

7-2014

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Anita Bernstein

*Brooklyn Law School*, [anita.bernstein@brooklaw.edu](mailto:anita.bernstein@brooklaw.edu)

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## Recommended Citation

35 J. Leg. Med. 345 (2014)

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# THEMES, DOCTRINE, AND PEDAGOGY IN THE 2013–2014 NATIONAL HEALTH LAW MOOT COURT COMPETITION PROBLEM

Anita Bernstein\*

## INTRODUCTION

Vaccination and anti-vaccine sentiment give a moot court problem writer quite the bountiful harvest. As a subset of public health, the topic fills domestic national policy and debates about how to spend money. In an exception to the almost total defeat of products liability reform at the federal statutory level,<sup>1</sup> Congress has managed to enact the National Childhood Vaccine Injury Act.<sup>2</sup> An interactive map by the Council on Foreign Relations, documenting what it called “vaccine-preventable outbreaks” worldwide, went close to viral in early 2014.<sup>3</sup>

The issue contains favorites of mine that I think are of general interest. Safety, health, the collective action problem, civil liberties, and individuals and communities in tension are included for starters. In the law school course that I have taught more often than any other, the iconic *O’Brien v. Cunard S.S. Co.* gives first-year students the haunting image of an Irish immigrant

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\*Anita and Stuart Subotnick Professor of Law, Brooklyn Law School. My thanks to Loren Pani for tireless research assistance; W. Eugene Basanta and Cheryl Anderson for their partnership and guidance throughout the construction of the problem; David Orentlicher, who suggested that I include the Health Care Quality Improvement Act; and my fellow judges at the National Health Law Moot Court Competition final argument, Victoria L. Green, M.D., Julio M. Fuentes of the Court of Appeals for the Third Circuit, and G. Patrick Murphy of the United States District Court of the Southern District of Illinois, who found more content in this problem than I knew was there. Thanks also to a couple of medical professionals dear to me, Joseph Bernstein and Kirsten Hickerson, for helpful tutelage about anti-vax as a public-health topic.

<sup>1</sup> See generally Anita Bernstein, *A Model of Products Liability Reform*, 27 VAL. U. L. REV. 637 (1993).

<sup>2</sup> *Id.*; Joanna M. Shepherd, *Products Liability and Economic Activity: An Empirical Analysis of Tort Reform's Impact on Businesses, Employment, and Production*, 66 VAND. L. REV. 257, 277 (2013) (situating the NCVIA and other narrow federal reforms against a backdrop of failure for comprehensive products liability reform efforts generally).

<sup>3</sup> *Vaccine-Preventable Outbreaks*, COUNCIL ON FOREIGN RELATIONS, [http://www.cfr.org/interactives/GH\\_Vaccine\\_Map/#map](http://www.cfr.org/interactives/GH_Vaccine_Map/#map) (last visited Mar. 2, 2014).

teen, fresh off the boat in Boston harbor, trying to say no to a smallpox shot by lifting her arm.<sup>4</sup> Freedom, a key theme in the writings I read and create, poses a question to this great public health initiative whenever it imposes its mandate: “Why won’t you leave me and my child alone?”

The most straightforward way to put vaccination into a moot court frame would have been to present a litigant, probably a prosperous mother, resisting vaccination as a claimed breach of liberty, in effect saying: “Please leave me and my child alone.” Quickly I rejected that path. Current law in the United States permits parents and guardians to refuse vaccines: that much freedom they have won.<sup>5</sup> The 2013–2014 National Health Law Moot Court Competition problem needed more varied stakes, more nuance, richer doctrine. Below I note some inclusions that I chose toward these ends.

## I. THE STORY

*Hanover University General Hospital v. Rutherford* featured a record containing four items. I gave participants an opinion by a federal trial court; an appellate reversal of the trial court’s decision; an excerpt from the petitioner hospital’s bylaws, which pertained to the dispute; and a statement of two questions before the Supreme Court of the United States, which they had to argue.

The defendants had suspended hospital privileges from the plaintiff, a cardiac surgeon named Thomas L. Rutherford, for about a month in the summer of 2012. Unmollified despite the relatively swift restoration of his status, Dr. Rutherford brought an action against the hospital, Hanover University General Hospital (HUGH), and four named individuals. He attributed his loss of privileges to a post he had published, on a Facebook-like site called ConnectSpace, just a few days before the hospital’s “corrective action” commenced. Dr. Rutherford contended that he had suffered retaliation for his speech. Because HUGH, as written into the problem, was a state actor and Dr. Rutherford a quasi-employee, the plaintiff could state his first claim, which, for participants, was the first certiorari question, in constitutional terms using 42 U.S.C. § 1983.

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<sup>4</sup> See *O’Brien v. Cunard S.S. Co., Ltd.*, 28 N.E. 266 (Mass. 1891).

<sup>5</sup> Several courts, interpreting state statutes, have compelled parents to state their objections in religious, rather than philosophical or secular-principled, terms. See *Toward a Twenty First Century*, 121 HARV. L. REV. 1820, 1825-26 (2008). When parents are willing to stay inside the religious-objection framework, courts spare them tough questions about what exactly they believe. See, e.g., *Sherr v. Northport-E. Northport Union Free Sch. Dist.*, 672 F. Supp. 81 (E.D.N.Y. 1987) (permitting parents to withhold vaccination on religious grounds even though they did not claim to belong to a religious organization); see also *In re LePage*, 18 P.3d 1177 (Wyo. 2001) (prohibiting the state health department from inquiry into the sincerity of a parent’s religious beliefs about vaccination).

The second certiorari question asked participants to apply the federal Health Care Quality Improvement Act of 1986 (HCQIA) to part of the dispute. Dr. Rutherford had added contract and tort claims to his Section 1983 action, complaining of retaliation for speech; specifically, he alleged that defendants breached his employment contract and caused him financial losses and emotional harm. If the “professional review” that HUGH used to investigate Dr. Rutherford qualified for immunity, then Dr. Rutherford could receive no damages for these common-law claims.

In my tale, the link confected for Dr. Rutherford’s social media post,<sup>6</sup> which for technical reasons never made it into the distributed problem, directed Dr. Rutherford’s 1,011 “friends” to an essay and a photograph of his toddler grandson, Declan. The essay contained musing by Dr. Rutherford that perhaps vaccines cause autism after all. Dr. Rutherford offered this speculation—along with a couple of snide comments about a vaccine-promotion research grant at HUGH—following what he mentioned as the recent news that Declan had been diagnosed with autism.

The four named defendants reacted to the post—or at least they acted immediately after it went up; they disputed causation—with what looked like a mix of villainy and bureaucracy. Anthony Glower, M.D., recipient of the vaccine grant that Dr. Rutherford had groused about, texted Alicia Polishov, M.D., high up in HUGH administration, to tell her about Dr. Rutherford’s friends-only social media post just hours after it was published. Dr. Polishov pulled together an ad hoc committee to investigate Dr. Rutherford’s record at HUGH. She parked her live-in companion, Dr. Seamus O. Milk, a cardiac surgeon recently retired from HUGH, on the ad hoc committee, along with Dr. Glower. (A third physician filled out the committee, but Dr. Rutherford did not name him as a defendant. This affable-sounding individual “goes along to get along,” said the plaintiff during his deposition.) Serving ex officio was the final named defendant, one Mary Elizabeth Kreutzer, a nurse-administrator who told the committee that Dr. Rutherford was abrasive.

Taking the committee’s deliberations and findings into account, HUGH suspended Dr. Rutherford’s privileges. Dr. Rutherford got the news in a letter dated July 31. On August 24, the hospital reversed itself and returned Dr. Rutherford’s privileges and he returned to work.<sup>7</sup> Soon after, he filed an action in federal district court.

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<sup>6</sup>The link I created to portray Dr. Rutherford’s fictional social media site was <http://www.connectspacemedia.com/ldrutherford>.

<sup>7</sup>I wrote it that way for two reasons: first, to eliminate a procedural due process claim that would have given participants too much work, and, second, to put a little thumb on the scale in favor of the physician, because case law on both of the certiorari issues seemed to me inclined against him.

## II. NOW WHAT?

With a narrative written and claims identified, I faced decision points in the preparation of the two opinions.

Although some prior National Health Law Moot Court Competition problems included concurrences and dissents, I opted for binary simplicity: dismissal of all claims by the trial court followed by wholesale reinstatement by the appellate panel. In another departure from a common, prior problem pattern, my appellate decision gave its own statement of facts rather than incorporate the trial judge's version. I wanted opinionated opinions.<sup>8</sup> Integrating themes into the presentation continued this approach.

## III. WHY THEMES? LEARNING FROM JUDGE KOZINSKI'S ESSAY ON MOOT COURT

*Hanover University General Hospital v. Rutherford* aligns with the layout familiar in appellate advocacy pedagogy—a constitutional question first and a federal statute second. Although I hewed to this tradition, my work was haunted by a law review article by the famed federal appellate judge Alex Kozinski.<sup>9</sup> Kozinski's critique of moot court as a misleading version of appellate litigation has always seemed correct to me, on one hand, yet not altogether constructive, on the other.

Kozinski reminds student readers interested in appellate advocacy that, with respect to their future employment, the number of retainers ahead that will ask them to expound on a constitutional issue before the nation's highest court hovers at approximately zero.<sup>10</sup> Worse, moot court sends an even less accurate message about what *is* available to practitioners: the record, into which a skilled appellate advocate must dive deeply.<sup>11</sup> Its pages reveal the stakes of the disagreement and often predict its resolution. Preparing for appellate advocacy means exploring the record to learn what judges on the panel will want to know more about, mastering the facts that good advocates recite fluently upon request. Moot court problems tend to glide past this reality by omission.

One can imagine the record of a real, or more real, *Hanover University General Hospital v. Rutherford*. But I could not include it. Prospective participants considering whether to join a competition browse a problem that must be complete in relatively few pages. A moot court problem also needs, pardon

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<sup>8</sup> After the competition, I was delighted to learn that participant teams, which chose which of the two sides to write briefs for, had split as equally as they could: 15 for HUGH and 14 for Dr. Rutherford.

<sup>9</sup> Alex Kozinski, *In Praise of Moot Court—Not!*, 97 COLUM. L. REV. 178 (1997).

<sup>10</sup> *Id.* at 189-92.

<sup>11</sup> *Id.* at 194.

the expression, “appeal.” Participants expect something sexy like the First Amendment, and I do not blame them. And, so in composing, I tried to nod in the direction of Kozinski’s point—after all, he is correct—by adverting to more of the missing record than I had space to provide.<sup>12</sup>

The other way I took Kozinski on Moot Court to heart was even less literally compliant with the judge’s stated wishes. But I link it nevertheless to his thesis. I read what he wrote as a plea for more. A moot court problem, Kozinski and I both believe, ought to do more than present a fictional factual record about a dispute and ask advocates to find and apply case precedents to support one of two binary outcomes. Kozinski rooted his belief in his long experience on the bench. My vantage point was necessarily farther from the real world of federal appellate advocacy, but I, too, like all problem-authors, had a job to do. What more *more* would I add? Not bulky pages of a record, for reasons just noted. Not more doctrine: with procedural due process built into its story, *Hanover University General Hospital v. Rutherford* already had one legal issue too many from the start. I chose instead to weave in a couple of themes.

### A. Theme 1: Employment Matters

The protagonist of *Hanover University General Hospital v. Rutherford* lost his job for only a few weeks. As a successful surgeon in his mid-60s based at a university hospital and the holder of a stent patent that, I implied, earned him significant income, he did not suffer the severe consequences of contemporary American unemployment of which some persons who participated in the exercise probably had personal knowledge. If “the 1%” demarcation in the United States is household income of more than \$350,000 or so each year,<sup>13</sup> Dr. Rutherford and his family likely dwelled among that cadre.

My making a federal case out of a short encounter with unemployment purposely emphasized an issue that will loom large in the participants’ future. Employment goes beyond—but also includes—healthcare and health law. Around the time of the oral arguments in November of 2013, the President nominated a new head of the Federal Reserve Bank, an economist who had “been talking consistently about what the economy needs for a healthier recovery—jobs and wages.”<sup>14</sup> The sector of interest to the National Health Law Moot Court Competition holds a strong role in U.S. job-creation and

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<sup>12</sup> See generally *id.* This included e-mails and texts created by the parties, as well as an excerpt from the HUGH bylaws, and acronyms and jargon.

<sup>13</sup> During the Occupy Wall Street days of 2011, one blogger wrote that an annual adjusted gross income of \$343,927 put a taxpayer in that band in 2009. Kay Bell, *Top 1%: How Much Do They Earn?*, BANKRATE (Oct. 24, 2011), <http://www.bankrate.com/finance/taxes/top-1-percent-earn.aspx>.

<sup>14</sup> William Greider, *It Took 3 Men 30 Years to Screw Up the Economy—Can One Woman Fix It?*, THE NATION (Feb. 3, 2014), <http://www.thenation.com/blog/178199/it-took-3-men-30-years-screw-economy-can-one-woman-fix-it>.

employment policy,<sup>15</sup> but I hoped to touch on more than just the work prospects of healthcare professionals.

Employment in the United States, in my view, poses problems of basic fairness.<sup>16</sup> Because employers typically have both more wealth and more experience in the types of strife that arise between them and the people they hire, they enjoy a power advantage in their employment relations. What looks to me like rectifications to alleviate an imbalance—especially labor unions and statutory employment protections enforceable in court—apparently looks to employer advocates like provocations to be resisted.<sup>17</sup> In my lifetime, union membership has plummeted all over the world but most steeply in the United States.<sup>18</sup> Harms to the non-union, white-collar workforce have been more diffuse and ambiguous, but researchers report decades of de-skilling, wage declines, and diminution in morale.<sup>19</sup> For this topic, law students are at a critical juncture.

On one hand, they have joined a profession. They may distance individuals who hold law licenses with the occasional lawyer joke or casual disparagement, but they know they have enlisted in a group that experiences numerous controls and privileges, both formal and unwritten.<sup>20</sup> They are virtually lawyers now. They can see an employment-related claim through the lens of statutes and precedents.

On the other hand, their relative youth makes them well situated to relate to a scenario about popularity and power struggles that stem from emotion. The named defendants had ganged up on Dr. Rutherford. In turn, Dr. Rutherford, like some targets of school bullying whom he may have evoked for participants, did not behave like the proverbial perfect angel. Participants had to consider how he had yelled at vulnerable persons; typed low-quality prose about vaccination at his computer and hit the “publish” key; and either

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<sup>15</sup> See *U.S. News & World Report Announces Best Jobs of 2014*, U.S. NEWS & WORLD REPORT (Jan. 23, 2014), <http://www.usnews.com/info/blogs/press-room/2014/01/23/us-news-announces-best-jobs-of-2014> (noting that 7 of the 10 top-ranked occupations “are from the health care sector”); David Orentlicher, *A Restatement of Health Care Law*, 79 BROOK. L. REV. (forthcoming 2014) (reporting that the United States spends about 18% of its gross domestic product on healthcare).

<sup>16</sup> I do not teach employment law, but the topic has long had a place in my research agenda. See, e.g., Anita Bernstein, *Foreward: What We Talk About When We Talk About Workplace Privacy*, 66 LA. L. REV. 923 (2006); Anita Bernstein, *Treating Sexual Harassment with Respect*, 111 HARV. L. REV. 445 (1997).

<sup>17</sup> See David C. Yamada, *Human Dignity and American Employment Law*, 43 U. RICH. L. REV. 523, 528-29 (2009) (internal citations omitted).

<sup>18</sup> Stephen F. Befort, *Labor and Employment Law at the Millenium: A Historical Review and Critical Assessment*, 43 B.C. L. REV. 351, 371 (2002), <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2201&context=bclr>.

<sup>19</sup> Lawrence Mishel, *Unions, Inequality, and Faltering Middle-Class Wages*, ECON. POL’Y INST. (Aug. 29, 2012), <http://www.epi.org/publication/ib342-unions-inequality-faltering-middle-class> (correlating the decline of unions with the decline of white-collar employment).

<sup>20</sup> See generally Anita Bernstein, *Pitfalls Ahead: A Manifesto for the Training of Lawyers*, 94 CORNELL L. REV. 479 (2009).

failed to prepare for his deposition or prepared for it but strayed heedlessly from advice. I wanted to remind participants of the ambivalence they likely would experience in reaction to the “pile-ons” and hostility delivered by mobs to individuals. An employment context builds on this awareness to connect these reactions to the problem with the menu of legal remedies. Should the doctor prevail in his protest against an adverse experience at work? If not, why not, as a matter of doctrine as well as fairness: how does the law block his claim? If he ought to prevail, what redress would comport with his injury?

## **B. Theme 2: Unintended Consequences**

If I ran the curriculum, law students would have to read the 1991 classic *The Rhetoric of Reaction: Perversity, Futility, Jeopardy*. Albert O. Hirschman needs only a few pages to cover unintended consequences memorably. He identifies the reactionary narratives that arise in response to reform proposals: Antagonists of progress claim that although an idea may sound good, its implementation will likely fail and perhaps even cause new harms. Maybe even the opposite of what reformers want to encourage will manifest.

It is not that the perversity-jeopardy alarm is wrong, Hirschman continues. Unintended adverse consequences can, indeed, ensue from a well-intentioned change. The folly for policymakers is to think that that one stance in response to reformist ideas—either naïve embrace (for progressives) or instinctive resistance (for conservatives)—will yield safety in a reliable way. From the peril we face, there can be no risk-free way out.

The HCQIA half of the problem brought up unintended consequences in a context that participants probably had not yet considered, even if they had taken a health law class. I had goals here beyond the inclusion of this theme. “Read the statute,” foremost: this famous piece of advice from Justice Frankfurter always deserves another iteration.<sup>21</sup> To fare well in their brief-writing and oral arguments, participants had to examine 42 U.S.C. § 11112(a)(1), § 11112(a)(2), § 11112(a)(3), and § 11112(a)(4)—four sections of a large law that needed to be studied both separately and together. Because courts have interpreted HCQIA with such striking favor to institutional defendants, the problem forced advocates to manipulate case law that simply does not divide evenly. The inclusion also brought supplemental jurisdiction and common-law claims to a problem dominated by federal constitutional law. But the aspect of HCQIA that I found most interesting was how this legislation turned out, in contrast to how it must have seemed during the bill-crafting stage.

HCQIA immunity, as was mentioned, gives shelter from damages to institutions and individuals who participate in the professional review of

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<sup>21</sup> Frankfurter was reported to have had three rules of statutory interpretation: “(1) Read the statute; (2) read the statute; (3) read the statute!” *In re England*, 375 F.3d 1169, 1182 (D.C. Cir. 2004) (quoting HENRY J. FRIENDLY, *BENCHMARKS* 202 (1967)).

physicians. The statute strove “to improve the quality of medical care in this country by encouraging the medical profession to rid itself of bad doctors.”<sup>22</sup> Enacted when policymakers shared a belief in a malpractice insurance crisis, this measure had bipartisan appeal.<sup>23</sup> Nobody apart from personal injury lawyers, as I recall, liked the lawsuit method of deterring and disabling medical malpractice. So how much better to extirpate the problem through peer review?

Peer review had never done this particular job well, true, but the historical shortfall was understandable. Why would a doctor work to get rid of a bad-apple peer when doing so would generate hostility from the bad apple’s friends, loss of time for people who get paid for their time, possibly lost referrals, and a risk of being sued for damages? Statutory immunity could not eliminate the professional intangibles, but it could remove tort and contract damages from reviewers’ list of worries.

A generation later, results suggest what Albert Hirshman’s “rhetoric of reaction” predicted. First is “futility.” The health law-and-policy literature contains no attempt to link HCQIA immunity with an increase in policing of bad doctors or a drop in the rate of injuries attributed to malpractice. It is fair to infer that such gains did not materialize. Physicians, themselves, respond to the prospect of peer review with what one journalist described as either “dread” or “indifference.”<sup>24</sup> The esteemed RAND Institute found medical peer review less reliable than its preferred alternative, which it called “structured implicit review,” because a post-hoc examination cannot know what it is looking for until an adverse event or other trigger starts the process.<sup>25</sup>

As for “perversity” and “jeopardy,” *Hanover University General Hospital v. Rutherford* adverts to what other writers have documented. Our protagonist might have been the victim of a bad-faith policing initiative. “Sham peer review,” the phrase quoted dismissively by the trial judge, is, indeed, not a legal category as she said, but doctors do complain about it.<sup>26</sup> One health law

<sup>22</sup> Charity Scott, *Medical Peer Review, Antitrust, and the Effect of Statutory Reform*, 50 MD. L. REV. 316, 318 (1991).

<sup>23</sup> Sponsored by Democrats and Republicans, the legislation prevailed by voice vote. H.R. Rep. No. 99-903, Pt. 1, at 4 (1986).

<sup>24</sup> Neil Chesnow, *What You Don’t Know About Peer Review Can Hurt You*, MEDSCAPE BUS. OF MED. (Jan. 21, 2011), <http://www.medscape.com/viewarticle/735133>. “Dread” here does not mean a socially useful prod to hew to good practices but rather reflects a “paranoid” fear of an “inquisitional and shaming” process. *Id.*

<sup>25</sup> See *Peer Review: Measuring the Quality of Physician Care*, RAND HEALTH, [http://www.rand.org/health/surveys\\_tools/peer\\_review\\_physicians.html](http://www.rand.org/health/surveys_tools/peer_review_physicians.html) (last visited Mar. 3, 2014).

<sup>26</sup> See, e.g., *Cohlmia v. St. John Med. Ctr.*, 906 F. Supp. 2d 1188, 1216 (N.D. Okla. 2012) (rejecting this characterization); *Tuli v. Brigham & Women’s Hosp., Inc.*, 592 F. Supp. 2d 208, 212-13 (D. Mass. 2009) (disallowing expert testimony on the sham peer-review phenomenon); Leigh Ann Lauth, Note, *The Patient Safety and Quality Improvement Act of 2005: An Invitation for Sham Peer Review in the Health Care Setting*, 4 IND. HEALTH L. REV. 151, 167 (2007) (“Many physicians are beginning to take the view that “[n]ot only is the peer review process corrupt, it’s ineffective.”) (citations omitted).

scholar has detailed anticompetitive behaviors commenced under the rubric of HCQIA-sheltered review.<sup>27</sup> Congress was optimistic back in 1986 when it equated immunity with patient welfare; but irresponsibility, as another scholar noted in another context, is among the consequences of immunity.<sup>28</sup>

### C. Theme 3: Objectionable Speech

To give full effect to the law-based right of free speech, or so I suggested in the problem, one needs a set of words that make real trouble. Speech without an objectionable aspect never gets worse than anodyne. The notoriously unavailing-at-best counsel that victims of bullying still hear—“Ignore them,” “Sticks and stones may break my bones . . .,” “Don’t feed the trolls”—rests on a misbegotten premise that words are bland.<sup>29</sup> Real violence and danger occur but only through other means, says this unhelpful nostrum.

At the same time, I wanted the instance of objectionable speech to contain some depth. The plaintiff could have spoken variations on a familiar ugly theme: racist epithets, online misogyny (a topic I address in a forthcoming paper),<sup>30</sup> homophobic taunting, or egregiously partisan politician-bashing, for example. Well-plowed grounds like these lay outside the problem, I decided. It is *health law* we are expounding.<sup>31</sup> No need for the protagonist to be a free-floating bigot. His objectionable speech ought to pertain to public health. It needed a little plausibility, too, a soupçon to which readers could relate.

Putting my cards on the table: as a layperson devoid of training in medicine or epidemiology, I side with the problem’s trial judge, who scoffed at what she read as pernicious nonsense and slapped Dr. Rutherford with summary judgment. I celebrate taxpayer-funded and mandated vaccination as a great step forward for public health. The individual defendants of *Hanover University General Hospital v. Rutherford* were probably a nasty pack of office plotters, but, in my opinion, they were right about vaccines and Dr. Rutherford was wrong.

And yet I know a smart, experienced speech pathologist who suspects an association between vaccination and autism.<sup>32</sup> A well-educated pharmacist of my acquaintance has opted, at least for now, to skip the DPT vaccine sequence for her children. She is inclined to acquit vaccination on the autism charge but

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<sup>27</sup> See Scott, *supra* note 22, at 318.

<sup>28</sup> Mary J. Davis, *The Supreme Court and Our Culture of Irresponsibility*, 31 WAKE FOREST L. REV. 1075, 1119 (1996).

<sup>29</sup> See EMILY BAZELON, STICKS AND STONES: DEFEATING THE CULTURE OF BULLYING AND REDISCOVERING THE POWER OF CHARACTER AND EMPATHY 11 (2013) (considering how “sticks and stones” brushoffs of school bullying became obsolete, although they rest on some truth).

<sup>30</sup> Anita Bernstein, *Abuse and Harassment Diminish Free Speech*, 34 PACE L. REV. (forthcoming 2014).

<sup>31</sup> *But cf.* *McCulloch v. Maryland*, 17 U.S. 316, 407 (“We must never forget that it is a *constitution* we are expounding.”) (emphasis in original).

<sup>32</sup> What I found interesting about this suspicion is that the speech pathologist keeps it humbly to herself, even though she is forthcoming generally in conversations. I had to ask her what she thought.

wonders, as did Dr. Rutherford, whether the practice is a “great uncontrolled experiment on little kids.”

It is not that I credit these worries, exactly. Rather, I think they make the point that words that get speakers in trouble can contain danger, not just idle hostility. Objectionable speech matters.

## CONCLUSION

Health law scholars often remind readers of the great breadth of their field.<sup>33</sup> The West hornbook runs more than a thousand pages—and it was published 14 years ago;<sup>34</sup> all topics named in its table of contents have been growing since then. The roster of issues considered during the years through the National Health Law Moot Court Competition reads like a compendium of the major debates about U.S. domestic policy.<sup>35</sup>

Diversity, intellectual curiosity, civic repair, and interdisciplinary engagement are among the aspects of health law that will continue to lure people to the subject and to its great national moot court competition. In 2013–14, an expansive and inclusive approach proved well suited to an expansive and inclusive field. Participants worked from doctrines, pedagogy, and themes that complement the fundamentals of health law to enlarge what I drafted: they made it better.

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<sup>33</sup> See Mark A. Hall et al., *Rethinking Health Law*, 41 WAKE FOREST L. REV. 341, 342 (2006) (introducing a symposium); see Orentlicher, *supra* note 15 (arguing that the subject is ready for an American Law Institute restatement); Jessica L. Roberts, *Health Law as Disability Law*, 97 MINN. L. REV. 1963, 1968 n.6 (2013) (surveying fields that fall under the rubric of health law).

<sup>34</sup> BARRY R. FURROW ET AL., *HEALTH LAW* (2d ed. 2000).

<sup>35</sup> See *Prior Moot Court*, S. ILL. U. SCH. OF LAW, <http://www.law.siu.edu/healthlaw/proirmootcourtcomp.php> (last visited Mar. 3, 2014).