U.S. LAW AND ETHICS OF HUMAN SUBJECTS RESEARCH

Interdisciplinary seminar on U.S. law and ethics in protection of human subjects of medical and behavioral research.

Michigan State University College of Human Medicine: HM 551
Michigan State University College of Law: LAW558P

7:45-9:45 p.m. Tuesdays, Room 340, Law College Building

SYLLABUS

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Office hours: By appointment.

Course objectives:

To foster needed interdisciplinary understanding of the substance and interrelationships of law and legally enforceable ethical requirements in the protection of human subjects of U.S. biomedical and behavioral research on human subjects.

Researchers in the biomedical and behavioral and social sciences study people—in order to understand and counter disease, to better understand people’s troubles, beliefs, behavior, and hopes, and sometimes for little more than revenue or academic advancement. Research on human beings incurs special ethical and legal responsibilities. But exposure to these responsibilities is limited in most courses to bioethical theory, voluntary codes, and minimum, often too narrow, usually single-regulation compliance materials. This course focuses on the context, substance, and operation of U.S. law, including U.S. international obligations, that must be taken into account in ensuring the ethicality of research on human subjects.
Like its companion seminar in International Law and Ethics of Human Subjects Research, this seminar brings together scholars and researchers from many fields to encourage interdisciplinary understanding of the substance and interrelationships of law and ethics in the protection of human subjects of biomedical and behavioral research.

Individuals who complete this seminar should share a broader situational awareness and should be better qualified to address these issues as scholars, researchers, administrators, ethics review committee members, teachers, practitioners, and mentors.

**Required reading:**


Additional readings: U.S. statutes, regulations, regulatory guidance, advisory committee reports; selected state statutes; selected judicial opinions; selected international instruments; professional ethical statements, professional journals, reports, and supplementary research documents. As assigned.

**World Wide Web resources:**

These Web sites have been useful direct or indirect sources for research into these topics. Like most Web resources, they are of mixed quality, are not necessarily up to date, and are not equally authoritative. This list is not comprehensive.

**Academic**

Michigan State University

College of Human Medicine: Center for Ethics and Humanities in the Life Sciences
http://www.bioethics.msu.edu/

Human Research
http://www.humanresearch.msu.edu/

**Governmental**

United States

Advisory Committee on Human Radiation Experiments – Final Report
National Bioethics Advisory Commission (archival matter)
http://www.georgetown.edu/research/nrcbl/nbac/

Department of Energy: Human Genome Project Information
http://www.doegenomes.org/

Department of Health and Human Services

Centers for Disease Control and Prevention: Public Health Law Program:
http://www2a.cdc.gov/phlp/

National Institutes of Health
Clinical Trials.Gov
http://www.clinicaltrials.gov/

National Institute of Allergy and Infectious Diseases:
NIAID’s HIV Prevention Trials Network, Fact Sheet
http://www.niaid.nih.gov/factsheets/hvtn.htm
HIV Prevention Trials Network, Ethics Guidance

Office for Human Research Protections
http://www.hhs.gov/ohrp/

Department of State: Human Rights Reports
http://www.state.gov/g/drl/rls/hrrpt/2004/index.htm

http://www.loc.gov/law/guide/guideindex.html

**Intergovernmental**

International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use [informal cooperative venue for agencies and industry; not a formal intergovernmental entity]
http://www.ich.org/

Efficacy Guidelines

United Nations
Office of the United Nations High Commissioner for Human Rights: International Law

World Health Organization
http://www.who.int/en/

WHO Ethics, trade, human rights, and health law
http://www.who.int/eth/en/

WHO International Digest of Health Legislation
http://www3.who.int/idhl-rils/frame.cfm?language=english

Non-governmental organizations

Council for International Organizations of Medical Sciences
http://www.cioms.ch/

CIOMS: Texts of Guidelines and Other Normative Documents

CIOMS in cooperation with WHO and the Islamic Organization for Medical Sciences International Ethical Guidelines for Biomedical Research Involving Human Subjects (An Islamic Perspective)

World Medical Association Declaration of Helsinki 2004
http://www.wma.net/e/policy/b3.htm

Seminar procedures:

Class format: Lectures, discussions, mini-rounds, simulations.

Required reading: (1) From Coleman, Menikoff, et al., eds., The Ethics and Regulation of Research with Human Subjects, as assigned; students must be prepared to discuss the Notes and Questions that accompany these readings; (2) from journal articles and legal and policy documents, as assigned; these readings are available on the World Wide Web or on the course ANGEL sites or will be distributed. These readings may include additional reference texts (see next paragraph). Students need not read reference texts in full but should be familiar with their origin, structure, and relevance to law and ethics of human subjects research. Much of this material will be used in more than one class session. Be prepared to discuss the readings.

Additional reference texts: Additional legal documents for reference. These documents are on the World Wide Web or on ANGEL. Students should at least skim these documents and then be able to find and use cited sections.
(Textbook reading tip: First, check the assigned materials fit in the Table of Contents, to see how the editors think these materials fit together. Second, look through the Notes and Questions to see the kinds of issues that seem important to the authors. Third, read the materials. Fourth, prepare to discuss the issues raised in the accompanying Notes and Questions.)

Mini-rounds: A portion of most class sessions will be devoted to mini-rounds on human-subjects research situations or proposals that raise ethical and legal issues. Mini-rounds should focus on specific factual situations, not general policy questions, although the situations may have implications for policy.

How it works: Responsibilities for mini-rounds will be assigned. The presenter chooses the problem, which may be hypothetical or drawn from experience, news reports, or current controversies, but not from existing case studies or textbook-type exercises. The problem should not be complex. Mini-rounds are not competitive. The presenter has three minutes in which to summarize the problem. The discussant has five minutes to suggest (1) the procedural setting in which the problem should be addressed or resolved, and why, and (2) what ethical and legal considerations should apply, and why. Then seven minutes are devoted to open questioning and discussion.

These are analytical discussions, not readings or recitations. Presentation, commentary, and discussion should be analytical, not conclusory. Advance documentation: Avoid it if possible; otherwise keep it to an absolute minimum. For mini-rounds, there are no rewards for length, volume, or bibliography. Presenters should send a very short précis and any essential accompanying documentation (documents, not Web links) to the instructor and other students by e-mail at least two days in advance. Discussants should distribute any essential documentation (documents, not Web links) at least two days in advance by e-mail to the instructor and students.

Simulations: As assigned.

Grading: Based on written submissions (80%) and class participation (20%). Letter grades, numerical grades, or P-NP, depending on the school in which the student seeks credit.

Written assignments: Four critical reviews—one of each of four chosen by the student from among those marked below with a bold-faced asterisk (*).

When due: Each critical review is due before the class completes the unit in which the item being reviewed is listed. Send to instructor by e-mail (send to: schatzg@msu.edu).

Format for critical reviews: Typed, 2-3 single-spaced pages each. Write plainly, and make the order of argument clear. The form that a critical evaluation or an essay
takes necessarily depends on the material. Generally, a critical review should include these elements:

For all critical reviews:

- Bibliographic citation for the selection reviewed, and, if possible, specific references (including page or section) for material quoted or summarized. In using quotations and paraphrases, make clear who is saying what.

For critical reviews of essays, articles, research reports:

- What is the author trying to say?
- Does the author say that?
- What facts and reasoning does the author use to support the position taken?
- Are there significant contrary facts and views?
- What relevant law, if any, is omitted?
- How does the author deal contrary facts and views and with relevant law? Is the author fair?
- On balance, is the author’s position supportable?
- Do you agree? Why or why not?
- How do you deal with the significant facts and views contrary to yours?
- Your conclusion?

For critical reviews of news articles or series:

- What is being reported?
- Are the sources apparently authoritative? Are critically important texts or statements quoted, with context given? Or are they paraphrased?
- Is the relevant law, if any, reported accurately?
- Are there significant omissions in the reporter’s account?
- How does the reporter deal with controversy? Is the account fair?
- Do you agree with the reporter’s interpretation? Why or why not?
- What are the most important apparent implications of the situation reported?

For critical reviews of policy documents:

- Who wants what, why, how, and when?
- What interests are represented among the authors?
- What important interests are not represented?
- What important facts, background information, and relevant law are omitted?
- If legal issues or sources are mentioned, are they treated fairly and authoritatively?
• How do the authors deal with contrary views and law?
• Is the policy intended to be binding? Under what authority? On whom? By whom? How is it to be enforced? Remedies?
• If the document is in response to questions presented, were those questions fairly stated? How do the authors respond to those questions?
• Do the recommendations flow logically from the facts adduced by the authors?
• Irrespective of the recommendations, how do the authors contribute to clearer understanding of the issues addressed? Or do they?

For critical reviews of legal documents other than judicial opinions

• Source of authority?
• Is it consistent with existing international and local legal authority?
• If a bill, law, or regulation: How is it intended to work in practice? What protections is it supposed to provide? For whom? Who is obligated? What is supposed to be required? Does it bind governmental entities and persons? How is it to be enforced? By whom? What remedies are provided?
• When is full compliance expected?
• What has been and what do you expect will be the effect of this document?
• Do you agree with this approach? Why or why not?

For critical reviews of judicial opinions

• Reviews of judicial opinions must be based not on excerpts in the textbook or on legal information service head notes but on the full opinion, including concurrences and dissents.
• Who are the parties? Who brought the original action? For what? Cause of action? What basic facts were alleged?
• Which court is ruling here?
• If an appellate decision: What happened in the courts below?
• What specific legal and factual issues are before this court?
• What did this court decide on these specific issues? What did this court order?
• What is the court’s legal rationale? What is the court’s policy rationale?
• Concurring and dissenting opinions?
• What does this decision imply for the parties? For society? For biomedical or behavioral research on individuals?
• Do you think this court decided these issues rightly? Why or why not?

Preparation for class participation:

Prior to each unit:
- Read all assigned readings and review Notes and Questions. Familiarize yourself with the additional reference texts.

Prior to each class session:
- Prepare for discussion of Notes and Questions and for mini-rounds and simulation(s) as assigned.

**Supplementary:** On-campus and nearby events of possible interest will be announced. Students are encouraged but not required to attend.

**Scheduling, attendance, cancellations:** If you do not expect to attend, please notify instructor in advance. Classes canceled due to weather or other exigencies will be made up. Make-up sessions can be arranged for students who have to miss a class session. Cancellations due to weather: See MSU policy: [http://keywords.msu.edu/viewpathfinder.asp?id=67#401](http://keywords.msu.edu/viewpathfinder.asp?id=67#401)

**Religious observance:** University policy is to permit students and faculty/academic staff to observe those holidays set aside by their chosen religious faith. It is the responsibility of those students who wish to be absent to make arrangements in advance with their instructors. See MSU policy: [http://www.hr.msu.edu/HRsite/Documents/Faculty/Handbooks/Faculty/Instruction/v-religiousobservance.htm](http://www.hr.msu.edu/HRsite/Documents/Faculty/Handbooks/Faculty/Instruction/v-religiousobservance.htm)

**TOPICAL OUTLINE**

(All units will be covered. Timing depends on semester calendar. Reading assignments and reference texts may be updated.)

**Unit 1:** Week 1

**Why human subjects research is regulated.**

**History and context.** Interrelationships of U.S. law and biomedical ethics. Using some people for the purposes of others. Violations and responses. Bureaucracy.

Required reading:

Coleman, Menikoff, et al., eds., *The Ethics and Regulation of Research with Human Subjects*, chapter 1: Historical Antecedents.


Overview

1. Government Standards for Human Experiments: The 1940s and 1950s
4. Ethics Standards in Retrospect

Unit 1, cont’d. Week 2

Sources of law and sanction. Emerging Federal regulatory structures. Federal and state legal and operational interests.

Required reading:

Coleman, Menikoff, et al., eds., The Ethics and Regulation of Research with Human Subjects, chapter 12: Compensation for Research Injuries.

U.S. Constitution: Selected amendments <US Const texts.doc>

*Sell v. United States (U.S. Supreme Court, 2003) <539US166-Sell-v-US.pdf>

International Covenant on Civil and Political Rights, arts. 4, 7. <ICCPRart4andart7>

Additional reference texts:

Administrative Procedure Act, 5 U.S.C. chs. 5, 7, excerpts: <05C5.doc>, <05C7.doc>

Torts outline <bltort.doc>

Unit 2 Weeks 3, 4, 5

The Common Rule, Food and Drug Administration, and Department of Education regulation.

The Belmont Report: Ethical principles for regulation and regulatory interpretation.

Required reading:


Food and Drug Administration, 21 C.F.R. part 50 <21CFR50-2005-4-1.pdf>

Food and Drug Administration, 21 C.F.R. part 56 <21CFR56-2005-4-1.pdf>


Additional readings:

*U.S. Department of Health and Human Services, Office for Human Research Protections, determination letter to Johns Hopkins University, July 19, 2001. <OHRP letter to Hopkins on decision to suspend funding.doc>*

*Pharmaceutical Research and Manufacturers of America (PhRMA), Principles on Conduct of Clinical Trials and Communication of Clinical Trial Results, 2004. <2004-06-30%201035.pdf>*


**Unit 3  Weeks 6, 7**
Structure, purpose, functions, and obligations of Institutional Review Boards.

Required reading:

Coleman, Menikoff, et al., eds., The Ethics and Regulation of Research with Human Subjects, chapter 4: Institutional Review Boards.

<A study of warning letters issued to institutional.pdf>


Unit 4 Week 8

Research integrity, conflicts of interest, and commercial exploitation of academic research.

Career interest, intellectual property, Bayh-Dole, Cooperative Research and Development Agreements, research integrity regulation.

Required reading:

Coleman, Menikoff, et al., eds., The Ethics and Regulation of Research with Human Subjects, chapter 5: Conflicts of Interest..

,42cfr50subparta.pdf>


Unit 5 Week 9

Clinical and non-clinical research; selection of research populations and subjects; protection of vulnerable populations; therapeutic misconceptions; risk assessment and analysis of burdens and benefits.

Required reading:


Coleman, Menikoff, et al., eds., *The Ethics and Regulation of Research with Human Subjects*, chapter 15: Prisoners.


Additional reading:

*Grimes v. Kennedy Krieger Institute (Maryland Court of Appeals, 2001).*  
<128aj00.pdf>

<nyt2006mar3-medicareconditionspaymentonclinicaltrial.doc>

**Unit 6  Week 10**

**Informed consent.**

Required reading:


Coleman, Menikoff, et al., eds., *The Ethics and Regulation of Research with Human Subjects*, chapter 8: Recruiting and Paying Subjects.

*Steven Joffe, et al., Quality of Informed Consent: a New Measure of Understanding Among Research Subjects, J Natl Cancer Inst 2001;93:139–47.  <jnciic139.pdf>*

**SIMULATION:** Protocol: Culturally-focused batterer counseling for African American men.  <IRBG.pdf>

**Unit 7  Week 11**
Privacy, confidentiality, and relevant federal and state regulatory interests.
Genetics and human tissue banking

Required reading:

Coleman, Menikoff, et al., eds., *The Ethics and Regulation of Research with Human Subjects*, chapter 10: Confidentiality.

Coleman, Menikoff, et al., eds., *The Ethics and Regulation of Research with Human Subjects*, chapter 17: Genetics Research.

*Mark A. Rothstein, The Impact of Behavioral Genetics on the Law and the Courts, 83 Judicature No. 3 (November-December 1999). <rothstein1999judicature-behavioralgenetics.rtf>*

*Gerald S. Schatz, Comment: Health Records Privacy and Confidentiality: Pending Questions, 18 J. Contemp. Health L. & Pol'y 685. <gssjchlp2002privacy.doc>*

*U.S. Department of Justice, Bureau of Justice Statistics, Summary of Human Subjects Protection Issues Related to Large Sample Surveys, June 2001, NCJ 187692. <dojshspirls.pdf>*

SIMULATION: In re JL <INREJL.RTF>

Unit 8 Week 12

International obligations of U.S. research performers.

Required reading:


Reference texts:


Unit 9  Week 13

Monitoring research data and safety.

Required reading:

Coleman, Menikoff, et al., eds., The Ethics and Regulation of Research with Human Subjects, chapter 11: Monitoring of Ongoing Research.


Gerald S. Schatz, An Institutional Review Board Member's View of Data and Safety Monitoring Boards: Notes for National Institutes of Health Inter-Institute Bioethics Interest Group Panel on Data and Safety Monitoring Boards, January 8, 2001. <DSMBGSS.RTF>

Unit 10  Weeks 14, 15.

Regulatory purposes and Interpretation. Review.

Required reading:


Additional reading:


[Rev.12/17/07]