

Preface

In a 1928 address before the New York Academy of Medicine, Justice Benjamin Cardozo stated of medicine and law:

Our professions — yours and mine — medicine and law — have divided with the years, yet they were not far apart at the beginning. There hovered over each the nimbus of a tutelage that was supernatural, if not divine. To this day each retains for the other a trace of the thaumaturgic quality distinctive of its origin.¹

Cardozo's statement of sixty years ago could equally apply today, except with greater accentuation. Since that time and especially within the last two decades, the chasm between law and medicine has grown wider as medical malpractice suits have proliferated. Physicians (and the rest of the world) increasingly view lawyers with suspicion or disrespect. At the same time, however, the two disciplines' dependence on each other, whether voluntary or not, has also deepened. New medical developments have raised and will continue to raise myriad ethical, legal, and moral problems whose ultimate resolution is in the courts.²

Indeed, Cardozo noted that even in his day new scientific advances were causing many to question the continued validity of some long-entrenched legal positions, including that toward euthanasia. It is interesting to note that this subject of euthanasia continues to confront humankind with inexorable issues, as Professor Smith's Article in this Symposium attests. Cardozo queried "whether the privilege should be accorded to a physician of putting a patient painlessly out of the world when there is incurable disease, agonizing suffering, and a request by the sufferer for merciful release."³ Cardozo stated that the law of his day recognized no such privilege.⁴ Cardozo observed, however, the undercurrent possibly tending toward change as those who dearly value human life confront the agony of human suffering. As evidence of at least some change in our day, ten of twelve physician-authors of a re-

¹ Cardozo, *What Medicine Can Do for Law*, in *SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO* 371, 371 (M. Hall ed. 1947).

² See, e.g., *In re Baby M*, 217 N.J. Super. 313, 525 A.2d 1128 (Ch. Div. 1987), *aff'd in part, rev'd in part, remanded*, 109 N.J. 396, 537 A.2d 1227 (1988) (deciding surrogate motherhood issue).

³ Cardozo, *supra* note 1, at 388.

⁴ *Id.*

cent article in the *New England Journal of Medicine*⁵ believe that it is "not immoral for a physician to assist in the rational suicide of a terminally ill patient. However, we recognize that such an act represents a departure from the principle of continually adjusted care. . . . Clearly, the subject of assisted suicide deserves wide and open discussion."⁶ As society continues to ponder this problem, Professor Smith's discourse on euthanasia will most surely enter, if not guide, this discussion.

Several issues exist today that Cardozo could not have foreseen. The advance of medical technology coupled with environmental and social factors will continue to raise problems that promise to confound both disciplines. The resolution of these issues will depend on how well law and medicine interact to produce solutions that preserve values important to both. These important societal values include preserving constitutional rights, maintaining confidentiality, ensuring access to affordable insurance, saving lives through increased organ donation, positively proving paternity and identity, and ending AIDS. The union of law and medicine to achieve such goals was the gist of Cardozo's address; law and medicine can complement each other in reaching solutions to problems facing both disciplines.

Since all people are afflicted in the "great democracy of suffering,"⁷ one or more of these issues will eventually confront us. For answers we will at times turn to medicine, at times to law, and (often) at times to both. These last issues are the headline issues that are difficult to resolve. Given these problems, the continued interaction of law and medicine is inevitable, since law will be the arbiter. Increased interaction between law and medicine will hopefully characterize resolution. Even with increased interaction, society will not resolve these issues without caustic, emotional debate and conflict, and without many questioning the outcome and implications of decisions. Cardozo recognized this conflict: "The law, like medicine, has its record of blunders and blindness and superstitions and even cruelties. Like medicine, however, it has never lacked the impulse of a great hope, the vision of a great ideal."⁸ Our Symposium hopes to illuminate that ideal.

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⁵ Wanzer, Federman, Adelstein, Cassel, Cassem, Kranford, Hook, Lo, Moertel, Safar, Stone & van Eys, *The Physician's Responsibility Toward Hopelessly Ill Patients*, 320 *NEW ENG. J. MED.* 844 (1989).

⁶ *Id.* at 848.

⁷ Cardozo, *supra* note 1, at 388.

⁸ *Id.* at 392.