Message from the Director

As I penned last year’s Director’s Message, I talked about the exciting challenges of living up to the potential of a promising future. Yet I could never have expected the difficulties that we have all faced over the past few months. One word, however, summarizes both our commitment to continued excellence and our desire to respond—and adapt—to these tumultuous and challenging times: growth.

We have experienced unprecedented growth over the last year. Most visibly, we have grown by a new entry-level tenure-track faculty hire. Valerie Gutmann Koch will be joining us from DePaul College of Law in the fall. I couldn’t imagine a better fit for our Institute.

And yet, growth is not always easy or comfortable. The COVID-19 pandemic, economic downturn, and social unrest have taught us that growth can also be painful and unexpected, but nevertheless transformative. We are intent on continuing to grow as individuals and scholars. I am so proud of who we have become this year, through both our successes and struggles, and I am so pleased that you have been able to grow alongside us.

HLPI News & Events

A Year of Success for HLPI

HLPI is proud to share the accomplishments of our faculty and staff. Some of our many highlights from this year include:

- **Jessica L. Roberts** (Professor of Law & Medicine): Awarded the Leonard H. Childs Chair from the UH Law Center and a courtesy appointment as a Professor of Medicine at the newly minted UH College of Medicine.

- **Seth J. Chandler** (Professor of Law): Honored by Wolfram Research for developing 22 software research functions through the company’s “Function Repository.”
Annual HJHLP Health Law Symposium Workshop on Medicare for All

On October 25, 2019, we hosted our 7th annual writing symposium. This year, we tackled the timely topic of Medicare for All. Each of our authors approached the issue from a different perspective, creating exciting diversity in the paper topics that will appear in Volume 20 of the Houston Journal of Health Law & Policy.

Professor Zack Buck from the University of Tennessee provided a look at the potential and often unexplored benefits of expanding Medicare’s regulatory schemes, including various fraud and abuse laws. Professor Nicole Huberfeld of Boston University School of Public Health and School of Law applied her keen eye for detail to explore the nuances between the current proposed Medicare for All legislation. Professor David Hyman (in collaboration with Charles Silver) added a contrasting view, examining the common misunderstandings in the debate about Medicare for All that built on their prior work in their book “Overcharged.”

Seth J. Chandler penned the Introduction to the volume. In it, he contrasts the three authors’ contributions in light of the economic and health consequences created by the ongoing COVID-19 pandemic. Professor Chandler discusses the strengths and weaknesses of the authors’ proposed solutions, which include a public option and fortifying the Affordable Care Act.

Distinguished Speakers Visit UHLC

Nationally Recognized Attorney Addresses Price Transparency

Susan Feigin Harris (UHLC ‘88), a Houston attorney with a national reputation, joined us
Susan Feigin Harris presented “The Healthcare Bill: Why are there surprises and what are the solutions to achieve price transparency?” as part of the 2019-2020 Speaker Series on November 7, 2019. In her well-attended talk, she covered price transparency, surprise medical bills, and the affordability conundrum in the U.S. health care system. Susan’s deep experience practicing health law and work in legislative advocacy enhanced her talk, which provided attendees with an hour of expert insights and CLE.

Deputy General Counsel of DHHS Gives Guidance on Health Care Fraud

In December, we co-hosted an event with the Houston Bar Association and Seyfarth Shaw, LLP. This event, featuring William Chang, Deputy General Counsel of the Department of Health and Human Services, and attorneys from Memorial Hermann Health System, Houston Methodist, and Seyfarth Shaw, took place at the Parador, one of Houston’s premier event venues. It drew an impressive crowd of about 50 local attorneys and health law professionals.

From Left to Right: Jesse Coleman, Seyfarth; William Chang, U.S. Department of Health and Human Services; Chris DeMeo, Seyfarth; Rob McStay, Memorial Hermann; Mark Easterly, Houston Methodist.

Craig Konnoth

On February 24, Professor Craig Konnoth of the University of Colorado Law School joined the law center to present his work Preemption Through Privatization. In his presentation, Professor Konnoth used constitutional and administrative law as a lens through which to consider the role of private actors in scholarly conversations about preemption. In the end, he introduced a model that triangulates the interests of federal, state, and private entities.

Craig Konnoth, an Associate Professor of Law at the University of Colorado Law School, addressed University of Houston Law Center faculty and students in the Hendricks Heritage Room.
On February 27, Professor Mark Weber of DePaul College of Law presented his essay Of Immigration, Public Charges, Disability Discrimination, and, of All Things, Hobby Lobby. Professor Weber addressed one of the most pressing issues in immigration law - the public charge rule. He analyzed this rule through its impact on people with disabilities. He proposed that the same legal reasoning in Burwell v. Hobby Lobby proved that the public charge rule was unworkable.

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**Mark Weber, a Professor of Law at DePaul College of Law, spoke as part of the Health Law & Policy Institute 2019-2020 Health Law Speaker Series.**

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**HLPI Responds to the Coronavirus**

Like many health law programs throughout the nation, our in-person events stopped short in February. However, we immediately transitioned to web-based programming and materials to continue reaching the public on important issues. At the end of January, we began work on updating *Control Measures and Public Health Emergencies: A Texas Bench Book* due to the pandemic. On February 19, we hosted a coronavirus webinar to educate the public on legal, medical, and public health perspectives. We later developed a website to host legal resources for individuals involved in court-ordered management of persons with infectious diseases as well as general information for Texans. Our videos, memos, bench book, and links provided useful information to the public, attorneys, and the judiciary.

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**New Faculty Spotlight: Valerie Gutmann Koch**

As we look forward to summer’s end, we are most excited about welcoming our new faculty member, Valerie Gutmann Koch, in the fall semester. Professor Koch brings a wealth of experience and expertise on issues in bioethics, public policy, and health law to the University of Houston.

Valerie Gutmann Koch joins the Health Law & Policy Institute from DePaul University College of Law, where she was the Jaharis Faculty Fellow. She also served as the Director of Law & Ethics at the University of Chicago MacLean Center for Clinical Medical Ethics. Professor Koch was the Special Advisor and Senior Attorney to the New York State Task Force on Life and the Law, the state’s bioethics commission, where she crafted policy and guidance related to pandemic preparedness and crisis standards of care, human subjects research, and surrogate decision-making. Following
law school, she practiced in the intellectual property litigation practice at Kirkland & Ellis LLP. She earned her J.D. degree from Harvard Law School, where she was the co-editor of the recent developments section of the Journal of Law, Medicine & Ethics. She graduated magna cum laude from Princeton University, with an A.B. from the Princeton School of Public and International Affairs, with a focus in bioethics. Professor Koch is committed to public service, including serving as the Chair of the ABA’s Special Committee on Bioethics and the Law and Co-Chair of the Law Affinity Group for the American Society for Bioethics and the Humanities. Professor Koch’s article, *Liability Protections and Crisis Standards of Care in the Covid-19 Pandemic*, will be published in the winter issue of the San Diego Law Review; she has articles forthcoming in the American Journal of Bioethics and Disaster Medicine & Public Health Preparedness, as well as a chapter in Reproductive Health, published by Oxford University Press.

In the fall, students will be able to take Health Industry Basics and a Bioethics Writing Seminar with Professor Koch.

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**Faculty News**

Despite the challenges of stay-at-home orders and social distancing this spring, **Jessica L. Roberts** had a productive and fulfilling year. She taught two classes, continued her commitment to producing timely interdisciplinary scholarship, and adjusted to remote working and teaching. This academic year, she presented her work at the Inaugural Charm City Colloquium on Bioethics, UCLA’s Health Law Workshop, the Sports and the Law Section’s panel at the 2020 AALS Annual Meeting, the *Fordham Urban Law Journal* Symposium (virtually), and Seton Hall’s 2020 Regional Health Law Works-in-Progress Retreat. She published two opinion pieces: *DNA Collection at the Border Threatens the Privacy of All Americans* (with Daniel I. Morales & Natalie Ram) in the *New York Times* and *Nursing Homes Need Increased Staffing, Not Legal Immunity* (with Nina A. Kohn) in *The Hill*. Journalists from a number of leading news publications—including the *Washington Post*, *STATNews*, *Vice*, *The Verge*, *MarketWatch*, the *Chicago Reader*, and *The Guardian*—interviewed Jessica or cited her work.


This summer, Jessica has participated in a number of virtual workshops to stay connected with her friends and colleagues in the academy. She is excited to present her work-in-progress, *Uncertain Terms*, co-authored with Jim Hawkins and Leah R. Fowler, virtually at the Loyola Chicago Wiet Life Science Scholars Workshop this fall. Their paper deals with one-sided changes to terms of service for health apps.
Jessica L. Mantel continues her research on innovative care coordination models that integrate clinical care, behavioral health, and community-based services. She is the principal investigator on a grant-funded study researching which structural and operational features of community-based integrated health teams promote or limit their success in improving patients’ health. The study will also explore how the COVID-19 pandemic impacted these teams’ operations and ways in which the teams shifted their resources to support various pandemic-related public health initiatives. Her symposium article *A Qualitative Study of the Promises and Perils of Medical-Legal Partnerships*, co-authored with Leah R. Fowler and published in the Northeastern Law Review, presents findings from qualitative interviews with attorneys, clinicians, social workers and other professionals on the strategic decision points and operational challenges facing those establishing or modifying a medical legal partnership. Her article *An Unintended Consequence of Payment Reform: Providers Avoiding Nonadherent Patients* was published in the Journal of Law, Medicine, and Ethics, and explains how higher patient cost-sharing can lead to conflict between patients and providers operating under value-based payment models. Her book chapter “Access to Affordable Care” is also included in The Patient and the Health Care System: A Guide to High-Quality Care (Sreemamonju and Snyder eds.) and discusses the challenges many individuals face in paying for their health care. Jessica also presented her research at several conferences, including the Association of American Law Schools annual conference, The American Society of Law, Medicine, and Ethics annual health law professors conference and the Southeastern Association of Law Schools annual conference.

Seth J. Chandler is in revisions of his book provisionally titled *Transforming Data into Information: the Wolfram Language*, to Wolfram Media and, in conjunction therewith submitted 15 additional Resource Functions, mostly addressing statistical and data management issues. In October, he gave a workshop on his book at the Wolfram Technology Conference. He developed an open source online casebook for his course Shameful and Ignored Supreme Court Cases. Professor Chandler hosted a webinar on COVID-19 on February 19, 2020 with over 140 people in attendance. He is currently engaged in a major work on the Costs of Equality; he presented an early draft of that work to the University of Houston Law Center faculty in June.

Leah R. Fowler completed her second year in the Health Law & Policy Institute in AY2019-2020. Her work continues to focus on the ethical, legal, and social implications of health care innovation, with increased attention to consumer health technologies. She received a new faculty grant from the University of Houston to support some of her health tech research and continued her grant-funded research on the Department of State Health Services tobacco database project. She published several articles on smartphone apps, including *Schrödinger’s App* (with Stephanie Morain) in the American Journal of Law & Medicine, *Teen Use of Smartphone Applications for Menstrual Cycle Tracking* (with Stephanie Morain and Charlotte Gillard) in Pediatrics, and *Readability and Accessibility of Terms of Service and Privacy Policies for Menstruation-Tracking Smartphone Applications* (with Stephanie Morain and Charlotte Gillard) in Health Promotion Practice. She also edited the most recent version of *Control Measures and Public Health Emergencies: A Texas Bench Book*, which has been an invaluable resource in addressing COVID-19. The combination of Leah’s expertise in public health and health technology has proved an insightful combination during the coronavirus pandemic, and her perspective has appeared in several news articles, blog posts, and podcasts. The Law Center recognized her pandemic-related work with the Ethel M. Baker Faculty Award in the spring. Leah maintains a
close relationship with her colleagues at Baylor College of Medicine and remains involved in teaching and scholarship with the Center for Medical Ethics and Health Policy. In her spare time, Leah has been working on her Masters in Public Health at the University of Texas Health Science Center - Houston and hopes to graduate at the end of summer 2021.

Student News

Health Law Students Place in Health Law Moot Court Tournament

Last Oct. 31-Nov. 3, 2019, moot court teams from around the country descended again upon Carbondale, Illinois for the SIU National Health Law Moot Court Competition. UHLC team members were as follows: Cody Miller, Brian Pounds, Lakshmi Achari, and Taylor Hood. LLM alum Julia Peebles and Jay Zhang coached the teams.

Brian Pounds and Cody Miller made it to the semi-finals.

From Left to Right: Coaches Jay Zhang and Julia Peebles, Cody Miller, Brian Pounds, Taylor Hood, and Lakshmi Achari.

HLPI Sends Four UHLC Students to the State Bar of Texas Health Law Conference in Austin

This October, four exceptional health law students traveled to Austin to attend the University of Texas Annual Health Law Conference.

HLPI was pleased to nominate Cynthia Adjain, Emily Becher, Michael Nolan, and Jennifer Pier from an extremely competitive pool of students.

The students attended on scholarships sponsored by the Health Law Section of the Texas Bar Association.

From Left to Right: Cynthia Adjain, Jennifer Pier, Emily Becher, and Michael Nolan.

Health Law Students Receive Writing Awards and Scholarships

Health Law Writing Award
This year, the Health Law & Policy Institute awarded two deserving students with the 13th Annual Ewer-
Emily Haywood, co-winner of the 13th Annual Ewer-Oren Health Law Writing Award. Rachel Arco received the award in recognition for her paper entitled *When Conditions of Confinement Lead to Violence: Eighth Amendment Implications of Inter-Prisoner Violence.* Emily Haywood’s paper, *Procedural Due Process Under State Guardianship over the Mentally Ill,* shared the award.

This J.D. writing award was established by Professor Laura Oren, Ph.D., J.D., in honor of Dr. Michael Ewer and her mother, Grace Oren, to be given to the best health law paper written by a J.D. student.

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**Health Law Scholarships**

Our students are always our proudest accomplishments. This year, five students received major health law awards. Cody Miller received the Scott Chase Scholarship, Taylor Hood and Benson Hill both received the Prudential Scholarship, and Simone DeLacey received the Health Law & Policy Institute Scholarship. Finally, Amanda Rhodes received the second annual Lex Frieden Endowed Scholarship for Health Law.

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**HLPI in Print**

News outlets around the country have turned to HLPI to comment on the social, legal, and economic impacts of the COVID-19 pandemic.

Jessica L. Roberts helped correct misinformation regarding the Americans with Disabilities Act’s application to mask orders in *USA Today.* *The Hill* published her op-ed with Nina A. Kohn, urging lawmakers to hold nursing homes legally accountable for negligence during the pandemic. She spoke to the *Chicago Reader* about the detrimental effects of pandemic legal immunity for health care providers and weighed in on the viability of a lawsuit challenging an employer’s decision to fire an employee for failing to disclose his mother’s COVID-19 status in *MarketWatch.* Finally, she discussed the legality of employer mandated antibody tests in *VICE.*

*USA Today* quoted Seth J. Chandler in an article discussing travel during the coronavirus outbreak, and he discussed the economic impact of COVID-19 with *The Hill.*

Valerie Gutmann Koch has written extensively regarding the pandemic, given her unique expertise on the bioethical issues related to crisis standards of care, scarce resource allocation, and liability shields. She published an op-ed in *STATnews,* calling for evidence-based policy in allocating scarce resources, and she called for the utilization of triage committees on the *Health Affairs Blog.* She argued against inclusion of do-not-resuscitate orders in allocation plan exclusion criteria for the *Hastings Center Bioethics Forum,* and she was published twice on Harvard Law School’s Petrie Flom Bill of Health blog, first on the subject of malpractice rules and again about legal liability protections for health care providers. Koch spoke with *Bloomberg Law,* the *Chicago Reader,* and twice with *ModernHealthcare* about legal liability for health care providers during the pandemic. She has also discussed implementation of crisis standards of care with *NPR,* the *British Medical Journal,* and *Factcheck.org.*

Professor Koch was interviewed on *WBEZ Reset* about the role of medical ethics during the pandemic and *CBS Tampa Bay* about the role of do-not-resuscitate orders in deciding whether to transfer a patient to a hospital. *Crain’s Chicago* published a profile of her work.

Jessica L. Mantel published an op-ed with HLPI Advisory Board member Lex Frieden calling on hospitals to adopt triage protocols that comply with federal guidelines and to publicize their protocols on their websites. They urged triage teams to judge the patient’s ability to benefit from...
treatment on a case-by-case basis and to not invoke generalized, arbitrary judgments about age or disability.

*Yahoo News* quoted Leah R. Fowler in an article recognizing HLPI’s COVID-19 resources website. She also commented on the applicability of her recent scholarship to the pandemic context in a blog post for *Boston University School of Public Health’s Public Health Post*, and as a guest on the *McGeorge School of Law CAP Impact Podcast*.

**Publication Spotlight**

HLPI Director Jessica L. Roberts co-authored an article with HLPI-affiliate Professor Jim Hawkins about the ability of digital health tech companies to unilaterally change their terms of service in *Science*. The authors explain that medical privacy laws and regulations often do not apply to consumer health apps because those apps are not technically health care providers. Instead, users must rely on the companies’ terms of service. However, many companies reserve the right to make one-sided changes to those terms. Thus, even consumers who read and rely on the terms of services are left vulnerable. Roberts and Hawkins suggest several options that Congress could take to protect consumers, including: requiring mandatory notice of changes made to the terms of service, allowing users to opt out of any changes and to revert to the original terms, and requiring user consent for significant changes.

*The University of Houston is a Carnegie-designated Tier One public research university and an EEO/AA institution.*