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The Ongoing and Iterative Task of Pandemic Preparedness

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**FOREWORD:
THE ONGOING AND ITERATIVE TASK OF PANDEMIC
PREPAREDNESS**

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The Articles published in this issue were written as part of the 22nd Annual Health Law Symposium entitled *Pandemic Preparedness: Lessons Learned and Future Challenges*. The Symposium was organized and hosted by the Saint Louis University School of Law, its Center for Health Law Studies, and the SAINT LOUIS UNIVERSITY JOURNAL OF HEALTH LAW & POLICY.¹ Authors and additional experts gathered for a day of illuminating presentations and panel discussions, examining the past, present, and future of laws and policies designed to assure public health in the face of pandemic threats.

The Symposium was held in March 2010 – the same month when, in 2009, health care providers in Mexico and Southern California collected specimens from children infected with what turned out to be novel H1N1 influenza. While the H1N1 scare was not the sole focus of the Symposium, it was an ever-present topic of conversation among panelists, perhaps because – at the time – we continued to operate under a global pandemic alert that would continue until July 2010. Although H1N1 was not nearly as virulent as initially feared, it nonetheless reminds us to be vigilant in our preparations for future pandemics. Moreover, it underscores the importance of the scholarly work presented at the Symposium and published here.

The Articles in this issue, when read together, clearly demonstrate that pandemic preparedness – including at the level of law and policy – is an ongoing, iterative process. It begins by addressing gaps in our laws and

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1. The 2010 Health Law Symposium was a major event that succeeded because of the hard work of many individuals. In particular, I want to recognize the stellar efforts of Amy Sanders, Assistant Director of the Center for Health Law Studies, Mary Ann Jauer, Program Coordinator of the Center for Health Law Studies, Yolonda Campbell, Editor-in-Chief of the *Saint Louis University Journal of Health Law & Policy*, and Daniel Katzman, Symposium Issue Editor of the *Saint Louis University Journal of Health Law & Policy*. Special thanks also to the Journal's entire editorial board and staff.

policies. Stewart Simonson, the nation's first Assistant Secretary for Emergency Public Health Preparedness, provides a captivating, first-hand account of how pandemic influenza preparedness moved from the back bench of federal spending priorities to a multi-billion-dollar initiative.² It is a story of how Simonson and others drew the attention of lawmakers to the threat of pandemic influenza and the absence of a comprehensive federal policy to address it.

Finding and filling policy gaps to better prepare for a pandemic is not simply a matter of history, however. An article by James G. Hodge, Jr. et al comprehensively examines current gaps in federal and state laws, which hinder our ability to prevent and mitigate the often-overlooked mental health consequences of mass emergencies.³ Similarly, Daniel D. Stier and Maria Guadalupe Uribe Esquivel recognize that mutual aid agreements between border states in the U.S. and either Canadian provinces or Mexican states are necessary to effective pandemic preparedness, and yet efforts to enter into such cross-border agreements are hampered in the U.S. because officials know little or nothing about Canadian and Mexican public health laws.⁴ Stier and Esquivel start to fill that gap by providing some basic information here.

The process of assuring that laws and policies aid in our preparations for future pandemics does not end when policy gaps are filled. Instead, we must also assess how well we have filled those gaps. Are the laws and policies that were crafted to prevent or mitigate the effects of a pandemic serving their intended purpose? Have any unintended, detrimental consequences resulted from those same laws and policies? Two additional articles in this issue provide examples of such an assessment.

Wendy E. Parmet reviews the role of law in the U.S. experience with the H1N1 pandemic, persuasively arguing that federal and state laws designed to spur private pandemic vaccine production and arm public health officials with powers to isolate and vaccinate uncooperative citizens may have backfired and eroded trust in vaccines and the public health system generally.⁵ Although Benjamin E. Berkman et al. take an empirical approach to assessing the effectiveness of federal pandemic preparedness

2. See Stewart Simonson, *Reflections on Preparedness: Pandemic Planning in the Bush Administration*, 4 ST. LOUIS U. J. HEALTH L. & POL'Y 5 (2010).

3. See James G. Hodge, Jr., Lainie Rutkow & Aubrey Joy Corcoran, *A Hidden Epidemic: Assessing the Legal Environment Underlying Mental and Behavioral Health Conditions in Emergencies*, 4 ST. LOUIS U. J. HEALTH L. & POL'Y 33 (2010).

4. See Daniel D. Stier & Maria Guadalupe Uribe Esquivel, *Cross-Border Legal Preparedness: A Comparative Review of Selected Public Health Emergency Legal Authorities in Canada and Mexico*, 4 ST. LOUIS U. J. HEALTH L. & POL'Y 93 (2010).

5. See Wendy E. Parmet, *Pandemics, Populism and the Role of Law in the H1N1 Vaccine Campaign*, 4 ST. LOUIS U. J. HEALTH L. & POL'Y 113 (2010).

law and policy, they make a similar discovery. Berkman et al. share the results of interviews they conducted with many federal public health officials and lawyers about the effect federal preparedness law has had on states, and, in the course of doing so, we learn of several ways that federal law is unintentionally impeding preparedness at the state level by offering a multitude of uncoordinated grants governed by confusing and even conflicting rules.⁶

Of course, the final step is to refine the laws and policies we assess in order to achieve greater preparedness. Zita Lazzarini explains this and all other aspects of assessing public health emergency legal preparedness. Specifically, she shares a research methodology – known as “Rapid Policy Assessment and Response” – that can be used both to measure the effectiveness of laws and policies and to develop a reliable set of best practices.⁷ Moreover, she demonstrates how this method has been used to improve legal preparedness in the context of the HIV pandemic.

In the end, pandemic preparedness requires constant repair. Even as we rely on current public health law and policy to address today’s pandemic threat, we must simultaneously assess and refine those laws and policies in the name of better preparedness for the future. To borrow a common metaphor: we are always rebuilding our ship while sailing it on the sea.

6. See Benjamin E. Berkman, Susan C. Kim & Lindsay F. Wiley, *Assessing the Impact of Federal Law on Public Health Preparedness*, 4 ST. LOUIS U. J. HEALTH L. & POL’Y 155 (2010).

7. See Zita Lazzarini, *Assessing the Public Health Response During and After the Emergency: Lessons From the HIV Epidemic*, 4 ST. LOUIS U. J. HEALTH L. & POL’Y 187 (2010).

