INTRODUCTION

Ian Ayres, Abbe R. Gluck, and Kate Stith

To say that the opioid crisis in the United States is a multi-faceted problem requiring a multi-faceted solution is by now almost a cliché. But like many clichés, there is truth to this one. Each of the articles in this special issue began with the question: "What is the role of law in the opioid crisis?" The answers provided, like the causes of and possible solutions to the crisis itself, span an extraordinary range of terrain and perspectives. This issue is the product of a first-of-its-kind interdisciplinary seminar at Yale University that brought together faculty and students from the law school, medical school, and school of public health to explore the crisis — and law's role in it — from many different angles, and to collaborate on research and analysis.

That the issue begins with perspectives on the regulation of the medical profession should be unsurprising for a crisis that started with an epidemic of under-prescribing for pain and evolved into precisely the opposite. The articles in the first section detail the structural and financial incentives that contributed to overprescribing, the legal and systemic obstacles that physicians face on the back end when they try to treat addiction, and the recent trend in many states to regulate physician prescribing — a major deviation from traditional norms of regulating medicine. This section also engages the difficult legal and ethical challenges faced by physicians asked to perform repeated procedures on patients who some deem "medically futile" because their opioid-use disorders keep bringing them back to the operating room.

Access to medication assisted therapy (MAT) — the prescription of opioid replacement medication such as methadone and buprenorphine — emerges as a second major theme. Although evidence supports the benefits of MAT as the best available treatment (especially dominating detox) for many addicted individuals, access is severely constrained for some populations. People living in rural areas are less able to access MAT, as are the incarcerated. Two articles advocate a constitutional right to MAT in prison, offering Rhode Island's universal access program as a national paradigm. Other scholars note the risks as well as the promise of buprenorphine and point to earlier problems — including addiction — that occurred when methadone was first introduced and widely prescribed.

Moving next to enforcement, authors tackle questions about the role of federal prosecutors and the challenges of intercepting potent illegal opioids sent through the "dark web" of the Internet. The sky-rocketing presence of fentanyl in overdose deaths over the last two years alone has created enormous challenges for prosecutors. This section also addresses the difficult issue of whether the criminalization of drugs in the United States has contributed to the crisis by creating a dangerous black market. Authors then tackle the issue of civil commitment, highlighting what they deem a troubling trend toward involuntarily commitment of those with opioid-use disorder, often to facilities without resources to provide effective treatment.

On the civil side, hundreds of lawsuits related to the crisis are currently pending in courts across the country, filed by states, localities, Indian tribes, and individ-

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uals. These suits have cast an exceedingly broad net of alleged responsibility that includes not only prescribers and opioid manufacturers, but drug distributors, pharmacies, and even medical accreditors. This litigation has culminated in an extaordinary aggregated federal lawsuit — a single "multidistrict litigation" in Ohio that comprises more than 300 cases, with more added each day — before a judge who has been forthright in his ambition to settle the disputes and accomplish real policy reform within the year.

Policy responses have emerged from outside the courtroom, too, with state legislatures actively deploying a variety of programs. These programs range from Good Samaritan laws, to requiring physicians to check prescription drug monitoring databases, to community outreach, and more. One question is how these programs will be financed; another is how to empirically test more of these programs so we can see which ones actually work. Other articles comment on the importance of better data-sharing to address the crisis. Legal and structural obstacles to data-sharing, including once-well-intentioned federal privacy laws preventing doctors from knowing if patients are being treated for addition, may now be obstacles to effective prevention and treatment.

Finally, the crisis has not affected all communities in the same way. For example, some Indian tribes have been hit particularly hard, and many have responded with innovative policy and legal actions. Minority populations also have experienced the crisis differently from whites. Bias in the medical setting may have led to under prescribing for pain for minorities in the first place, which some point to in explaining why minority populations were not hit as hard by the current epidemic. But these gaps are closing. Still, the perception of the current moment as a crisis of the white middle class has bred resentment in some minority communities. Whereas earlier drug crises associated with black communities, including the crack crisis of the 1980s, were treated as a criminal justice issues, the current crisis has been treated primarily as a problem requiring public health solutions, rather than incarceration. For example, given the scope of the crisis, one article argues that the federal government should use a rarely-invoked statutory power to make naloxone, the most important overdose antidote, more widely available.

As with many interdisciplinary efforts, we had to overcome early barriers that arose from the participants' different analytical frames and trainings. For instance, those who embrace policy experimentation and see an urgency in trying all kinds of responses disagree with economists' insistence on rigorous empirical testing. Those interested in criminal justice divide on the extent to which criminalization of use and/or trafficking is a problem. Some blame physicians; others argue that physicians have been unduly targeted, and to the detriment of their patients. In the end, we believe this diversity of perspectives has contributed to a stronger product. At the same time, it has revealed the crisis to be one of even greater, ever-changing, complexity than we had initially imagined.

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Note

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