Report from America

Bernard Towers *University of California, Los Angeles, USA*

The extent of public interest in medical-ethical-legal problems

Newspapers tend both to reflect and to create public interest in matters of concern to society. Great newspapers over time reflect the changing interest and involvement of society in special areas of concern. Ten years ago the relatively few medical reports tended to deal with one of two topics. The first was yet another 'scientific breakthrough', of which we have had many hundreds in recent years. The use of the word 'breakthrough' is interesting: it is as if all scientific advance is patterned on army manoeuvres and the aggression appropriate to warfare. Second in interest to newspapermen used to be any scandal of professional malfeasance. Such things still make news. But today there is a lively general interest in all aspects of health care. More and more people, both professional and lay, are becoming involved in bioethical and biolgal problems at the grass-roots level.

The *Los Angeles Times* (LAT) is generally recognised today as one of the world's great newspapers. The imminent production, using sophisticated electronic techniques, of a West Coast edition of the *New York Times* (NYT), which will be available for distribution at normal prices and in time for breakfast, will recreate an interesting competition from which, at its last attempt, the NYT had to retire ignominiously. That great newspaper will have to work very hard to match the LAT for well-informed coverage of the biomedical field in all its aspects. We get informed articles not only about sophisticated biotechnology (a high-level human value itself) but about many other health-and disease-related human values of great importance for the well-being of society.

Consider: during the month of June, 1980 the LAT ran the following stories and reviews by well-informed writers:

- 1) The report of the National Research Council's Food and Nutrition Board, in which it was opined that cutting down on fats and cholesterol in the diet makes little or no difference to the development of coronary artery disease. There was, and continues to be, a lively controversy over what has been an article of faith for many years.
- 2) A report from the June 5 issue of *New England Journal of Medicine* (NEJM) about the effectiveness of infedipine for the relief of pain in some forms of *angina pectoris*.

- 3) A 'Profile of the Surrogate Mother': a sober account of the modern antenatal equivalent of the wet-nurse.

- 4) A major article by Harry Nelson (rapidly becoming one of the foremost medical writers in the country) on 'informed consent': whether it is really possible and indeed whether it is always desirable. The consumer-movement that has led to full and frank disclosure of risks and benefits of investigative procedures and of both established and innovative therapies, has clearly boomeranged in many instances to the patient's detriment.

- 5) A sensitive article on haemodialysis and the way patients can come to look on the machine as either friend or foe or both. Chronic renal disease is the only condition for which the Federal Government has undertaken to pay all costs of treatments. The story of how that regulation was adopted, and the multiple stories of how the system is both used and abused, are bizarre in the extreme. When America decides to 'do something' she tends to go whole-hog; and then the hogs get very greedy.

- 6) A story on the development of a new rabies vaccine, more effective and less painful in five shots than the previous one's twenty-three.

- 7) A story on the State Supreme Court's agreeing to review the constitutionality of California's statutory rape law, which provides jail sentences of up to three years for anyone convicted of intercourse with a consenting female under 18 who is not his wife. The issue is really one of sex-discrimination, since in this case both parties were under 18. The review is likely to take the best part of a year.

- 8) A report on the withdrawal of a Bill in the State Senate that would have required a girl under 18 to get her parents' consent or a court order to have an abortion. The bill was judged to have no chance in the Assembly Health Committee, to which it was assigned after defeat of an attempt to steer it instead through the Judiciary Committee where it might have had a better chance.

- 9) A report on the defeat, in the Assembly Health Committee, of a bill (backed by Governor Brown) to legalise the use of Laetrile for the treatment of terminally ill cancer patients. The committee had held extensive public hearings on the proposal during recent months. Opinion amongst the general public, the medical profession and the legislators, is widely divergent on the benefits and risks of such legislation.

- 10) A brief 'news story' of how two babies were inadvertently 'switched' in a hospital where, only a

week before, two young boys had received each other's surgical operations.

11) A report of a public hearing on a proposal by the State Department of Health to drop a requirement, in effect for only two years, that prior to sterilisation there must be a minimum waiting period of three days. The rule was a response to a lawsuit filed in 1975 by a group of Mexican-American women, in which they alleged that they were sterilised in the delivery-room without a valid informed consent being given. The case was eventually lost, but before the trial it had provoked a public outcry which led to the hasty adoption of rules which are sometimes not in a patient's best interests in that they require two operations instead of one.

12) A report on the State Supreme Court's ruling that physicians are obligated not only to explain the dangers of accepting medical tests but also the risks of declining them. The Court had reviewed an Appeals Court's exoneration of a doctor who was sued by the surviving children of a woman who died of cervical cancer after declining to undergo a Pap test. The suit was for 'wrongful death'. The physician is likely now to be brought to trial again, probably on a different charge. The practice of medicine in California can be hazardous to one's health and well-being! The ruling brought another insightful piece by Harry Nelson to the pages of the *LAT*.

13) A major article on Dr Robert S Mendelsohn, author of *The Confessions of a Medical Heretic*. Anti-doctor books regularly appear on best-selling book lists in America.

14) A report on a State Court appeal ruling that a child born genetically defective, of a condition (Tay-Sachs) that can be diagnosed *in utero* and legal abortion offered, can subsequently bring suit against the laboratory for 'wrongful life'. Predictably the Supreme Court has now been petitioned to reverse a ruling that would appear almost to demand abortion of fetuses likely to be born handicapped.

15) and 16) Two major articles (on June 13 – we are still in the first half of the month!) on breast cancer and the need for full disclosure of all forms of therapy. It seems almost that people believe that this requirement will of itself lead to 'certainty of judgment' and even to discovery of an effective cure. Whereas, of course, all that full disclosure does is to demonstrate the uncertainty that is inherent in all medical practice. Honesty may be the best policy, but it is not self-evident that it is always in the patient's best interest.

17) A report on the condemnation of abortion 'except to save the life of the mother' by the Southern Baptist Convention, which is the nation's largest Protestant body.

18) An account of the clinical death (brain-death) of a local woman whose common-law husband cannot or will not be charged with her murder while her heart and lungs are maintained 'alive'.

19) A major article on the State's requirements for

committal of a mental patient. Again, the consumer-movement towards increased freedom for the individual (patient) has resulted in many cases in the adoption of inadequate and harmful modes of therapy. The debate is continuous on the question of rights, duties and privileges. Medical problems are now perceived as societal in nature, and, to the extent that they are, all members of society have a right to be heard. The age of medical paternalism (parentalism, rather) is over – in California at least.

20) A report on the US Supreme Court's ruling that scientists or companies may obtain patents on living microorganisms they manufacture in their laboratories. The pros and cons of this question have been and continue to be widely discussed in scientific, medical and business circles; and the general public is being continually alerted to the issues and their complexities. That is one of the most impressive features of this great democracy, where the people have the opportunity (if they bother to take it) actually to vote on such matters (or for or against their proponents) at very regular intervals.

21) A powerful article protesting against a ruling on the patenting of microorganisms by Gary F Will, the syndicated columnist.

22) 23) and 24) A three-part series (June 18, 19, 20) from *The Washington Post* on the history of 'Lobotomies: a troubling era in medicine'. This superb series is typical of an apparent editorial policy at the *Los Angeles Times* not only to generate articles on complex issues in Medicine, but to draw widely on other resources for good copy.

25) An editorial on the hearings by the State Assembly Criminal Justice Committee on a proposal to redefine the insanity defence. The definition of insanity is still based on the 1843 McNaghten Rules, but was considerably broadened by the State Supreme Court in 1972. Now the legislators are preparing a possible reversion to what in 1972 was described by one of the Supreme Court Justices as 'an ancient and discarded psychological mold . . . frozen into a stereotyped, rejected formula of the past'. We shall see what effect the public hearings will have on subsequent debate in the legislature, and whether or not the right-wing trend towards reversal of the legal liberalism of the 1960's will prevail.

26) A report of a vote by a State legislative committee to repeal a recent Supreme Court ruling that allowed cancer victims to sue makers of diethylstilbestrol even though they are unable to identify the individual manufacturer. The ruling had allowed for damages to be awarded against all manufacturers in proportion to their share of the market. The debate now goes to the full State Senate.

27) A major review of natural birth control methods.

28) A report of the Pope's reaffirmation of the Roman Catholic Church's ban on 'mercy killings'.

The report on the US Supreme Court's decision to uphold the authority of Congress (the Hyde Amendment) to refuse public funds to pay for abortions appeared on 1 July. Thus the month following the period of this review started with newspaper coverage of another conflict-ridden problem in *Medicine and Society*. At one point in June there was much to-do over the fate of Sido, a dog whose Californian owner ordered him 'put down' after her death. A judge stayed the execution and Conrad, the *LAT*'s brilliant cartoonist, had a picture of a gas chamber with a notice on the door 'No Dogs Allowed' and a caption 'Sido gets reprieve; Jack Potts to die.—News item'.

I cannot be sure that I did not miss a few pieces during the month under scrutiny: American newspapers have a penchant for hiding news in the deep recesses of the ubiquitous advertising-spaces. It is clear that the coverage by the *LAT* of matters of concern to readers of the *Journal of medical ethics* is impressive. When the *NYT* appears as promised on the West Coast I shall take both newspapers for a trial period of six months. I shall compare them (if time permits) for coverage of many areas that are of interest to me: bio-medical-legal-ethics will be high on my list. Accurate information, good argumentation and 'sound judgement' are crucial concerns in this burgeoning field.