The Institute for Law & Public Policy, an unincorporated division of California University of Pennsylvania, is established to bring to Western Pennsylvania academic and practical expertise in the area of law and justice, law and public policy, applied jurimetrics and related fields relevant to the American legal and justice system.

The existence of this Institute will provide the impetus for a number of significant outreach, community service, service-based education, and practitioner education, as well as cooperative ventures with local colleges, universities and high school populations.

Examples of said outreach include but are not limited to:

• Engage university students and faculty in service-based educational programs as part of their undergraduate and graduate studies. Majors in Political Science, Urban and Regional Planning, Social Science and Sociology, Forensics and Hard Sciences, Criminal Justice and History are potential participants.

• Enable the university to serve as a resource for all types of media and publications, planning and public management issues and resolutions, and as a forum for a discussion and debate over questions involving the American legal system and how it impacts public policy.

• Conduct workshops for educators within the region.

• Provide specialized educational opportunities for practitioners in the area of legal analysis, legal education, GIS in police practice, robotics and advanced security, force and excess in justice operations, accident reconstruction and disaster preparedness as well as other topics of benefit to the community.

• Provide public forum for debate and advocacy of contrary and complementary perspectives in the law.

• Deliver continuing education to justice professionals.

• Publish, research and write papers on issues of critical importance relating to law and public policy implications.

• Apply for grants and other research funds. Conduct esoteric research on law and public policy questions.

• Conduct studies and consult justice and legal agencies in the university service area.
The debate regarding health care can only be characterized as intense. On the one hand, every person of charity and good will wishes that every citizen have the protection of health care coverage. To claim that only the deserved and more affluent are entitled is an argument rarely, if ever, heard. If there is any consensus on health care, it encompasses the mutual wish and desire that people have coverage in matters of medicine and cure. The tumult emerges when discussing the means to this end. At one end of the spectrum, policy makers and legislators clamor about the universality of health care coverage, as if rooted in the language of legal rights and the inherency of human dignity. From any vantage point, the argument is very appealing.

This school of thought usually ties government to the dilemma – craving another governmental agency that will deliver medical care.

While Europe and Canada are seeking to bail out of programs run amok and without economic restraints, the proponents of the government health care plan seem to think that their version will not trek down the same expensive path. Aside from costs, nearly every observer of health care in the European theatre critiques quality – from the qualifications of those who provide the care and the facilities that deliver it, to the waiting periods for service. Across the ocean in the American sphere one witnesses both the beauty and ugliness of a system run for profit while simultaneously planting a foot or two in the governmental domain of Medicaid and Medicare. For all the quasi-free market American system’s faults, it is undeniable that our facilities and the preparedness of our medical professionals are unmatched. And as a consumer driven culture, Americans do not wait for much of anything – including health care.

When compared to the United States, the Europeans are quite comfortable with the public fund dynamic in the health care arena. The chart on the next page at Figure 1 manifests this taste for governmental control and oversight.

It just as persuasively proves that America is a long way from this level of governmental participation, though the trend towards governmental costs has been buttressed by a burgeoning entitlement system known as Medicare and Medicaid. In 1960, three-quarters of the medical expenditure were driven by private providers. Today, that trend is slightly above one-half. (See Figure 2.)

The trend clearly manifests a nation at the crossroads of a dilemma. At each juncture the question remains the same – how do we insure the citizenry and carry out this policy with effectiveness? Will the slow journey away from private services benefit the general population? Has not history shown, in just about every quarter, the failure of government to confront and resolve problems? In the most succinct summary, under what schema can health care be...
delivered to the masses? And what characteristics seem to be the most effective?

The current Presidential Campaign allows a close look at competing ideologies – the vast distinction between health care in the private sector and health care by government fiat. All Democratic candidates espouse universal health coverage with a general demand that either business or government deliver.

In contrast, the entrepreneurial model posed by various candidates seems the more intelligent mentality. Some of the more often encountered incentives for health care follow.

**Tax Credits and Deductions**

The stimulus of a tax credit and deduction goes a long way towards solving problems of any sort. In the area of health care, the tax credit can open the flood gates to universal health coverage. The Institute recommends:

- Full deductibility of health care premiums for all employer-based health care coverage;
- Employers initially providing health care insurance for their employees will receive double deductibility.

Use of the tax code to drive personal choice is nothing all that new in legislative history. Unfortunately, the federal tax code has nicked and dimed the problem rather than addressing it with the fervor of the recommendations above.

**Competition**

The costs of health coverage result from many factors although none is more obvious than the monopolized environments evident in health care delivery. If the federal government has a positive story on efficiency, it relates to the federal delivery of health benefits whereby federal employees may pick from a list of nearly 240 differing providers of insurance. The picking is what drives the competition since each of these 240 providers is looking for clients. This free market mentality drives costs down and opens up a greater pool of potential clients. The federal program is the rare exception since most employers, private and public in design are locked into either one or at best a few choices. The fewer the choices, the higher the prices. Competition should be favored in every context, including health care. Some recommendations are:

- Encourage companies, localities and states to permit health care monopolies and if existent, strike the monopoly down and replace with multiple choices for health care;
- Permit competition across state lines by eliminating regional distinctions and the artificial distinctions encouraged by the historic blue cross/blue shield companies;
- Permit the insured to purchase insurance from any provider willing to write policies whether it be local, statewide or national;
- De-regulate the insurance provider by permitting the sale and competitive bidding of non-traditional insurance providers such as professional bodies and associations, credit unions and other not-for-profit operations;
- Challenge excessive lifestyles and compensatory packages for the non-profit sector. Excessive compensation is a breach of fiduciary duty.

**Freedom for the Policyholder**

Health care coverage policies have historically favored the company delivering the service rather than the consumer of said service. The upper hand of the provider translates into higher premiums and the general mentality that the insured is held captive by the insurer. These policies further reinforce a lockstep approach to health care, a conclusion that the rights of the insurer always take preeminence over the rights of the insured. In turn, the quality of service and the associated costs were the exclusive business of the insured.

Some simple steps which infuse the spirit of free enterprise into health care policies are:

- Policy portability – the insured not only having the right to maintain the policy but to take said policy wherever he or she works;
- Policy durability – the insured has the right to purchase and lock in longer policy periods rather than sit captive in annual contortions regarding rates and premiums;
- Policy incentives – instead of a one size fits all premium

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5 For a complete copy of Senator Hillary Clinton’s expansive governmental initiative into health care, see her plan at: http://www.hillaryclinton.com/feature/healthcareplan.

6 No candidate represents the spirit of entrepreneurial leadership in the matter of health care reform more than Senator John McCain. See the particulars of his plan at: http://www.johnmccain.com/Informing/Issues.

system, permit insurers to reduce premium costs for those engaged in positive behavior such as ending the smoking habit, becoming active and engaging in the general
principles of wellness.
In general, the health care crisis will only be solved when empowerment of the human person, the citizen of the commonwealth takes center stage. For too long, the interests of the insurer, historically safeguarded in a protectionist bubble, have hobbled the marketplace. Ironically, policy and the legislative process, which allegedly seek to serve the citizenry, have misunderstood this marketplace. Health care, like any other commodity, works best when free and unshackled.

HEALTH CARE IN AMERICA: GOVERNMENT ASSISTANCE REQUIRED

By Michael Dawida, J.D., Former Allegheny County Commissioner and Instructor of Legal Studies, CAL U Pittsburgh

Government has to be part of the health care solution. As a person of charity and goodwill I wish for every person to have adequate health care coverage. Our failure to provide the same, however, marks the U.S.A. down from the world-leading quality of life to which we aspire. People on all sides of this issue play games with numbers, but all agree that far too many have no or little insurance for their health care needs. The suggestion I make is that our government must play a crucial role in securing this needed service.

Ubiquitous health care is now rooted in essential human rights and expectations. This is so, in part, because of the tremendous breakthroughs in medical science. We are a country which has broken through historical norms and placed the great majority of its populace in the middle class. Most of our people enjoy roughly equal economic, moral and legal opportunity. Access to health care is now, more than ever, a life and death equation. Perhaps never before in history has the access to health care meant the difference between life and death.

It is true that totally government run programs seldom offer incentives for quality and tend towards bureaucracy and higher cost. It is equally true that purely private responses tend to favor those who can pay and offer little incentive to cover those who cannot. Millions of Americans do not have coverage and in a country with the broadest and most open system of economic and social mobility we must not consign the uninsured to a third world status of poor health and economic misery.

It is un-American to have a health care system which can save virtually anyone, including giving life to those near death by providing new hearts and other organs, yet denies basic healthcare to a quarter of the population. Competition and the free market do not work very well to ensure that the poor and uninsured are covered. Pricing in health care does not work like a WalMart commodity, although efficiency is always to be prized. The ability to secure life saving organs, transplant sight saving corneas, save infants at fantastically early gestation periods and the ability to sustain life for the elderly at great cost all defy normal economics. Only government has the power and incentive to bring order to this situation.

I agree that monopolies are inconsistent with good public policy whether they be private or public. Government must participate in solving this issue because where the profit motive doesn’t operate the private sector doesn’t and shouldn’t work. The haters of government always point out its failures, but seldom its successes. They also fail to point out that pure capitalism is by definition a search for profit. Capitalism offers efficiency where competition exists which is good, but shows no ability where profit doesn’t exist. The American ideal supports capitalism as it should, but it also supports government for its role in providing equality of opportunity and equity for all. This doesn’t mean we should “dumb down” the mean so that everyone has equally bad health care. It means that a public-private partnership is in the best interest of all.

Many of Dr. Nemeth’s recommendations are excellent, especially those that encourage competition and push the huge non-profit sector to become less excessive in its spending habits.

continued on page 4
What is also necessary, however, is to balance this capitalistic zeal with private enterprise’s obvious lack of interest in non-profitable work. Private enterprise needs to have regulation because its job is to make profit. As such, private enterprise misses those areas where it cannot profit. This profit motive is generally a good thing, but it cannot be expected to resolve the needs from whom it cannot profit.

Government’s role is to help those not easily profited from. It must ensure that the citizens of the commonwealth are all treated fairly. It must bridge the divide in our uniquely American way, melting the best of free enterprise with a caring government. We in the U.S.A. are the government and we should not despise it even when it fails us, as it often does. With this most important issue we need to demand government to participate alongside the private sector.

There are many interest groups that make health care change difficult. Doctors have long held positions of privilege and power and they rightly take credit for much that is right with our system. Hospitals started out primarily as do good non-profit agencies, many with religious and other altruistic purposes. They and the insurance companies have grown richer and more powerful, but none has improved access to care. None has helped policy portability and durability. The interest groups which dominate health care will not change without governmental intervention. It is up to all of us to see that this intervention preserves the interest of the citizenry to improved and more ubiquitous care. The protectionism of the past must be eliminated, but it must see that the uninsured are not missed. American health care does not need to follow the wholly owned government model, but it also cannot just serve those wealthy enough to afford it. America introduced to the world the concept that all men are created equal. It has been and always will be a difficult ideal to uphold, but as we haltingly try to lift the dignity of people in our country we are required to aspire to equal opportunity.

A health care system which misses a quarter of the population is not proper. Health care is different than a century ago when we developed our current system. Those who have it now dramatically see life sustained. Those without it see life diminished or ended. Government is the one player in the system who can ensure fairness. It should do so in partnership with the private sector using its strengths. In a country by and for the people we must command our public servants to make access to health care the right it has become.

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**Graduate Student Spotlight**

Leroy Hurt is currently employed by Booz Allen Hamilton, a leading global consulting firm, and provides management support to the U.S. Coast Guard relative to the testing and acquisition of a new fleet of multi-mission capability boats known as the “Response Boat-Medium.” In this capacity, Mr. Hurt’s areas of responsibility include contract management, organizational development, quality management and strategic communication.

Born in Manila, Philippines in 1956, Mr. Hurt is a graduate of George Washington Senior High School in Guam. He holds a Bachelor of Science in Engineering Management from the United States Military Academy at West Point, New York, a Master of Arts in English from the University of Washington at Seattle, Washington, and a Master of Business Administration from Regis University at Denver, Colorado. He is currently enrolled in the Graduate Legal Studies Program where he is completing a thesis entitled “Conflicts Between the Small Business Act’s Language of Protection of Small Businesses and the Drive for Economic Efficiency in Government Contracting.” Following his graduation in May, Mr. Hurt intends to commence doctoral studies in the discipline of management.

A published author, Mr. Hurt’s distinguished career includes service as an officer in the United States Army as well as an information technology manager for the State of Washington and at Ft. Lewis, Washington. His private sector experience includes program management at Sprint and vendor management at Washington Mutual. He is the recipient of the Distinguished Service Medal of Alabama from the Governor of Alabama, the Bronze Order of Mercury from Signal Corps Regimental Association and a member of MENS.

When asked why he chose CAL for his Master’s degree, Mr. Hurt indicates that “the legal studies online program offered the most cost-effective, schedule-friendly, and the most comprehensive coverage of the law among the institutions I researched.” He also notes that he has gained intellectual agility while studying at CAL and that the coursework has been immediately applicable to his work.

Mr. Hurt is married with two children and lives in Olympia, Washington.
On June 9, 53 BC, Roman legionaries, led by Marcus Licinius Crassus, were encircled by Parthian slaves and nobles astride fast horses from Persia (the pre-1935 name for Iran). The battle in Carrhae (now Diyarbakir, Turkey) pitted Parthian General Surena’s highly mobile, small formations against 30,000 less-mobile legionaries. When the battle was done, all of Crassus’ forces were killed or captured. (See, e.g., Mark Antony’s Persian campaign, HistoryNet.com, available at http://www.historynet.com/magazines/military_history/5236991.html).

Over two millennia (2,000 years) later, during the Iran-Iraq war, small, fast Iranian gunboats (not mounted forces) posed a modern asymmetric threat to shipping in the Persian Gulf – the so-called “tanker war” of 1987-1988. Twelve years later, on October 12, 2000, the U.S. destroyer Cole suffered 17 casualties and nearly sank during an al-Qaeda (not Iranian) asymmetric attack; an explosive-laden boat surrounded by other smaller vessels exploded next to the Cole while it was near a port in Yemen.

Most recently, on January 6, 2008, Iranian Revolutionary Guard Corps (IRGC) patrol boats confronted a Navy destroyer, cruiser and frigate, in a tense encounter which cost no lives but raised serious questions whether lessons from history had gone unheeded.

It was no small irony that this 21st century asymmetric military threat would come from Iran and that it would take place in the narrow Strait of Hormuz — the locus of the U.S. Department of Defense’s so-called Millennium Challenge 2002 (MC 2002) exercise pitting notional Iranian versus notional coalitional forces in asymmetric warfare at sea. New York Times journalist Thom Shanker wrote about this encounter in the January 12, 2008; New York Times article “Iran Encounter Grimly Echoes ’02 War Game” (see http://topics.nytimes.com/top/reference/times topics/people/s/thom_shanker/index.html?inline=nyt-per). Shanker interviewed Marine Lieutenant General Van Riper, who served in that Millennium Challenge war game as commander of the notional Iranian “Red Team” force. Quoting General Van Riper, Shanker wrote that “the sheer numbers [of swarming forces] involved overloaded [coalitional] ability, both mentally and electronically, to handle the attack” and that the encounter “was over in 5, maybe 10 minutes.” Looking back, Van Riper was further quoted as saying “important lessons of his simulated victory were not adequately acknowledged across the military.”

Asymmetric swarm tactics have been extensively studied by the U.S. armed forces. The Department of Defense commissioned the Rand Corporation’s 2000 monograph “Swarming on the Battlefield, Past Present and Future” (see http://www.rand.org/pubs/monograph_reports/MR1100/). That monograph aptly noted that “swarming has occurred throughout military history, and the lessons of this past experience may offer insights into a possible future application of swarming.” By 2004, the Navy had a computer simulation modeling system to anticipate this kind of tactic of small, highly trained, well-armed autonomous teams working in concert, continually adapting...
to changing conditions and environments in the guise of ISAAC (Irreducible Semi-Autonomous Adaptive Combat) (see http://cna.org/isaac/white.htm?from search=1). For that matter, the U.S. Marine Corps (part of the Department of the Navy) at its Center for Emerging Threats and Opportunities (CETO), has extensively explored “swarm tactic” operations, even in the context of Iran’s neighbor Iraq (see, e.g., CETO Quick Look, available at http://www.au.af.mil/au/awc/awcgate/usmc/ceto/post-saddamiraq.pdf).

As a current instructor of homeland security and related courses for California University of Pennsylvania and as an Assistant Professor of Law at Ave Maria School of Law, my perspective on these events is shaped by both my history and my knowledge of history. I am also a retired Army Officer and was the Chief of Operational Law for the XVIII Airborne Corps participating in the very first Millennium Challenge (MC) exercise – Millennium Challenge 2000 (MC 2000). The XVIII Airborne corps was then and remains the Army’s premier deployable corps element, often serving as a Joint (multiservice) or Combined (multinational) Task Force Headquarters in exercises and in wartime, and it was chosen by the U.S. Joint Forces Command (JFCOM) exercise to test joint experimentation and high-technology command-and-control systems. During MC 2000, the Navy’s Second Fleet (or Joint Task Force-2) “handed off” command to my parent organization, the XVIII Airborne Corps (Joint Task Force –XVIII) at Fort Bragg, NC in a sea, air, and land-based notional conflict not dissimilar from the MC 2002 exercise.

The current Chairman of the Joint Chiefs of Staff Admiral Mike Mullen (seehttp://topics.nytimes.com/top/reference/timestopics/people/m/michael_g_mullen/index.html?inline=nyt-per) was quoted by Shanker as saying that “It’s clear, strategically, where the Iranian military has gone.” It doesn’t take a current or even a former military member to appreciate the swarm tactics Iranian forces have used, as even Malcolm Gladwell’s book Blink: The Power of Thinking Without Thinking has popularized the notion of swarm theory. Nonetheless, as our military force troops and commanders anticipate and encounter emergent threats, whether on the seas, in the air, or on the land, they should look backward as well as forward, and appreciate George Santayana’s admonition that “those who cannot remember the past are doomed to repeat it.” (See George Santayana, the Life of reason, Chapter XII – Flux and Constancy in Human Nature (Doer Edition 1980), available online at http://www.gutenberg.org/etext/15000.
Call For Papers

The Homeland Security Review is a peer reviewed, interdisciplinary journal devoted to the discussion and analysis of issues related to the subject of homeland security. The Review seeks scholarly articles from a broad spectrum of academic disciplines including criminal justice; security studies; political science and law; engineering and computer science; forensic applications and other fields. The Review publishes feature articles, book reviews, commentaries and articles focusing on the field of homeland security. The Review is published by the Institute for Law & Public Policy at California University of Pennsylvania. The Institute was established to bring academic and practical expertise in the areas of law and justice, law and public policy, applied jurimetrics and related fields relevant to the American legal and justice system.

For specific submission guidelines, please visit our website at www.cup.edu/ilpp. For questions or comments, please contact the Institute’s Director, Dr. Charles P. Nemeth, at nemeth@cup.edu or Professor Christina A. Toras at toras@cup.edu. You may also reach the Institute by phone at 412-565-2328 or fax at 412-565-5082.