

Law School Notes

Institute chief sees the big picture

By Jerry Crimmins
Law Bulletin staff writer

The attorney and bioethicist who is the new head of the Health Law Institute at DePaul University College of Law traveled a circuitous route to become an expert on reproductive law and genetic issues.

Nanette R. Elster said she started out to study child abuse and neglect.

"That was where I wanted my career to go during law school" at Loyola University Chicago School of Law.

In Elster's first job as a staff attorney for the office of the chief judge of Cook County Circuit Court from 1990 to 1992, she continued to research juvenile law, child abuse in particular.

She went on to get a master's degree in public health from Boston University and continued to focus on child abuse and neglect.

But, "I got a little disenchanted or disappointed that it's kind of hard to change the world," Elster said.

With the guidance of a mentor, Elster switched her focus to "the flip side of working in child abuse and neglect." She began studying "families doing everything they could to have children" but who were unable to due to infertility.

"That struck a chord with me," Elster recalled. She focused on reproductive law and genetic issues, including genetic privacy and genetic discrimination.

Today, Elster is a member of the Chicago law firm of Spence & Elster P.C., which advises individuals and agencies on assisted reproduction.

Her firm also assists clients with contracts involved in assisted reproduction, such as when a third party is necessary either as an egg or sperm donor.

Elster took the helm of the Health Law Institute in the spring. The institute was founded in 1984, and DePaul calls it "the first ABA-accredited program of its kind in the nation."

Dean Glen Weissenberger praised "Professor Elster's extensive background in the legal and ethical issues related to genetic and reproductive health, as well as public health."

Asked in an interview an ethical question that



Nanette R. Elster

has sparked debate for decades — "Is a human embryo a human being?" — Elster said in the biological realm, "It's hard for me to say because so much science is involved and I'm not a scientist."

"Certainly," she continued, "there are human properties. It's going to be a variable question depending on whether one considers viability to be the point at which one becomes a human being."

In the moral realm, Elster said the answer to the question of whether an embryo is a human being "depends on your personal belief system."

Legally, Elster said, "In most instances, at least according to the U.S. Constitution, it's probably not a human being, not entitled to the same level of constitutional protection."

Asked the related question — "When does a human being begin?" — Elster stated: "I don't have an answer for that question. ... I would never put myself in a position to make a blanket

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statement because that affects so many people so differently.”

Some people, Elster said, might believe an embryo is “just a ball of cells.” For other people, an embryo “might have a totally different meaning” — such as “for the person whose embryos they are.”

The issue of assisted reproduction is not merely academic for Elster.

According to the DePaul press release, “Her commitment to issues in reproductive law was bolstered by her personal struggle with infertility — she became a single mother through sperm donation.”

Elster is today 43, and her daughter born through sperm donation is 6 years old.

She said she previously had been trying to have a child “when I experienced my own infertility. I had to make a decision whether I was going to have a child or not. I chose to proceed as a single woman.”

“It’s something that has a different emotional piece to it when it’s kind of a forced decision.”

But having the child “has been life changing and altering, I can say with 100 percent certainty.”

Artificial human insemination goes back to at least the 19th century. Successful in vitro fertilization goes back to 1978.

According to Elster, the first human egg donation took place in 1984. The business really took off in the 1990s, she said.

“Today the infertility business is roughly a \$4 billion a year business,” she said. “It’s very commercial.”

Nevertheless, the idea of creating a voluntary national registry of egg donors and sperm donors, which might provide some record of who the natural mothers and fathers are, is just in the talking stages, she said.

“Many gamete donors are anonymous,” Elster noted, referring to egg and sperm donors. “There’s really no requirement to keep records.”

Elster wanted to stress in the interview, “The Health Law Institute is far broader based than reproductive law and infertility. ... It provides students with exposure to a full range of health law experiences.”

Students in the institute might study public health advocacy, health care regulation, managed care, health insurance law, autism or genetic testing, among many more topics.

“Students go to work for law firms,” Elster said, “they go to work for companies like Walgreens; some will work in policy-related fields, maybe advising the government or working for a not-for-profit,” or they might work for an insurance company.

“The institute is meant to be incredibly diverse. ... We want to tackle a full range of topics.”

“When we think about health law, it really touches everybody’s life. It affects everyone.”