fice to say, the ground of liability which Dr. Kohn's article suggests would not be an easy one to implement.

All these problems of proof in intimate affairs, and the larger issue of privacy, are recognized in the constitutional law cases cited by Dr. Kohn, including *Griswold v. Connecticut*,[3] and *Eisenstadt v. Baird*.[4] Invasion of the privacy of the marital bedroom, or the merely coital back-seat, is not resisted solely because of a punctilious societal respect for intimacy without intrusion. Legal intervention is equally repelled by the realization that it makes little practical sense to declare illegal that which cannot be proved in court.

Suppose that suits for unforewarned transmission of venereal infection are allowed. What will the courtrooms be like? The taking of testimony will be more lively than is the case in most of our drudging civil litigation. The ratings of afternoon soap operas may slip as crowds line up outside municipal buildings across the land to seek a look at the "real-life" dramas being played out. Or perhaps the networks, loath to miss out on such a good thing, will merge "The Young and the Restless" with "The People's Court" and come forth with a whole new form of truly riveting educational programming.

To many, I suspect, converting the courts into soap opera sets is not an appealing prospect. In fact, as Dr. Kohn points out, complainants would probably be reluctant to come forward and expose themselves to the public eye. One would certainly not expect many suits by herpes victims. On the other hand, the consequences, economic and otherwise, of AIDS, undesired pregnancy, and the transmission of genetic defects are sufficiently serious to motivate litigants in spite of the ignominy involved. So, given the (paraphrased) proverbial "infinite numbers of potential litigants and infinite numbers of courtrooms," I am sure that we will see more cases along the lines described and thoughtfully analyzed by Dr. Kohn. May heaven give us the wisdom to deal with them!

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References

1. 607 P.2d 924 (Cal. 1980), *cert. denied*, 449 U.S. 912 (1980). It is somewhat difficult to imagine a party suing for venereal infection where he or she would have to rely upon a "market share" approach to apportion liability.
2. "Scienter" is defined as "the defendant's previous knowledge of the cause which led to the injury complained of or rather his previous knowledge of a state of facts which it was his duty to guard against, and his omission to do which has led to the injury complained of. . . ." H.C. BLACK, BLACK'S LAW DICTIONARY (West Publishing Co., St. Paul, Minn.) (5th ed. 1979) at 1207.
3. 381 U.S. 479 (1965).
4. 405 U.S. 438 (1972).

Preventive Law: Is Money the Obstacle?

Dear Editors:

In his eloquent essay, *Reflections: Preventive Medicine and Preventive Law: An Essay that Belongs to My Heart*, published in the October issue, Louis M. Brown laments the fact that the legal system's adroitness at identifying and preventing personal injury, on both the primary and secondary levels, generally lags far behind the abilities of the health care system in this regard. He lays much of the blame for this deficiency on the too-frequent failure of legal education and practice to imbue legal practitioners with an adequate spirit of caring and humanism toward the clients whom they serve.

It is true that the caring felt and exhibited by many attorneys toward their clients leaves much to be desired. It seems to me, however, that Mr. Brown has failed to mention a much more serious and fundamental reason for the differing stages of development in preventive medicine and preventive law, namely, money, or, to be more precise, lack of money.

Each of the diagnostic and therapeutic medical interventions described by Mr. Brown, with the possible exception of his initial annual physical examination, was presumably financed by either public (i.e., Medicare — the author stated that he was seventy-three years old) or private (i.e., Blue Cross/Blue Shield or commercial) health insurance. Our society has created the means to fund (albeit inadequately) various aspects of preventive medicine. Thus, patients are more likely to seek out preventive health services, and physicians and other caregivers are more likely to offer preventive consultation and treatment.

Conversely, society has provided no effective funding mechanism yet for making preventive legal services — diagnostic and therapeutic — generally available to the public. The one exception is the dwindling Legal Services Corporation that even at its height served only a small and categorically select portion of our population. Today, middle or upper class individuals or families desiring or desperately needing such services must either pay for such services out of their own pocket or forego them. Most choose the latter alternative. In the legal as well as the medical realm, money is the tail that wags the dog: function follows financing. I am confident that were adequate private and/or public funding of preventive legal services generally available, more potential clients would gladly seek them out and more practicing attorneys (magically made more caring and human) would be more ready, willing, and able to provide them.

The concept of preventive law raises many interesting and enticing possibilities. One area in which such a development might bring about very salutary effects is that of advance health care planning, through the execution and invocation of documents like living wills and durable powers of attorney that could guide future medical decision-making for individuals who subsequently become mentally incompetent. However, until our society is willing to back its rhetoric with a financial commitment, and to devote a meaningful amount of its collective economic resources to the fulfillment of individual legal rights and opportunities (through the inception of third-party payer programs like Judicare, Judicaid, Blue Scales, and employer-paid enrollments in Legal Maintenance Organizations), the deficiencies that Mr. Brown perceptively pointed out in the quality of preventive law will probably persist.

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