to each in the form of a statement of fact, only then applying the principle to the matter at hand. In other words, metaethics functions to justify normative judgments.

The issues raised by Scofield are of considerable importance to all as ethics is called upon to engage with an ever more morally complex world. As an ethicist, however, I feel compelled to say to Mr. Scofield, the lawyer, that I wish I could practice law as easily as he purports to practice ethics. And as someone who claims to know something of ethics, he might well recall that a little knowledge can be dangerous.

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Test of Admissibility Should Be Framed Another Way

Dear Madam: The lively debate between Professor Baylis and Mr. Scofield about the admissibility of bioethics expert testimony is a bit off the mark (*JLME*, Fall 2000). Framing the debate about admissibility in terms of normative, descriptive, and metaethical testimony — though common among ethicists — is an evidentiary dead end.

These categories have never been recognized as relevant to the question of admissibility in U.S. courts and, for reasons summarized in Spielman and Agich, "The Future of Bioethics Testimony," *San Diego Law Review*, 36 (1999): 1043, are unlikely to become relevant. Judging from the scant information that Ms. Baylis offers about Canadian standards of admissibility of expert testimony, the normative-descriptive-metaethical labels are not relevant to Canadian evidence law either. Superimposing an (outdated?) philosophical construct onto evidentiary standards does not significantly advance the debate about admissibility. What would advance the debate, at least for many U.S. courts, is whether the method by which Professor Baylis derived each of her assertions is rigorous enough to qualify as knowledge in a legal arena. Mr. Scofield addresses the problem of knowledge versus self-validating beliefs, but his standards for knowledge are, in one respect, a bit narrow, at least for many U.S. courts. Not all expert testimony must be scientific, but testimony does need to be reliable. In order to be reliable, an assertion must be derived by a reliable method, not be riddled with analytical gaps, and not come from a field that is merely self-validating. Depending on how rigorously these criteria are applied, a carelessly derived "descriptive" assertion and most, if not all, "metaethical" assertions could be as inadmissible as any "normative" one.

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Two Courts Rule Against Admissibility of Testimony

Dear Madam: After the publication of the *Journal* which contained a discussion of the admissibility of expert testimony by medical ethicists (JLME, Fall 2000), two courts ruled on this matter in a manner that supports my position.

In *In re Diet Drugs*, 2001 U.S. Dist. LEXIS 1174 (E.D. Pa., February 1, 2001), the court applied the *Daubert* test to determine whether a medical ethicist, John La Puma, M.D., could testify that American Home Products had failed to provide appropriate warnings in connection with its drugs, as a clinical ethicist with expertise in "truth, honesty, and integrity."

The court concluded that Dr. La Puma's proffered testimony could not withstand scrutiny under *Daubert* because, *inter alia*: (1) his experience and expertise in clinical ethics were, at best, marginally relevant to the matters being litigated; (2) his testimony could not assist the trier of fact because "anyone who reads and understands the English language [could] interpret and apply" the relevant codes of conduct; and (3) the court had "serious doubts about the reliability of the methodology employed by Dr. La Puma," which it found to be "inherently susceptible to subjective personal influence and lacking indicia of reliability."

In *Hall v. Anwar*, 774 So. 2d 41 (2000), the Florida Court of Appeals ruled that testimony of a medical ethicist should not have been admitted in a medical malpractice action because the ethicist was not qualified to testify about a medical standard of care nor the legal issue of negligence. As the court said, "The standard of care ... still involves the standard of care owed by a ... health care provider and not that owed by an ethicist." Although the court ruled that the ethicist's expert testimony should not have been admitted, it also concluded that its admission constituted harmless error, in that it was cumulative and not emotional, overtly religious, or sensitive. Indeed, the court observed that the testimony was "very abstract," in that it referred to the metaphysical and epistemological issues of living in a post-Kantian world. As the court observed, "It is not surprising that all of the lawyers essentially ignored this testimony in their closing arguments."

While I doubt that these cases, which represent instances in which the testimony of medical ethicists as experts has been objected to, will lay to rest the controversy over whether such testimony ought to be admitted, they do lay to rest any suggestion that the admissibility of such testimony is somehow indisputable or unquestionable. That being the case, the points of view exchanged between Professor Baylis and myself reflect and will likely contribute to a lively and important debate that is occurring in the courts as well.

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