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2012 NEWS ARCHIVE

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Newton, MA--the winter issue (vol 32) of the Boston College Journal of Law & Social Justice recently went to press. The issue marks a name change for the Journal, after publishing under the Third World Law Journal moniker since 1980. The Journal continues to focus on issues of social justice and underprivileged populations across the world.

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Authors Outside of the BC Law Community:


Courts have tremendous power to shape social attitudes. At the same time, court opinions can reflect commonly held views. In “Islam in the Mind of American Courts: 1800 to 1960,” Marie A. Failinger, professor of law at Hamline University and Editor of the Journal of Law and Religion, investigates how American judges viewed Islam and Muslims throughout a large part of American history. Failinger's illuminating discussion not only shows how many negative stereotypes about Muslims have pervaded American society, but also gives a historical context to modern day decisions and policies concerning Muslims and Islam. Failinger identifies several conflicting themes: judges typically viewed Islam as a non-American and exotic; at the same time, however, they would refer to Islam and its principles positively when establishing the existence of long-held, universal public policies; and Islam sometimes played an exemplary role in arguments stressing religious equality before the law, even when courts favored one religion over another.

Maurice Hew, Jr., "Under the Circumstances: Padilla v. Kentucky Still Excuses Fundamental Fairness and Leaves Professional Responsibility Lost"

Maurice Hew, Jr. critiques the relatively low standard of professional responsibility set by the Supreme Court for attorneys handling immigration matters in "Under the Circumstances: Padilla v. Kentucky Still Excuses Fundamental Fairness and Leaves Professional Responsibility Lost.” Professor Hew astutely notes how Padilla fails to compel court-appointed attorneys to engage in a thorough study of immigration law or advise clients of the consequences of a guilty plea except where those consequences are "truly clear.” As a result of this low threshold of professional responsibility, immigration clients who cannot afford attorneys may receive less than satisfactory advice and face consequences of either incarceration or deportation. This standard of professional responsibility, argues Hew, must be heightened because poor immigration clients are entitled to a fair and complete understanding of their options, but in doing so, the profession must be sure not to overburden public defenders that already have burgeoning caseloads.

Marcia Yablon-Zug, “Separation, Deportation, Termination”

In “Separation, Deportation, Termination,” Marcia Yablon-Zug analyzes an alarming trend at the intersection of immigration law and family law: courts are increasingly terminating the parental rights of immigrants facing deportation. The rights of parents have long been
recognized in American jurisprudence; custody is not to be terminated unless the parent is found unfit. Professor Yablon-Zug shows, however, that courts are increasingly employing a “best interest of the child” standard to terminate parental rights of immigrant parents. This subjective standard allows courts and state welfare agencies to remove children based merely on harmful stereotypes about immigrants and assumptions about the superiority of an American upbringing. Yablon-Zug exposes a darker side to the rise of the Children’s Rights Movement and reveals the ways in which harsh immigration laws can combine with the “best interest of the child” standard to undermine the longstanding preference in the law for family unity.

**Student-Written Notes:**

**Andrew Eppich, “Wolf at the Door: Issues of Place and Race in the Use of the ‘Knock and Talk’ Policing Technique”**

Andrew Eppich’s Note, “Wolf at the Door: Issues of Place and Race in the Use of the ‘Knock and Talk’ Policing Technique,” looks critically at a policing technique that is increasingly growing in popularity. “Knock and talk” occurs when police approach a dwelling and knock on the door with the goal of eventually obtaining entry for a warrantless search. While seemingly uncontroversial on its face, Eppich discusses the impact that this technique has on low-income and minority communities. Eppich reviews the evolution of the curtilage doctrine in allowing police to approach a dwelling without a warrant, noting that courts have generally ignored the realities of living in densely populated, multi-unit apartment buildings. Eppich then demonstrates how “consent” searches and the destruction of evidence exception to the warrant requirement frequently allow police to search a dwelling just by utilizing the “knock and talk” technique. Ultimately, he argues that “knock and talk” has the potential to harm the very communities the police are tasked to protect.


Michael O’Neil’s Note, entitled “Twombly and Iqbal: Effects on Hostile Work Environment Claims,” examines the heightened pleading standards that the Supreme Court recently imposed on civil litigation plaintiffs. The Note explains that, by raising the bar under Federal Rule of Civil Procedure 8(b)’s requirement governing plaintiffs’ pleadings, Twombly and Iqbal may effectively bar many meritorious sexual harassment and hostile work environment claims. O’Neil goes on to argue that the legal standard for hostile work environment cases is particularly subjective, and the application of this new standard only increases judicial subjectivity. The Note examines the various negative implications of this result and argues for a reading of Twombly and Iqbal that limits judicial discretion so as to mitigate their negative implications.

**Radha Vishnuvajjala, “Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to Stay Silent”**

In her Note, “Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to Stay Silent,” Radha Vishnuvajjala advocates for the reform of the “Secure Communities” program run by Immigration and Customs Enforcement. The Note describes the problem of domestic violence in the United States, especially as it is perpetrated against immigrant women. It then explains that collaboration between local and federal law enforcement discourages documented and undocumented immigrant women from reporting domestic violence or seeking help. Vishnuvajjala shows that Secure Communities’ process of sharing fingerprints between local and federal law enforcement exacerbates the immigrant community’s distrust of local law enforcement. In response, the Note argues for a three-step process to reform Secure Communities and allow for greater protection of domestic violence victims by mandating delayed reporting to immigration officials, limiting the types of crimes that require fingerprint-sharing, and by rebuilding trust through communication with the public.

**Full issue available on JLSJ website**