

November 2016

# Lex | Brevis

WESTERN NEW ENGLAND UNIVERSITY SCHOOL OF LAW







**AMARA RIDLEY**  
LEX BREVIS Editor-in-Chief

## Social Justice: The Struggle For Equity

This month we delve into the many facets of social justice advocacy. But what do we mean by social justice? I posit that it's this constant struggle to recognize that people deserve to be treated fairly, to be able to live their lives free of oppression by a majority or by a culture that does not value the strength of diversity and opportunity. And sometimes equality is not sufficient to bring about a just result when it comes to making sure people are on a level playing field. It is also this concept that equality in and of itself isn't enough of a goal because it requires recognizing that we do not all start out on equal footing in society for various reasons. It is also about preserving and promoting a certain level of fairness as it applies to people living their daily lives.

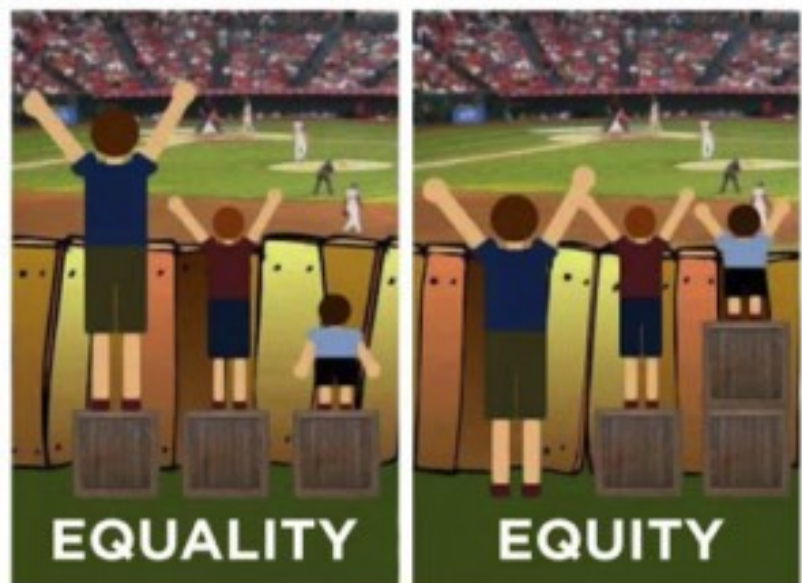
The cover is a reminder as to how far society has come toward providing a more equitable existence for people and the coming articles are both a window into the current struggle as well as a reminder of the work that still needs to be done.

With Warm Regards,

**Amara Ridley**  
Editor-in-Chief

**“Everybody is a genius, but if you judge a fish by its ability to climb a tree, it will live its whole life believing it's stupid.”**

-Albert Einstein



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*Attorney Carl Williams*

We, at Lex Brevis, are always looking for ways to improve. We would love feedback to better serve our law school community. Enjoy the issue.

Email Amara at [LexBrevis@gmail.com](mailto:LexBrevis@gmail.com)

# Recap Of Public Interest Week



by **MICHELLE TSANG**  
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Public Interest Law spans various facets and areas of law. In celebration of Public Interest Law, the Public Interest Law Association came up with a week of events to highlight each of those sectors for the law school community.

On Tuesday, PILA kicked off Public Interest Week with a panel on finding and securing a meaningful public interest internship. During the event, panelists spoke about their experiences working in different internships/externships at diverse geographical locations. We spoke about the rewards, as well as the struggles in this field, aside from the financial barriers. Though there may be barriers such as ungrateful clients, clients that you are just not able to help because of the limitation in resources, the benefits overpower the struggles and come back tenfold. The panelists had a difficult time thinking of the most enriching benefit of the work. They all

alluded to the seriousness of outcomes that may ultimately go against the client they are representing. The benefits centered around a service based, client-focused approach to serve these varying populations. Panelist Sam LeBoeuf spoke about the benefit of knowing she has the power to work against this system that oftentimes are inconsiderate of people's rights. "It is empowering to be able to work against that." Panelist Alexa Pascucci spoke about how

rewarding it is to be given the opportunity to work as an intern on a real client's case. She states that as an intern, she appreciates being able to begin that initial step for clients seeking assistance and when looking at the bigger picture of the case she is handling, to realize that she was one of the key components. Panelist Sarah Morgan highlighted her experience working in the Orleans Public Defenders Office and what an impact the capacity

Finding and Securing a Meaningful Public Interest Internship Panel

to







“Coming Out” in the Workplace Panel

spend time with clients, and to listen to them had on the client him/herself. She also emphasized the importance of time and resources for defense attorneys generally, who are often overworked and unable to provide in-depth one-on-one counseling with clients. “The clients that I was able to work with, they felt like they weren’t just a number because they were always going to be one of the 300 cases that my attorney had at a given time... a docket number... but I could by virtue of being an intern and not an actual attorney, I was able to go in for that 20 minutes or hour... and really saw them for who they were,” stated Ms. Morgan. The panel ended with some “last advice” for other students who may be interested in pursuing an internship or career in public interest. The advice centered around starting early, taking relevant courses that will increase your knowledge on the subject, and most importantly, do this work with a passion.

On Tuesday afternoon, PILA in collaboration with NLG and BLSA had a screening of the documentary “13th” directed by Ava Duvernay. After the screening, members of the audience engaged in a raw discussion on the reality of the current criminal justice system and how it unfairly targets people of color and low-

income disenfranchised populations. We spoke about how the criminal justice system is developed in a way that prevents individuals from successfully reintegrating back into the community, which perpetuates the revolving door of violence. Discussion soon turned to strategies on how to fix this broken system. We spoke on the importance of education, employment and services for these individuals both during incarceration and post-incarceration. We spoke openly about the need to restore their rights, including voting and opportunities to allow for a positive reentry. “I really appreciated the intensity and respect of the conversation that took place after

the film. We had a frank conversation about the realities of mass incarceration and the difficulties of overturning a pervasively racist system” stated Chelsea Donaldson during a debriefing of the discussion.

On Wednesday, PILA collaborated with OUTlaw and invited two “out” attorneys from the Western Massachusetts Area, as well as three law school students to speak about their experiences coming out as a member of the LGBTQ community in the workplace. The panel began with a general narrative of how their experience coming out in the workplace was. Panelists shared some good experiences as well as bad experiences, depending on the different fields of work, geographic location and population of people they were around. Panelist Lisa Lippiello, a practicing criminal defense attorney, spoke about how being closeted was harder for her than her coming out. She stated that coming out was much easier because everything was out in the open and not a source of rumor. Attorney Lippiello also commented on the importance of the presence of such a panel to those who are not comfortable exposing their queerness. Panelists also spoke about barriers they faced “coming out” including negative treatment by coworkers and clients with whom they dealt. Panelist Carole Gillespie spoke about her experience with her partner working in

Louisiana and the struggles she faced there. The people in Louisiana whom the couple dealt with refused to acknowledge Carole as her wife's partner. Instead, they viewed Carole as her "sister," even after it was disclosed that they were married. The discussion then turned to the importance of location in your decision on where to live and where to work. We are fortunate enough to live in a relatively accepting area. Panelist Claudia Quintero, a California native, spoke about how important it is to be strategic in where one chooses to work with regards to environment. "It wouldn't be a good thing to work in a conservative city if you are LGBT." When the panelists were asked about the difficulty of living authentically in one area of life, and then working in another lifestyle, panelist Barbie Curatolo spoke about how her experience may be opposite to some. "Everyone has different coming out experiences and in some ways, I was lucky that I am so stereotypically gay that it is assumed for me so that I don't have to 'come out' to my coworkers. I think for others that are not noticeably queer, the coming out experience can be a lot harder because they don't get that same assumption." Ms. Curatolo agreed with Attorney Lippiello's comment, stating that people have approached her in the past for being out and that it has made it easier for them to come out. The panel ended by asking panelists what allies or the general population can do to become more informed on the LGBTQ community and/or how to be an ally. Panelist Ashleigh Rousseau spoke about the importance of being open and asking/ answering questions. She shared an experience with a friend in which they had made an agreement. The friend was to share knowledge and educate Ms. Rousseau on her Islamic faith and in return, Ms. Rousseau was to educate her friend on the LGBTQ community.

From Thursday through Saturday, students attended the Equal Justice Works Conference and Career Fair in Arlington, VA. Each year, over 1,200 students from law schools all over the United States attend this career fair, meeting over 150 public interest employers in efforts to obtain summer internships or full time jobs.



Public Interest Week will continue through the end of October with a Clason lecture from Professor Frank Rudy Cooper of Suffolk University School of Law, discussing his research on the policing of black men in the era of Black Lives Matter. Professor Cooper's talk will address the intersectionality of race and how racial stereotypes of masculinity impact the policing and ultimate racial profiling of black men all throughout the United States.

The week will close with a Lunch and Learn: Access to Justice panel on representing low income clients. This panel will be comprised of law students and attorneys from Community Legal Aid of Springfield who will discuss the rewards and benefits of providing legal assistance to low income individuals that need access to affordable legal services and how we can better serve them as public servants.

In the upcoming months, PILA will begin planning for its annual event, the Public Interest Law Association Auction. Proceeds from the auction will be used as scholarships to fund students for their summer internships. If you are interested in getting involved or would like to learn more, email Michelle Tsang at [pilaatwneu@gmail.com](mailto:pilaatwneu@gmail.com).

## Equal Justice Works Conference 2016



by **CLARIBEL MORALES**  
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Upon my journey to law school, I faced many hurdles. However, I knew that once I had the opportunity to finally attend law school it would be an experience worth fulfilling.

All through my undergraduate and graduate education I worked full-time and part-time positions thus I was not as active in school activities as I wanted to be. When I decided to attend law school and was accepted I told myself that I would be as active as time permitted.

**“There is enough room for everyone willing to make a difference...”**



Now being in my first semester of law school, I have been giving my best effort to make myself known throughout the school and also, to take advantage of opportunities that are beneficial to us as law students.

When I heard about the Equal Justice Works Conference & Career Fair, I was attending my first Public Interest Law Association general meeting. I heard from many 2Ls and 3Ls that it was a place where one can get introduced to the opportunities that are connected with being in law school.

As I move further into my studies I want to be able to secure internships and hopefully a job that I feel will not only fit what I want to focus my legal career on, but also a place that I can learn and grow as a student and legal professional.

When I first walked into the Conference along with one my of classmates, we both walked into a room that was filled with tables and tables of people. I was slightly taken back from just the amount of people that were attending and also, the vast number of non-profits, organizations, and government agencies all looking to speak to students and graduates about internship opportunities and possible job opportunities.



I was able to speak to a number of organizations that caught my eye especially since public interest work is the avenue I want to focus on. I also learned of many organizations that I had never heard of and was able to learn about the work they do for people in their communities.

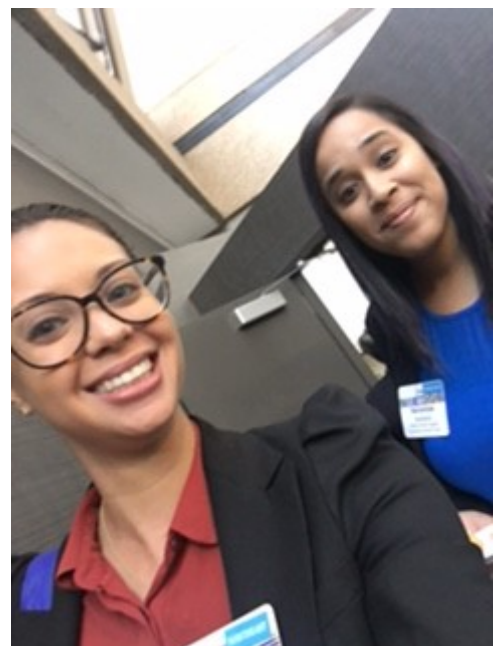
Though I am just a 1L I felt it was an experience that I am grateful that I was able to take part in. To be able to be around so many people just like me, eager and filled with potential validated my choice to attend the conference.

While waiting to attend a discussion panel with Associate Justice of the Supreme Court Elena Kagan, I was approached by a woman. She was a law student from Wake Forest University Law School and she asked me, "Are you Puerto Rican?" I responded "Yes." She said "I saw your last name on your name tag and I wanted to ask" and she had this smile on her face, and I said "It's great to see other Latinas here." Such a simple five-minute conversation radiated me, as if I needed more gratification from my day. I was just instantly boosted. I smiled and told my classmate about what happened-- she is also Puerto Rican.

My day surely got better, as I, along with my classmate, were lucky enough to hear Justice Elena Kagan speak about her life and her career and the values that were instilled in her from a young age. The room was filled to capacity, and judging by everyone's energy it was an honor just to be in attendance. It is not an everyday occurrence where a girl from Trenton, New Jersey can be in a room to listen to not only a great legal mind but a woman who has become, in her career, the "first" in many areas. If I cannot hold on to every word she said I will surely try and duplicate her approaches to how she writes her judicial opinions: "edit, edit and edit."

Overall, my experience at the Equal Justice Works Conference & Career Fair was a trip worth taking, and being around my classmate and fellow 2Ls and 3Ls definitely made my trip even more gratifying. I am grateful to have attended, to be able to hear from legal professionals about all the work they have done and continue to do in the public interest sector and also, most importantly, speaking to fellow students from law schools all over the United States, and doing away with the stigma that being a law school student means you see everyone else as the competition, which isn't true. There is enough room for everyone willing to make a difference, and I felt that the Equal Justice Works Conference & Career Fair promoted that.

*Sincerely,  
Claribel Morales  
Class of 2019*





## Protected Speech In the Digital Age



by **CHRIS MUTCHLER**  
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With all of the media attention that whistleblowers like Edward Snowden and Julian Assange have received recently, the approach that the American Justice system chooses to take in dealing with “hacktivism” is becoming more and more relevant. The United States has chosen to deal with perpetrators of politically motivated online attacks differently than other countries.

For example, whereas perpetrators of “hacker” group Anonymous’s 2010 attack on Paypal, Mastercard, and Visa in response to their refusal to facilitate funding of Wikileaks received substantial jail time, in Germany, a very similar attack was found to be protected speech.<sup>1</sup> As the workings of the computer world are as foreign to the average person as are the words in which the German court articulated its logic, a brief oversimplification of everything relevant follows.



### Who is Anonymous and what do they do?

For those who may be unfamiliar with or have limited knowledge of “hacktivist group” Anonymous, the group is an internet community that gained notoriety after their feud with the Church of Scientology. Fittingly, the name “Anonymous” stems from an internet meme: The “group” - for lack of a better term - began as a loose association of users of the website 4Chan in the ear-

By LORINA MURPHY '17

ly 2000s. 4Chan is a website that allows users to anonymously upload photos and videos, and to comment on uploaded content. It is essentially a completely anonymous version of Facebook, wherein the word “Anonymous” appears as the source of a post rather than one’s own name. Thus the joke began “what if everything on here was posted by one guy, whose name is Anonymous?”

The feud with the Church of Scientology arose from the famous video of Tom Cruise's interview with the church. The video –which many considered to “expose” Scientology as a religion created solely for profit – was leaked on YouTube®, and removed almost immediately for alleged copyright violations. The internet community was outraged at what they considered to be the use of intellectual property law to violate their right to free speech.

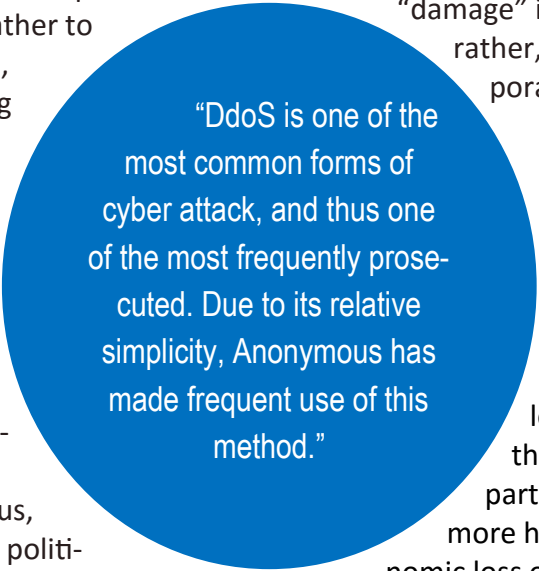
The Church of Scientology, they said, pushed so hard to have the video removed not to protect their intellectual property rights, but rather to quell criticism of the religion. This, they argued, amounted to nothing more than internet censorship.

In response to the actions of the Church of Scientology, Anonymous “declared war” on Scientology, and in the true spirit of the internet, set out to “troll” the Church. This was the beginning of what is today regarded as “hacktivist group” Anonymous. Under the name Anonymous, the group – a loose association of politically minded individuals acting meritocratically - organized protests against the Church throughout the world. Anonymous members donning Guy Fawkes masks (inspired by the movie V for Vendetta, and also a 4Chan meme) to protect their identity (the Church of Scientology had been known to harass opponents) gathered outside of branches of the Church in protest. Additionally, the group temporarily took down the Church's website via a distributed denial of service (DdoS) attack. The effect, according to the Church of Scientology, was devastating. The Church suffered substantial economic loss from the “damage” to their website, and filed a criminal complaint.

### **Okay, but what is DdoS?**

The Courts - having not before dealt with DdoS – agreed with the Church of Scientology, and many people received jail time for their involvement in the cyber attack. For those who may not be aware, DdoS is, in essence, the digital equivalent of hitting the refresh button on a webpage thousands of times per

minute. A website can only handle a certain amount of requests to view the page at one time. Thus, in this way, legitimate traffic to a website is blocked because of the number of “phony” requests. As an analogy, picture a website as a building: only one person can enter the building at a time, because only one person at a time can pass through the doorway. Similarly, only one person can access a website at one time. DdoS is the the equivalent of sending thousands of friends to walk through a door in a constant stream so that no one else could get in. No “damage” is done to a website by DdoS; rather, access to a page is merely temporarily inaccessible.<sup>2</sup>



“DdoS is one of the most common forms of cyber attack, and thus one of the most frequently prosecuted. Due to its relative simplicity, Anonymous has made frequent use of this method.”

DdoS is one of the most common forms of cyber attack, and thus one of the most frequently prosecuted. Due to its relative simplicity, Anonymous has made frequent use of this method. U.S. courts have been less lenient on those involved than courts in Germany and other parts of the European Union, often more heavily weighting the finite economic loss of privately held corporations over the more intangible First Amendment right to protest of the perpetrators. The logic used by some German courts, however, is quite different, and - at the very least - interesting.

### **What Do the German Courts Do, And Why Does Any of This Matter?**

German courts have compared DdoS to a “digital sit-in,” and have held with a fair amount of consistency that it is protected speech. In a sit-in, courts have reasoned, activists physically occupy a business with whose stance on a particular political issue they disagree, thus preventing the business from operating. Similarly, in these types of DdoS attacks, perpetrators who disagree with a business's stance on a particular political issue digitally occupy the website of that business, thereby preventing the business from operating.



Sit-ins have been a crucial part of many human rights movements throughout history, from desegregation to Vietnam. By preventing corporate entities which held an objectionable stance on an issue from realizing their full economic potential, social reform was achieved in areas where government intervention had repeatedly proven ineffective. A business that is complying with the law may still take actions that are objectionable to the public – its patrons. By denying such companies the public’s business, the people have the power to change objectionable business practices. The theory is that economically disadvantaged practices will fade with their profitability. In this way, the free market allows individuals the power to effectuate change in a capitalist society. Disallowing such practices by non-acknowledgment of a right to protest results in an erosion of the reformative power vested in the individual.

Objectively, the distinction between the courts’ view of DDoS and past sit-ins seems to be a disagreement as to whether a legitimate political issue exists. But hey... hasn’t that always been the case in civil rights disputes?

<sup>1</sup>See OLG Frankfurt Decision of 22 May 2006, Az. 1 Ss 319/05.

<sup>2</sup>Monetary loss occurs from a combination of lost traffic, additional bandwidth usage, and diagnostic costs, among other things.

By RYAN HENLY



# PRO BONO OPPORTUNITY

Are you interested in working with the population of formerly incarcerated individuals or those who have a criminal record? Do you believe that these disenfranchised individuals should have rights equal to the rest of the population and they should be afforded equal opportunities? We are currently in the process of putting together an ongoing pro bono project known as the CORI Initiative. This initiative is focused on assisting indigent individuals in the preparation of documents to seal their criminal records for three academic years. Criminal records have historically been an impediment to those with criminal backgrounds in employment, housing, and even as a general standard of living. In the CORI Initiative, law students will learn how to interpret a criminal record, key things to look for, how to interpret applicable case law, and how to prepare petitions, affidavits, and motions to seal CORIs. Student volunteers will be involved in real legal work as they gain skills in client interviewing, counseling, document review and legal writing. If you are interested in getting involved or learning more, please contact Michelle Tsang at [michelle.tsang91@yahoo.com](mailto:michelle.tsang91@yahoo.com).

# Immigration



by **PROFESSOR ART WOLF**

LEX BREVIS Guest Writer

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to deport 11 million aliens unlawfully in the country. He has also promised to build a wall between the United States and Mexico on our southern border, insisting that Mexico will pay for it.

The presence of children born in the United States of illegal alien parents complicates the matter considerably. Although the Supreme Court in 1898 declared such children citizens based on the first sentence of the 14th Amendment, recent opponents have argued against the current vitality of the Court's 1898 precedent. Further, in the latter part of the 19th century, the Supreme Court upheld the constitutionality of anti-Chinese statutes that prohibited Chinese laborers from entering the United States even though they had a right to do so under our treaty with China. The statutes further required the deportation of Chinese laborers who had legally entered the United States. To avoid deportation, the statute required them to secure a "white witness" to testify to their residing in the country.

Immigration policy has consumed much time in the political discourse of the United States from its earliest days. Many years ago, The New Yorker Magazine published a cartoon showing two Native Americans standing on the bluffs overlooking the Hudson River as the Dutch ships landed on Manhattan Island. One turns to the other and observes: "Oh, well, there goes the neighborhood."

This year's presidential election is no exception. Mr. Trump has been especially critical of United States immigration policy, for example, objecting to the admission of Muslims and vowing

For her part, Secretary Clinton has promised to continue the current policy of deporting aliens who have committed serious crimes, and to seek immigration reforms that could include legalizing the status of some unlawful aliens, especially the younger generation. In the past, Congress has enacted amnesty laws for illegal aliens (sometimes referred to as "undocumented" non-citizens). For example, President Reagan signed into law an amnesty bill that legalized the status of about four million unlawful entrants

To sustain these blatantly discriminatory laws, the Supreme Court relied on the plenary power doctrine that gives Congress the



unreviewable authority to control the entry and deportation of aliens. Whether the Court would adhere to these precedents today is not clear, although the Court has not questioned them.

What has been missing from the current political discussion of unlawful aliens is the recognition that United States and international law permits the illegal entry of aliens into sovereign states without their express consent. For example, the United States, together with a large majority of nations, is a party to the 1967 Protocol on the Status of Refugees, an international treaty. The Refugee Act of 1980 incorporates its provisions.

The Protocol states that the countries that are parties “shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened ... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.” United States law further provides that such “illegal” entrants have one year to report their presence in our territory to the immigration authorities.

After their presence is known, such aliens have a right to a hearing to determine if they are “refugees” within the meaning of United States law, which tracks

the international law of the 1967 Protocol. Generally, a refugee is a person who has “a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...,” according to the 1967 Protocol and the Refugee Act of 1980. If the applicant satisfies this test, the “unlawful” alien may remain in the United States. If not, the United States may deport the alien to the alien’s homeland or to a third country.

“What has been missing from the current political discussion of unlawful aliens is the recognition that United States and international law permits the illegal entry of aliens into sovereign states without their express consent.”

For example, whether we expressly accept Syrian refugees into our country, they may enter the United States “illegally” under our law. Within one year, they would need to report their presence to our immigration officials. Identifying their presence in the United States would entitle them to a hearing to determine “refugee” status and their right to remain in our country.

Consequently, the claim by Mr. Trump that all aliens illegally in the United States are immediately deportable is

contrary to United States and international law. Of course, he is not alone in stating and believing that to be the case. It is unfortunate that journalists and other interviewers of our presidential candidates are not better informed about the status of refugees in the United States, even if they enter unlawfully.

By the way, “refugees” who enter the United States, legally or illegally, become “asylees” once they cross the border. That is why they are frequently referred to as persons seeking “political asylum.” But persecution for one’s political beliefs is not the only basis for entering or remaining in the United States, lawfully or unlawfully. As noted above, a refugee entering our country to claim asylum may argue that persecution at home is based on “race, religion, nationality, membership in a particular social group, or political opinion.” That claim, if proved, would entitle them to remain in the United States.

In short, the discussion of immigration policy during this presidential election would have been much more helpful to the voters had the candidates and the media focused on our current law and its enforcement. Perhaps the newly elected President and the Congress will do so in 2017 in addressing our immigration policies and the need for change.



## Professor Erin Buzuvis



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by **Marketia Wright**  
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Professor Buzuvis currently serves as the Director of the Center for Gender & Sexuality Studies at Western New England University School of Law. She also teaches courses on administrative law, employment discrimination, Title IX, torts and property.

### **What's your favorite thing about the law? Least favorite?**

Law is awesome because of the opportunity it provides to develop and appreciate creative arguments and legal reasoning. Naturally, my least favorite thing about law is the bar exam, because it means I have to teach some things – like classifying present estates and future interests – that hardly use any of that.

### **Did you always want to go to law school? If not, what made you want to go to law school?**

It was always either law or science, but a summer job I had in college doing scientific research on chickens really helped me narrow it down.

### **What did you enjoy most about law school? Least?**

As you might expect from a law professor I really loved law school – my classmates, my classes...I even loved winters in Ithaca NY. But if I had to pick one thing I enjoyed most of all, it was being managing editor of the law review. When it was time to turn my desk over to the next ME, I was crying inside—though publically I played it cool.

### **If you had to do it all again, would you?**

Of course! Though sometimes I wish my job was interviewing famous people on NPR.



**As a law professor, you are now where your professors used to be. What is one thing that is done in law schools now, that you wish was done when you were in law school?**

Law professors today provide way more academic support to students. When I was in law school, there were no midterms or quizzes or other assignments to learn from prior to the final exam. Professors did not create review questions or hold review sessions or have TAs. There were no TWEN sites or CALI lessons. I wish I had had those resources when I was a law student!

**Do you still practice? If not, What made you transition from practicing to teaching?**

No, I do not practice law. I strive to do research and writing that is helpful to those who are practicing law involving issues that I care about, like discrimination and civil rights. Sometimes I analogize it to serving in the artillery rather than the infantry. I admire the lawyers who are on the front line and hopefully the work I do gives them the support they need to carry on the fight against inequality.

**What do you like most about teaching? Least?**

What I like most about teaching: working with passionate and engaged students, especially when there's a moment of recognition that something I taught them is helping them achieve their professional goals.

What I like least: the aforementioned estates in land and future interests. There is nothing fun about any of that.

**My mother has been a nurse for 38 years and when she watches a medical show of any kind, she will often critique the show about its "realness" factor. Do you find yourself doing the same with legal shows?**

Only *How to Get Away With Murder*. How come Annelise Keating never has to prepare for class or grade exams?

**Tell us something we would never be able to guess about you? What is your guilty pleasure?**

Some of my taste in television is a little bit embarrassing. For instance, I've seen every episode of *Switched at Birth*.

**Tell us about your first legal job.**

For the first two years after law school, I worked for a large law firm in Boston. Because of my love for administrative law, I chose to work for the environmental department. I learned a lot and worked with some really great people. Also, since my goal was always to be a law professor, I was not invested in trying to climb the law firm ladder of success. I think that helped me have good perspective on the parts of the job that were unpleasant.

**When you're not helping to shape legal minds of the future, what do you enjoy doing in your spare time?**

Brewing beer. Riding my bike. Playing hockey and softball.

**Tell me about your favorite vacation?**

This summer I went to Norway with my partner and my family. My sister and I ran a marathon at night, but because it was the solstice and we were above the Arctic circle, it was light out the whole time. Later in the trip I took my parents to the village where my mom's ancestors came from and we snuck into the 400+ year old church where many generations of our family had been members. The next day, my partner and I rode bikes around the fjords and went whitewater rafting. How could a trip like that, with so many adventures, not be my favorite!?

**What is one food that you would eat everyday if you could?**

Chocolate chip ice cream.





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# ADVOCATING

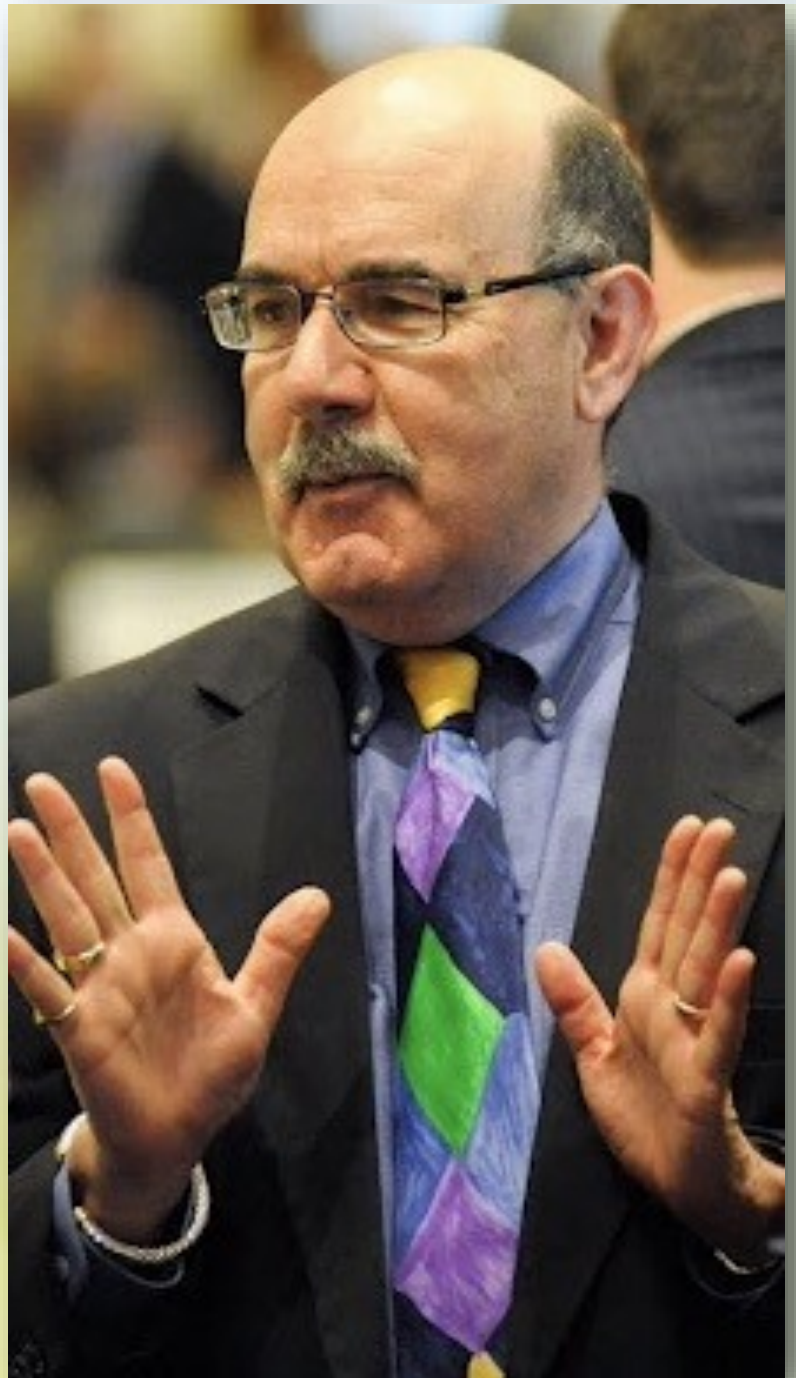
*for*

## THE BEST INTEREST OF THE CHILD

Judge David G. Sacks  
Hampden County  
Probate and Family Court

Suffolk University Law School  
Class of 1974

by **AMARA RIDLEY**  
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While he was not talking specifically about the courts, the late Hubert H. Humphrey aptly summarized the jurisdiction of the Probate & Family Court when he said.....

“The moral test of government is how it treats those in the dawn of life (the children), the twilight of life (the elderly) and the shadows of life (the sick, the needy and the handicapped).”

**What was it like in law school?**

It was a lot of hard work and learning. I had to be disciplined in my study habits. I had the benefit of really good professors and classmates so in the end it was very rewarding.

**What about getting practical experience?**

I was involved in a clinical program called Suffolk Volunteer Defenders under SJC Rule 3:03. We had to take Criminal Procedure during our second year, and then were able to try criminal cases in our third year, which I did in the Salem District Court.

**What was that like?**

It was exciting as a student to interview witnesses and prepare cases, and then actually to go to court for trials. It was an excellent experience.

**What did you do after you graduated law school?**

I took the Bar and then started practicing the following January in a small firm in Holyoke. It was a general practice and I did real estate, probate, divorce, criminal and bankruptcy.

**What was that like?**

It was like jumping into a cold water lake. It was a bit of shock but refreshing and a great way to learn. I had the benefit of speaking to attorneys in the office. On estate matters, we had a secretary who had been there for nearly 30 years-- so she was a wonderful resource. Having good support staff is very important to having a good legal practice.

**How long were you there and what was it like?**

I was there for 12 years and it was totally interesting and rewarding.

**Were there any major changes in the law at the time?**

Interestingly, there was a federal change to bankruptcy law and a new entity was created called a private panel of bankruptcy trustees and several lawyers were appointed in several regions. I was fortunate to serve on one of those panels. I learned even more as a Trustee.

**What about changes for you, professionally?**

I incrementally improved my writing, research and presentation in court. It's constant self-improvement. You can always do better.

**What else was happening at that time?**

There is a deeply rooted tradition in lawyers to help communities. The Massachusetts Commission Against Discrimination created a Hampden/Hampshire regional advisory board and I was asked to chair that group. I was also elected to and became chair of the Holyoke School Committee. We would meet several nights a week. It was a big commitment because of the impact it could have on children. I also got involved in Bar Association activities. I held offices in the Holyoke Bar Association, the then Young Lawyers Section of the Hampden County Bar Association, was on its board, and also served as the Hampden County delegate on the Massachusetts Bar Association's board of delegates.

**How long were you on the school committee?**

5 ½ years.

**What was your experience working on the MCAD advisory board?**

It was an additional growing experience. It’s sort of like when you do a case in an area you are not familiar with, you learn more. I learned about discrimination, employment and housing.

**And after those 12 years?**

I became a judge. I’ve been sitting at this desk in this room for 30 years this October.

**Why did you become a judge? What was that path like?**

In some ways it started when I was a little boy. My father was a Deputy Sheriff, Constable and Court Officer in this court. His last day was my first day on the bench. As a kid, my dad was manager of a softball team of attorneys and judges. So from a young age I was around attorneys and judges. The desire to be an attorney and then judge came sort of naturally. I can remember as a kid in my dad’s office he had the red Mass. Lawyer’s Diaries that made me want to have my own bookcase with my own red books! Many days after school I would go to my father's office and be bills and returns of service and I would bring them to attorneys’ offices.

**How did that impact you?**

It made me want to be an attorney.

**Why did you come back to Holyoke after graduating law school?**

It was more of a coincidence. A local attorney asked me to come for an interview. I could have ended up in Washington D.C. (where I went to college), Boston (where I went to law school) or in Holyoke (home).

**What was the benefit to going home?**

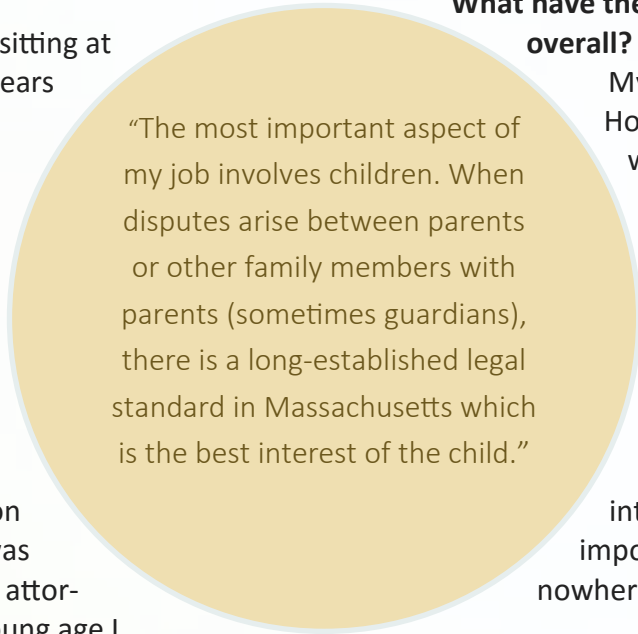
I am a native of Holyoke and I really like my community. In terms of practicing, there is the practical part of having clients that pay to represent them. To some degree, if you like where you are from, that is a good network to build on. On the other hand, if you do not have strong feelings about where you grew up or the areas you want to practice in are not in that place, then go elsewhere.

**What have the last 30 years been like overall?**

My wife and I like living in Holyoke. It is a poor community with a lot of challenges. We like our tax dollars going to a community willing to make itself better. It has been a good 30 years.

**What has it been like working at the Probate Court?**

It’s busy, challenging and intense. It is dealing with very, very important societal issues and there is nowhere else I would rather be.



An overwhelming number of cases that come into the courtroom are about family and domestic relations. They are people driven. Estate matters are overwhelmingly paper driven and not many of them actually make their way into the courtroom. The most important aspect of my job involves children. When disputes arise between parents or other family members with parents (sometimes guardians), there is a long-established legal standard in Massachusetts which is the best interest of the child. That standard governs our decisions about who the child lives with, parenting time, etc. We have to sort through incredible amounts of information which might involve child developmental status, medical conditions, how a child is doing in school. Apart from that, there may be allegations of domestic violence, sex abuse, drug and alcohol abuse, and that is the bulk of our day. There are other issues as well, decisions about alimony, child support and the division of property.

## **In your 30 years on the bench what kind of changes have you seen?**

There has been a much greater awareness of domestic violence and its impacts. Child support changed in the late 1980s when Congress required that states establish child support guidelines—a formula to calculate child support. Another change about child support at the same time dealt with falling behind in child support payments. Sometimes payers would convince the court to drastically reduce the amount in arrears. Massachusetts did this through

a statute where now a court can only retroactively reduce child support arrears from the date starting on the date the other party was served. This was significant because a lot of family law is discretionary. Those are two examples where a line is drawn in the sand. We can deviate from the formula amount but we have to give specific written reasons for doing so.

## **What are some of the largest or most frequent issues?**

Both that people need protective orders or the domestic violence history being a part of a child custody case.

## **What other areas?**

If you think about the court, we cover the whole life span. From birth it may be about who the father is or who gets custody. On the other end of life someone, for medical reasons, may not be legally competent and we may have to make decisions like whether to terminate life support (Do Not Resuscitate orders). We also deal with adults with mental disorders who may take antipsychotics and when they need to be administered in what dosage and for how long.

## **What separates probate matters from family matters?**

The family matters consist of divorce, paternity, separate support, domestic violence and abuse

prevention. Probate consists of guardianship, conservatorships, estate matters and adoptions. And somewhere in the middle is equity jurisdiction by statute, Mass. Gen. Law c. 215 § 6 which can be a tool where a case bumps into both sides [family and probate]. There is also Petition to Partition jurisdiction involving disputes between owners of real estate.

The paper driven cases are reviewed and an administrative process exists. Some of those matters require a judge's signature and some do not have that

step. Some estate matters need to be filed, then reviewed and approved. If there is an objection to a type of fiduciary matter, then the matter goes before a judge. If it is an estate, then the personal representative (fiduciary) files the appropriate paperwork that is then processed without seeing a judge, unless there is a timely objection.

## **What's been the impact, on you personally?**

I have said to people, about why I like being a judge after all these years, that it is busy, fast, rewarding and stressful. I have heard a retired Family

and Probate judge say that in criminal cases you see you see bad people acting at their best and in Probate and Family Court, you see good people acting at their worst. There is nothing like personal relationships falling apart to see people act with incredible emotion.

One way I describe what keeps me going—I have parents in front of me in the courtroom, not always on their best behavior. I visualize a big curtain in a courtroom and behind it is a child. That reminds me to keep focused on the child and do what's right for the child within the legal framework. That is great motivation.

**“Perhaps we cannot prevent this world from being a world in which children are tortured . But we can reduce the number of tortured children. And if you don't help us, who else in the world can help us do this.”**



# “There is a legal tradition of pro bono publico that is as important as any aspect of the profession”

## **What is it like overseeing personal cases that impact your community?**

It is sobering. It is both a lot of responsibility and it is also an incredible opportunity.

## **Is there anything you would like to add?**

It is important for lawyers to give back. It is one of the best things about the profession. I can't remember a time as a lawyer or a judge that I was-n't on some committee.

One area I've worked is dispute resolution. Some of that work has resulted in getting authorization for a pilot program in Hampden Probate and Family Court for mandatory mediation. Massachusetts courts cannot otherwise require mediation. There is a statutory provision by which the Chief Justice of the Trial Courts can give the authority to mandate mediation. In 2014 we received approval to do a pilot program. As of now, (the end of June 2016) approximately two thirds of cases we referred to mediation have been either partially or completely settled in mediation. That gets done with a private provider.

Oran Kauffman and Dean Gouvin approached our court. Professor Kauffman was teaching a mediation class and the proposal was for him to teach in the Fall where students could become trained as mediators. In the Spring, those students would come with Professor Kauffman to do the mediations in the pilot program. The project is the first ever in the

Massachusetts Trial Court. The link between the pilot and Western New England University School of Law has been an unexpected benefit. The Trial Court has a Standing Committee on Dispute Resolution that has 20 members including representatives from all courts departments, providers, lawyers and academics.

In June 2016, there was a vacancy in the Chair position and I was fortunate to be appointed by the Chief Justice. I am taking over for Superior Court Judge Mark Mason who has been Chair for six years. While it is a statewide project, it is very nice to have back-to-back Western Massachusetts judges chairing it. Before then it was Probate and Family Court Judge Gail Perlman from Hampshire County.

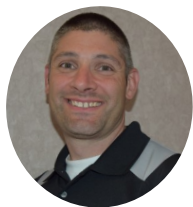
## **Do you have any additional advice to law students?**

Study hard. Preparation is everything—for school and the courtroom and try to appreciate the fact that the legal profession is very special. And when you do become a lawyer, find some way to give back.

## **On giving back:**

There is a legal tradition of pro bono publico that is as important to being a lawyer as any aspect of the profession. Our fellow citizens benefit greatly from a wide variety of contributions lawyers make to their communities. It might be in taking a case for free or volunteering for an organization—it is any number of ways.

# Cell Phones And Privacy Rights



by RONALD "JAY" PUGLIESE  
LEX BREVIS Staff Writer

**M**odern cell phones contain a host of personal and very private data.

Someone's cell phone can hold a digital record of their entire life.<sup>1</sup> Digital data stored on a cell phone can tell the story of someone's life, even their most intimate moments. There could be very personal information on the phone including, but not limited to, personal conversations, banking records, photos and videos, location information, notes, home address, personal contact information, and information related to credit accounts.

The United States Supreme Court used this reasoning, *inter alia*, to restrict what police officers can do when dealing with cell phones. The Court ruled that officers can no longer search the contents of a person's cell phone incident to arrest.<sup>2</sup> Search incident to arrest is one of the seven warrant exceptions allowed by the Fourth Amendment.<sup>3</sup>

The Court ruled that Officers may search an arrestee's person and the immediate area over which the arrestee has control.

This is sometimes referred to as a wingspan search. An Officer has the right to search the area within the immediate control of the arrestee for the purposes of officer safety and to prevent the destruction of evidence.<sup>5</sup> The Police have been justified in searching a cigarette pack that an arrestee had in his pocket when he was arrested.<sup>6</sup>

In the *Riley* case, the government tried to analogize a modern cell phone to a cigarette pack, claiming the data contained "inside" the phone was the same as the contents of a cigarette pack.<sup>7</sup> The court disagreed with this notion citing privacy and the concerns stated above.<sup>8</sup>

The *Riley* decision made it very clear that a cell phone is not a pack of cigarettes. Furthermore, the contents of a cell phone are much more private than the contents of a pack of cigarettes, thus, far more protected from search.<sup>9</sup> The rule of thumb the police use for searching a cell phone now is "get a warrant" or they must find another exception to the search warrant rule, such as asking for consent.

That doesn't mean that police cannot protect themselves or prevent the data from being destroyed. The police are still justified in examining the physical device and case for concealed weapons. Furthermore, officers are justified in securing the data on the device, as they would any other physical evidence, while in the process of obtaining a warrant.<sup>10</sup> The police can access the phone's user interface to remove passcodes if they have it, place the phone in "airplane mode," or place the phone in a radio wave proof bag (Faraday Bag) to prevent remote wiping of the data.<sup>11</sup>

The *Riley* decision gives us a look into how the court and society in general, feels about cell phones and the data they contain in relation to privacy. The data within someone's cell phone is truly a look into their entire—and often times very personal—life. There are clearly enormous privacy concerns; privacy concerns that did not exist in 1973 when the *Robinson* case was decided. In closing, your modern cell phone is no longer just a smart pack of cigarettes on which you can play Pokémon Go!

**See References on Page 26**

# Mass. SJC: Comm v. Warner

## Black Men May Have “Cause” to Run from the Police



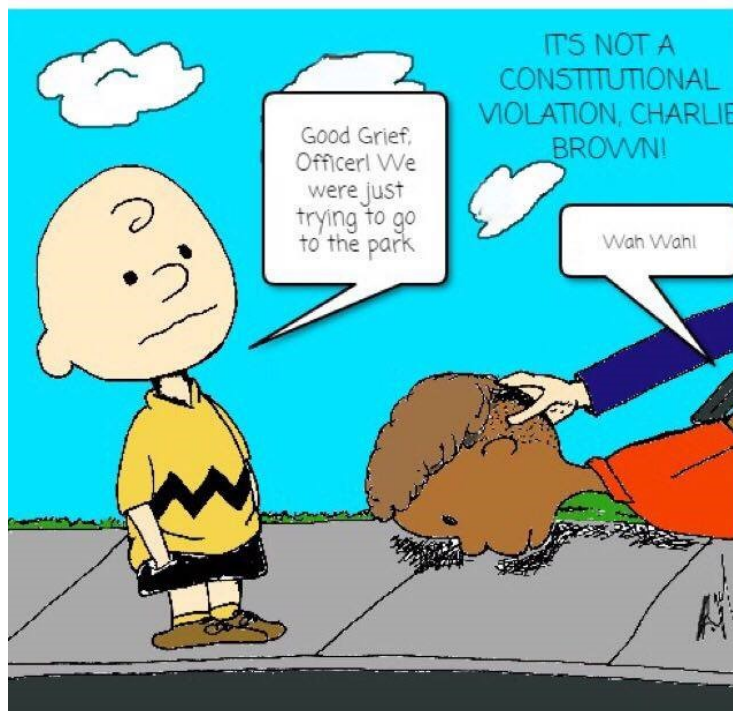
by **CHELSEA DONALDSON**

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By LORINA MURPHY '17

Jimmy Warner was having a relatively normal evening on December 18, 2011—until he was stopped by Officer Luis Anjos, who was patrolling Roxbury, Boston.<sup>1</sup> Officer Anjos stopped Warner and his friend because Officer Anjos had received a call concerning fleeing suspects in an armed robbery.<sup>2</sup> The only information that Anjos received concerning the fleeing suspects was that one was a black male wearing a “red hoodie.”<sup>3</sup> The victim of the armed robbery saw three suspects running down the street after the incident, wearing backpacks; Officer Anjos, when he spotted Jimmy Warner (a black male wearing a “black hoodie”) and a friend at a basketball court roughly twenty minutes after the robbery, decided to stop Warner on a “hunch.”<sup>4</sup> Anjos approached Warner and his friend, calling out to the two men. The men made eye contact with Anjos and jogged away. Anjos radioed in that



Warner and his friend had elected to flee the scene.<sup>5</sup> Ultimately, Warner was caught by another officer who spotted Warner holding a hand against his leg, a movement the officer interpreted as having a gun.<sup>6</sup> When Warner was ordered to the ground at gunpoint, he moved slowly, which the officer interpreted as Warner not wanting to follow commands.<sup>7</sup>

A struggle ensued, and Warner was arrested and searched. After asking whether or not Warner had a permit for the .22 caliber firearm he had on his person, Warner responded that he did not. He was charged with unlawful possession of a firearm.<sup>8</sup> Warner was ultimately convicted of his crime.<sup>9</sup>



Upon appeal, Warner attested that the evidence of his firearm should be suppressed. Warner claimed that the stop was not reasonable, was unconstitutional, and there was no probable cause to be stopped in the first place.<sup>10</sup> The Supreme Judicial Court (SJC) agreed, stating that Warner's fleeing of the police was not enough to constitute probable cause for a search.<sup>11</sup> However, the SJC went one step further, alleging that Black men running from the police, as a whole, was not only not grounds for a reasonable search, but *reasonable* in and of itself.<sup>12</sup>

Examining evidence provided by the ACLU of Massachusetts and other organizations, the SJC found that Black men are searched at a much higher rate in the city of Boston than any other demographic.<sup>13</sup> Black men are also, more often than not, victims of police abuse and brutality.<sup>14</sup> In other words: Black men have a fairly well-established set of reasons for wanting to flee the police that have nothing to do with perceived guilt.

In an exceptionally powerful statement, Justice Hines, for the court, writes:

Such an individual, when approached by the police, might just as easily be motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal activity. Given this reality for black males in the city of Boston, a judge should, in appropriate cases, consider the report's findings in weighing flight as a factor in the reasonable suspicion calculus.

While the Massachusetts Supreme Judicial Court's decision in *Commonwealth v. Warner* is not a precedent to be set across the country, it quickly circulated the country's media networks as a victory for racial justice. *Warner* sends a powerful message concerning the state of racial inequality and injustice within the Commonwealth. The SJC's utilization of implicit (or, arguably, explicit) bias when police officers see Black men in applying a reasonable search standard is a powerful victory for racial justice in Massachusetts—and, hopefully, a preventative measure in assisting the next Jimmy Warner, when he is stopped unreasonably by the police in Roxbury.

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**“Such an individual, when approached by the police, might just as easily be motivated by the desire to avoid the recurring indignity of being racially profiled as by the desire to hide criminal activity.”**

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#### REFERENCES

<sup>1</sup>*Commonwealth v. Warner*, 475 Mass. 530, 531 (2016).

<sup>2</sup>*Id.*

<sup>3</sup>*Id.* at 532.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.* at 532–33.

<sup>6</sup>*Warren*, *supra* note 1 at 533.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

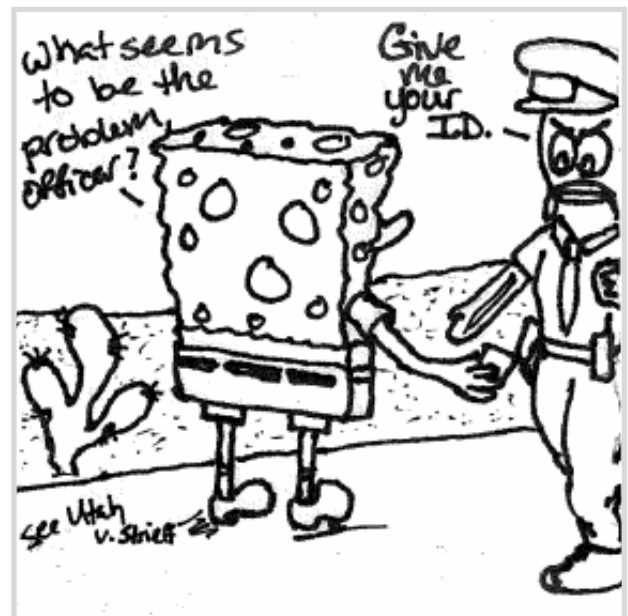
<sup>9</sup>*Id.* at 530.

<sup>10</sup>*Id.* at 533–34.

<sup>11</sup>*Warren*, *supra* note 1 at 530.

<sup>12</sup>*Id.* at 540.

<sup>13</sup>*Id.* at 539.



# ADVOCATING *for*

## RACIAL AND SOCIAL JUSTICE: DISMANTLING SYSTEMS OF OPPRESSION

by **AMARA RIDLEY**  
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Carl Williams

Staff Attorney

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Carl joined the ACLU of Massachusetts as staff attorney in September 2013. He was previously a criminal defense attorney with the Roxbury Defenders Unit of the Committee for Public Counsel Services. Carl is a graduate of the University of Rhode Island and the University of Wisconsin Law School.

A long-time resident of Boston's Roxbury neighborhood, he has been an activist and organizer on issues of war, immigrants' rights, LGBTQ rights, racial justice and Palestinian self-determination. Carl is a member of the National Lawyers Guild and has served on its Massachusetts board of directors. During the Occupy Boston movement he was part of its legal defense and support team, which provided nearly 24-hour support to the participants.

More recently, Carl was a Givelber Distinguished Lecturer on Public Interest Law at Northeastern University School of Law, where he taught a class on social justice movements and the law.

ACLU biography

**A: What was your first year of law school like?**

CW: It was Wisconsin. My law school was very white and it had been a while since I had been back in school. So I think I was culturally less—I wasn't ready for the levels of arrogance of people. It wasn't hard for me but I think I was shocked at people's level of bigotry.

**A: Is that because it was Wisconsin or just because it was law school?**

CW: No, I think it's the environment. It's people who thought they were an only child and they should be there, or that I'm the best and the brightest in the world. But a lot of the reason we were there is because we were privileged, we were really lucky and we got access to education in different ways. We had the ability and time to study. We didn't have to worry about where our next meal was going to come from or if we were going to get evicted from our house and we had the ability to find nice internships and make our resume look like a nice thing. It isn't because your brain is of the 1% of brains in the world. People would think that was outrageous thing to say.

**A: What else happened in your first year?**

CW: One of the people I was close with was my

criminal law professor. In Wisconsin they did a good job of teaching criminal law in the first semester and criminal procedure in the second semester and that was really a magnet for me because—it showed how to understand and think about how the law is affected and is acted on people of color. Specifically for Black people, it raised a lot of questions. I also think I had a lot of answers for example, I was locked in the back of

**“I wasn't ready for the levels of arrogance of people. It wasn't hard for me but I think I was shocked at people's level of bigotry.”**

a police car when I was 18 years old and a cop was jumping over me beating my twin brother who was sitting on the side of me. That was four days after my 18th birthday. I've seen people beaten by police. I've seen people shot at by and killed by police. So when I went to law school and I was talking

about reasonable suspicion and talking about probable cause, or talking about the ordinary person or the reasonable person—the reasonable person is a white person. But you can't say that in a traditional law school class. You would get, 'you're a crazy person,' and 'of course that isn't the case.' 'Why are you saying it that way?' And I did say things like that many times and it was very difficult because you are very different from everybody else. But my criminal law professor was

was supportive and was a person who I could sort of seek some solace in because she agrees with this, she understands where I was coming from.

**A: How did that impact you?**

CW: That probably in some ways guided me. My criminal law professor was from Wisconsin but then came to Massachusetts and worked here with the Public Defenders in Massachusetts and then went back and taught as a professor. I was sort of the opposite. I was a Massachusetts person who went to Wisconsin and then came back to Boston so we sort of bonded over those things to talk about like the difference between Massachusetts society versus that of Madison [Wisconsin]. I also talked to her about how apparently she

had got a lot of flack from students because they thought

she had an agenda in law

school. You should say I'm a criminal defense attorney and

I teach criminal law. It comes with the package. So I'm going to say things that a criminal defense attorney would say. You can flesh it out. You can argue with me. She was happy about that. Its actually more fair to say I'm a person who believes this. You don't have to agree with that at all.

**A: I understand. I don't like the idea of censoring someone just because it may not be the most popular viewpoint.**

CW: I think in academia people feel they are supposed to be in the middle which is a political viewpoint anyway.

**A: So after your first year, then you started working?**

CW: In my first year I started doing work for the Innocence Project of Wisconsin, which is part of the school. I did some tech stuff like computer database design. I remember YouTube and Facebook came out when I was in law school so I told the folks at the Innocence Project that I did pretty good web stuff and if I could do their website. I redid their website and a few other things. I kind of like connected with people that I

wanted to be connected with and I was also doing a lot of organizing in and outside of the law school around certain rights, war stuff and is-sues like that. My spring break I went to Arizona and I was doing some work on immigration law issues. Then my first summer I stayed in Madison and I worked with the Innocence Project.

**A: What was that summer like?**

CW: It was mostly doing background research and getting in touch with people and visited a lot of prisons in Madison. One case I worked on ultimately a year and half later we were successful. Someone who was convicted with a 28 year sentence, we had that case on appeal on the 7th Circuit Court of Appeals. His conviction was overturned and he was not prosecuted but was released.

He was actually released right when I graduated.

**“It seemed so 19th Century to me to put someone in jail for a public health problem.”**

**A: That must have been so rewarding.**

CW: Yeah it was great. He then went on to get his Associates Degree, he went on to get his Bachelor Degree, his Law Degree and then he went on to clerk in the court that overturned his conviction. So now he's a lawyer in Illinois, in New York working on police accountability stuff. We've spoken at a few different things. His name is Jarett Adams. So that was great work and it's interesting how his case and my work on his case and my co-worker's work on his case tracked my law school and my career. That took from the beginning of my 1L summer to the day I graduated. I was going to graduate in December and I remember that I found out that we won the case and he was going to be released in the beginning of December. I remember right when I started studying for the Bar he started to get in touch with community college. Then I remember right around when I started practicing law and I was doing my first case he got his Associate's Degree. So that's what I did for my first summer.

**A: What was your second year like?**

CW: I did a Public Defender internship. It was like a



clinical program in the law school. We had three clinical professors and we took misdemeanor cases from Dane County, the county where Madison is located. Those were my very first clients that I would represent on criminal matters. I learned a lot in terms of how to deal with clients, how to research cases, how to investigate things. It was amazing how brutal prosecutors were in a small town like Madison with very little crime. I remember a prosecutor laughing at me and saying where I tried to get my client pro-bation for driving on a suspended license. He had driven on a suspended license three or four times and I was trying to get probation but the prosecutor was saying they that for driving on a suspended license for four times. He has to have jail time. Driving on a suspended license should be like a ticket but they were like no, he was going to go to jail.

I remember my first time of someone having to go to jail. It was a woman who was addicted to drugs. She was not the person selling the drugs. It seemed so 19th Century to me to put someone in jail for a public health problem. I remember another client where it was a black man/white woman couple who just had a baby. They took some kind of complicated dietary situation and I told them I was a vegan and they were super happy. I remember they were fully homeless, staying on the street in Madison, and they had a baby infant. They went into the local grocery store downtown and they dropped a bad check to buy some diapers and food for their baby. I remember trying to talk the prosecutor out of being ridiculously punitive to the people who—in a real sense, if you watch a movie imagine someone standing outside of a grocery store and they have a checkbook but they don't have any money and there is food in the grocery store and their baby is crying and needs a diaper and its 20 degrees outside. It should be in some way criminal not to do what they did. I remember that going over not very well with the prosecutor. But with those cases I sort of

learned my chops. There are horrible things happening. The vast majority of things that people get prosecuted for are outrageous and ridiculous. And the vast majority of clients are really wonderful, caring, heartfelt people who are brutalized by the system.

**A: How did that affect you?**

CW: it wasn't a lot different from what I had seen. I remember a friend who is a lawyer told me, and this is after I graduated, about the first time he went to prison to visit someone was when he was in law school. I laughed out loud. "The first time you were ever in a prison is when

**"It should be in some way criminal not to do what they did. I remember that going over not very well with the prosecutor."**

you were in law school?" He said "Yeah." I never thought that going to law school would make your first time going to a prison. The first time I was in prison I was three. I have a painting of that time because we were visiting my father.

I would know that if I thought about it logically but it just

surprised me that people I would consider my compatriots, my peers, their lives had been just so dramatically different. This guy was almost 30 when it was the first time he went into a jail. The first time I went to a jail I was too young to remember.

**A: How did your interning impact your studies in law school? Did you see a direct connection? Did getting practical experience make law school easier or make you feel more connected?**

CW: I took a lot less law school classes. I think I took 24 clinical credits and I was only in law school for five semesters. The first semester of law school everyone has no idea what is going on. The best grade I got was in Contracts and it's clearly what I know the least about and that was my best grade in my first semester. So the law that I did was kind of like what lawyers did 300 years ago. It was like I'm going to work with this attorney as an internship and then become a lawyer. A lot of that is what I did. I remember

there were a lot of other things going on in law school and I would just have no idea because I would just be in court all the time.

There are people who are going to go to jail and who are in jail today and you can practice and sharpen your sword or you can go do real battle. Practice is good but there are people right now and there's work that needs to be done.

**A: In terms of social justice, what is a good definition for what social justice is?**

CW: It's a name that we give the struggle for full freedom and equality. It's clear, unless you have a bigoted view of the world where you believe that Black people are not fully free.

That Latino people are not fully free. That LGBTQ and gender non-conforming people are not totally free in the way that they should be. That women are not fully free in the way that they should be. That immigrants in this country and specifically immigrants of color are not fully free. Our immigration system is built to punish you if you're from browner countries and if you're from poorer countries. So those things are unjust.

Those things lead to people being murdered, people dying of many different things. And then we act as a society like those are surprising outcomes. It's built on a system of white supremacy that people should be owned. We've mostly gotten over that idea that people should be owned but the ideology behind it, a thing, almost a religion, white supremacy, that invented idea, is something that we need to address. That idea is written deeply, deeply into the law. It is arguably the most referenced thing in the United States Constitution. There are 425 words of the Constitution about race or slavery and the Constitution is only just over 4,000 words; 425 are about race or Black people or slavery but the words slavery or black are not there.

**A: You work for the ACLU, what area do you primarily work in?**

CW: I only work on racial justice.

**A: Why?**

CW: Because we live in a system where the structural framing is one of white supremacy and that is something that we need to say and we need to dismantle because its built into the very foundation of this country. No one can get around the fact that the Constitution is an explicitly racist document. People may say that they don't like saying that or that the racism isn't all of it but it talks about the 'merciless savages' in talking about Native American people. It sets a theme that is clearly dehumanizing people and allowing for not just one genocide but multiple genocides. There are ethnic groups who do not exist. There are languages of people who do not exist.

**“It's the name we give the struggle for full freedom and equality.”**

In that structure I think white supremacy is one of the ideologies that is one of the most murderous of human kind. I think the most murderous is male misogyny. So those are ideologies that we need to name and say those are evil as ideologies. So I think talking about that in terms of racial justice and more broadly in terms of social justice is very important. And I think the law is part of that, legislation is part of that, litigation is part of that, social movements are part of that, and ultimately behind all of that is a change in our culture. A change in the basic culture of things like Black people are fearsome, Black people are thugs, women are objects for our entertainment, etc. All of these ideas are part of these systems. Where someone doesn't sit next to the Black person because they are scared or where someone gives a creepy eye to a woman or spreads out sitting down, as a man. All of those things are very basic things that support the ideology.

## Annual Worker's Rights Conference



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Every year, over 100 law students from law schools all across the country get together in Washington, D.C., to discuss the status of labor law and workers' rights in the United States. The Peggy Browning Law Students' Workers' Rights Conference occurs every year and is put on by the Peggy Browning Fund. The Peggy Browning Fund is named after Peggy Browning, who was a dedicated labor lawyer, and upon her death, was recognized as a "rare breed of great appellate lawyers," by then Chief Judge Edward R. Becker of the National Labor Relations Board. Peggy dedicated her life to fighting for workers' rights such as union representation, fair and equal pay and working conditions. Peggy became the first-ever union-side labor lawyer to be appointed, by the Clinton Administration, to the National Labor Relations Board. The Peggy Browning Fund is an organization dedicated to supporting law students who are interested in labor/employment work. Every year Peggy Browning



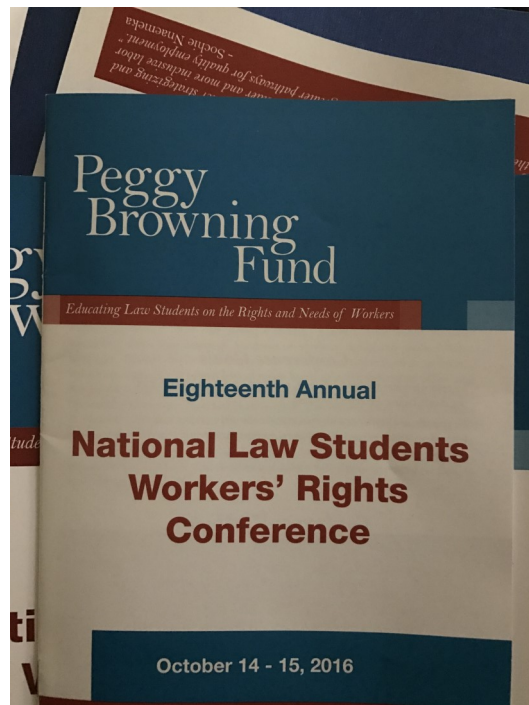
hosts the workers' rights conference, and provides paid summer internships. The Peggy Browning Fellowship offers law students placement in over 75 placements nationwide, working on labor/employment issues, and each placement comes with a \$6,000 stipend. Applications for fellowships are due early in the Spring semester; check out the Peggy Browning Fund website for more information.

This was my second time attending the conference. The

conference begins with a dinner on Friday night followed by a film and discussion; Saturday begins with a keynote speaker and breakout workshops ending with a plenary session. It is all very inspiring!! This year the film, *Farewell Ferris Wheel*, was a documentary about migrant carnival workers. The discussion was led by an attorney who opened an advocate legal center in Mexico to protect migrant workers from being exploited by American employers. The legal migrant worker is granted



an HB-2 visa, which allows American employers to recruit workers from other countries. The visa allows migrant workers to work legally in the country, and imposes legal responsibilities on the employer to provide certain rights to workers that employers often ignore. For example, in the film, one of the migrant workers injures his hand while taking apart a Ferris wheel. The worker notifies his employer who refuses to take him to the hospital, and instead tells him to take a day off-- refusing to pay him for the day. It isn't until the worker's hand is black that the employer finally takes him to the emergency room, where the doctor informs the worker that had he waited longer he would have lost his hand. Such instances are not uncommon, as employers often recruit workers with HB-2 visas to circumvent legal responsibilities they believe they can get away with. Saturday's keynote speaker was the Chairman of the National Labor Relations Board, Mark Pearce, the first person of color to ever chair the NLRB. Pearce was inspiring and detailed the trajectory of his professional life to being an effective labor lawyer. The breakout sessions I attended included immigrant workers' rights (discussing how labor laws protect immigrant workers), public sector labor law (discussing how some States highly limit the unionization of public employees and constitutional protections), and international worker's rights (how globalization and international treaties like the North American Free Trade Act (NAFTA) affect domestic labor laws). Finally, the plenary session welcomed a panel of legal advocates and activists who discussed the union organizing and demand of worker rights in the gig economy, how individuals who work for companies like Uber and Lyft can organize and make certain demands against their employers. Overall, it was an amazing experience to be among like-minded folk, people who are highly passionate about advancing and protecting the rights of workers in the United States.



Labor law is an exciting and expanding legal field. To be a labor lawyer requires a level of grit that is unique to representing workers on the picket line, one that requires both legal precision and an adversarial approach that one would find in criminal work. Labor lawyers are local to unions, ideologically predisposed to stand with workers and laborers, and against management or employers. The labor field is ever changing, affected by globalization, international treaties, immigration laws, technology, and societal changes, including political outcomes of presidential elections. Labor law is all parts public interest, defending the rights of ALL workers, whether they work for a private or public employer.

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**Continued from PRIVACY RIGHTS p.19**

### References

- <sup>1</sup>*Riley v. California*, 573 U.S. \_\_\_, 134 S.Ct. 2473 (2014).
- <sup>2</sup>*Id.*
- <sup>3</sup>*Chimel v. California*, 395 U.S. 752 (1969).
- <sup>4</sup>*Chimel*, 395 U.S. at 767
- <sup>5</sup>*Id.*
- <sup>6</sup>*United States v. Robinson*, 141 U.S. 218 (1973).
- <sup>7</sup>*Riley*, 573 U.S. \_\_\_, 134 S.Ct. at 2487.
- <sup>8</sup>*Id.*
- <sup>9</sup>*Id.*
- <sup>10</sup>*Illinois v. McArthur*, 531 U.S. 236 (2000).
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