# CLARION UNIVERSITY LAW JOURNAL

Inquiries into the Legal Dilemmas of Our Time

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# TABLE OF CONTENTS

About the Clarion University Paralegal Program ..... i

Table of Contents ..... ii

Paralegals and Access to Justice ..... 1

Abuse of Civil Forfeiture in Our Communities ..... 5

Bad Boys Bad Boys; Whatcha Gonna Do? Whatcha Gonna Do When They Come for You? ..... 8

How Gerrymandering Affects Elections in Pennsylvania ..... 13

Breaking Up Families as We Debate the Constitutionality of DACA ..... 17

Human Trafficking: Plaguing the United States ..... 26

Justice For The Brave ..... 31

Gas Companies and Their Abuse of Private Property ..... 38

The Legal Status of Wrongful Birth and Wrongful Life Claims ..... 42

Understanding Your Freedom of Speech ..... 46

The Oil War of 1872 ..... 49

Acknowledgements ..... 52

Paralegals and Access to Justice

By

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**The late jurist, Antonin Scalia, said the following: "The American ideal is not for some justice. It is, as the Pledge of Allegiance says, 'Liberty and Justice for All'…Can there be a just society when some do not have justice? Equality, equal treatment, is perhaps the most fundamental element of justice." Today access to justice is denied to the poor, the working poor, and in many instances to the middle class. Access to justice is expensive and the court house door is closed to far too many. At one time the Legal Services Corporation, the government funded legal aid service, was able to provide legal services in limited civil matters to the poor. However, as the number of poor has increased, the governmental support for legal services has been drastically reduced. As of 2009 there was only one attorney for every 6,415 low income person who met the LSC guidelines; while at the same time there was one attorney for every 429 people above the LSC threshold.[1] Since the time of that finding support for Legal Services has been cut even more. Federal financial support to Legal Services has been reduced by an additional 15% since 2012.[2]**

**As stark as these numbers are, left out of the calculations are the untold number of working poor and lower middle income families who are simply priced out of the ability to seek justice. They do not have access to even the limited number of cases that Legal Aid can accept and they are shut out of the Public Defender's Office on any representation in a criminal matter short of a major crime. The choice between justice and food should not have to be made in twenty-first century America. Someone making minimum wage in the United States has a take home salary from a 40 hour work week of $267.40. The average apartment rental in the United States is $1,099.00. After buying food, transportation to work, utilities, and basic human necessities; hiring an attorney is out of the question.[3] The Legal Services Corporation theoretically represents those under 125% of the federal poverty guideline. However, they estimate that 80% of the poor's legal needs go unmet. Keep in mind though; the minimum wage salary worker outlined above would be turned down for legal aid because her income exceeds 125% of poverty by about $250.00 per year.[4]**

**Let us assume that the minimum wage worker outlined above is a single mother who has not seen her two children in over six months. Her ex-husband has them and simply refuses to allow her access. If her parents can't front her the money for a retainer, what is she to do? Perhaps she can get on the local bar association's pro bono list and wait her turn; but odds are she does not know that one exists.**

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[1] Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-income Americans http://legalaidresearch.org/?p=1661

[2] Toward Equal Justice For All: Report of the Civil Legal Justice Coalition to the Pennsylvania State Senate Judiciary Committee, April 2014, p 13

[3] http://www.huffingtonpost.com/2014/09/24/minimum-wage-increase-numbers_n_5868848.html

[4] http://www.nclegalclinic.org/Portals/0/2015%20Federal%20Poverty%20Guidelines.pdf

**The solution to this problem lies with paralegals who can help close the gap between our current situation and the ideal so aptly expressed by the late Justice, Antonin Scalia. There is no perceptible reason why an independent paralegal, having graduated from an ABA approved program or one that meets the standards of AAfPE could not act as a legal concierge for those, like this single mother, who are shut out of the legal system. The paralegal could provide her with the necessary custody complaint forms, help her complete them, and explain the procedures to her. It is likely the client does not know where to file the documents, how to serve them, or how to get her plight in front of a judge. The paralegal would enable the parent to proceed pro se. The arguments supporting unauthorized practice of law statutes are all about protecting the citizenry from the harm that could be done to them by bad and inaccurate legal services. This is a laudatory goal, however, we do more harm by baring the court house door to so many. We can't truly say that we are a nation of liberty and justice for all when so many are denied access to justice.**

**The authors of this paper spent many years representing indigent clients through Legal Aid. Much of what we did, Legal Aid not longer has the resources to provide. Many of these tasks from representation in child support cases and uncontested no-fault divorces could easily be handled by our paralegals. Frequently public schools require divorced or separated parents to provide a copy of a custody court order or written agreement. The parties have no need for a judicial determination of custody, however, the school demands it. But, even though it is the school's need, the schools do not pay for such legal items. A paralegal could easily draft such an agreement in these, and all uncontested situations.**

**Federal regulations allow paralegals to represent those seeking Social Security Disability or the related Supplemental Security Income. As we all know Social Security is a fairly complicated area of the law. Certainly more complicated than child support or the cases heard in the minor judiciary across the country. In Pennsylvania, as an example, the judges in these courts are not required to be attorneys or to have the rigorous education we require of our paralegal graduates.[5] Assume that our person above barely over 125% of poverty receives a minor speeding ticket. The ticket, with costs, is $150.00. That is a devastating amount for someone whose weekly take home income is $267.40. We have examples of people all across the nation who choose food over paying the fine and end up in jail. Paralegals are not allowed to represent these people. Yet, the judge does not have the legal education of a paralegal and she is deciding the case. The officer does not have the legal education of a paralegal and yet he is prosecuting the case. The paralegal would have the most legal education of anyone in the court room!**

**We are not protecting anyone by allowing the silliness of such a result to take place. Our citizens need access to the court room and paralegals are an under utilized resource that can provide that access to justice. Paralegals should be able to be represent litigants in the minor judiciary. Pennsylvania's District Justice jurisdiction is limited to civil amounts of less than $12,000.00, landlord-tenant cases, and summary offenses.[6] All state's have similar systems of minor judiciary. All states have a problem with people being denied justice because the system outprices their ability to pay.**

**Representation is frequently denied to those seeking state supported benefits. Another good discussion question for your students is to compare the difficulty and complication of Social Security**

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[5] Pennsylvania requires 140 hours of instruction for minor judiciary judges once elected and 1,250 hours to be a cosmetologist.

[6] 42 Pa.C.S.A. § 1515

**Disability practice with the relative ease of representing the needy in SNAP/Food Stamp cases, Medicaid cases, and the denial of HUD applications. All of these are unmet needs for which the paralegal is more than qualified. Representation for Veteran Benefits and Veteran's Health Care are two other areas where greater access to justice is needed and where paralegals can provide quality representation.**

**A handful of states have taken some of the shackles off of paralegals. Most notably the State of Washington which now allows Limited License Legal Technicians. However, even they need to expand the use of paralegals to allow actual representation before tribunals and the minor judiciary.**

**The medical community has moved forward with direct patient care provided by nurse practitioners. In Ontario Canada paralegals have been providing exactly the type of representation that this paper advocates. The process and limitations of the successful expanded use of paralegals in Ontario establishes that we can do it here. This link provides all of the relevant information concerning their paralegal practice program. http://www.lsuc.on.ca/with.aspx?id=1064**

**To a lesser extent the states of California and Washington have expanded the use of paralegals in an effort to increase access to justice. These efforts are a step in the right direction but are not as effective as the Ontario model and are more conservative than they need to be. The State of Washington, by Supreme Court Order, has created a Limited License Legal Technician category allowing these technicians to provide limited legal services. Currently the LLTL's are limited to domestic relations actions. To the credit of the State of Washington, these technicians may give legal advice to clients. However, they cannot negotiate on behalf of a client and they cannot represent that client in court. To become licensed the prospective technician must have earned at least an Associate degree, having taken forty-five paralegal course credits from an ABA approved program, and taken three, three credit courses from the University Of Washington School Of Law. They then need to find an attorney who will employ them for no less than three-thousand hours. Once these steps have been completed they may sit for an exam on domestic relations law. This program is too modest in what it allows Legal Technicians to do. The requirement that domestic relations courses be taken from a particular law school is most curious. The courses from the University Of Washington School Of Law can be taken via webinar. This is a process of paralegal education that fails to meet ABA guidelines for paralegal education. Licensed attorneys teaching face to face domestic relations classes at an ABA approved paralegal program would provide a superior education to anything offered by webinar. Those who teach at ABA approved paralegal programs are accustomed to instructing in the practical paralegal skills that the Limited Licensed Legal Technician require.**

**In 1998 California created a class of document specialists who are allowed to prepare a variety of legal documents. One may qualify to be what California terms a Licensed Document Assistant (LDA) in a variety of ways from having graduated from an ABA approved paralegal program to being a high school graduate or possessor of a GED who works for at least two years in law related work under the supervision of an attorney. Each LDA has to register with the county clerk in every county in which they attend to do business and provide proof of bonding of at least twenty-five thousand dollars. Beginning in January of 2016 each LDA must complete fifteen credits of CLE per year, and yet they cannot give legal advice or provide needed representation as they are limited to document preparation.**

**Both of these initiatives fail to respond in any meaningful way to the denial of justice to so many of our fellow citizens. In order to open the court house doors to those who cannot afford representation**

**Neither of these initiatives allow for representation in small claims court, administrative cases, or minor criminal and civil matters. Any graduate of an ABA approved program who took a course in family law can easily prepare a custody or a divorce complaint. They can most certainly provide representation at child support hearings were for the most part the hearing officer is not legally educated. Our graduates can provide quality representations to needy clients in all of the areas we are advocating.**

**On the federal side we allow non-attorneys to represent Social Security Disability clients. As we all know this is a much more complicated area of the law than anything we are advocating in this paper. The State of Washington itself allows non-legally educated judges to hear and decide cases and yet they deny the right of a citizen to be represented by a better educated paralegal in front of that judge.[7]**

**The United States has a massive amount of unmet legal needs. We have an educated group of people who are willing and able to meet that need. It is a sad state of affairs when our law makers block such a logical remedy for such a tragic situation.**

**It is both necessary and appropriate that we expand the use of paralegals to get us closer to that ideal that Justice Scalia so aptly expressed.**

[7] http://www.judicialselection.us/judicial_selection/methods/limited_jurisdiction_courts.cfm?state=

# ABUSE OF CIVIL FORFEITURE IN OUR COMMUNITIES

KELSEY MONRO
ROBIN RYBCZYK

*Civil forfeiture is a policy that allows the government to take possession of property without due process. We will look at when and why did this practice come to be? What property can they seize? Can they just walk in and take your property? How do you go about regaining your property once you have been acquitted? Then we will look at how hard it is to regain possession of your property if you are found innocent by examining case examples and review proposed changes to the current law.*

Civil forfeiture has been around since Medieval Common law but it became prevalent during the Civil War and even more so during the Prohibition era. Even our great country was partially funded in our infancy from goods seized from foreign ships. During the 1980's it was expanded because of the war on drugs to eliminate the financial aspect of drug laundering.

In Pennsylvania, money and personal property may be seized if any of the following apply: first, the seizure must be incident to arrest or searched under a search warrant with reason to believe the property is subject to forfeiture.[1] The property could also be seized if it has been the subject of a prior judgement in favor of the Commonwealth in a criminal injunction or forfeiture proceeding. Other reasons would include if there is cause to believe the property is dangerous to health and safety of others, the property could be destroyed, or if there is probable cause to believe the property has been used or intended to be used in violation of The Controlled Substance, Drug, Device and Cosmetic Act or another offense subject to forfeiture.

Can they just walk in and seize your property? The simple answer is no; there is a procedure that they must follow before they can take possession of your property.[2] To begin, they must file a petition asking for an order of forfeiture containing a description of the property being seized, facts of the case, an allegation that the property is subject to forfeiture and an averment of material facts supporting the forfeiture. Before a property owner files an answer, they may file a motion to postpone the forfeiture proceedings if they have been criminally charged to await the outcome of those charges. Then he or she may file an answer in writing to the court of common pleas claiming a right of possession of the property within 30 days of the forfeiture petition. A notice of the forfeiture petition is required to be served to the owner and each person who was found in possession of the seized property when it was seized.

If one has their property seized, how would they go about getting it back? Of course, the process would be slightly different in each county, so we will concentrate on Philadelphia, which seizes on average $6 million in property each year.[3] The average household income in Philadelphia is only $41,233,[4] which means most people who fall victim to civil forfeiture cannot afford an attorney to keep possession of their property yet do not qualify for free legal aid. In many of these cases, the cost of an attorney far exceeds the value of their assets they are trying to

[1] 42 Pa. C.S.A. § 5803 (West)
[2] 42 Pa. C.S.A. § 5805 (West)
[3] http://endforfeiture.com/philadelphia-forfeiture
[4] http://www.city-data.com/city/Philadelphia-Pennsylvania.html

recover. If they proceed on their own, there are many steps they must follow to get their assets back. They can go to the courthouse and get the complex legal paperwork which they can then fill out on their own if they can understand it all. Normally, they will have to go back to the courthouse several times to fill out more paperwork or answer questions about their case. If they fill something out incorrectly or miss a deadline, that could mean the end of their recovery process. For most homeowners, this means taking time off work, which is taking even more money out of their pocket.

Many Philadelphia residents are finding out the hard way, it can be very difficult to regain property taken by civil forfeiture. The New Yorker reports the case of Leon and Mary Adams,[5] a regular hardworking couple, had their home taken from them in 2012 after their grown son was arrested for selling three bags of marijuana worth $20 each. Surely their home, which they purchased in 1966, was in no way paid for with drug money. Another similar case[6] involved an elderly widow who worked her whole life to pay for her home. She paid her taxes, and volunteered in her community and at her church. After some health issues, her grown son moved in with her and was later caught selling less than $100 of marijuana. Not only did the city take her home of forty years, they also confiscated her fifteen-year-old vehicle too. In each of these cases, the property owner was not the one who was charged with a crime. This is in violation of the Eighth Amendment which protects us from excessive punishments.[7] How can an innocent person be punished so severely for a crime they did not commit? The Institute for Justice reports countless other cases across the country that involve the police taking legally obtained income from a legal cash business or a citizen's savings they are carrying to make a large purchase, such as for a vehicle, home, or other legitimate purchases that are, quite frankly, none of the government's business.

What happens to property once it has been seized? Current legislation allows law enforcement agencies to keep what they seize for their own use. Not only do the agents get to use the vehicles and other property taken under civil forfeiture, many areas count on acquiring assets as part of their budgets to pay salaries and other "extras" not allotted in the regular budget. Out of the $64 million seized between 2002 and 2012, $25,000 was spent on salaries. Instead of going back to the very people who are prosecuting these cases, this money could go to benefit the entire community by improving schools or senior centers, helping homeless people, or to improve the crumbling infrastructure in so many communities.

Because of the rising abuse of power when it comes to asset forfeiture, there has been major discussion about civil forfeiture reform. Rep. Jim Sensenbrenner (R-WI) and over a dozen other members of Congress reintroduced the DUE PROCESS Act and Sen. Paul Rand (R-KY) has introduced the Fifth Amendment Integrity Restoration Act of 2017 (FAIR Act).[8] Many states have also enacted their own reforms and many other states have reform efforts pending. Three states, Nebraska, New Mexico, and North Carolina, abolished the practice altogether and now may only seize property if the person has been convicted of a crime.[9]

The FAIR Act[10] which proposes that citizens who are fighting to regain possession of their property should have access to legal representation. It would also change the burden of

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[5] https://www.newyorker.com/magazine/2013/08/12/taken
[6] Commonwealth v. 1997 Chevrolet & Contents Seized from Young, 160 A.3d 153 (Pa. 2017)
[7] U.S. Const. Amend VIII
[8] http://ij.org/press-release/major-civil-forfeiture-reform-bill-introduced-congress
[9] http://ij.org/activism/legislation/civil-forfeiture-legislative-highlights
[10] https://www.congress.gov/bill/115th-congress/senate-bill/642

proof from “preponderance of the evidence” to “clear and convincing”. This would make the government prove that the assets were connected with a crime instead of the homeowner having to prove that they were not, reinstating the common standard of innocent until proven guilty. The bill would also call for seized property to go into the General Fund of the Treasury instead of being retained by the law enforcement agencies who are profiting from the seized assets.

The DUE PROCESS Act calls for similar changes to protect citizens’ rights when facing civil forfeiture. Like the FAIR Act, it would shift the burden of proof from the owner onto the government, raise the standard of proof in civil forfeiture proceedings, and provide legal representation for citizens facing civil forfeiture. Under this act, citizens would also be able to recover the cost of attorney fees if the case is settled and provide a hearing for defendant to contest the pretrial restraint of property needed to pay for counsel, which would overturn the controversial decision made in Kaley v. United States.

In theory, civil forfeiture makes sense. If a drug dealer buys a house, car, or other property from the profits of his crimes, he should not be able to keep that property. The Eighth Amendment protects us from excessive punishment, but at what point does it become excessive? If someone is caught selling thousands or millions of dollars’ worth of contraband, they should not be allowed to keep property that was acquired as a result of their crimes. But if someone is caught selling such a small amount, that the criminal punishment could be as little as probation or a fine less than $100, should they really have to forfeit their homes, vehicles, and other assets? If they have already paid a criminal fine, and/or served a prison sentence or probation, have they not paid their debt to society? Overall civil forfeiture is a policy that is intended to make sure people do not profit from illegal activities. The injustice occurs, when people, even their property, are presumed to be guilty instead of innocent until proven guilty and when innocent people are unable to defend themselves with proper representation. Fortunately, the new acts regarding civil forfeiture are one step in the right direction to make sure the rights of the people are upheld.

*Bad Boys Bad Boys; Whatcha Gonna Do? Whatcha Gonna Do When They Come for You?*

*By*

Austin Blose and Demetrius McKenzie

A mere encounter, an investigative detention, seized, handcuffed, and read rights; what's going on? Who's getting arrested now, what for, and how Come? Is this even legal; where's my phone call? Who to trust, what to say, what NOT to say, do I need a lawyer? There are so many questions surrounding the law that it is complicated for the everyday person to understand and comprehend which is why equal access to justice is vital. Our criminal justice system is far from perfect. It is complex, multilayered, and it takes years of deliberate practice to appreciate the skill needed to implement justice into this country. If you ever find yourself in a legal predicament stay calm and talk to someone you can trust.

From the start, our criminal justice system was designed to be Utilitarian in nature. The Utilitarian concept of retributive justice is that punishment is necessary in order to deter future crimes, rehabilitate the offender, and protect society from criminals. This concept is designed to prevent future injustices within society and disregards correcting for past injustices. These core principles are the backbone of our criminal "*justice"* system. These principles are used to justify the creation of laws, institutions, prisons, and court systems. Regardless of what one believes in, everyone *should* be able to come together to recognize what's right and what's wrong.

Innocent until proven guilty sounds about right but, the burden of proof has left the building. Under normal criminal proceedings, the one who brings the charges has the burden to prove the other parties' guilt in the matter, beyond a reasonable doubt to the trier (judge or jury) of the facts. The burden of proof is on one who declares, not on one who denies. The United Nations acknowledges this international human right as much to include the presumption of innocence in its Universal Declaration of Human Rights; Article 11. In criminal proceedings, the prosecution, usually the District Attorney, has the burden of proof and must rely solely on actual admissible evidence and testimony presented in court to prove that the accused is guilty beyond a reasonable doubt. If the prosecution fails to meet the standard set forth by law the accused must be acquitted.

Far too often is America willing to incarcerate. The presumption of innocence has turned into the presumption of guilt; people are judged on their appearance instead of their character, and the political divide is deeper than ever. People would rather win an argument than come together to create a viable solution. No longer is one innocent and no longer does the prosecution have to prove the defendant is guilty beyond a reasonable doubt, they just have to agree to a plea deal. The modern-day standard is to arrest, detain, charge, and then prosecute but really, I mean plea bargain. PrisonPolicy.org found through research, that approximately more than half of the cost of running the local jail systems in America is spent detaining people who have not yet been convicted ($13.6 billion)[1]. This would mean Clarion County spends approximately $1,287,203.50 [3] locking FREE citizens behind bars. Researchers at the Vera Institute of Justice found that Pennsylvania was one among 10 other states where prison population has declined since 2010, but total prison costs have increased by $1.1 Billion[2]. A trial is taken less and less, justice is often forgotten about, and morally correct persons end up sitting behind bars

way longer than they ever should; but thanks to special interest groups backing the current system and resisting reform we live to fear the system. Mob bosses and terrorists are curators of fear and use fear to dictate control. Should a Government be of the same manipulative model? How is one presumed to be innocent and yet still handcuffed, detained, charged, and locked down in the county jail waiting to spend hundreds of dollars that are non-refundable to get a bail bondsman to come bail one out? If one doesn't have $500 - $1,000 laying around one must sit in jail and wait for 30 – 90 days for a preliminary hearing while taxpayers bear the burden of the costs. What about when one gets charged with a nonviolent crime and the bail is set for millions of dollars? Is that excessive and should one have to buy their freedom back in this country or is freedom an inalienable right set forth by the founding fathers? How would they perceive the status of the country today?

Take McKenzie for example; it was a cool calm autumn night when McKenzie and a friend found themselves in a legal predicament. They had just peacefully left a convenience store when they had a strange encounter with a police officer; the same police officer they courteously held the door for at the same convenience store 15 minutes prior. McKenzie is an alert driver especially when a patrol car is visibly patrolling the area directly around them. Shortly after driving away and through the patrol area, McKenzie saw the familiar red and blue flashing lights come speeding up behind them. McKenzie had not committed a crime and was not about to either. When the officer approached the car, he was frantically looking for ANYTHING in plain sight, was immediately hostile, and asked for the vehicle information very condescending in nature, as if McKenzie wasn't capable of comprehending the question. McKenzie asked the officer why he pulled them over. The officer ignored the question and asked if there were anything in the car that he should know about. McKenzie's friend told him that there is a licensed firearm in the glove box. At this point, the officer was on high alert and put his hand on his gun ready to defend himself. He then shouted, "Get out of the car slowly and keep your hands where I can see them." The free law-abiding citizens were then handcuffed and forced to sit on the curb while the police, the police backup, and the K-9 unit searched the car while they ran a background check on the individuals and the weapon. After all was said and done the officer found no wrongdoing to charge them with and the only explanation offered as to why they got pulled over in the first place was, "You pulled out of the gas station in a suspicious way."

Now 3 weeks later McKenzie and a different friend were driving to a mall during a boring Saturday afternoon except this time McKenzie was the passenger, not the driver. His friend did commit a traffic violation in front of a patrol car, so they knew what was about to happen. McKenzie feared it was going to be Déjà Vu all over again. The arresting officer just so happened to be the same police officer from a couple weeks prior, except this time his approach and his mannerisms were different. He calmly notified the driver as to why he was being pulled over. McKenzie's friend obliged by informing the officer of his registered weapon on the floor next to him and showed the officer the permit to carry. The officer didn't react in an intensified manner. All he said was "Do not grab it, leave it lay, and make sure you pay attention to the traffic signs and where you are turning." No fine, no ticket, no problem.

Except, there is a problem, a big problem all too surreal for Mr. McKenzie. Mr. McKenzie is roughly 6 feet 1 inch tall, approximately 200 pounds, and is an African-American male football player with dreadlocks. One doesn't need a label on them to feel discriminated against. Discrimination is a feeling that takes hold only after an insensitive act of ignorance. If you were to know McKenzie and the friend from the first scenario were both black and his friend in the second scenario was white, prior to reading; would it have changed your thought process? Can you feel hatred through someone's eyes when they glare suspiciously at you like the police officer did while McKenzie courteously held the door for him? Can you tell when someone doesn't like you? How do you go about proving such a mentally internal dilemma like racism? Truly, you can't and our criminal justice system can't either for it is not designed to bring out the truth. The Criminal "Justice" System is designed to justify the creation of laws, institutions, prisons, and court systems not to determine what's right or wrong.

PrisonPolicy.org estimates the cost of The United States mass incarceration theory and utilitarian system at approximately $265 billion; this includes the costs of federal, state, and local corrections and the entire police and court systems [1]. This is why when one gets arrested they must buy their freedom back from the police, even if they haven't had a legitimate court hearing. Someone other than the taxpayers, namely "*criminals",* must cover the cost of a $265 billion-dollar system. According to the Clarion County budget of 2017, the county made $950,431 through various revenue streams relating to the Criminal "*Justice*" System [3]. Meanwhile, we only spend $59,400 on economic development compared to the $6,579,197 the county spends on the judicial and correctional system, when it is known fact that a strong economy omits less crime [3]. When everyone is employed there isn't time for crime. Jobs create purpose, and purpose creates human flourishing.

America's special interest groups ensure that the system focuses on taking criminals off the street, incarcerating the masses, and over criminalizing the free. According to the Federal Bureau of Prisons non-violent "criminals" makeup approximately 46.2% of the prison population [1]. The PrisonPolicy.org finds that currently, the United States has 2.3 million people behind bars that cost the government and families of justice-involved people at least $182 billion every year[1]. Our criminal justice system thinks that by incarcerating drug offenders we are "cleaning up the streets". Drug addiction is a disease regardless of what the crimes code says. A user will use regardless of the risk of criminal prosecution. Spending $6,579,197 [3] to put mentally diseased humans in a tiny closed off cell does not fix the issue at hand nor does it rehabilitate an offender. It's time to take action and demand criminal justice reform to happen.

I myself have been a victim of being presumed guilty when innocent and denied my freedom. I was "cuffed and stuffed" in my ex-girlfriend's parent's driveway at 9:30 pm. Charges were filed against me at the local police station based off of hearsay from a family friend of the local police chief. The family friend told the chief of police that I was going to assault her boyfriend for being an informant against me in a previous matter. I was charged with: Terroristic Threats W/ Intent to Terrorize Another, Retaliation Against Witness or Victim, Harassment – Lewd Comments, Threatening Language, Conspiracy - Terroristic Threats W/ Intent to Terrorize Another, and finally Conspiracy - Retaliation Against Witness or Victim. I was booked into the county jail that night. I waited until morning to call a bail bondsman, which was a $500 non-returnable deposit. I was released on bail by mid-afternoon the following day. I acquired a local attorney for $1,700 to help fight against these bogus allegations. All charges were dismissed at the preliminary hearing for lack of evidence and inadmissible hearsay. Either way, I was out

$2,200, added more negative marks to my record, and spent a night in jail for no reason. I was presumed guilty based off of hearsay. I don't know what's worse, to be presumed guilty based off of bogus testimony and hearsay or blatantly presumed guilty for the color of one's skin? In either scenario, the presumption of guilt goes hand and hand with the revenue generation goals of the criminal justice system; professional racketeering at its finest.

The presumption of innocence is an ideal thought but is truly unrealistic. The criminal justice system is exactly that; a systematic machine used to generate revenue at the expense of United States citizens. We are a nation of laws, we always have been and we always will be. Law enforcement should not be the number one priority of municipalities. If progress and innovation are the goals then change is necessary. Our criminal justice system needs renovating in the worst ways and we should start with equal access to justice. We have private for-profit prisons, overcrowded prison populations, underfunded rehabilitation programs, innocent people locked up behind bars, and growing expense bills that taxpayers are forced to fund. It's time to reform the criminal *justice* system! Could the massive amount of money that we pour into our criminal justice system be utilized more efficiently? Could our criminal justice system *actually* rehabilitate offenders?

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# How Gerrymandering Affects Elections in Pennsylvania

*Jacob McCord-Wolbert*

Ever since the United States became a sovereign nation back in 1789, elections have shaped who we are as a country. The fact that we are a democratic nation is a great thing, the people have the power to elect the person they want to lead the country and make laws and decisions that affect them. With that being said, candidates running for office are always looking for an upper hand in winning an election, and that's where gerrymandering comes into play. Gerrymandering is the process of drawing election districts to give one political party, Republican or Democrat, an advantage over the other. Maps are drawn to maximize one party's voters over as many districts as possible while concentrating the opposing party's voters in as few districts as possible. The result is districts that favor one political party. In most states, whichever political party holds the majority and the power in state government gets to determine where the lines are drawn every 10 years. In this article I will analyze the history of gerrymandering, the process of it, and if there are any solutions to it.

The first known case of gerrymandering dates back all the way to 1788, when Patrick Henry persuaded lawmakers to remake the 5th Congressional District of Virginia to help James Monroe beat James Madison, but the plot failed. The term gerrymandering was originated from a combination of "salamander" and the last name of Elbridge Gerry, who as governor of Massachusetts in 1812 signed into law a redistricting plan designed to benefit his political party. The *Boston Gazette* coined the term in 1812. Along with this, the Voting Rights Act passed in 1965, which also created some issues. Some states created "majority-minority" districts, in

which the majority of the constituents in the district are non-white, based on Census data. This practice, also known as “affirmative gerrymandering,” was intended to remedy historic discrimination and promote the election of minority politicians. Then, in 1993, a gerrymandering case went all the way to the Supreme Court. In *Shaw v. Hunt,* the U.S Supreme Court found that North Carolina's legislature had violated the Constitution by using race as the predominant factor in drawing its 12th Congressional District's boundaries in 1992. These are just a few examples of how gerrymandering has affected our country throughout the years, and there are many more, but I am going to look into gerrymandering issues that affect the state of Pennsylvania.

It’s a well-known secret that Pennsylvania is one of the most gerrymandered states in the United States. In Pennsylvania there are about 900,000 more registered Democrats than registered Republicans. National and statewide elections are intensely competitive, but when you look at the electorate in congressional voting districts, out of 18 seats in the U.S. House of Representatives, Republicans hold 13 and Democrats hold five. This doesn’t add up. The numbers should not be that extreme, and a big reason for that is due to gerrymandering. A great example of how backwards gerrymandering is in Pennsylvania is Berks County. There are about 20,000 more registered Democrats than Republicans, and yet the county is represented by four Republican congressmen. This is already a suspicious issue, but the big kicker is that none of those representatives live in Berks County. That doesn’t make sense, and it isn’t fair to the residents of the county. Constituents deserve to be represented by leaders who share the voice of the people, and the process of gerrymandering is ruining that.

Along with that, a report was released earlier this year from the Brennan Center for Justice at the New York University School of Law stating that Michigan, North Carolina, and Pennsylvania are the top three states in the United States in regards to the most extreme levels of

partisan bias. The report also found that out of five measures used to study gerrymandering, Pennsylvania was the worst in two: Efficiency Gap, which is being discussed in the Gill v. Whitford case now before the Supreme Court, and Seats-To-Vote, which "compares the number of votes versus the seats won." Carol Kuniholm, executive director of Fair Districts PA, called for an independent commission whose members would not include legislators, their spouses or their staffers. They would be members of both major parties as well as nonaligned voters. Their job would be to set the lines of electoral maps, rather than whichever party holds power at the time of redistricting. And the commission would not be allowed access to sophisticated mapping technology and data mining tools.

There are many groups trying to limit the effects of gerrymandering or just discontinue the practice overall. Since January, Fair Districts PA has held 200-plus public meetings across the state, helped win passage of resolutions supporting gerrymander reform in 80 municipalities and 12 counties, and pushed legislation that attracted 97 bipartisan sponsors and cosponsors. Along with that there are various legislature cases happen at the moment. Earlier this year, the Commonwealth Court in Harrisburg held a hearing on a lawsuit, filed by the League of Women Voters, contending the 2011 U.S. Congressional map for the state was gerrymandered. Also, State Senator Lisa M. Boscola is sponsoring the creation of a bill (SB484) that calls for an independent citizen's commission to draw the congressional map. All of these efforts are going into putting more confidence into the voting process. If voters' don't have confidence in the voting system then they will stop voting overall, and that could have a drastic negative effect on the democracy of our country.

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Breaking Up Families as We Debate the Constitutionality of DACA

by

Kassandra Wetterwald and TyNiesha Perry

There are eleven million illegal immigrants in the United States to date. Five million of those illegal immigrants are children or young adults. In June of 2012, under the Obama Administration, the Deferred Action for Childhood Arrivals, commonly referred to as DACA, was created. This program allows the youth and young adults a reprieve from deportation and gives them the right to work authorization.

The Deferred Action for Childhood Arrivals is a policy implemented for certain people who came to the United States illegally as children. Those children must meet certain requirements to request consideration under DACA. The consideration is good for two years, but can be subject to removal if, and, or when they no longer meet those requirements. DACA allows those children who came here illegally to stay within the United States without deportation and allows for work authorization. DACA does not provide lawful status, but gives those children the temporary right to live, study, and work in America (U.S. Citizenship and Immigration Services).

The individuals protected under DACA are known as the Dreamers. Most Dreamers are from Mexico, Guatemala, El Salvador, and Honduras. The majority of Dreamers live in California, but Texas, Florida, and New York are also known for having a large number of Dreamers in them. The term “Dreamer” came after Congress failed to pass the Development, Relief, and Education for Alien Minors (Dream) Act. This failed act would have allowed the illegal children a permanent legal residency in the United States (Joanna Walters, 2017).

According to the United States Citizenship and Immigration Services, there are certain eligibility requirements needed to obtain deferred action. Below are the eligibility requirements in 2017:

> "You may request DACA if you...Were under the age of 31 as of June 15, 2012; Came to the United States before reaching your 16th birthday; Have continuously resided in the United States since June 15, 2007, up to the present time; Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS; Had no lawful status on June 15, 2012; Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety" (U.S. Citizenship and Immigration Services).

On September 5th, 2017, President Donald Trump and General Attorney Jeff Sessions ordered to rescind DACA. The Trump Administration's termination of the program has left 800,000 recipients of the program in a state of limbo in regard to their immigration status. The Administration stated that DACA was created without proper statutory authority and should be ended immediately due to being unconstitutional. In reality, no court has yet to rule on the constitutionality of DACA. A reporter and journalist, Andrew Wyrich, noted that according to legal experts, "it's not uncommon for presidents to allow certain groups of immigrants to enter the United States on a temporary basis. Importantly, so-called deferred action is constitutional" (Wyrich, Andrew).

Arguments that deem the program unconstitutional include jobs, balance of power, and the risk of allowing criminals to stay in the U.S. Donald Trump and Jeff Sessions both argued that:

> "Those in the country illegally are lawbreakers who hurt native-born Americans by usurping their jobs and pushing down wages… Americans [are] victimized by this unfair system. The program has denied jobs to hundreds of thousands of Americans by allowing those same illegal aliens to take those jobs" (Hirschfeld, Davis).

There is a serious issue with their outlandish statement. Most of those people who are apart of DACA work minimum wage jobs, but they aren't bargaining to keep the wages low. They get nothing out of keeping wages low, contrary to popular belief. Only five percent of those on DACA have higher education jobs (Patler, Caitlin, and Caberea, Jorge, 2015). This leaves so much room for us as Americans to get a better paying and higher education job. Not to mention, one of the requirements to become a Dreamer is schooling and one of DACA's purposes is to help the Dreamers to start a career. These immigrants are not stealing jobs from Americans. Proper education and skill does not constitute theft, but simply a higher qualification than others. Aside from that, as stated before, most immigrants accept the lower wage jobs.

DACA was created by executive order. It has been said Obama did this despite the fact that immigration laws passed by Congress do not give the president the ability to do this. According to Michael Tan, a staff attorney at the ACLU Immigrants' Rights Project:

> "A new open letter to the president by 105 law professors makes clear that the DACA program is lawful and constitutional. As the letter explains, DACA is a form of temporary protection from deportation known as 'deferred action.' Deferred action is one in which the executive branch historically has exercised discretion over whom should and shouldn't be deported from the United States" (Tan, Michael).

The final concern is risking illegal criminals to reside in the United States. Trump announced, “I have advised the Department of Homeland Security that DACA recipients are not enforcement priorities unless they are criminals, are involved in criminal activity, or are members of a gang.” This is a not an issue for anyone on the DACA program. The DACA program requires that you do not have any type of criminal history and that you are not a threat to the security of American citizens. If you do become a criminal or deemed a threat in the future, you will be deported immediately.

Despite continuing statements of the unconstitutionality of DACA, there are serious counterclaims to those arguments with strong valid standpoints. Barack Obama stated:

> “Whatever concerns or complaints Americans may have about immigration in general, we shouldn’t threaten the future of this group of young people who are here through no fault of their own, who pose no threat, who are not taking away anything from the rest of us” (Tan, Michael).

Deferred Action for Childhood Arrivals is not unconstitutional. Michael Tan proclaims:

> “To be clear, a decision to abandon the DACA program would be a political decision — not a legal one. In fact, the U.S. government has repeatedly — and successfully — defended DACA against constitutional challenges. Indeed, every legal challenge to the DACA program has failed” (Tan, Michael).

While lawmakers continue to debate the constitutionality of DACA, those in the DACA program are left with the unknown. Thousands of families are being ruined in the process. If DACA does not find a replacement or come back into law, many families will be broken up. Ninety-six percent of those who are on DACA reported having family members in the United

States both legal and non-legal. According to a report done by the Institute for Research on Labor and Employment:

> "70% of respondents have at least one U.S. citizen family member, 44% have a lawful permanent resident family member(s), 53% have documented family members, 23% have family member(s) with some other type of visa, and 77% have undocumented family member(s)" (Patler, Caitlin, and Caberea, Jorge, 2015).

Those family members who are legal will continue to live in the United States, while the other family members who are on DACA or undocumented will be sent back to their home country. Why does this matter? Well, depending on who is legal or who is illegal, they are typically certain bread winners in a family. Since DACA allows for work authorization, those people who can work and are able to will, but they are being sent back to their home country. Keep in mind, many have no memory of that country nor know anything about it. They were brought here as children by their parents or another family member. Why punish the child for an older person's mistake? The same study from the Institute for Research and Labor stated that 82% of those on DACA had a job and the majority (8:10) contributed to the family household, but they are being deported in March (Patler, Caitlin, and Caberea, Jorge, 2015).

That leaves their parents or grandparents to work to support the family household. The grandparents are most likely legal when it comes to citizenship due to having a long enough time to apply for citizenship and go through the process, but are too old, weak, frail, etc. to work. They are unable to work even if they wanted to. Not to mention, if they had a labor heavy job, they would never be able to do that job in their current state, but they are only experienced in that field. It doesn't leave much opportunities in the job market for the elders.

So, that leaves the parents to work and support the family household. They may not have been here long enough to become a legal U.S. citizen, which means they cannot legally work and can only work under the table jobs. Not to mention, if an employer knows they are an illegal, they will pay them much less than they deserve. How can you support a family household with a job that is not guaranteed, nor pays for your labor acceptably? The answer is you can't. You cannot pay for your household on a minimum wage or less job. It just is not possible. This leaves the child or young adult by themselves in their home country, a country that they are more than likely to know nothing about. The grandparents are left without any money to pay for a home, food, or bills, and the parents are out of luck both financially and emotionally, unsure if they should stay and take care of their child or their parent. This is a huge burden on any family.

Through research, direct quotes were found from those in the DACA program, and how it being rescinded has affected them personally. Karla Perez stated, "My biggest concern right now is my parents because DHS has my information… I'm not so much worried for myself as for my family." Rebeca Ruiz, from Pittsburg, Pennsylvania, says, "I came here looking for a better life for me and my family. That is why we're here." Cindy Cristofori a receipt of DACA said, "This not only affects me, it affects my husband and it affects my very small children." Marco Collins expressed, "It leaves me and my husband pretty confused on what we are going to do. I was brought here at the age of four, and this state, this country is all I have ever known." Ceci Druetta detailed, "I have a son; he's a United States Citizen. I have a husband; he is a United States citizen. I am a homeowner, and guys I belong here." The 800,000 people part of DACA are scared. Scared for themselves, but mostly for their family. They are unsure of what is going to happen yet, and it's affecting all friends and families involved. (Donni Sullivan and Samantha

Guff). While we continue debating the constitutionality of DACA we are uprooting thousands of families in the midst.

Many on the DACA program trusted that they were safe from deportation and opened themselves up to the federal government with their personal information that now is being used against them. Ending DACA is not only affecting those in the program, but also their families. Someone like Cindy will leave her husband and very small children behind. Those children will grow up without a mother. Someone like Ceci will leave her son, husband and home behind. Her son will grow up without a mother and leave a husband without wife. Someone like Marco will leave everything he ever knew behind without his husband by his side. All of those once protected under DACA are feeling hopeless, scared, and unsure of what the future has in store for them. DACA ending is not only causing political controversy, but also sending ripples throughout the household and creating a huge burden upon them.

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# Human Trafficking: Plaguing the United States

By
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One of the most serious and unthinkable crimes troubling our world today is human trafficking. By law, human trafficking can take two severe forms. The first form is sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such acts has not reached the age of eighteen. The second form is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery.[1]

Any human can become a victim of human trafficking. Traffickers can lure victims into promised job opportunities that turn into nightmares. The victims are typically held captive and forced to perform various acts of either hard labor or sexual conduct. However, if the victim is a citizen of the United States, normally they are known to be missing and there is hope in finding and saving them from their captors.

There is one group of individuals, however, that are forced into this torment in the U.S. who don't even have that small amount of hope to take comfort in. Illegal aliens are particularly vulnerable to the crime of human trafficking. They have very little chance of escaping their holders because of five major factors. They have lack of legal status and protection, limited language skills and employment options, poverty and immigration-related debts, and the social isolation of being brought into a foreign country. Due to these circumstances, the human trafficking of illegal aliens into the United States is an issue that should be attended to immediately, not only for the benefit of the victims, but also for the benefit of society.

## I. The Severity of Human Trafficking

After drug dealing, human trafficking is tied in with the illegal arms industry as the second largest criminal industry in the world today, and it is the fastest growing. According to the U.S. Department of State, the United States is a destination country for thousands of men, women, and children trafficked from all areas of the world. The victims are trafficked for the purposes of sexual exploitation and free labor[2].

Victims are often trafficked from all areas. However, in a recent 2016 Trafficking Persons report, Mexico and the Philippines were listed as the most prevalent areas where victims are being trafficked and brought into the U.S[3]. Also reported during a different 2016 report, there were 1,952 arrests made regarding human trafficking. Out of these arrests only a mere 435

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[1] Westlaw. (n.d.). Retrieved October 1, 2017, from https://1.next.westlaw.com/
[2] Human Trafficking-Exploitation of Illegal Aliens. (n.d.). Retrieved October 19, 2017, from https://fairus.org/issue/illegal-immigration/human-trafficking-exploitation-illegal-aliens
[3] (n.d.). Retrieved October 19, 2017, from https://www.state.gov/j/tip/rls/tiprpt/2017/index.htm

victims were identified and given the support they need[4]. We must provide these victims with a safe place to go and more resources to reach out so they are easily able to be identified.

Many people confuse the trafficking of illegal aliens with smuggling. These two concepts are actually very different. Human trafficking centers on exploitation, whereas human smuggling centers on transportation (importing illegal aliens into the country involving deliberate evasion of immigration laws)[5].

Most victims of trafficking strive to gain employment and live better lives. They are typically promised a job, housing and other guarantees, but after arriving they are subjected to various forms of abuse, exploitation and forced to work under inhumane conditions. Victims do not often report the abuse to authorities for a number of reasons. They are often intimidated and threatened by their beholder and they are unable to provide any form of valid documentation. Victims are frequently worried about being penalized by the U.S. and returned to their country where they could suffer further hardships and punishments by retaliation.

Once they're trapped in these circumstances, it's a very difficult process to escape the traffickers' hold. Victims find themselves in a foreign country where they cannot speak the language to communicate for help. The victims also fall into a situation in which they have no legal status in the United States. Traffickers most often take away the victim's travel and identity documents and tell them that if they attempt escape, the victims' families back home will be severely harmed or assumed any accumulated debts. Victims often fall into social isolation in their new environment. Because of the threats and abuse, and their lack of knowledge on the foreign culture they've entered, they fearfully remain silent over their circumstances[6]. This is a cycle the government of the U.S. must strive to break.

## II. The Reality of Human Trafficking

Human trafficking occurs around the globe 24 hours a day, 7 days a week. It's a crime that can be hard to detect and ruins lives and families. Although law enforcement agencies are working to find these traffickers and free their victims, not every crime is detected and prevented. But the cases that are reported and decided are important to the prevention of many future cases to come. Two individual cases present facts that describe how illegal aliens fall into the sex trafficking conditions, and the outcomes of each.

The first case highlighted occurred in October 2014. Members of the Cadena-Sosa family plead guilty to conspiracy and holding a person in conditions of involuntary servitude[7]. In his

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[4] Human Trafficking. (n.d.). Retrieved October 8, 2017, from https://www.ice.gov/features/human-trafficking

[5] Human Trafficking and Smuggling. (n.d.). Retrieved October 11, 2017, from https://www.ice.gov/factsheets/human-trafficking

[6] Human Trafficking-Exploitation of Illegal Aliens. (n.d.). Retrieved October 19, 2017, from https://fairus.org/issue/illegal-immigration/human-trafficking-exploitation-illegal-aliens

[7] Mexican National Sentenced to 15 years for Participating in a Brutal Family Run Sex Trafficking Organization. (2015, January 26). Retrieved October 15, 2017, from

plea, Rafael Alberto Cadena-Sosa admitted that he and other members of his family approached women and girls (some as young as fourteen years old) in Veracruz, Mexico. They lured them into coming into the United States illegally with the false promise of better employment opportunities.

After smuggling the women and girls across the border and into the United States, the family members proceeded to establish a "smuggling debt," and used brutal physical force and violence, including sexual assault and threats of death and bodily harm to the victims and their families. By striking fear into the hearts of these victims, the women were being forced to engage in prostitution twelve hours a day, six days a week and turn over the proceeds to the Cadena-Sosa family as payment toward their "smuggling debt." Any victims that escaped the captivity were hunted by the family and subjected to intense beatings and rape. What kind of sentence did Mr. Cadena-Sosa receive for his crimes against these countless women? Only fifteen years in prison. Fellow family members and those associated with the trafficking had punishments ranging anywhere from a $500.00 fine to a few years of jail time.

The next case regarding the severe trafficking of illegal aliens occurred in 2012[8]. An El Paso man, Charles Marquez, conspired with Martha Jimenez to recruit women in Mexico for their prostitution scheme. The pair placed ads in a Ciudad Juarez newspaper, offering better employment opportunities in the United States. The victims were then transported and harbored in hotels, being forced into prostitution. All money gathered from the scheme went directly to the defendant's profit. Marquez was convicted of one count each of sex trafficking of a minor, sex trafficking by force, fraud or coercion, transporting for prostitution, conspiracy to coerce or entice a minor to engage in sexually explicit activity; coercion or enticement, and importation of an undocumented alien for immoral purpose. He faces life in federal prison, as well as a $10,000 fine for his crimes.

## III. Government Remedies for Trafficking

The United States government strives to detect the signs of human trafficking within its borders using the three "P" strategy; Prosecution, Protection, and Prevention[9]. However, there can be complications in detecting the victims within the country. Since the victims are illegal aliens, they have no documentation in the country, most can't speak the language to convey their need for help, and most are beaten and threatened into submission, so they don't attempt to get help. Because of this, new techniques and provisions must be put in place in order to help the victims sooner than later.

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[8] El Paso Man Sentenced to Life in Federal Prison on Human Trafficking Charges. (n.d.). Retrieved October 20, 2017, from https://1.next.westlaw.com/Document/I56d1b165e1fc11e698dc8b09b4f043e0/View/FullText.html?transitionType=UniqueDocItem&contextData=%28sc.Default%29&userEnteredCitation=2014%2BWL%2B12648114%2B%28D.O.J%29

[9](n.d.). Retrieved October 19, 2017, from https://www.state.gov/j/tip/rls/tiprpt/2017/index.htm

In 2000, the government passed the Victims of Trafficking and Violence Protection Act 2000. This act allows victims to gain a T-Visa if they meet certain requirements. They first must have suffered a severe form of trafficking into the United States and they also must participate in the prosecution of the trafficker. Exceptions to this status would include the victim enduring severe trauma, causing them to be unable to assist during the prosecution and children under eighteen are also exempt from participating as well. Lastly, if the victim could face serious harm by removal from the U.S they could be exempt from participating. By the victim facing harm or serious hardship with removal to their country, this could help provide evidence for the victim when they are trying to obtain their T-Visa. Unfortunately, there are only a number of T-Visas; 5,000 issued per year[10].

The U-Visa was passed with the Victims of Trafficking and Violence Protection Act and the Battered Immigrant Women's Protection Act. This visa protects victims who have been suffered a severe form of physical and mental abuse due to a qualifying crime such as: rape, trafficking, sexual exploitation, prostitution, and many more. Victims must assist law enforcement during the investigation, unless they are under the age of sixteen. If they are under the age of sixteen, a person considered to be the "next friend," which is considered a representative of the victim during the lawsuit, can act on their behalf. Before a victim files for the U-Visa, a law enforcement official must confirm that the victim was, or will be helpful to the investigation of the case. This is a crucial piece of information in the U-Visa process and differentiates it from the T-Visa. Victims must be willing to work with law enforcement more and prove that there was a substantial amount of abuse. Similar to the T-Visa, the U-Visa only has a mere 10,000 visas issued to victim's each year[11].

How do we better handle this horrible crisis with only a mere 15,000 visas being granted to victims yearly? That's not the biggest problem yet, the burden of proof is on these victims to provide the proof to obtain one of these visa's and they must go in front of an immigrant judge to prove their case. How can we expect the victims to prove their cases when they do not feel comfortable seeking the help they need from our government and they continue to remain fearfully silent from their attackers? First, we must provide them with the resources to seek the help that they need. These resources include being able to seek legal assistance without the fear of immediate deportation. Victims who have not sought legal assistance need access to more shelters where those employed there could help them to feel more comfortable and safe in coming forward to officials about their situation. If/when the victim does come forward, this could possibly expose multiple other victims if police officials are able to arrest their captor.

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[10] Victims of Human Trafficking: T Nonimmigrant Status. (n.d.). Retrieved October 18, 2017, from https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status

[11] Victims of Criminal Activity: U Nonimmigrant Status. (n.d.). Retrieved October 21, 2017, from https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status

These victims deserve to live in the United States free of their beholder and free from persecution from the cruelty they have been faced with; by helping one victim, it can help many.

Human trafficking is a horrible crime that plagues not only the United States, but the entire world. Most of all it deprives human beings, regardless of their immigration status, their freedom and self-esteem. Individuals fall victim to human trafficking every single day, and sadly we reported how many were identified in 2016[12]. They're smuggled across borders, beaten, raped, and forced into involuntary servitude by their captors. The human trafficking of illegal aliens can be the deadliest form of them all, because victims are brought into a foreign country with no way of getting out or getting away from their captors to reach help. To assist and protect these victims, and to end the war on human trafficking, more attention to this matter and new provisions should be set forth. If human trafficking were put to a stop within the United States, it would benefit the potential victims, and the world.

[12] Human Trafficking. (n.d.). Retrieved October 8, 2017, from https://www.ice.gov/features/human-trafficking

# Justice For The Brave

By: Zechariah Lemke

We the people have a serious issue at hand that requires immediate attention; transgender soldiers no longer being able to serve in the military. This includes the Marines, Army, Navy, Air force, and Coast Guard. This is a serious issue both violating the equal protection clause of these people and not allowing them the fifth amendment. The ban had always been in effect until, 2016 where the Obama Administration rescinded it and allowed transgender individuals to serve. This opened a doorway for transgender individuals to not only be more socially accepted, but it made them feel much more empowered. Obama along with his administration granted the Pentagon to pay for medical gender transitions. This helped the transgendered turn to transitioning rather than drug abuse, alcohol abuse or suicide. However, Trump has taken away these rights and left thousands of people without jobs and leaving them to feel lost of what they can do now.

The issue we have at hand is the funding for medical gender transitions. Sometimes this can be a very costly procedure and the government has every right to dictate the money and where it is spent when it comes to funding medical benefits. President Donald Trump, took this funding problem to a whole new height. He came out and had a directive to reinstate the ban on transgender soldiers saying “our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail” (Trump, 2017). He did not consult military heads, instead he made this decision on his own, while the pentagon is still deciding how to implement the order. Trumps quick decision making was unprofessional, unofficial and uncalled for.

Major policy announcements cannot be announced in such a manner. This is preposterous and unconstitutional. This violates basic human civil rights and violates the fifth amendment. These transgender soldiers are being denied due process and equal protection. Colleen Kollar-Kotelly, a United States District Judge for the District of Columbia says;

> "Such a ban stands a good chance of being ruled unconstitutional in court as a denial of due process and equal protection for transgender people. No argument or evidence suggests that being transgender in any way limits one's ability to contribute to society" (Hawkins, 2017).

And goes on to says that "it's a form of discrimination on the basis of gender" (Hawkins, 2017). Let us delve into a case challenging the president's order, Doe v. Trump. GLAD and NCLR filed a lawsuit in federal court in Washington DC fighting the president's "directive to reinstate a ban on military service by transgender people" (GLAD Legal Advocates & Defenders) They filed this lawsuit because President Trump is, "needlessly attacking courageous transgender service members who put their lives on the line for our country" (GLAD Legal Advocates & Defenders) and went on to say;

> "Trump's efforts to reinstate the ban are already harming service members, who have been blindsided and are scrambling to deal with what this means for their families and their futures—including the loss of job security, retirement benefits, healthcare, and other serious harms" (GLAD Legal Advocates & Defenders).

What are these families going to do? They are being wrongfully fired from their job. Put yourself in their situation; imagine walking into work one day and being told you are fired because of your body shape, your appearance, or your previous treated medical conditions. Think of how outraged you would feel. They were discriminated and not given a real reason for them to be banned. Being transgender did not affect these soldiers ability or desire to work and serve the country. Even the military themselves find the ban should be reinstated;

> "The military itself carefully studied this issue and concluded that there is no reason to ban transgender people from military service." If you read articles and listen to interviews it seems every member of the military finds no reason for the ban to be reinstated. "Since the Department of Defense announced in June 2016 that transgender people can openly serve, thousands of transgender soldiers have come out and are serving openly. Our country is safer and more secure because of their service" (GLAD Legal Advocates & Defenders).

Thousands of transgender soldiers signed up as soon as they heard they could join the military. They were more than eager to serve and protect the United States of America. Reversing what has already been done, is reversing our countries safety. These people are helping out in such an amazing, impactful way. They are risking their life to better our own. Who are we to say what body part they have takes away their right to work? Who are we not to allow them work authorization?

GLAD and the NCLR are representing five active duty service members who came out as transgender to their commanding officers in "reliance" (GLAD Legal Advocates & Defenders).

After the Defense Department's June 2017 announcement, involving transgender people serving in the military. The lawsuit expresses that President Trump's directive to ban transgender soldiers violates "equal protection and due process guarantees of the federal Constitution" (GLAD Legal Advocates & Defenders). They are saying it serves no purpose and it was just enacted to discriminate. That it "contradicts the military's own careful, recent conclusion—reached after a comprehensive review process—that there is no reason to ban transgender soldiers from serving" (GLAD Legal Advocates & Defenders).

There is no deny this is enacted to discriminate. It is nothing, but bigotry from President Trump and anyone else in the house who agreed with this directive. If you read into the case further, these troops (along with most transgender troops) were enlisted, but just did not notify their command. What action is the military accountable for letting this happen for so many years already? These troops fought for the country and had no mishaps and no mental/physical breakdowns; with some even being on the frontlines.

> "The Due Process Clause of the fifth Amendment prohibits the federal government from depriving individuals of their property or liberty interest without due process of law" furthermore " the due process clause of the fifth Amendment requires at minimum, government action have some rational basis" (GLAD Legal Advocates & Defenders).

I took my time to step back and really think about a rational basis. I cannot find a rational basis myself and am not enlisted in the military, why not ask someone who experienced this first hand and agrees with the directive? I decided to ask an active duty soldier who is the age of 24. The rational basis he said to me is that their;

"mental state is not the same without certain hormones and if they have no way to access that in battle they could not be the same soldier and could decide to go against the fight and have a mental breakdown which would, in turn, cause other troops to be too caught up in dealing with the emotionally distraught soldier and it would cost the whole units life."

To counteract this reasoning; a mental state could be altered at any time or anywhere. There is no judge to mental stability if your medical records are clean for any psychological issues; to think there is a reason other than medical records is an act of discrimination. To counteract furthermore, if they were fine mentally and physically for years, paying their own way for their gender transitions, and fighting on the frontlines under the military's radar before what makes it any different now? The case puts my words to better use:

> "Plaintiffs have served honorably and successfully in the military since coming out as transgender, and their transgender status has not had any detrimental effect on their ability to serve or to fulfill their duties... The President's directive to exclude transgender people from military service is arbitrary and capricious" (GLAD Legal Advocates & Defenders).

Let us not forget the count of Estoppel. These troops would have never released the information to their command of being transgender if it would have meant getting banned from the military. The case yet again portrays this best:

> "In reliance upon that promise from the Defendants, Plaintiffs informed their commanding officers that they are transgender… In reliance upon that promise from the Defendants, Plaintiffs Have undergone medical treatment for the purpose of gender

> transition... Because they identified themselves as transgender in reliance on Defendant's ‘ earlier promise, Plaintiffs have lost the stability and certainty they had in their careers and benefits, including post-military and retirement benefits that depend on the length of their service… Plaintiffs have served honorably and successfully in the military since coming out as transgender, and their transgender status has not had any detrimental effect on their abilities to serve or to fulfill their duties” (GLAD Legal Advocates & Defenders).

After all the information set forth, I would hope that you can see that the ban is in complete violation of the law and is in complete violation of human civil rights. The directive needs to be omitted; there needs to be justice for these transgender soldiers.

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https://www.washingtonpost.com/news/morning-mix/wp/2017/10/31/trumps-tweets-come-back-to-bite-him-in-court-again-this-time-in-transgender-military-case/?utm_term=.467e190a3bf7

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# Gas Companies and Their Abuse of Private Property

**AUTHORS:** Decklan Burkhart, Nikki Deitz, Andrea Larsen & Ben Trinkley

**ABSTRACT.**

The rights of some landowners specifically in Pennsylvania have been in infringed by how gas companies can take advantage of the Federal National Gas Act to be able to confiscate land. It has always been known that gas companies can cause damage not only to your property, but also to your health, but what if your trusted doctor was now not able to properly diagnose you due to this act. Using Eminent Domain and skipping Zoning Laws are the main ways that the gas companies have been able to take advantage of the surrounding areas. A big question is how will the environment be protected if gas companies are taking all the land they want, whenever, and however they want. The real question though is what do you do when they decide they want to use your land.

## INTRODUCTION

Imagine you live in small town rural Pennsylvania. You own several acres of forested land, that you have worked hard your whole life to obtain. Now imagine the land you worked so hard for being taken away from you and there is very little you can do to stop it. How could this happen? It happens during the process of condemnation. Condemnation, or eminent domain is the right of the government or its agent to take private property for public use, with payment of compensation.[1] For landowners in Pennsylvania, losing their land to gas companies has become a grim reality. The Federal National Gas Act[2] gives power to gas Companies to buy personal property for market value, the same power that only the government had at a point in time. This is a power that can be questioned because of the Public Trust Doctrine. The Public Trust Doctrine is the mandated law that holds States accountable to make law decisions that will keep the interest in protecting natural and environmental resources for the use of the public.[3] More specifically the Public Trust Doctrine means that the Government owns all land under navigable waterways and the Government must use that land for the benefit of the public.

Gas companies have been given a lot of power from the Federal National Gas Act[2], which includes a few key powers. The first is Eminent Domain. Eminent Domain is the power for a company to take private property for public use. The second main power is that this act prohibited doctors to tell their own patients that they are sick, or poisoned, from fracking fluid. Fracking fluid has been known to contaminate drinking water, when not watched properly, which is poisonous if ingested. The third main power given to gas companies from this act is that local zoning and safety ordinances could not be enforced onto the gas companies.

### Eminent Domain

In order to enforce the power of eminent domain, gas companies must obtain a certificate of public convenience and necessity from the Federal Regulatory Energy Commission[1](FREC). The Commission may issue a certificate of public convenience and necessity to a natural-gas company for the transportation in interstate commerce of natural gas used by any person for one or more high-priority uses.[2]The issue arises when you examine what a high-priority use is. The Federal National Gas Act states that eminent domain can be given to the gas companies if their venture ultimately benefits the public interest.[3] However, gas companies may try to take advantage of the statute. One example of this abuse of power is the Mariner East 2 Pipeline. This pipeline was intended to carry natural gas liquids from Western Pennsylvania to Delaware County where it will be shipped to Scotland to make plastics[4]. This brings us to question who is actually benefiting from the pipeline, is this a public or private gain?

**Medical Consequences**

One of the main concerns when it comes to the powers given to gas companies is not even a power given, it is a power taken away. Doctor's are not allowed to tell their own patients, that they could be poisoned or that their health is in danger due to fracking fluids. Fracking fluid has been proven to contain chemicals that can cause bodily harm, arsenic, lead and chlorine are just few of these chemicals. Not only the fluid going into the well contains these chemicals but it is believed that the by products from fracking contain even more dangerous combinations of chemicals and gases. Some of the chemicals that are known to have been used in fracking can cause reproductive issues and developmental problems. [5] Unfortunately this part of the Federal national Gas Act was not struck down and this rule is still in play. The problem with not knowing what might be causing issues in your health is that you have no idea how to remedy the problem. The chemicals that are in the fracking fluid do not need to be there and if there was a better alternative hydrofracking can be a very beneficial and profitable endeavor. Not only to the companies but to the surrounding area.

**Zoning**

Many people wonder what zoning actually is and how it could get mixed up into the gas industry. Zoning is the legislative act dividing a jurisdiction's land into sections and regulating different land uses in each section in accordance with a zoning ordinance. Zoning can regulate just about anything and everything that it wants to. Zoning can regulate noise, things being built on land and how it is being built, and what is done with that land. So, how could this legislative act affect where and how gas companies drill in Pennsylvania? It has a pretty major effect on certain counties due to the fact that some counties have no zoning laws. Meaning that nothing is regulated, and anything is allowed. However, this all changed when a zoning ordinance was added to certain counties that involved trying to deal with noisy compressor systems that were used by the gas companies. This had a big impact in the gas industry for the

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[1] 15 U.S.C. §717f(c).
[2] 15 U.S.C.A. § 717f(f).
[3] 15 U.S.C.A. § 717f
[4] https://stateimpact.npr.org/pennsylvania/2016/10/31/a-new-front-emerges-in-the-battle-against-eminent-domain/

fact that drilling could now be blocked by zoning if the county chose to do so. But, then Act 13 came along. Act 13 set statewide rules which did overrule all local zoning laws and allowed drilling to happen just about anywhere and everywhere. With drilling being allowed to go on anywhere, there was a part added that included an "impact fee". An impact fee is basically a fee which charged the companies money for using the land in that county. The money from the impact fee goes back to the community which is hosting the drilling. Zoning is a very important part of law and Act 13 basically sets a precedent that gas and drilling companies, like Marcellus Shale, can and will supersede the law. When an important part of law can basically be totally ruled out, what's the point in having it in law at all?

**Public Trust Doctrine**

When considering the Public Trust Doctrine in this matter the real question is how is the environment as well as those surrounding it being benefitted?The Public Trust Doctrine is a way for the states to take responsibility for the protection of natural and environmental resources, the benefit of the public, and the preservation for future generations.[6] It has been stated by attorney Alex Bomstein when asked about natural gases being removed that "There is no apparent public need for these things and that's demonstrated by the fact that [the gas products] are being exported". [7] These resources are not currently of need here by these landowners, yet their land and communities are being destroyed for it. One of the biggest concerns that come from the removal of natural resources such as through the means of fracking is the contamination of waterways, which are to be protected by the Public Trust Doctrine. Once a waterway has been contaminated all the surrounding environment such as plants, animals, and people begin to experience major health issues and even death.[8]

**Supreme Court Decision**

Fortunately for residents of Pennsylvania, the Supreme Court found provisions of the statute to be unconstitutional. Specifically, the zoning and safety regulations exceptions for the gas companies were completely struck down. Also the main aspects of the Eminent Domain were struck down to the point that makes that power almost useless for the gas companies.

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[1] *See*.https://www.justia.com/real-estate/condemnation-eminent-domain/

[2] 15 U.S.C. § 717 *et seq*. (2006).

[3] 45 Envtl. L. 431

[4] (this the the first supreme court case.)
https://1.next.westlaw.com/Document/I5e67f9fb696611e38913df21cb42a557/View/FullText.html?originationContext=document&contextData=(sc.Keycite)&cacheScope=undefined&transitionType=DocumentItem&searchWithinQuery=%22public%2520tru

st%2520doctrine%22&chunkSize=S&docSource=c52ce67fd5a642b3a27a7454beca14c6&needToInjectTerms=False&searchWithinHandle=i0ad82b9e0000015f4f0ef510d5ea10cc

[5] https://news.yale.edu/2016/01/06/toxins-found-fracking-fluids-and-wastewater-study-shows

[6]45 Envtl. L. 431

[7]https://stateimpact.npr.org/pennsylvania/2016/10/31/a-new-front-emerges-in-the-battle-against-eminent-domain/

[8]http://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1354&context=faculty_articles

# THE LEGAL STATUS OF WRONGFUL BIRTH AND WRONGFUL LIFE CLAIMS

By Morgan J. Green

## I. Abstract

Wrongful birth and wrongful life claims are debated globally. They raise questions on both moral and legal standpoints. Is it morally acceptable for a court to deem that a child should have never been born or has a life not worth living? And if so, how should the courts compensate the plaintiffs? Extensive research showcased that the answer is not black and white. Whether wrongful birth and wrongful life action is permitted relies on who has jurisdiction.

## II. Introduction

The laws affiliated with wrongful birth and wrongful life differ amid courts, but first, what exactly are wrongful birth and wrongful life? Wrongful birth and wrongful life are negligence based tort claims brought against a doctor when a child is born with a severe, significant disability or impairment that a doctor could or should have warned the parents about.[1] Both remedies fall under the scope of medical malpractice. In the United States, wrongful birth and wrongful life laws are within the purview of state law. A key difference between wrongful birth and wrongful life is who brings the lawsuit. In wrongful birth, the parents of the child bring a lawsuit on their own behalf seeking damages associated with rearing the child. On the contrary, in wrongful life cases, the child who was born with the severe significant disability or impairment brings the lawsuit. It is not uncommon for the parents or guardian of the child or other person acting in the interest of the child to file for wrongful life on behalf of the child if the child has not reached the age of majority.

## III. Wrongful Birth

In order to establish a wrongful birth suit, the burden of proof falls on the plaintiffs, the parents, to prove that the defendant, the doctor, owed a duty to the patient and the defendant breached that duty which injured the plaintiff. The injury is more probable than not referring to giving birth to the child. The most common claim for wrongful birth is intertwined with the failure to correctly diagnose a genetic abnormality in the parents or in the fetus accompanied by the claim that if the doctor did not err, the parents would never have had that child. North Carolina held that wrongful birth is prohibited because they are "unwilling to say that life, even life with severe defects, may ever amount to a legal injury." Twenty-eight states in the United States, however, do permit wrongful birth action. This is partially because they aspire to deter diagnostic errors.

On the other hand, other courts refuse to recognize wrongful birth because recognizing wrongful birth would burden the constitutional right of the parents. Twelve states specifically prohibit wrongful birth by law. These states are Arkansas, Georgia, Idaho, Kentucky, Michigan, Minnesota, Missouri, North Carolina, Oklahoma, Pennsylvania, South Dakota, and Utah.[2]

When the plaintiffs establish a prima facie case based on negligence, the court will determine how to measure the damages and if monetary damages should be granted.[3] Typically,

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[1] Harvard XD. (2017). Bioethics. Retrieved September 2017, from http://courses.edx.org/coures.edx.org/courses/course-v1:HavardX+HLS4X+1T2017/course/

[2] Wrongful Birth | Gaar Law Firm | Lafayette Louisiana. (2012). Retrieved October 19, 2017, from http://www.gaarlaw.com/Newsletters/Medical-Malpractice-Newsletter/Wrongful-Birth.shtml

[3] Cohen, M. (1978). Park v. Chessin: the continuing judicial development of the theory "wrongful life." *American Journal of Law & Medicine*

the only damage awarded in wrongful birth cases is to pay for extraordinary medical costs until the child has reached the age of majority. Few courts have allowed the compensation to continue beyond the child reaching the age of majority, if the child cannot support him or herself. It has been previously held that parents are not rewarded for emotional distress since they are not in the zone of danger given that they do not have a physical injury or illness; however, some states do allow damages to include pain and suffering as well as emotional distress. These damages exclude the cost it takes to raise a healthy child.

Wrongful birth suits are not solely argued in the United States. According to South African Law, it was held in *Friedman v Glicksman*[4] that wrongful birth claims are possible where the parents of a child born with congenital abnormalities were deprived their opportunity to exercise their reproductive rights because the medical practitioner was negligent as indicated by the failure to identify or diagnose an abnormality in the fetus, or informing the parents of the diagnosis.[5]

Wrongful pregnancy is sometimes mistaken as wrongful birth, however, thinking the two are the same is a misconception. As stated above, the injury in wrongful birth is that a child was born who would not have been born if the doctor was not negligent. On the contrary, in wrongful pregnancy, the mother became pregnant because the doctor erred which caused the patient to get pregnant. Suppose a doctor performed a vasectomy on a male so he couldn't have children. The male patient impregnates his girlfriend because the doctor erred on the vasectomy and the patient did not know it. If the doctor did not err on the patient's vasectomy, the girlfriend would not have become pregnant. This is clearly a wrongful pregnancy case but here's where the misconception comes in. Logically, if the girlfriend was not impregnated, the baby would not have been born, deceiving some to think wrongful pregnancy falls under the penumbra of wrongful birth. This is not the case. Establishing a wrongful birth claim is not merely based on the grounds that the child should not have been born.

## IV. Wrongful Life

Wrongful life claims claim that the child was injured by the tortious act that gave rise to the pregnancy. In other words, being born was an injury to the child because of the significant impairment the child endured. The child's life is often depicted as a life not worth living, given that his or her life is a harm and not an overall benefit. Some courts disagree and argue that the child has not been harmed because living is better than not existing. In contrast, few courts allow wrongful life suits because of deterrence. The reason for this being that if people know there will be consequences to their actions, they will be more careful. It is challenging for courts to enumerate how much compensation should be endowed to the plaintiff in wrongful life cases. Thus far, no court has allowed plaintiffs to recover from pain and suffering damages resulting from their impairment. Most states in the United States have prohibited wrongful life by legislative or case law. In spite of, in *Park v. Chessin*[6], it was held for the first time that action for wrongful life is legally cognizable. Further, the only states that permit plaintiffs to recover from wrongful life claims are California, New Jersey, Washington, and under certain circumstances, Louisiana.[7]

There are multiple defects in developing wrongful life in the United States. To lead with, given the child has not yet been born, the physician, the defendant, did not have a legal duty to the child at the time the negligent act occurred. In addition, a child cannot suffer from being born

[4] *Friedman v. Glicksman*, 1996 (1) SA 1134 (W)
[5] Tregoning, T. (2016). An analysis of wrongful birth and wrongful life claims in South Africa.
[6] *Park v. Chessin*, 400 N.Y.S.2d 110, 60 A.D.2d 80 (1977)
[7] W. Ryan Schuster, R. W. (2016). Rights gone wrong: a case against wrongful life, 57 Wm. & Mary L. Rev. 2329 (2016), *William & Mary Law Review*.

because it is implausible for an individual to say he or she should not have been born. Furthermore, any injuries the child has suffered from birth cannot be measured making it difficult to award monetary damages to the plaintiff in wrongful life suits. Not only is it a defect that wrongful life suits raise a moral question rather than a legal one and therefore the courts are unfit to adjudicate wrongful life suits, but also, unsolicited consequences will arise from judicial acceptance of wrongful life.

In England, the claim for wrongful life is unintentionally allowed due to assisted reproductive treatment negligence pursuant to England's Civil Liberties Act of 1976. Albeit, according to the holding in *McKay* and *Another v Essex Area Health Authority,*[8] a child has no wrongful life claim against relevant doctors if a second child is conceived outside the *in vitro* fertilization clinic.

Unlike 46 states in the United States, The French Supreme Court of Appeal allotted compensation to a child in a wrongful life claim on November 17th, 2000 in *Nicolas Perruche*[9] on the grounds that he was "born at all." Never before has it been deemed that the birth of a child with disabilities is wrong. Like in the United States, French Courts were not certain how to adjudicate compensation regarding a person's existence.[10] After Perruche was compensated, there were protesters who protested against wrongful life claims which lead to France passing Article I of the Patients' Rights and Quality of Care Act on March 4th, 2002 which prohibits wrongful life and wrongful birth action.[11]

## V. Pennsylvania Law

In Pennsylvania, wrongful birth and wrongful life action is barred by law pursuant to Act 47 of 1988 which amended Title 42 of the Pennsylvania Consolidated Statutes. Thereunder, Pennsylvania enacted statute 42 Pa.C.S.A. § 8305(a)-(b) thereinafter that prohibited wrongful birth and wrongful life action.

> *"(a) Wrongful birth.--There shall be no cause of action or award of damages on behalf of any person based on a claim that, but for an act or omission of the defendant, a person once conceived would not or should not have been born…"*
> *"(b) Wrongful life.--There shall be no cause of action on behalf of any person based on a claim of that person that, but for an act or omission of the defendant, the person would not have been conceived or, once conceived, would or should have been aborted…"*

Pennsylvania passed another statute, Title 42 Pa.C.S.A. § 8306, thereinafter that also affected wrongful birth and wrongful life given it lessened defenses against injuries sustained *in utero*.

> *"Where a person has, by reason of wrongful act or negligence of another, sustained injury while in utero, it shall not be a defense to any action brought to recover damages for the injury, or a factor in mitigation of damages, that the person could or should have been aborted."*

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[8] *McKay and Another v Essex Area Health Authority* [1982] 2 ALL E R 771, (C A)
[9] Cour de cassation, Nicolas Perruche 1 and 2 (26 March 1996, D. 1997, Jur. P. 35, 17 November 2000, D. 2001 Jur. P. 332)
[10] Harrant, V., & Vaillant, N. Compensation and wrongful life. *Journal of Legal Economics*.
[11] Manaouil, C., Gignon, M., & Jarde, O. (2012). 10 years of controversy, twists and turns in the Perruche wrongful life claim: compensation for children born with a disability in France. *Med Law*.

*Sernovitz v. Dershaw*[12] challenged the constitutionality of Act 47 on the grounds that: the Act's original purpose was changed during its passage through the General Assembly, violating Article III Section I; it contained more than one subject, a breach of Article III, Section III; and it was not considered on three days in each House in its final form, therefore not conforming with Article III, Section IV.[13] Though the plaintiffs could not depict what the single subject of Act 47 was, plaintiffs allege that Section 8305 was distinct from the single subject in Act 47 thus, plaintiffs asked the court to invalidate Section 8305 and sever it from Act 47.

The Common Pleas Court dismissed the complaint because they held that the act complied with Article III of the Pennsylvania Constitution therefore, wrongful birth and wrongful life action is barred by Section 8305. Sernovitz appealed to the Superior Court who reversed the decision because it violated the single subject rule. The case went on to the Supreme Court who decided the Superior Court's decision to sever the Section 8305 from Act 47 could not be sustained.[14]

## VI. Conclusion

The legal remedies of wrongful birth and wrongful life, are and will remain, controversial. At present, the remedies depend on which legislatures and courts have control. Jurisdictions are divided in recognizing the remedies of wrongful birth and wrongful life, as they invoke issues of religious principles, morals, and rights of privacy. A clear future path for these remedies is far from certain.

[12] *Sernovitz v. Dershaw*, 633 Pa. 641, 127 A.3d 783 (2015)
[13] PA. CONST. art. III, §§1, 3, 4
[14] Mr. Chief Justice Saylor (2015). Opinion. *Sernovitz v. Dershaw*.

# UNDERSTANDING YOUR FREEDOM OF SPEECH

*Hannah Dewey*[*]

THE FREEDOM OF SPEECH IS PROVIDED TO CITIZENS OF THE UNITED STATES OF AMERICA IN THE FIRST AMENDMENT OF THE FEDERAL CONSTITUTION AND IS ALSO PROVIDED FOR BY THE STATE CONSTITUTION, BUT MANY DO NOT FULLY UNDERSTAND WHAT THIS RIGHT TRULY GRANTS THEM. WHETHER IT IS A LACK OF EDUCATION OR MERELY A MISUNDERSTANDING OF THE FIRST AMENDMENT, MANY AMERICANS SEEM CONFUSED ON WHAT ONE OF THEIR FUNDAMENTAL RIGHTS IS AND HOW IT AFFECTS THEIR LIVES. THE PURPOSE OF THIS ARTICLE IS TO INFORM PEOPLE ON WHAT FREEDOM OF SPEECH IS AND WHAT IT PROTECTS.

## I. WHAT IS "FREE SPEECH"?

### *The Definition*

1. What exactly is "free speech"?

   It seems a simple enough concept but many may still find it hard to truly understand, especially when speech that they may find inappropriate is protected under this right. The United States Constitution grants us the right to free speech in the First Amendment by stating, "Congress shall make no law… abridging the freedom of

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She has attended multiple academic institutions due to personal and family reasons. As a freshman at Viterbo University in La Crosse, Wisconsin, she played collegiate volleyball on the Junior Varsity team while also taking honors courses. She then transferred to Western Technical College, also in La Crosse, Wisconsin, but only spent a semester there before moving to the Northern third of the state and attending the Lac Courte Oreilles Ojibwe Community College near Hayward, Wisconsin, for a semester, where she learned about the Ojibwe culture. In the Summer of 2016 she made the decision to attend Clarion University of Pennsylvania while finishing her degree.

She has maintained a high QPA over her years in college and maintained a 4.0 QPA over the course of her junior year while taking on a full course load of 18 credits each semester and is currently working hard to ensure that she maintains her 4.0 average. She is also a member of the National Society of Leadership and Success, the nation's largest leadership honor society.

speech…"[1] This means that the federal government of the United States of America cannot inhibit your ability to speak about subjects by making certain speech illegal, although there are exceptions that will be addressed later on in this article.

2. What about the Pennsylvania State Constitution?

The Pennsylvania State Constitution discusses the freedom of speech in Article 1, Section 7 where it states, "The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty." This follows along with the Federal Constitution by making it so the government cannot regulate speech, with some exceptions. These exceptions are provided for in the section of the text that states, "…being responsible for the abuse of that liberty."[2]

## II. The Exceptions to the Rule

### *What is and is not protected by the Freedom of Speech?*[3]

1. What is protected by the Freedom of Speech?

The Freedom of Speech, granted to us by the United States Constitution, gives citizens the right not to speak (specifically, the right not to salute the flag)[4], for students to wear black armbands in school to protest a war[5], to use certain offensive words and phrases to convey political messages[6], to contribute money (under certain circumstances) to political campaigns[7], to advertise commercial products and professional services (with some restrictions)[8], and to engage in symbolic speech (e.g. burning the flag in protest)[9].

In Brandenberg v Ohio, the Supreme Court of the United States ruled that Ohio's criminal syndicalism law, which prohibited the advocating of "crime, sabotage, violence, or unlawful methods of terrorism as a means

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[1] U.S. Const. amend. I

[2] PA Const. art. 1, § 7

[3] This section's contents were derived from: What Does Free Speech Mean? (n.d.). Retrieved November 16, 2017, from http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does

[4] West Virginia Board of Education v Barnett, 319 U.S. 624 (1943)

[5] Tinker v Des Moines, 393 U.S. 503 (1969)

[6] Cohen v California, 403 U.S. 15 (1971)

[7] Buckley v Valeo, 424 U.S. 1 (1976)

[8] Virginia Board of Pharmacy v Virginia Consumer Council, 425 U.S. 748 (1976); Bates v State Bar of Arizona, 433 U.S. 350 (1977)

[9] Texas v Johnson, 491 U.S. 397 (1989); United States v Eichman, 496 U.S. 310 (1990)

of accomplishing industrial or political reform" and assembling "with any society, group, or assemblage or persons formed to teach or advocate the doctrines of criminal syndicalism", was unconstitutional on the basis that speech can only be prohibited if it is "directed at inciting or producing imminent lawless action" and it is "likely to incite or produce such action"[10]. This law made it illegal to advocate and teach doctrines while not determining whether or not that advocacy or teaching would incite any imminent lawless action. The decision in *Brandenburg v Ohio* affirmed Brandenburg's right to free speech, even though what he said may seem inappropriate or bigoted. Brandenburg was a leader of the Ku Klux Klan and he spoke about his group taking possible "revengeance" against certain minority groups at a rally where he was later arrested under Ohio's criminal syndicalism law[11].

2. What is not protected by the Freedom of Speech?

There are a few exceptions to the right of Free Speech that the United States Constitution grants us. These exceptions include speech that incites actions that would harm others[12], the making or distribution of obscene materials[13], the burning of draft cards as an anti-war protest[14], permitting students to print articles in a school newspaper over the objections of the school administration[15], students making an obscene speech at a school-sponsored event[16], and students advocating illegal drug use at a school-sponsored event[17].

## CONCLUSION

The Freedom of Speech is one of the fundamental rights that the United States Constitution grants us and yet it is one of the most misunderstood rights by the majority of United States citizens. Hopefully this article educated you on what your Freedom of Speech is, on both a federal and state level, and what is and is not protected by the Freedom of Speech so that you may better understand what rights you have as citizen of the United States of America.

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[10] Brandenberg v Ohio 395 U.S. 444 (1969)

[11] Brandenburg v. Ohio. (n.d.). *Oyez*. Retrieved November 10, 2017, from https://www.oyez.org/cases/1968/492

[12] Schenck v United States, 248 U.S. 47 (1919)

[13] Roth v United States, 354 U.S. 476 (1957)

[14] United States v O'Brien, 391 U.S. 367 (1968)

[15] Hazelwood School District v Kuhlmeier, 484 U.S. 269 (1988)

[16] Bethel School District #43 v Fraser, 478 U.S. 675 (1986)

[17] Morse v Frederick 551 U.S. 393 (2007)

THE OIL WAR OF 1872

By

Frank Shepard

The Oil War of 1872. It was a time when the people of the Oil Creek Valley stood together and proved that ordinary people could defeat the powerful and wealthy few. The Oil Region was strewn with wooden derricks, shops supporting the industry, and small refineries. The railroads were the only way to get oil, crude or refined, to market. The Pennsylvania Legislature, at the behest of Tom Scott of the Pennsylvania Railroad, forbade the building of pipelines.

John D. Rockefeller saw the producer's Achilles heel. If he could control the price of transport he could own the oil industry. A Pennsylvania corporation was formed, The South Improvement Company. The company entered into contracts with the major railroads and Rockefeller's Cleveland refineries. By the contract's terms 45% of all oil would be shipped by the PA Railroad, 27.5% on both the Erie Railroad and the New York Central. Oil then sold for about three dollars a barrel.

On February 26, 1872 the first volley in the war was fired. The cost of shipment from Oil City to New York City refineries went up to $2.56 per barrel for oil not owned by Standard or not going to a Standard Refinery. It was an additional thirty-six cents a barrel for refined product. The additional kicker in this was that Standard received a rebate of $1.06 per barrel for every non-Standard Oil barrel shipped. Standard Oil shipping costs were $1.50 per barrel and with the rebate it could be as low as forty-four cents per barrel. From the Valley to Cleveland was double the rate for independents.

The independent Cleveland Refiners gave up. Of the twenty-six independent refineries in Cleveland, twenty-one sold out to Rockefeller's Standard Oil immediately after the rate hikes went into effect. In the Oil Creek Valley surrender was not a consideration. Meetings were held in Shamburg, Tidioute, and Titusville, Pennsylvania. Three thousand protesters hit the streets of Titusville. There were torch lit parades and bands marching on the streets. In the crowded bars the whiskey flowed and the voices were raised. In the end no plan of action was created, the turnout was simply an expression of anger.

It would take more than rage for the people of the Oil Creek Valley to defeat the great robber barons of the era: Jay Gould of the Erie Railroad, Commodore Vanderbilt of the New York Central, Tom Scott of the Pennsylvania Railroad, and John D Rockefeller of Standard Oil. Out of this turmoil four leaders arose. William Hasson, Jacob Vandergrift, John Archbold, and perhaps most importantly, Coleman E. Bishop editor of the newly formed Oil City Derrick. Eleven railroad cars full of people from all over the oil region arrived in Oil City for a meeting in Love's Opera House at the top of Center Street. At this meeting the oil workers and producers of the region agreed to form the Petroleum Producer's Union at the behest of Hasson, Vandergrift, and Archibald. They convinced the producers of the region to band together and refuse to sell to any Standard Oil refinery or to ship on the Erie, New York Central, or Pennsylvania Railroad. They agreed to drill no new wells for sixty days and to not pump oil on Sundays.

The oil they did produce was to be stored and sold through the Producer's Union only. The oil fields were divided into sixteen regions with a committee selected in each region to store and sell the crude. "First, to the local refiners; second, to the agents of the refiners located in distant cities, as may be

designated by the executive committee; and third, to such shippers, dealers, and exporters as may be named by the executive committee…"[1]

All the while "[w]ielding his literary cudgel with an inspiring hand, Coleman E. Bishop turned the battle into a moral crusade against commercial sin."[2] The Derrick became the glue that held the people together, branding the South Improvement Company as the Forty Thieves and publishing daily a black list of people and companies involved. Oil buyers descended on the region offering more than market price and they were all turned down. The embargo was so successful that the Cleveland refineries were shut down.

The Petroleum Producer's Union also appealed to the Pennsylvania Legislature. A petition signed by five thousand people of the Oil Creek Valley was sent to the Pennsylvania Legislature demanding an end to the oil pipeline monopoly created by the Pipeline Act of 1865. Other members of the Producer's Union met with President Grant.

The producers' wanted to get their refined product to the large cities on the east coast and crude to large Kerosene refineries in New York City and Philadelphia without being gouged by the South Improvement Company. However, if the independents were expecting help from their elected representatives they were disappointed. In legislation almost as obnoxious as Pennsylvania's Gas Act of 2012 Harrisburg blocked the building of pipelines that would compete with the Pennsylvania Railroad. No pipeline was allowed to be constructed with the intention of crossing state lines. Additionally all oil bound for Philadelphia, New York, or Baltimore had to give preference to the Pennsylvania Railroad "…at the same rate of transportation." As their predecessors would do in 2012 the elected representatives voted as directed by lobbyists and against the people.

But the producers of the Oil Creek Valley were winning anyway. The Cleveland refineries were shutting down for loss of crude and the tank cars of the railroads were sitting idle. The refineries of New York sent representatives to Oil City to meet with the Petroleum Producer's Union and it became clear that the resolve of the railroads was weakening. From March eighteenth to the twenty-fifth representatives of the union met with railroad executives in New York City. John D Rockefeller and Peter Watson of Standard Oil came to the meeting. The producers refused to allow them to enter and they were ushered away.

In the end the railroads caved. They agreed to charge the same transportation rates to independents as they charged Standard Oil. They had done it. The independent producers had defeated the most powerful and well connected wealth in the United States. Unfortunately, their victory was to be short lived. The Panic of 1873, known as the Great Depression until a worse one hit in 1929, greatly reduced the demand for oil. The leaders of the independent Producer's Union, except William Hasson, would sell out to Standard Oil. John Archbold would eventually become Vice-President of Standard Oil. Jacob Vandergrift almost immediately sold his Imperial Refinery in the Siverly area of Oil City to Standard and would eventually be indicted for conspiracy, along with John D Rockefeller and a few others, by a state Grand Jury held in Clarion, PA.

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[1] Contract forming the Petroleum Producer's Union. Found at Appendix 8, *The History of Standard Oil,* Ida Tarbell, McClure, Phillips and Company, 1904

[2] *Twenty-nine Hectic Days: Public Opinion and the Oil War of 1872*, Harold Helfman, Pennsylvania History: A Journal of Mid-Atlantic Studies, Vol 17, No. 2 (April 1950) page 128

Coleman E Bishop soon ended his relationship with the Oil City Derrick which under his leadership was"…one of the most vigorous, witty, and daring newspapers in the country..."[3] But there was a time, there was a day, when the weak defeated the mighty.

[3] The History of Standard Oil, Ida Tarbell, McClure, Phillips and Company, 1904, chapter 3

# Acknowledgments

We wish to thank the Barbara Morgan Harvey Center for The Study of Oil Heritage for funding the publication of this Journal.

The Center is located in Suhr Library on Clarion University's Venango campus. It contains a fascinating collection of old photographs and texts concerning oil heritage. The center supports a lecture series highlighting the history of petroleum in our area. A few of the lectures are available to view at the Center's web site: www.clarion.edu/harveycenter.

In recognition of the Barbara Morgan Harvey Center for the Study of Oil Heritage and their support for this journal, each edition of the Clarion University Law Journal will contain an article on the history of the oil region of Western Pennsylvania.

*The front cover is a picture of the Clarion County Court House. It was constructed between 1883 and 1885 and sits on the site of the first two courthouses which were destroyed by fire.*

*The back cover is a picture of the train station at Petroleum Centre, Pa. in what is now Oil Creek State Park. Petroleum Center was a company town started by the Central Petroleum Company. It quickly became known as the wildest town in the oil region filled with saloons and houses of prostitution. There was no law enforcement other than mob rule. One night a floating brothel came down Oil Creek and docked in Rouseville, Pa. In the middle of the night people of the town cut the barge lose. The inhabitants and their customers soon found themselves floating miles away on the Allegheny River. Such things were to stay largely in Petroleum Centre.*

*Today a passenger train runs from the Petroleum Centre Station through the sites of the old ghost towns along Oil Creek, past Drake Well, to Titusville, Pa. On select days tours of Petroleum Centre by those in period costume are included with the train ride.*

*Please forward any comments to shepard@clarion.edu*


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