Foreword

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FOREWORD

Twenty years from now, we may finally discover the technology to manipulate the genetic materials that encode violence, prejudice and greed. These undesirable traits could be removed, and DNA chains could be rewoven into cells that have a propensity for balancing the political, social and economic needs of all people. However, science may transgress the power that makes humans unique and diverse. Just as it is true today, legal remedies may fall short of meeting the needs of individuals who are challenged by life circumstances. Legal, governmental, and private remedies must be scrutinized today, and always, in the absence of effective means to stop and address injustices for all people.

The authors in Volume XXI of the Buffalo Public Interest Law Journal examine public interest issues that deal with law and society. They challenge public service provider systems and discuss in-depth how politics, demographic changes, new biotechnology, and evolving interpretations of our laws create problems that affect the delivery of services to those most in need. Some critical questions that are addressed in this issue include whether agencies serving victims of domestic abuse are providing services in a manner not shaped by bias or private agenda, and whether cloning is a constitutionally permissible expression of individual rights. A model of strict scrutiny suggesting an alternative and more discreet review is also examined, as well as issues like third party standing and litigation alternatives available to public interest groups.

The first article in this issue examines how the lines between public and private boundaries for health care and its funding are blurred. In “Changing Boundaries: Child Abuse, Public Health, and Separation of Church and State,” authors Brian Gran and Laurel Gaddie provide a critical overview of child abuse as a public health issue and how governmental responsibility is being delegated and administered by private agencies. The authors examine the constitutionality of public
funding for private service providers, who may have other religious agendas under the Establishment Clause and separation of church and state. Programs such as Charitable Choice, a faith-based initiative promoted by the Bush administration, would channel tax dollars into private religious organizations that may require participation in worship before services are provided. Congress clearly has the power to tax private citizens, but in no way did the framers intend to promote religious doctrine through direct taxpayer support.

In the second article, author Jenny Rivera examines domestic violence services for Latinas in “The Availability of Domestic Violence Services for Latinas in New York State: Phase II Investigation.” In this article, Rivera updates the findings of her Phase I report, which indicates that providers of services to Latina survivors of domestic abuse were not responding to the high demand for service needs. Further, this Phase II report identifies the continuing, and often unaddressed, issues of the boundaries and obstacles Latinas are expected to overcome in seeking services. For instance, when Latinas seek the assistance of domestic violence service providers, they are frequently confronted with the additional challenges of language and cultural barriers.

Rivera contends that these barriers prevent Latinas from effectively participating in programs offered by domestic violence agencies. Addressing the needs of Latinas and members of other underserved communities extends beyond language and cultural barriers. The gap in services therefore needs to be bridged by enlarging the scope from lack of effective services for Latinas to better education and participation of the community at large.

In the third article, “Selective Strict Scrutiny – A New Way to Use Suspect Classifications,” author Bruce Comly French examines an alternative approach to using suspect classifications. French analyzes a proposed model of suspect classifications that would allow for strict scrutiny in some discrete situations, while concurrently relying upon the operation of a majority political process. Although French contends that this model would better address the current social and political climate where minorities can protect themselves in some jurisdictions, he also believes that
their interests should be evaluated under the strict scrutiny standard in settings that are hostile to them. The author suggests that the voting pool, which would enhance the power of discrete and insular minorities, has been diluted by those already disenfranchised by discrimination. However, the same injustices that place more African-American men in the pool of disenfranchised voters compared to other minority groups may not be addressed by judicial intervention alone.

The next article deals with whether a ban on cloning would be a violation of the constitutional right to privacy. In “Human Cloning: Beyond the Realm of the Constitutional Right to Procreative Liberty,” author Maureen McBrien analyzes the constitutional, social and moral issues of cloning as a reproductive option. Cloning may have moved from the big screen science fiction entertainment to current news with the alleged birth of a cloned human being, but cloning for reproductive purposes may break natural and political laws. McBrien asserts that cloning is more akin to asexual reproduction; that it is replication and not reproduction. If it is indeed replication, then perhaps human clones will be considered another species and the constitutionality of cloning would be moot.

The first note, “The Role and Rejection of a Claim for Third Party Standing in the Prison System,” examines the Supreme Court’s development and application of a three-prong test for obtaining third-party standing. Author Michael Bui begins his analysis of this issue by measuring the efficacy of the three-prong analysis when applied to federal cases on topic. When it is applied to the federal prison system, a prison physician can bring suit against the prison system on behalf of the prisoners for not providing adequate health care, mainly because of the special physician-patient relationship similar to the one between lawyer and client. Bui contends that third-party standing should be tempered by a reasonableness standard to eliminate the chance of coercion from becoming a factor. He also discusses the
significance of public interest in third party standing in light of the prison system example.

Finally, author Jaclyn Wanemaker examines public interest activism and the efficacy of different strategic and tactical methods used in furthering the goals of a public interest group. In “Public Interest Groups’ Litigation Alternatives,” Wanemaker analyzes different approaches to litigation strategies utilized by public interest groups such as the efficacy of amicus curiae briefs, personal contacts and other methods of solicitation. These multiple litigation strategies may be more important than ever for the current peace movement against the war on Iraq. Grassroots organization efforts culminated in an enormous turnout in New York City for the February 2003 rally against the war on Iraq. However, numerous participants reported being physically restricted by blockades and police who prevented their participation in the rally. Police and barricades will not kill grassroots movements because alternative litigation methods still serve as the foundation for successful public interest activism.

If the political machine threatens the efficacy of street mobilization, then perhaps litigation will be more effective at landing a direct hit before bombs destroy thousands of innocent lives that can never be replicated.

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