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Defining Family: Gays, Lesbians and the Meaning of Family (Program)

Institute of Bill of Rights Law at the William & Mary Law School

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DEFINING FAMILY



... and justice for all?

GAYS, LESBIANS AND THE MEANING OF FAMILY

WITH KEYNOTE SPEAKER

CONGRESSMAN BARNEY FRANK

THE INSTITUTE OF BILL OF RIGHTS LAW STUDENT SYMPOSIUM
COMMONWEALTH AUDITORIUM, UNIVERSITY CENTER
6 TO 9 P.M., THURSDAY, MARCH 24, 1994 • FREE ADMISSION

DEFINING FAMILY

March 24, 1994

6:00 p.m. WELCOME

6:05 MOOT COURT EXERCISE

THE ADVOCATES:

for the petitioner:

Jim Cady
Kenya Parrish

for the respondent:

Wendall Pai
Ramsey Taylor

THE JUSTICES:

Beatrice Dohrn, Esq., Legal Director, Lambda Legal Defense
Neal Devins, Professor of Law, College of William and Mary
Kay Kindred, Deputy Director, the Institute of Bill of Rights Law, College of William and Mary
Gretchen Knoblauch, 2L
Mike Cox, 2L

SIMPSON v. SIMPSON: STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Moot Court Presentation involves a custody battle between a gay father and a straight mother, set in the fictional state of Shadwell. In Shadwell, custody is awarded based on the best interests of the child. The arguments focus on how the father's homosexuality affects his fitness as a parent and whether he has any constitutional challenges to the use of his sexual orientation as a factor in the custody determination. The trial court applied a multi-factor analysis to determine the best interests of the child, and granted custody to Mrs. Simpson, citing Mr. Simpson's homosexuality as an overriding factor. The appellate court affirmed, and ruled that a parent's homosexuality is a *per se* bar to his or her fitness for custody. There was a vigorous dissent at the appellate level. The case now appears before the Supreme Court of Shadwell.

7:00 p.m. Ten minute break.

GAYS, LESBIANS, AND THE MEANING OF FAMILY

7:10 p.m. KEYNOTE ADDRESS
The Honorable Barney Frank, member of the U.S. House of Representatives

7:45 p.m. PANEL DISCUSSION AND TOWN MEETING

Joseph Broadus, Professor of Law,
George Mason University

Beatrice Dohrn, Legal Director,
Lambda Legal Defense

Dr. David Flaks, Director of the Employee's Assistance Program,
St. Francis Medical Center, Trenton, New Jersey

Stephen Pershing, Legal Director,
ACLU Virginia

Herbert Titus, Editor,
The Forecast

Moderator: Rodney A. Smolla, Arthur B. Hanson Professor of Law and
Director, Institute of Bill of Rights Law

9:00 p.m. Closing

The Student Division of the Institute of Bill of Rights Law was established to foster dialogue and promote research among law students. An integral part of the Institute, the Student Division enhances the educational opportunities of students and promotes thoughtful resolution of political and social problems.

The Institute of Bill of Rights Law was established in 1982 at the College of William and Mary, Marshall-Wythe School of Law, to support research and education on the Constitution and Bill of Rights. The programs and publications of the Institute are designed to enrich the educational experience of law students, broaden public knowledge, promote scholarly research, and facilitate the creative public policy solutions to conflicts involving constitutional issues.

The William and Mary Bill of Rights Journal is a scholarly journal of professional and student articles. The *Journal* is dedicated to the exploration of Constitutional issues, with a focus on civil and individual liberties.



The following hypotheticals have been provided to the panelists as focal points for discussion.

case 1:
BRADY DECHENE
V.
CHARLOTTE ROBERTS DECHENE, AND
BETSY FISK
AND
CHARLOTTE ROBERTS DECHENE, AND
BETSY FISK
V.
STATE OF JEFFERSON

Christie is an 11-year-old girl who lives with her father, Brady, in the middle of downtown Jefferson City. She visits her mother, Charlotte, three weekends a month. Her brother, Craig, is five year old, and lives with Charlotte.

Charlotte is a 33-year old entrepreneur who has independently created a tee-shirt company and a clothing store. She sold both of these businesses for a substantial profit and is now trying to start a grocery delivery company. She married Brady when she was 22, and just out of college. She lives in a 6-bedroom house with Betsy, a successful children's book author, who won the 1991 Newberry award for her book, Timmy has Two Daddies. Betsy has three children of her own: Greg, 14, and Suzie, 9, from a previous marriage, and Billy, 3, conceived through artificial insemination. Charlotte also has another son, Craig, who was conceived shortly before her divorce from Brady.

Brady is a 29-year old bartender who has worked the 3-11 shift at local restaurant/nightclub for the last 12 years. He married Charlotte when he was 18 and fresh out of high school. He has lived alone since their divorce 5 years ago.

Charlotte and Betsy wish to get married, and are suing the state for a marriage license. Furthermore, Betsy is attempting to adopt Christie and Craig (with Charlotte's consent). Charlotte and Betsy wish to terminate Brady's parental rights because a psychiatrist has testified that Brady has physically abused Christie. They believe that the adoption would be in the best interests of both children. It has been stipulated by the parties that but for the fact of Charlotte and Betsy's lesbian relationship, they would make ideal parents.

Brady is suing to block Charlotte's adoption of Christie and Craig because Charlotte, as a lesbian, is an unfit mother. In furtherance of his claim, he additionally asserts that Charlotte's relationship with Betsy threatens Christie and Craig's well-being, and that because of Betsy's work as an activist, she is independently a bad influence on both Children. He is also suing for sole custody of both children.

Should Charlotte and Betsy be allowed to marry? Is the marriage in the best interests of their children?

Should Betsy be allowed to adopt Christie and Craig?

Should Brady get custody of Christie and Craig?

What are the interests of the State of Jefferson in these outcomes?

case 2:
CATHY JOHNSON
v.
GARRETT MORSE

Matthew is a fifteen year old boy who lives with his uncle, Garrett. He has a younger sister, Beth, who is 6 and also lives with Garrett. Their father, Garrett's brother, died four and a half years ago while traveling overseas. Michael is a member of the county gay youth group, and has told his friends and family that he is gay.

Cathy, the children's mother, is a 42-year old saleswoman for a major hospital supply company. After the death of her husband, Cathy had a nervous breakdown and was hospitalized for a few months. The children have been living with Garrett since that time. While recovering from her breakdown and rebuilding her career, Cathy visited Matthew and Beth frequently and they often stayed at her home. She is often out of town on business, and frequently must work odd hours. She owns a three-bedroom townhouse in a residential neighborhood not far from Garrett's home.

Cathy has just accepted a transfer to another city in order to get a raise. Since her husband's death, Cathy has disclosed her lesbianism to the rest of the family. She has, however, not had a relationship with another woman since before her marriage.

Garrett is 46 and is the manager of a large department store in the Lamb County Mall. To a large extent, he is able to set his own hours. He is married to Helen, a 43 year old Methodist minister. Helen is a first-generation Korean-American; she and Garrett have 4 children: Michael, 19, Leigh-Anne, 14, John, 8, and an adopted daughter, Kim, a Filipino-American, age 3.

Cathy wants to take Matthew and Beth with her when she moves. She claims that her life is now back in order and that the children would be better off now living with their mother.

Garrett is suing to adopt Matthew and Beth (but is willing to grant liberal visitation rights for Cathy), because he feels that Cathy, as a lesbian, is unfit as a parent. He has suggested that Matthew, in particular, has been influenced by Cathy to say that he is gay, and that Matthew might return to heterosexuality if he were to live with Garrett and Helen permanently. He further asserts that because Cathy is often not at home, and will have to relocate the children in order to pursue her job prospects, that the children would be better off with him.

Cathy is fighting Garrett's action. With regard to Matthew in particular she says that as a lesbian, she is uniquely qualified help him with the difficulties of growing up gay.

Should Garrett be allowed to adopt Matthew and Beth?

Did the sexual orientation of either Cathy or Matthew play a role in your decision?

What are the interests of the State of Jefferson here?

BIOGRAPHICAL INFORMATION

Jayne W. Barnard is the Acting Associate Dean for Academic Affairs and professor of Law at the College of William and Mary. Dean Barnard specializes in corporate law, securities law and bankruptcy. She also periodically teaches a course called Law and Social Change. She received her B.S. from Illinois and her J.D. from Chicago. Prior to joining the William and Mary faculty in 1985, Dean Barnard practiced law in Chicago for ten years.

Joseph E. Broadus is a professor of law at George Mason University School of Law. Professor Broadus received his B.A. from Florida International, and his M.A. and J.D. from Florida State. Prior to joining the faculty of George Mason in 1987, he clerked for the Honorable J.W. Hatchett, United States Court of Appeals for the 5th Circuit and practiced law in Florida.

Neal E. Devins is a professor of law and lecturer in government at the College of William and Mary. Professor Devins received his A.B. from Georgetown and his J.D. from Vanderbilt. Prior to joining the William and Mary faculty in 1987, he was Assistant General Counsel for the United States Commission on Civil Rights, and Project Director for the Institute for Public Policy Studies at Vanderbilt. Professor Devins is co-author of *Political Dynamics of Constitutional Law* and editor of and contributor to *Public Values, Private Schools* (Stanford Series on Education and Policy) and *Readings in Institutional Dynamics*. He is also the author of numerous other publications, including articles in the *Columbia Law Review*, the *Stanford Law Review*, the *Michigan Law Review* and the *California Law Review*.

Beatrice Dohrn, Esq. is the legal director of Lambda Legal Defense and Education Fund. She received her B.A. from Bennington College and her J.D. from Rutgers. As the Legal Director of Lambda, Ms. Dohrn administers and directs the national legal program and serves as lead counsel for many of Lambda's cases. Prior to her work at Lambda, Ms. Dohrn served as a staff attorney and later a supervising attorney at the Legal Aid Society in New York City. While at Legal Aid, she was involved with cases that included federal class action litigation concerning the constitutional rights of prisoners, the rights of HIV infected prisoners, and housing court eviction proceedings.

David Flaks is the director of the Employee Assistance Program at St. Francis Medical Center in Trenton, New Jersey. Dr. Flaks received his J.D. from Cornell Law School and a doctorate in psychology from Widener University. Prior to joining the St. Francis Medical Center, he clerked for the Honorable Aubrey E. Robinson, Jr. of the U.S. District Court in Washington, D.C. Dr. Flaks has published and presented in the areas of homophobia and lesbian and gay parenting.

The Honorable Barney Frank is now serving in his seventh term in the United States House of Representatives. Prior to entering Congress in 1981, Congressman Frank served in state and local government. In Congress, Rep. Frank chairs the Subcommittee on International Development, Finance, Trade and Monetary Policy of the Committee on Banking, Finance and Urban Affairs. He is also a member of the Judiciary Committee and the Budget Committee.

Kay P. Kindred is the Deputy Director of the Institute Bill of Rights Law, a lecturer at the College of William and Mary, Marshall-Wythe School of Law, and a member of the adjunct faculty of the College's School of Education. Professor Kindred received her A.B. from Duke and her J.D. from Columbia. After practicing law in Connecticut, she joined the Office of General Counsel at Old Dominion University, before coming to the Institute of Bill of Rights Law at William and Mary. Beginning in fall of 1994 she will join the Marshall-Wythe law faculty as an Assistant Professor. Professor Kindred has recently published an article, "When First Amendment Values and Competition Policy Collide: Resolving the Dilemma of Mixed-Motive Boycotts" in the *Arizona Law Review*.

Stephen Pershing has been legal director of the American Civil Liberties Union (ACLU) of Virginia since 1989. He is one of Sharon Bottoms' attorneys (a 23 year old Virginia woman whose 2 year old son was removed from her custody solely because of her lesbian sexual orientation). Mr. Pershing received his B.A. in English from Harvard and his J.D. from the University of Virginia. Prior to joining the ACLU, he clerked for the Honorable Julian Abele Cook, Jr. of the Federal District Court in Detroit. He has worked for a Ralph Nader watchdog group, a state attorney general's office, and the national ACLU legislative office in Washington. Mr. Pershing is co-author of a primer on voting rights litigation in the spring 1991 issue of the Virginia Trial Lawyers' Association Journal.

Rodney A. Smolla is the Arthur B. Hanson Professor of Constitutional Law at the College of William and Mary, Marshall-Wythe School of Law, and the Director of the Institute of Bill of Rights Law. Professor Smolla received his B.A. from Yale and his J.D. from Duke. Prior to joining the William and Mary faculty in 1988, he clerked for the Honorable Charles Clark, United States Court of Appeals for the Fifth Circuit, practiced in Chicago, and taught at DePaul, Illinois and Arkansas. Professor Smolla is the author of *Free Speech in an Open Society; Suing the Press: Libel, the Media and Power; Law of Defamation*; and *Jerry Falwell v. Larry Flynt: The First Amendment on Trial and Constitutional Law: Structure and Rights in Our Federal System* (with Banks and Braveman). He is the author of numerous other publications, including articles in the *Pennsylvania Law Review*, the *Stanford Law Review* and the *Duke Law Journal*.

Herbert Titus is the editor of the *Forecast*, a twice-monthly journal on law and public policy. A constitutional and common law scholar, Mr. Titus also serves several public interest organizations as a consultant on constitutional litigation and strategy. Mr. Titus graduated Phi Beta Kappa from the University of Oregon and received his J.D. from Harvard Law School. Mr. Titus has served as a trial attorney with the U.S. Department of Justice, and served from 1964 to 1979 as a professor of law at the state universities of Oklahoma, Colorado, and Oregon. In 1975, Mr. Titus worked for three years as a charter member of the law faculty at Oral Roberts University and then for eleven years as the founding Dean of the Schools of Law and Public Policy at Regent University.

The organizers of the Bill of Rights Student Symposium are Clay Batchelor, Peter Owen, Danny Reed, and Scott Drabenstadt.

The organizers would like to thank the *William and Mary Bill of Rights Journal*, the Colonial Williamsburg Foundation, Alternatives, the Young Democrats, and the Lesbian and Gay Law Association.

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