

The Center for Social Justice and Public Service
Announces the 2010 Women & Law Conference

The Power of Women's Stories II: Examining Women's Role in Law and the Legal System

Law schools began offering Women and Law courses in the early 1970s. Since that time, many textbooks have examined law through the lens of feminist legal theory. Women continue to feel the impact of changing legal developments in areas as disparate as violence against women, sexual harassment, discrimination at work, mothering and reproduction, families, women and the legal profession, education, and health. Yet scholars have often neglected the power of women's stories and the lessons these stories teach us about law and social change.

This conference focuses on the women whose lives led to these legal changes and who continue to inspire the need for further progress. It also celebrates *WOMEN AND THE LAW STORIES* (ELIZABETH M. SCHNEIDER & STEPHANIE M. WILDMAN, eds., Foundation Press) (forthcoming). Many panelists have contributed chapters to this volume.

8:00 a.m.

Buffet breakfast

8:30 a.m.

Welcome

Dean Donald J. Polden

Stephanie M. Wildman & Elizabeth M. Schneider

8:45 a.m. to 10:15 a.m.

**Panel I: Women: History, Identity, and
Standard of Review**

Nineteenth century laws revealed the role of women as different and inferior, viewing slave women as property and married women as the property of their husbands, losing their property & contract rights. The law contained examples of loss of women's legal identity and physical autonomy, controlling women through sexual norms. Women responded by contesting the separation of the so-called public and so-called private spheres and by the struggle for suffrage and basic recognition of membership in the democratic community. Throughout this period, a standard of review for sex-based practices evolved in the Supreme Court. This panel provides an in depth look at some key developments.

Angela Harris (Berkeley)

U. S. v. Cruikshank (co-author Rebecca Hall)

Historians often date early feminist history from the Seneca Falls Convention. That vision ignores the interconnection of racial justice and gender justice. *U.S. v. Cruikshank* is best known as a race case that arose in the context of terrorism directed at black men. This story details the brutal rapes of black woman who later came forward and testified before Congress in an effort to convince legislators to enact laws that would offer protection. Their Congressional victory was short-lived in the Reconstruction South; the Supreme Court gutted the law that their bravery engendered.

**Patricia Cain (Santa Clara)
& Jean Love (Santa Clara)**

In Re Marriage Cases

The California Supreme Court faced the question of whether it could constitutionally deny the protections, benefits, and obligations conferred by civil marriage to same sex couples. The drama of San Francisco Mayor Gavin Newsom's mandate that the clerks' office offer marriage licenses to same-sex couples and the stream of couples who sought the opportunity

spawned this litigation. In six cases, consolidated under the name *In Re Marriage cases*, the court examined the issue under the state constitution's promise of liberty, privacy, and equality. The story reviews California's "unique and supportive history with respect to gay rights."

Serena Mayeri (Penn)

Frontiero v. Richardson

Developing constitutional jurisprudence to combat sex discrimination and to promote equality presented a challenge to the modern U.S. Supreme Court. Early constitutional cases marked the development and recognition of equality for women. Prior to *Reed v. Reed* the U.S. Supreme Court had never found a sex-based classification to be unconstitutional. Beginning in the 1970s with *Reed v. Reed* and *Frontiero v. Richardson*, the Court for the first time changed course.

Respondent and Moderator: Catherine Sandoval (Santa Clara)

10:15 a.m. to 10:30 a.m. Break

10:30 a.m. to Noon Panel II: Women and Work

To be in the workplace is to enter a male-defined world. The workplace remains one site where the U.S. cultural schizophrenia about women can be both revealed and contested. Women roles as mothers, sexual targets, or "ladies" emerge against the background of the job site. This panel examines those roles as they encounter workplace norms and the legal responses to those encounters.

Martha Chamallas (Ohio State) *Price Waterhouse v. Hopkins*

Ann Hopkins was the only female associate being considered for partnership at Price Waterhouse. Partners viewed Ms. Hopkins very differently. To some she was "an outstanding professional' who had a 'deft touch,' a 'strong character, independence and integrity.'" To others she was "sometimes overly aggressive, unduly harsh, difficult to work with, and impatient with staff." One partner advised that plaintiff should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." The Supreme Court acknowledged the legal relevance of sex stereotyping, finding it present in this case.

Minna Kotkin (Brooklyn)

Diversity and Discrimination: A Look at Complex Bias

Increased diversity in workplace demographics suggests that frequently disparate treatment in fact may be rooted in intersectional or "complex" bias. Complex bias provides a counter-narrative to the currently in vogue characterization of workplace discrimination as "subtle" or "unconscious." Despite the common sense notion that the more "different" a worker is, the most likely she will encounter bias, empirical evidence shows that multiple claims—which may account for more than 50% of federal court discrimination actions—have even less chance of success than single claims. Courts need to pay more attention to social science research that delineates the nuanced stereotypes faced by complex bias claimants.

Stephanie M. Wildman (Santa Clara) *Cal. Fed. v. Guerra*

This case raised issues ranging from reproductive freedom in the context of pregnancy to the meaning of equality in the workplace. The *Cal Fed* case dramatically split the feminist legal community, with feminists disagreeing publicly about the meaning of workplace equality. The debate, often framed in terms of "equal" versus "special" treatment, scarred many long standing alliances and the issues still resonate today.

Respondent and Moderator: Deborah Moss-West (Santa Clara)

Noon to 12:15

Break: Box lunches available (or wait until lunch break)

12:15 p.m. to 1:15 p.m.

Introduction of Keynote Speaker: Marina Hsieh (Santa Clara)

Keynote: Michelle Oberman (Santa Clara)

“Hot Teen Sex” and the Government’s Struggle to Regulate Adolescent Sexuality: The Stories Behind the Story of *In re John Z.*

The renowned 2003 California Supreme Court case of *In re John Z.* commonly is taught to illustrate a woman’s right to withdraw her consent in the midst of a sexual act, thus transforming the act from sex to rape. In truth, the doctrinal point is uncontroversial, and John Z’s case is interesting only because it illustrates the way legal principles collide with messy facts in the real world of contested sexual interactions among acquaintances—particularly among adolescents. By interviewing the legal players involved in the prosecution of John Z., Professor Oberman is able to tell a fuller story about the case. She then uses this story to inform a meditation on common themes in adolescent sexual encounters, on the inevitability of cognitive bias among adults reviewing these cases, and on the personal as well as the political stakes in the struggle to regulate adolescent sexual interactions.

1:15 p.m. to 1:45 p.m.

Box lunches available and break

1:45 p.m. to 3:15 p.m. Panel III: Women: Health and Safety

Democracy requires that members of society to be able to participate in self-government. Some argue that requires the state to provide some modicum of well-being to its members in order to enable that participation. This panel focuses on women’s capacity to live a healthy and safe life and the role of law in enabling or hampering that aspiration.

Lisa Ikemoto (UC Davis)

Relf v. Weinberger

A doctor sterilized the Relf sisters, Mary Alice, age 12, and Minnie, age 14, without either their or their parents’ knowledge or consent. Sixteen year old Katie escaped by locking herself in her bedroom. The ensuing litigation, *Relf v. Weinberger*, highlighted the epidemic of federal involvement in involuntary sterilizations among minority, low-income, immigrant women, often living with disabilities. Exerting social control over minority women and girls of childbearing age had a long history that preceded eugenics as a movement to manipulate the human gene pool. But the case was also a product of its era, the 1970s period of retrenchment against the demonstrations and struggle for social change of the 1960s.

Sylvia Law (NYU)

Harris v. McRae

Roe v. Wade established a right of privacy for women in consultation with their physician to decide whether to terminate a pregnancy. *Harris v. McRae* raised the issue of whether that constitutional right would extend to poor women, who would fund their abortion through Medicaid. *Harris v. McRae* upheld the denial of funding for medically necessary abortions, excepting only those procedures which threatened the mother’s life. A woman’s freedom of choice carried with it no constitutional entitlement to the financial resources necessary to avail herself of the full range of protected choices.

Margalynne Armstrong (Santa Clara)

Planned Parenthood v. Casey

Casey marked a shift in privacy jurisprudence, making clear that personal autonomy should be protected from unwarranted state intrusion. The Supreme Court held that a state may enact legislation governing abortion if the regulation causes no “undue burden” to a woman’s liberty to terminate pregnancy prior to viability. The *Casey* plurality found only one unduly burdensome aspect of the Pennsylvania statute at issue, the spousal notification provision. The trial record’s inclusion of testimony regarding the impact of the notification requirement on abused women was instrumental in the Court’s ability to view spousal notification as an offense to a woman’s personal dignity and autonomy.

Zanita Fenton (Miami) Castle Rock v. Gonzales

Violence against women is a problem that advocates have long struggled to address using the courts and other vehicles. Unfortunately, Jessica Gonzales was unable to obtain redress in U.S. Courts for herself or for the murder of her three daughters for the state’s failure to protect. *Castle Rock v. Gonzalez* is much more than *Deshaney* redux. Nevertheless, *Castle Rock* does not adequately deal with concepts of property and their relationship to violence. It also discusses, but does not address, the state’s role in the history of violence against women nor the reasons that deference to police discretion is problematic in these cases. With this inability to get redress, Jessica continues to seek justice at the International level for human rights violations.

Respondent and Moderator: Martha Field (Harvard)

3:15 p.m. to 3:30 p.m. Break

3:30 p.m. to 5:00 p.m. Roundtable on Women in the Legal Profession and the Academy

From early cases seeking to integrate law firms, like *Blank v. Sullivan and Cromwell*, to modern issues of retention and advancement, women continue to contest their role in the legal profession and academy. Women who serve as judges face hurdles as well. Panelists will discuss their observations with each other and the audience.

Panelists include: Cynthia Grant Bowman (Cornell), Lynne Henderson (UNLV), Paula Monopoli (Maryland), and Stacy Leeds (Kansas).

Respondent and Moderator: Liz Schneider (Brooklyn)

5:00 p.m. Reception