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A NEWSLETTER ABOUT LAW AND DIVERSITY

Marriage Equality Gains Ground with Landmark Rulings

by Jodi L. Miller

This past June, the U.S. Supreme Court handed down two important decisions regarding marriage equality, giving the gay rights movement hard-fought victories.

Support for marriage equality is on the rise. According to a recent Pew Research Center poll, 51 percent of Americans favor same-sex marriage, which is up significantly from a 2009 poll when just 37 percent favored it. Even American Catholics support same-sex marriage by 54 percent, according to a Quinnipiac University Polling Institute survey released in March 2013.

By June 2013, 13 states and Washington, D.C. had legalized same-sex marriage either by legislative action, popular vote or through the courts. Twenty-nine states ban same-sex marriage outright, either by statute or in their state constitutions and seven states, including New Jersey, offer alternatives, such as civil unions or domestic partnerships in lieu of marriage (see sidebar for the status of same-sex marriage in New Jersey).

New Mexico is the only state that has no laws regarding same-sex marriage. It neither recognizes them nor prohibits them. In September 2013, the New Mexico Supreme Court agreed to hear a case that will likely decide whether same-sex marriage will become legal in the state. A hearing is scheduled for October 23rd.

Defending marriage?

The two cases the Court considered were *United States v. Windsor* and *Hollingsworth v. Perry*. The *Windsor* case involved Edith Windsor and Thea Spyer, a New York couple who had been together for more than 40 years and were legally married in Canada in 2007. Upon her death in 2009, Spyer left her entire estate to Windsor. When Windsor sought to claim the federal estate tax exemption available to surviving spouses, she was denied due to the federal Defense of Marriage Act (DOMA), which states that the term "spouse" only applies to marriage between a man and a woman. She was forced to pay more

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About Face—Military Changes Stance on Women in Combat

by Barbara Sheehan

Women have officially been part of the U.S. military since 1948 when President Truman signed the Women's Armed Services Integration Act. Unofficially, women have served their country during wartime since the Revolutionary War.

In modern times, U.S. servicewomen have typically been shut out of ground combat positions; however, that changed in January 2013 when military leaders ended the ban that kept women off the front lines and away from some of the most dangerous assignments. With the lift of this ban, women—who make up about 14 percent of U.S. armed forces—will now have a chance to serve in combat alongside men.

Even though women were officially restricted from certain combat assignments by the ban, the reality is that a number of servicewomen have supported combat battalions in Iraq and Afghanistan in many ways, including as drivers, medics and intelligence officers. In addition, women are also currently flying combat aircraft, such as helicopters and carrier-based Navy

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Race and the Death Penalty— What Does It Reveal About Our Criminal Justice System?

by Phyllis Raybin Emert

According to Amnesty International, an organization committed to ending human rights abuses, of the 198 countries in the world only 20 still carry out death penalty executions. In 2011, the top executioner was China, which killed more people than the rest of the world combined.

The United States comes in fifth on Amnesty International's list, preceded by Iran, Saudi Arabia and Iraq. Today, 32 states still allow capital punishment (New Jersey does not). According to the Death Penalty Information Center (DPIC), a Washington, D.C. non-profit organization that analyzes issues relating to capital punishment, 1,342 executions have been carried out in the United States between 1976 and August 2013. The South is responsible for more than 80 percent of all executions and Texas, with a little over 500, has put to death more people than any other state.

Most criminologists agree that the death penalty does not act as a deterrent to criminal activity. In October 2009, the Council of the American Law Institute (ALI), the organization that provided the Model Penal Code or the framework for today's capital punishment system, disavowed the structure it created. The concerns cited by ALI included the monetary expense of the death penalty, the risk of executing an innocent person and the fact that capital punishment is plagued by racial disparities.

First there was slavery…

In his article titled, "The Death Penalty and Racism," which appeared in *The American Interest* magazine, writer Charles Lane noted, "Between 1930 and 1967 (at which point executions stopped pending a decade-long Supreme Court overhaul of the death penalty), 54 percent of the 3,859 people put to death under civilian authority in the U.S. were African American."

In an article that appeared in Social Sciences Journal, Michael Fraser of Western Connecticut State University noted there is a deep-rooted connection between slavery, the dominance of whites in the South, the lynching of blacks, and the death penalty today. "The rise in the execution of African Americans," wrote Fraser, "is irrefutable proof of the racism inherent in the institution of capital punishment."

According to a study published by the Legal Defense Fund of the National Association for the Advancement of Colored People (NAACP), as of October 2009, America's death row houses 3,263 inmates. Of those inmates, 44.35 percent were white, while 55.63 percent were classified as non-white. Of those non-whites, 41.53 percent were African American. These statistics seem disproportionate when you consider that according to the U.S. Census Bureau in 2008, African Americans account for only 12.8 percent of the total population of the United States. According to writer Sophia Kerby of americanprogress.org, that is because "people of color continue to be disproportionately incarcerated, policed, and sentenced to death at significantly higher rates than their white counterparts."

In an interview for *Time* magazine, David Dow, a defense attorney in Texas and once a strong supporter of the death penalty, said, "Once I started doing the work, I became aware of the inequalities. I tell people that if you're going to commit murder, you want to be white, and you want to be wealthy–so that you can hire a first-class lawyer–and you want to kill a black person. And if [you are and do], the odds of your being sentenced to death are basically zero."

U.S. Supreme Court death penalty decisions

In the 1960s and 70s, the Legal Defense Fund of the NAACP led constitutional challenges alleging racial bias and the cruel and inhumane nature of the death penalty. These challenges resulted in the 1972 U.S. Supreme Court decision in *Furman v. Georgia*, in which three death penalty appeals were combined. Two African Americans were separately sentenced to death in the South for raping white women, and another African American received the death penalty after killing a white man in the course of a burglary that went wrong. In a 5 to 4 decision, essentially outlawing the death penalty, the U.S. Supreme Court ruled that capital punishment violated the Eighth and Fourteenth Amendments of the constitution because it was a cruel and unusual punishment.

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Lane noted in *The American Interest* magazine article that Justice William O. Douglas in *Furman* stated that "racial disparities were part of what made the death penalty 'cruel and unusual' under the 8th Amendment, and other justices alluded to race in their analyses of the penalty's arbitrariness."

In response to *Furman* and to eliminate discrimination and bias, the states passed laws dividing a criminal trial into two separate parts. The first part would be to determine guilt or innocence and the second part would be the sentencing phase, where juries would determine whether a defendant received life in prison or a possible death sentence. In the sentencing phase jurors are allowed to consider mitigating factors or a defendant's life experience, which could shed light on the circumstances surrounding the crime, while not excusing it. These factors could potentially indicate that a lesser sentence than death is warranted.

In 1976, the U.S. Supreme Court reinstated the death penalty with its 7 to 2 decision in *Gregg v. Georgia*. The Court ruled that the death penalty was no longer a cruel and inhumane punishment with the use of the dual system of trial and sentencing. Then in 1977, the U.S. Supreme Court's decision in *Coker v. Georgia* held that the death penalty for rape was unconstitutional if the victim was not killed.

An extensive study in the 1970s by Professor David Baldus of the University of Iowa analyzed more than 2000 cases of race and the death penalty in Georgia. Professor Baldus found a new racial pattern involving the race of the victim, but not necessarily the defendant. Adam Liptak of *The New York Times* wrote that the study "did not show that blacks were significantly more likely to be sentenced to death than whites. What the study found was that people accused of killing white victims were four times as likely to be sentenced to death as those accused of killing black victims. In other words, a death sentence often hinged not on the race of the defendant but on the race of the victim." African Americans who killed white victims were the most likely racial group to be sentenced to die, the study showed.

McClesky v. Kemp

The Baldus study played a major role in the 1987 U.S. Supreme Court decision in *McCleskey v. Kemp*, in which an African American man was sentenced to death for killing a white police officer during a robbery. The defendant, Warren McCleskey, appealed his death sentence arguing that the Georgia criminal justice system was racially biased. In a 5 to 4 decision against McCleskey, Justice Lewis Powell, writing for the majority, stated that the Baldus study "failed to show discriminatory intent by Georgia officials, and that the court could not infer unconstitutional motives from Baldus's statistics." Justice Powell stated that McCleskey needed to prove the bias of a specific person in the case, which he did not. After his retirement from the Court in 1991, Justice Powell was asked if there were any decisions where he would have voted differently. He admitted he would have changed his vote in the *McCleskey* case.

According to the Legal Defense Fund of the NAACP, the *McCleskey* decision "created a crippling burden of proof for anyone seeking to stamp out the corrosive influence of race in the criminal justice system…African Americans are stopped, ticketed, searched and/or arrested by the police at far higher rates than whites…"

North Carolina's Racial Justice Act

In 2009, North Carolina addressed racial disparity in death penalty cases by passing the Racial Justice Act, which allowed prisoners on death row to change their sentences to life without parole if they could prove that racial bias played a substantial role in their trial. The first case to challenge the death penalty under the new law involved Marcus Robinson who was convicted of killing Erik Tornblom, a white teenager, in 1991. The Superior Court judge who heard the challenge ruled that "race played a persistent, pervasive and distorting role" in jury selection. The ruling relied on a Michigan State University study of 7,400 potential capital jurors, which found no reason other than race to explain why black jurors were dismissed at twice the rate of white jurors. The study also revealed that of the 160 inmates on North Carolina's death row, 31 were convicted by all-white juries.

Most of North Carolina's prisoners on death row filed appeals under the Racial Justice Act and four prisoners were resentenced to life; however, the act was repealed in June 2013. The courts will now have to determine if those claims already filed by death row inmates under the repealed law (approximately 150 cases) will continue or be thrown out, allowing executions to begin again.

At what cost?

Whatever your view on the morality of the death penalty, one thing is unquestionable—it's expensive. The costs of attorneys, appeals, petitions, experts, and special imprisonment on death row are staggering. According to DPIC statistics, those costs range from $2.16 million per execution in North Carolina to $2.3 million in Texas to $3 million in Maryland, which just repealed its death penalty law in May 2013.

Rising costs and the recession are causing many states to consider death penalty repeal measures. Cost was a factor in New Jersey's repeal of its death penalty law in 2007. The first state to ban capital punishment since the death penalty was reinstituted, New Jersey had spent approximately $4.2 million for each death sentence issued in the state. New Jersey had 10 men on death row at the time the death penalty was repealed. All of them had their sentences commuted to life in prison without parole.

According to California's Legislative Analyst's Office, the cost to incarcerate an inmate is approximately $50,000 per year. California has the largest death row population (667 at last count) and according to DPIC the state has spent more than $4 billion since 1978 to carry out a total of 13 executions.

Once a supporter of capital punishment, Donald Heller, who drafted California's 1978 measure instituting the death penalty,

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fighters. Changing the combat rule gives women a chance to play an even more substantial role, opening up as many as 230,000 positions previously closed to them, and shows that military leaders recognize the contributions women make.

New opportunities, new questions

The process of opening these jobs to women will take some time; and in order to qualify, women, like men, will need to meet strict requirements. As this transition unfolds, it is opening new doors for women, but also raising questions. For example, what requirements are needed to perform the different combat jobs now being opened to women?

"We're not going to lower standards," Juliet Beyler, the Defense Department's director of officer and enlisted personnel management, told *Bloomberg News*. "It's not a matter of lowering or raising standards. The key is to validate the standard to make sure it's the right standard for the occupation."

Some are not convinced. In a *U.S. News and World Report* opinion piece, Elaine Donnelly, president of the Center for Military Readiness, wrote, "studies done over 30 years have shown that in a direct ground combat environment where lives and missions depend on physical strength, women do not have the equal opportunity to survive, or to help fellow soldiers survive." In another opinion piece for the *National Review*, Donnelly wrote, "Elite forces will make them [standards] 'equal' for men and women by lowering them for everyone, or accepting a few token women along with men who otherwise would have washed out."

The Center for Military Readiness, founded by Donnelly in 1993, is a private, non-profit educational organization and is not affiliated with the military. The organization opposes gays serving in the military and has been vocal about limiting the role of women as well.

Military leaders are focused on the impact the combat rule change will have on women and men in the active-duty military. Concerns have been raised about whether women might compromise our troops' effectiveness in battle.

In Associated Press reports, Major General Bennet Sacolick, director of Force Management and Development for U.S. Special Operations Command, said he wasn't concerned about women in combat positions in terms of physical strength, but did express concern about social issues that could arise.

"I'm actually more concerned with the men and their reaction to women in their formations," General Sacolick said. Downplaying physical strength requirements, he said today they are looking for "someone who can speak and learn a foreign language, who understands culture, who can work with indigenous populations and have culturally attuned manners. When people fail in the Special Forces qualification course, predominantly they fail because they're not doing their homework."

Exceptions possible

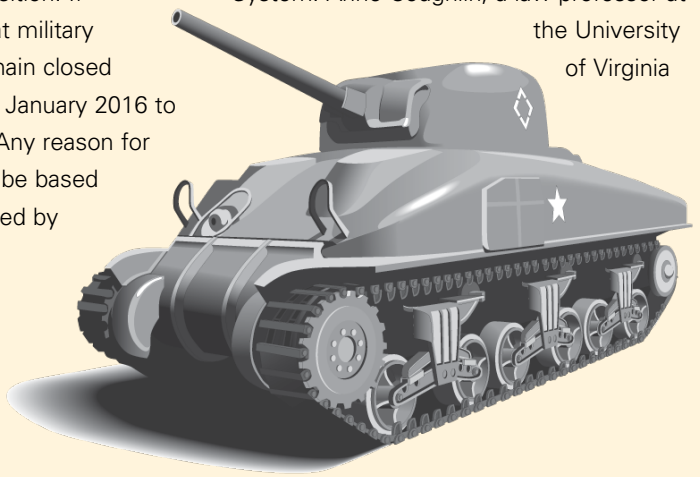
Although lifting the combat ban is seen as a giant step forward for women, there is still a chance that some positions may ultimately be restricted to men. Each branch of the military (Army, Navy, Air Force, Marine Corps and Coast Guard) will conduct studies to ensure that the standards for affected military positions are gender-neutral but that they make sense for the particular position. If there are any positions that military leaders believe should remain closed to women, they have until January 2016 to ask for those exceptions. Any reason for keeping women out must be based on factual data and approved by top military officials.

Drafting women

For many years, the United States has operated with an all-volunteer army; however, the country maintains a Selective Service System with the names of eligible men between the ages of 18 to 25 who could potentially be required to serve their country in the event a "draft" is necessary. This happened decades ago, for example, during the Vietnam War, when thousands of young men were drafted and sent off to war. As of now, only men are required by law to register with Selective Service; however, some say women should be required to register as well now that they are eligible for combat roles.

The constitutionality of excluding women from registering for a possible draft came up in 1980 when President Carter re-established the Selective Service System. In 1981, with its 6 to 3 decision in *Rostker v. Goldberg*, the U.S. Supreme Court ruled that since women were not eligible for direct combat assignments, exempting them from registration with Selective Service was constitutional. The Court's opinion stated, "the existence of the combat restrictions clearly indicates the basis for Congress' decision to exempt women from registration. The purpose of registration was to prepare for a draft of combat troops. Since women are excluded from combat, Congress concluded that they would not be needed in the event of a draft, and therefore decided not to register them."

Lifting the ban on women in combat seems to open them up to the requirement of registering with the Selective Service System. Anne Coughlin, a law professor at the University of Virginia



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School of Law, told *The Christian Science Monitor*, "The legal argument is clear: If it comes to that kind of wrenching emergency where we have to press young people into service, there is no legal justification for saying that men alone need to shoulder that burden."

Retired Colonel Peter Mansoor, a professor of military history at Ohio State University, agreed and told *The Christian Science Monitor*, "If women are acceptable to serve in combat, they are acceptable to serve whether they volunteer or not. You can't have the frosting on the cake and not the cake underneath."

To critics of women in combat who claim that the concept of women being drafted will make the country reluctant to go to war, Col. Mansoor said, "It should be: That's exactly the debate the country needs to have."

The Service Women's Action Network (SWAN), a national human rights organization founded and led by women veterans, has come out publicly in favor of adding women to the Selective Service System.

"Expanding the universe of registrants increases the share of the national population with a stake in the activities of the armed forces. Pledging commitment to military service, even in the unlikely event of a draft, is a step toward bridging a growing gulf between the military and civil society," Rachel Natelson, SWAN's legal director, wrote, in a *U.S. News and World Report* opinion piece. "When less than one percent of the nation bears the burden of military service and multiple deployments have become the norm, unequal participation undermines popular sensitivity to those who serve. As President Carter reminded a skeptical country on the eve of reinstituting mandatory registration, only equal obligations can deliver equal rights."

Moving on up

Among the complaints that arose with banning women in combat roles were concerns that it limited promotions for women. Did it hold women back from advancing as quickly as men, and will the new policy make a difference? Major Becky Lapidow, a 1999 graduate of Hillsborough High School, who has spent close to 15 years in the military, believes it will.

Major Lapidow shared one particularly "frustrating" experience she had during her service in Afghanistan, when being a woman in a combat company limited her advancement opportunities. She explained that because of the combat rule, she was only eligible to lead one platoon (and she had to stay mostly on the base), whereas the men she served with were eligible to lead 12 different platoons.

Lapidow noted that she met all the same physical requirements as the men, and she "kept right up." Still, because of the combat restrictions, it took her longer to be promoted. Today, in spite of the challenges she faced, Major Lapidow advanced to become a Judge Advocate with Joint Force Headquarters in the New Jersey National Guard, Fort Dix, NJ.

As a firm believer in the career opportunities offered by the military, she supports the military's new stance on combat roles and the doors it may open for women.

Weighing the risks

New Jersey attorney Michael B. Berman, who served in the army in Korea and now occupies an appointed position on the New Jersey Governor's Veterans' Service Council, said he also believes lifting the combat ban on women is a good idea; however, he expressed concerns about women being put into roles where there is a distinct possibility of being killed or taken prisoner or engaging in one-on-one combat with the enemy.

In particular, there is a concern about possible sexual abuse that women prisoners may face. But Major Lapidow points out that being a POW is "not a pleasant situation" any way you slice it—for men or women.

The fact is that everybody is not totally on board with the U.S. military's decision to lift the combat ban. For example, some people—including some women in the U.S. military—have reportedly expressed concerns that allowing women into male-dominated roles might lead to more problems with sexual harassment, which is already an ongoing problem in the military.

Military leaders hope removing the distinction that only men can serve in combat will help to alleviate problems of sexual harassment. General Martin Dempsey, chairman of the Joint Chiefs of Staff, told *Bloomberg News*, "I have to believe the more we can treat people equally, the more likely they are to treat each other equally."

Growing pains

When asked if it might ever be appropriate to limit women's roles, Major Lapidow suggested that perhaps one possible situation might involve training foreign armies of men who may not accept women in positions of authority because of cultural differences.

Still, even that may be surmountable. Major Lapidow recalled a time in Afghanistan when a female physician's assistant in the U.S. army was treating U.S. soldiers and male Afghani citizens at an open clinic. Initially, the male Afghani patients were reluctant to accept the female doctor as being the one in charge, and directed their attention to the male workers who were assisting her. When they realized she was the person making the decisions, they adapted.

Clearly, the idea of women on the front lines will take some getting used to.

"I think there will be growing pains," Major Lapidow said. She doesn't think every woman will be able to physically pass the requirements for combat roles, just as every man cannot. "But I think they should have that opportunity."

That sentiment was echoed by then Defense Secretary Leon Panetta at the time of the announcement in January 2013. He said, "Not everyone is going to be able to be a combat soldier, but everyone is entitled to a chance." ■

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than $363,000 in estate taxes, a sum she would not have paid had Spyer been her "husband" instead of her wife.

President Bill Clinton signed DOMA into law in 1996. He would later advocate for its repeal. In a 2013 opinion piece for *The Washington Post*, President Clinton wrote, "When I signed the bill, I included a statement with the admonition that 'enactment of this legislation should not, despite the fierce and at times divisive rhetoric surrounding it, be understood to provide an excuse for discrimination.' Reading those words today, I know now that, even worse than providing an excuse for discrimination, the law is itself discriminatory. It should be overturned."

Taking rights away in Cali

Hollingsworth v. Perry dealt with the constitutionality of California's Proposition 8. A California Supreme Court decision in May 2008 held that limiting marriage to opposite-sex applicants violated California's constitution. Same-sex couples began marrying in California the next month. In November 2008, California voters responded to that decision by adopting Proposition 8, a ballot initiative that prohibited same-sex marriage in the state constitution. After the measure passed, same-sex marriage was suspended in California. In August 2010, a federal district court judge struck down Proposition 8, ruling that it violated the due process and equal protection clauses of the 14th Amendment. The court's opinion stated, "The evidence demonstrated beyond serious reckoning that Proposition 8 finds support only in…disapproval [and] As such, Proposition 8 is beyond the constitutional reach of the voters or their representatives."

The state of California chose not to appeal the district court's ruling; however, the proponents of Proposition 8 did. In February 2012, the Ninth Circuit Court of Appeals upheld the lower court's decision stating, "Proposition 8 serves no purpose, and has no effect, other than to lessen [same-sex] status and human dignity… and to officially reclassify their relationships and families as inferior, subject[ing] a minority group to the deprivation of an existing right without a legitimate reason." Not liking this decision either, proponents of Proposition 8 asked the U.S. Supreme Court to hear the case.

Oral arguments

Over the span of two days, the U.S. Supreme Court heard oral arguments in both cases. With their questions to the attorneys arguing before them, a few of the justices might have given away how they would rule.

Justice Ruth Bader Ginsburg said of DOMA that the law created "two kinds of marriage: the full marriage, and then this sort of skim milk marriage." Justice Anthony Kennedy said in reference to the Proposition 8 case, "There are some 40,000 children in

New Jersey—Next Frontier for Marriage Equality

The fight for marriage equality in the Garden State began in 2006 with the case of *Lewis v. Harris*. The New Jersey Supreme Court unanimously agreed that state law at the time was unconstitutional with regard to the equal protection of same-sex couples; however, it disagreed on how to remedy the situation.

Four justices advocated for civil unions and three justices advocated for giving same-sex couples full marriage rights. Ultimately, the New Jersey Legislature passed a bill establishing civil unions. In February 2012, the New Jersey Legislature passed a marriage equality bill that would have brought same-sex marriage to the Garden State. Gov. Chris Christie vetoed the bill. The Legislature has until January 2014 to override the governor's veto.

It seemed the fate of marriage equality was at a stalemate in New Jersey. Then along came the case of *Garden State Equality v. Dow*, brought by six same-sex couples seeking equal protection of the law with regard to marriage. In light of the U.S. Supreme Court's decision in *United States v. Windsor*, which struck down Section 3 of the Defense of Marriage Act, a New Jersey superior court judge ruled in September 2013 that "Same-sex couples must be allowed to marry in order to obtain equal protection of the law under the New Jersey Constitution. The landscape in 2013 is markedly different from the one that existed just seven years ago when *Lewis* was decided."

In her 53-page ruling Judge Mary Jacobson wrote, "Every day that the state does not allow same-sex couples to marry, plaintiffs are being harmed. Plaintiffs are ineligible for many federal marital benefits at this moment, and their right to equal protection under the New Jersey Constitution should not be delayed until some undeterminable future time."

Let the people decide?

In 2012, when he vetoed the marriage equality bill, Gov. Christie told *The Star-Ledger*, "I think this is not an issue that should rest solely in my hands, or the hands of the Senate President or the Speaker or the other 118 members of the Legislature. Let's let the people of New Jersey decide what is right for the state."

Does that sound reasonable? To most gay rights advocates, it is not.

"Marriage equality is a civil right. It should not be up to the majority to vote on whether the minority should be entitled to equality under the law," said Felice Londa, an attorney in Elizabeth and a former co-chair of the New Jersey State Bar Association's GLBT Section. "We saw what happened in California where marriage equality was reversed by majority vote under Prop 8 based primarily on enormous funds being pumped into California with fear based advertising."

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California who live with same-sex parents, and they want their parents to have full recognition and full status. The voice of those children is important in this case."

Asked if there was a compelling reason to exclude same-sex couples from the institution of marriage, Charles J. Cooper, arguing for the proponents of Proposition 8, responded, "it is reasonable to be very concerned that redefining marriage as a genderless institution could well lead over time to harms to that institution and to the interests that society has always used that institution to address." Cooper also cited the key to marriage being procreation. Justice Stephen Breyer and Justice Elena Kagan both pointed out instances where opposite-sex couples don't have children, for instance, couples who are sterile, as well as older couples, and asked if banning them from marrying would be constitutional. Cooper agreed that would not be constitutional but saw no reason to alter traditional definitions of marriage to include same-sex couples.

Referring to the Court's 1967 landmark ruling in *Loving v. Virginia*, which dealt with interracial marriage, Theodore B. Olson, who represented the couples challenging Proposition 8, stated in his arguments before the Court, "The label 'marriage' means something…You could have said in the *Loving* case, you can't get married, but you can have an interracial union. Everyone would know that was wrong. Marriage has a status, recognition, support."

Paul D. Clement, who defended the Defense of Marriage Act on behalf of House Republicans (not the Obama administration, which had already made a decision not to defend the law), argued that Congress had the right to a uniform definition of marriage. "What Congress says is, 'Wait a minute, let's take a timeout here," Clement said. "This is a redefinition of an age-old institution." Justice Kagan responded by reading a House committee's analysis of the law at the time, "Congress decided to reflect an honor of collective moral judgment and to express moral disapproval of homosexuality." Justice Kagan asked, "Do we really think that Congress was doing this for uniformity reasons, or do we think that Congress's judgment was infected by dislike, by fear, by animus…?"

Responding to a question from Chief Justice John Roberts about the political power of the gay community, Roberta A. Kaplan, one of the attorneys challenging DOMA, said, "The fact of the matter is, Mr. Chief Justice, that no other group in recent history has been subjected to popular referenda to take away rights that have already been given or

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Where the case stands

Because New Jersey only offered same-sex couples civil unions, they were denied approximately 1,130 federal rights that come with marriage.

Judge Jacobson ordered that same-sex marriages be allowed in New Jersey beginning October 21st. Gov. Christie's office requested a stay be granted so that the New Jersey Supreme Court can decide the matter.

On October 10th, Judge Jacobson denied the Christie Administration's request for a stay. In her opinion, Judge Jacobson wrote, "There is no 'public interest' in depriving a class of New Jersey residents their constitutional rights while appellate review is pursued. On the contrary, granting a stay would simply allow the State to continue to violate the equal protection rights of New Jersey same-sex couples, which can hardly be considered a public interest." In addition, Judge Jacobson noted in the opinion, "The 'harm' [the state] alleges simply cannot justify depriving plaintiffs and other same-sex couples of equality in the form of access to important federal marital benefits."

The New Jersey Supreme Court agreed to hear the case of *Garden State Equality v. Dow* and scheduled oral arguments for January 6, 2014. The Court also agreed to render a decision regarding the lower court's denial of the governor's stay in the matter. On October 18th, the Court unanimously upheld Judge Jacobson's ruling regarding the stay.

The Court ruled, "The state has advanced a number of arguments, but none of them overcome this reality: Same-sex couples who cannot marry are not treated equally under the law today. The harm to them is real, not abstract or speculative."

The Court's ruling paved the way for New Jersey to become the 14th state to offer marriage equality and on October 21st the Christie Administration dropped its appeal of the case.

In the meantime, the New Jersey Legislature can still override the governor's veto to reinforce the legalization of same-sex marriage in the Garden State. At press time, advocates of same-sex marriage were three votes short in the Senate and 12 votes short in the House.

What the future holds

Will the marriage equality fight ever be a thing of the past? Londa thinks eventually it will.

"I believe that the younger generation understands that people should be entitled to love who they love, and form protected families," Londa said. "It is clear that eventually, people will look back on this fight and wonder what the big deal was. There was once the same fight against interracial marriage, and today people would be shocked if different races (or religions for that matter) were prohibited from marrying."

—Jodi L. Miller

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exclude those rights the way gay people have."

The rulings

In the end, the U.S. Supreme Court struck down Section 3 of DOMA. In his majority opinion, Justice Kennedy wrote, "The federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and injure those whom the state, by its marriage laws, sought to protect in personhood and dignity. By seeking to displace this protection and treating those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment."

As for the fate of Proposition 8, the Court ruled that because the state of California did not appeal the trial court's decision and the proponents of Proposition 8 did not have legal standing to appeal the decision, the U.S. Supreme Court could not render a decision in the case. Given that, the decision of the lower court stands and Proposition 8 was overturned, making California the 13th state to allow same-sex marriage.

While Section 3 of DOMA was struck down, Section 2 of the Act still remains. DOMA's Section 2 asserts that states can deny recognition of same-sex unions from other states. In other words, if a same-sex married couple from New York moves to one of the 29 states that ban same-sex marriage, say Texas, their marriage would not be valid in that state. Introduced in June 2013, the Respect of Marriage Act would repeal the remaining part of DOMA. The bill currently has 42 cosponsors and was referred to the Senate Judiciary Committee.

IRS weighs in

The issue of marriages being recognized in one state and not in another was cause for concern among opponents of same-sex marriage. In August 2013, the Internal Revenue Service (IRS) cleared some of the confusion when it announced that the agency would treat legal same-sex marriages the same as opposite-sex marriages for federal tax purposes beginning with the 2013 tax year. Where the couple was married or where they currently live do not matter for federal tax purposes. It only matters whether the marriage is legal.

In a statement, Treasury Secretary Jacob J. Lew, said, "This ruling assures legally married same-sex couples that they can move freely throughout the country knowing that their federal filing status will not change."

The new IRS policy applies only to legal marriages, not civil unions or domestic partnerships. Other federal agencies are still trying to determine what their new guidelines will be; however, the Obama Administration is pushing for a speedy resolution so that the Court's ruling is carried out as soon as possible.

The idea of marriage equality is still controversial for some, although as polls suggest most of the country is quickly moving toward tolerance on the issue. In determining the rights of individuals, Eric Zorn, a columnist for *The Chicago Tribune*, may have said it best when he wrote, "The standard for denying them [same-sex couples] the right to marry ought to be high. The harms of extending such rights have to be real and measurable, not simply insults to tradition and sensibility." ■

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told *The New York Times*, "The cost of our system of capital punishment is so enormous that any benefit that could be obtained from it—and I now think there's very little or zero benefit—is so dollar-wasteful that it serves no effective purpose."

In the *Time* magazine interview, Dow stated that if capital punishment is abolished it will be for "economic reasons." He pointed out all the good that could be done with the money saved. "You could hire a lot of policemen. You could have a lot of educational programs inside of prisons, so that when people come out of prison they know how to do something besides rob convenience stores and sell drugs…Let's fix the schools and fill the potholes in the streets instead of squandering this money on a death-penalty case." ■

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Glossary

animus – hostile feeling or animosity. deterrent – serves to discourage or prevent something from happening. lynching – to murder by mob action, usually by hanging. majority opinion – a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues. mitigating factor – a factor that does not excuse a defendant from guilt but may lessen accountability and therefore lessen his or her sentence. pervasive – common or widespread. procreation – reproduction or to bring into being. sterile – barren or having no reproductive power. statute – legislation that has been signed into law. stay – a stopping or the act of suspending a judicial proceeding. upheld – supported; kept the same.