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Foreword: St. Thomas Law Review Volume 20 Anniversary Issue

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FOREWORD: ST. THOMAS LAW REVIEW VOLUME 30 ANNIVERSARY ISSUE

ALFREDO GARCIA, DEAN AND PROFESSOR

As a faculty member and administrator of this law school for nearly three decades, it is my honor to write the foreword to our Volume 30 Anniversary Issue, aptly dedicated to the “voiceless” in our society. St. Thomas University School of Law’s mission, from its founding in 1984, is to provide a voice to those members of our community that have been under-represented by the legal profession. In turn, our law school instills in our student body the need to “give back” by offering legal services to those who cannot afford them. Indeed, we were one of the first law schools to require students to provide a minimum of forty hours of pro bono legal services as a condition of graduation. This unwavering commitment to the “voiceless” has led to our law school’s recognition as one of the top ten law schools in the country for pro bono service.

The editors have chosen six magnificent articles that manifest the dire need to heed the muted call of the voiceless. In broad terms, the six articles underscore the ways in which the legal system ignores the plight of certain segments of our society. Whether those groups comprise children, juveniles, blacks, the poor or socioeconomic disadvantaged, or prisoners, it is a fact that they are often marginalized and overlooked by our justice system. I will attempt to summarize the pieces; however, I urge you to read each article carefully and to internalize its important lessons.

As the twentieth century ended, two perceptive legal scholars, David Wexler and Bruce Winnick, launched a novel and an exciting way to approach our adversary system of adjudication. Coining the term “therapeutic jurisprudence,” Wexler and Winnick defined it as the “study of law as a therapeutic agent.” In essence, these scholars stressed the “law’s impact on emotional life and on psychological well-being.” In that vein, Professor Ronner’s article, *Dostoevsky as Juvenile Justice Advocate and Progenitor of Therapeutic Jurisprudence*, posits that the harbinger of therapeutic jurisprudence was Dostoevsky. She depicts Dostoevsky “as an early ombudsman for therapeutic juvenile justice and link[s] him to the voiceless . . . voices in *The Brothers Karamazov*.” In the course of her brilliant exegesis, Professor Ronner relates the sad and poignant stories of abused children. Further, she examines how therapeutic jurisprudence may heal our most vulnerable clients.

Similarly, Professor Kierstead relies on therapeutic jurisprudence to address a common, yet difficult, issue for lawyers: how to deliver “bad news” to a client. Rather than conveying the “bad news” to the client in a cold, detached, and antiseptic manner, Professor Kierstead proposes a therapeutic approach that draws upon the medical model. In particular, Professor Kierstead suggests that lawyers adopt the medical “SPIKES” model, “which provides a comprehensive approach to compassionate, patient-centered communication of bad news.” Every lawyer should read her article, *Therapeutic Jurisprudence, Professionalism, and “SPIKES” for Lawyers*, for the valuable lessons it imparts to foster healthy client-lawyer relations.

Criminal defense lawyers often experience the difficult task of conveying “bad news” to their clients. It is especially difficult when the attorney must tell a juvenile client that he or she is going to prison. To avoid that outcome, Nancy G. Abudu and Ron E. Miles suggest that courts avoid ratifying school disciplinary policies that “end up being a conduit in the ‘School to Prison Pipeline’ (STPP).” Rather than “over-disciplining” minors, the authors implore the school and legal systems to jettison STPP in favor of a more comprehensive solution to disciplinary problems. Their article, *Challenging The Status Quo: An Integrated Approach to Dismantling the School-to-Prison Pipeline*, should be a required reading for teachers, administrators, and state judiciaries.

Criminal suspects and prisoners are the subjects of recent Supreme Court rulings that collectively undermine their ability to invoke constitutional protections. Chanae Wood’s comment, *Black & Poor: The Grave Consequences of Utah v. Strieff*, documents the disparate impact *Utah v. Strieff* will have on black and poor citizens. Further narrowing the exclusionary rule in *Strieff*, the Supreme Court has sanctioned police conduct that violates criminal suspects’ Fourth Amendment rights. Since black and poor citizens are disproportionately detained for either driving with suspended licenses or failing to pay traffic fines, those two groups will likely be subjected to more illegal searches and arrests than the general populace. Mrs. Wood’s innovative proposal to implement a “warrant hierarchy” regime would restore the civil liberties *Strieff* undermines.

Similarly, federal prisoners seeking habeas corpus have seen this hallowed right constricted by legislation and Supreme Court opinions. Agnieszka Chiapperini’s comment, *A Right Without a Remedy: Time Runs Out Before the Right to File Accrues for Successive Habeas Corpus Petitioners*, adeptly follows the byzantine and confusing Supreme Court jurisprudential interpretation of this critical right. She observes that the

“conflicting policies” regarding the availability of habeas corpus relief for prisoners in effect create “a right without a remedy.” Let us hope Congress and the Supreme Court heed her sage advice.

Ansell Fernandez’s comment, *Prisoners of the Zip Code: How Single Zip Code Rate-Making Hurts the Public Interest*, uncovers a practice, setting auto insurance rates based on socioeconomic factors, which potentially “may violate Florida law prohibiting the use of race or national origins in calculating premiums.” He offers a pragmatic solution to the problem: outlawing the use of socioeconomic factors in determining rates and the corresponding use of insurance risk pools larger than a single Zip Code to calculate insurance rates. Mr. Fernandez’s comment should prompt policymakers to redress this inequity.

I commend the Editorial Board and all of the members of our Law Review for assembling an exceptional issue that reflects our law school’s mission and values and acts as a platform to give a voice back to the voiceless.