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# Journal of Law and Social Deviance

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## Editor's Introduction

Welcome to the Twenty-Sixth Volume of *Journal of Law and Social Deviance (LSD Journal)*, an independent, peer-reviewed journal. *LSD Journal* encourages submissions from a wide range of professionals, researchers, and scholars in a variety of fields. Within our broader interest in social deviance and the law, we are particularly interested in how law creates, inhibits, or challenges deviant behavior, especially as it evolves from, responds to, or inspires the animal kingdom, art, design, structure, pop culture, hate, religion, sex, illness, work, drugs, terrorism, and youth. Volume 26 is about pursuing happiness. Happiness is experienced when justice is granted. The audience is allowed to look into the inner-workings of groups professing to help others pursue happiness. The contributions explain how help is accomplishable and recognized in the justice system that extends into healthcare and wellness research. *LSD Journal* remains committed to publishing articles, essays, and book reviews that strongly represent the journal's niche and offer readers important, substantive, and useful literature.

## Contribution

### Re: Submissions, Subscriptions, and Comments

Submissions for publication, whether articles, book reviews, essays, notes, or research, should be made electronically to [Submission@LSD-Journal.net](mailto:Submission@LSD-Journal.net). All attachments must be Microsoft Word compatible. Please use Times New Roman 9 pt, single-spaced, superscripted footnotes, and use Times New Roman 12 pt, double-spaced text in the body. The editors will referee all submissions. Occasionally, outside expertise may be sought.

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# HAPPY, CONTROLLED, AND PRISTINE GRASS: ;GRACIAS!

Carmen M. Cusack<sup>1</sup>, Matthew E. Waranius

## I. BEFORE BEGINNING TO GARDEN

### A. Outline

This environmental Exposition is about three kinds of grass.<sup>2</sup> The categories are generated by this research and other research.<sup>3</sup> Law is discussed throughout to explain human interaction with grass.<sup>4</sup> The categorical terms do not exclusively and broadly rely on government terms, but terms like “controlled substance” and “pristine wilderness” are included.<sup>5</sup>

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<sup>1</sup> Dedicated to Ralphe Dog, C., in consideration of world-domination and supplies. My term papers are on-file independent and in an institution with access through cooperation and agreement. Carmen M. Cusack, T.B.; C.C.. (3 d3)

<sup>2</sup> See Part II.

<sup>3</sup> *Id.*

<sup>4</sup> See Part I, C.

<sup>5</sup> “Pristine wilderness” is internationally used by the government. Scottish Government, “Pristine Wilderness,” The Future for National Parks in Scotland (May 13, 2022), <https://www.ideas.gov.scot/the-future-for-national-parks-in-scotland/pristine-wilderness>. (commenting on “pristine wilderness” in the United States and other countries).



This Exposition about grasses as natural and living beings treats grasses akin to trees, seaweed, bushes, and flowers.<sup>6</sup>

This work labels the presence of grass.<sup>7</sup> Here happy grass is content under human care.<sup>8</sup> Controlled grass is detrimental and demonstrates side effects.<sup>9</sup> Pristine grass is happy grass, presumably, but is unknown to humans.<sup>10</sup> It grows in hospitable places and is treated well without any interference or human knowledge.<sup>11</sup>

Grass terms are beneficial and thus labeling is the purpose of this Exposition.<sup>12</sup> It begins by showing how terminology is relevant to guarding plants.<sup>13</sup> Then it describes the terms.<sup>14</sup> The Second Part of this Exposition covers “happy,” “controlled,” and “pristine” grass giving rise to a Conclusion.<sup>15</sup>

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<sup>6</sup> CARMEN M. CUSACK, DEER JHONN (2021).

<sup>7</sup> See Part II.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Part I.

<sup>13</sup> *Id.*

<sup>14</sup> See Part II.

<sup>15</sup> See Parts II and III.

In the First Part, the law and terms are woven together to make this Exposition about grass.<sup>16</sup> Terms have been coherently developed by those with subject area knowledge.<sup>17</sup> People working with grass, those who study, and humans who care for grass, gardeners for example, are some of those bringing their observations to the public.<sup>18</sup> This Exposition shows legal authority to stop harm against plants and eliminate potential encroachment issues not fully explored in this Exposition.<sup>19</sup> This Exposition concludes that humans are to label grass and the utilization of descriptive mechanisms must continue to expand.<sup>20</sup>

## B. Terminology

This Part is about how environmental advocates apply language to classify and make standards.<sup>21</sup> In

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<sup>16</sup> See Part I.

<sup>17</sup> See Part II.

<sup>18</sup> Carmen M. Cusack, *The Driest Title on Earth: An Educational Study Proving that Crime in the West Affected the Greenland Shark*, 23 J. L. SOC DEVIANCE 120 (2022).

<sup>19</sup> See Part II.

<sup>20</sup> See Part III.

<sup>21</sup> See *infra*.

*Sierra Club v. Costle*, the government said that “[l]anguage” itself “not only authorizes variable control but also gives” the Environmental Protection Agency known as the “EPA authority when determining the best technological system to weigh cost, energy, and environmental impacts in the broadest sense.”<sup>22</sup> “Variable control protects air quality and visibility at least as well as any other standard.”<sup>23</sup>

Legal language allowed the EPA to decide whether emissions met the criteria for particular forms of regulation using a scale.<sup>24</sup> The Clean Air Act protects people from environmental waste, known as emissions.<sup>25</sup> The environmentally concerned Sierra Club said the reasonability was in doubt because it failed a national standard, but the court found that the implementation under the relevant language was

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<sup>22</sup> *Sierra Club v. Costle*, 657 F. 2d 298, 330 (1981) (describing the Environmental Protection Agency’s (EPA’s) authority achieved through language analysis). 42 U.S.C. § 7401, *et seq.* (1979 Supp. III) (“Clean Air Act”); Clean Air Act, Pub.L.No. 84-159, 69 Stat. 322 (1955).

<sup>23</sup> *Sierra Club*, 657 F. 2d 298, 338 (1981).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* 42 U.S.C. § 7401, *et seq.* (1979).

reasonable.<sup>26</sup> Because environmental groups, governmental and private, use language and advocacy relying on language to protect the air, and air comes from plants, the advocacy in this Exposition utilizes lingo to show which plants need intervention according to their circumstances and response to humans.<sup>27</sup>

The court in this case, *Sierra*, acknowledged the relevance of a “blitz” of ideas, and this Exposition about grassy plants does, too.<sup>28</sup> This Exposition describes the suffering of grass, including for this purpose trees and other plants such as marijuana.<sup>29</sup> The *Kelly* Court in *Kelly v. CB&I* found that trees can be injured.<sup>30</sup> The appeals court sided with the fact-finding jury.<sup>31</sup> The defendant negligently caused a ranch-damaging fire.<sup>32</sup> The plaintiff’s personal reason for

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Sierra Club*, 657 F. 2d 298, 386 (1981).

<sup>29</sup> *Id.*

<sup>30</sup> *Kelly v. CB&I Constructors, Inc.*, 179 Cal. App. 4th 442, 447 (2009) (“Tree damage caused by a negligently spread fire is wrongful injury to trees caused by a trespass subject to mandatory doubling pursuant to Civil Code section 3346, notwithstanding the general provision governing fire damage in Health and Safety Code section 13007.” *Id.*).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

restoring the property allowed double recovery, except for annoyance discomfort because that was not the plaintiff’s residence at the time, and that was worth millions of dollars, which was worth more than the property.<sup>33</sup> “

The trial court doubled the amount awarded by the jury for tree damage pursuant to Civil Code section 3346, and awarded plaintiff attorney fees pursuant to Code of Civil Procedure section 1021.9, which permits such awards in cases of trespass on property ‘under cultivation.’<sup>34</sup>

The discussion of trees’ rights includes a linguistic analysis, typical of the legal field to measure the intent with which trees are treated.<sup>35</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 447.

<sup>35</sup> *Id.* at 463, n. 5. “‘The phrase ‘casual or involuntary’ comes directly from the tree trespass statute in New York’s Field Code of 1848. In the mid-nineteenth century, ‘casual’ meant ‘casualty.’ [Citations.] Casualty, in turn, meant ‘accident or negligence’ and contrasted with ‘designedly and under a claim of right.’ [Citation.]’ (*Matanuska Elec. Ass’n, Inc. v. Weissler* (Alaska 1986) 723 P.2d 600, 606-607, fns. omitted.)” *Id.*

(12) The plain language of section 3346 is not ambiguous. The statute authorizes an award of double damages ‘[f]or wrongful injuries to . . . trees . . . upon the land of another, . . . where the trespass was casual or involuntary . . .’ (§ 3346, subd. (a).) Under any reasonable interpretation, fire damage constitutes an ‘injur[y]’ to a tree. There is no dispute that the fire was a trespass (see *Elton, supra*, 50 Cal.App.4th at pp. 1305-1307), or that the trespass in this case was ‘casual or involuntary’ within the meaning of section

The United States Coast Guard, like the United States Drug Enforcement Agency (DEA) follows federal law protecting plants.<sup>36</sup> Specifically, marijuana is mentioned as being controlled under the Controlled Substance Act (CSA) for the definition of a controlled substance analogue.<sup>37</sup> Its control means that the government goes after the substances and makes arrests.<sup>38</sup> Yet, it is controlled because it is uncomfortable.<sup>39</sup> People are abnormal while they consume it. People complain that it is difficult to grow

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3346.<sup>[5]</sup> When there is no ambiguity or absurdity on the face of the statute, we may not manufacture one by resort to the legislative history. (See *People v. Hagedorn* (2005) 127 Cal.App.4th 734, 743 [25 Cal.Rptr.3d 879] [‘Courts generally resort to legislative history to *resolve* ambiguities, not to *create* them.’].) *Id.* at 463.

<sup>36</sup> The Coast Guard enforces control over many shrubs, plants, trees, grasses, etc. causing discomfort in America between plants and within human-plant relationships around the world. See e.g., “CBP, U.S. Coast Guard Seize More Than 10 Tons of Khat,” *Homeland Security (HS) Today* (July 27, 2022), <https://www.hstoday.us/cbp/cbp-u-s-coast-guard-seize-more-than-10-tons-of-khat/>. “Khat is a green, leafy plant typically grown in the Arabian Peninsula and many parts of Africa. It is chewed for its stimulant effect.” *Id.* Drug Scheduling, United States Drug Enforcement Agency (DEA), <https://www.dea.gov/drug-information/drug-scheduling>.

<sup>37</sup> Controlled Substance Act (CSA), 21 U.S.C. § 802(32)(A) (2023).

<sup>38</sup> See, *Homeland Security (HS) Today* (2022).

<sup>39</sup> Nataliya Datchenko, Yurii Mosaiev, Ellina G. Pozdniakova-Kyrbiatieva, Zhanna Petrochko, & Olena L. Pozdniakova, *Improvement of the Regulatory Framework for Social Order in Ukraine*, 26 J. L. SOC. DEVIANCE \_\_ (2023) (social order eliminates discomfort).

and it consumes too many resources which causes people to misjudge the value of land, plants' lives, and animal welfare.<sup>40</sup>

### C. Black Letter Law<sup>41</sup>

Federal and state law cited throughout is composited here to symbolize the breadth of the government's reach.<sup>42</sup> A strong law, mentioned below is the Privileges and Immunities Clause of the United States Constitution because it can show how committed Americans are to preventing wildlife abuse.<sup>43</sup> "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."<sup>44</sup> This allows people in each state to prevent harm to plants, for example refusing to make happy

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<sup>40</sup> Drug Scheduling, (DEA).

<sup>41</sup> CUSACK, DEER JHONN.

<sup>42</sup> See Parts I-III.

<sup>43</sup> U.S. CONST., art. IV, § 2. *Corfield v. Coryell*, 6 fed. cas. 546 (1823). "Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole." *Id.*

<sup>44</sup> *Id.*

grass into controlled grass.<sup>45</sup> Americans have power “[t]o define and punish [p]iracies and [f]elonies committed on the high [s]eas, and [o]ffences against the [l]aw of [n]ations” potentially allowing them to stop wildlife trade, cruelty, and abuse.<sup>46</sup> This may be in accord with commonly an observation that plants live on the water, below, or just before it on an embankment.<sup>47</sup>

Indianans commit to natural resources under federal and state oversight, such as in Indiana’s Natural and Cultural Resources laws.<sup>48</sup> This law demonstrates how the United States may consider threatening fields, such as lawn care and construction, to be under control and viable, while heavily regulating the effects of poor grass treatment.<sup>49</sup>

Sec. 1. The following are declared as a matter of legislative determination:

(1) That the land and water resources of Indiana are among the basic assets

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<sup>45</sup> *Id.*

<sup>46</sup> U.S. CONST., art. I, § VIII.

<sup>47</sup> *Id.*

<sup>48</sup> Ind. Code Ann. § 14-32-1-1 (2023).

<sup>49</sup> *Id.* U.S. CONST., art. I, § VIII.



of Indiana and that the proper management of these resources is necessary to protect and promote the health, safety, and general welfare of the people of Indiana.

(2) That improper land use practices and failure to control and use rainfall and runoff water cause and contribute to deterioration and waste of these resources of Indiana.

(3) That the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors excessive runoff and erosion, with the following results:

(A) The topsoil is being blown and washed out of the fields and pastures.

(B) There has been an accelerated washing of sloping fields.

(C) These processes of erosion by wind and water speed up with removal of the topsoil, exposing the less absorptive, less protective, less productive, and more erosive subsoil.

(4) That valuable water resources are being lost causing damages in watersheds.

(5) That failure by a land occupier to properly manage the soil and water causes a washing and blowing of these resources onto other land and makes the conservation of these resources on the other land more difficult.

(6) That the consequences of soil erosion and failure to control and use rainfall and runoff water are the following:

(A) The silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors.

(B) The loss of fertile soil material.

(C) The piling up of soil on lower slopes and the deposit over alluvial plains.

(D) The reduction in productivity or outright ruin of bottom land by flooding and overwash of poor subsoil material, sand, and gravel swept out of the hills.

(E) The deterioration of soil and the soil's fertility, deterioration of crops grown, and reduction in crop yields.

(F) The loss of soil and water that causes destruction of food and cover for wildlife.

(G) A blowing and washing of soil into streams and lakes that silts over spawning beds and destroys water plants, diminishing the food supply of fish.

(H) A diminishing of the underground water reserve and loss of surplus rainfall runoff causing water shortages, intensifying periods of drought, and causing crop failures.

(I) An increase in the speed and volume of rainfall runoff, causing severe and increasing floods.

(J) Economic hardship for those attempting to farm land that is eroded or subject to frequent flooding.

(K) Damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms.

(L) Losses in navigation, hydroelectric power, municipal water supply, recreational water development, irrigation developments, farming, and grazing.

(7) That to conserve soil and water resources, control and prevent soil erosion, protect water quality, reduce flood damage, and further the conservation development, use, and disposal of water, it is necessary that:

(A) land use practices contributing to soil and water wastage, water quality impairment, and soil erosion be discouraged and discontinued; and

(B) appropriate soil and water conserving land use practices and works of improvement for flood prevention or the conservation development, use, and disposal of water be adopted and carried out.

(8) That among the procedures necessary for widespread adoption are the following:

(A) Carrying on of engineering operations such as the construction of flood preventing reservoirs and channels, terraces, terrace outlets,

check dams, dikes, ponds, ditches, and similar operations.

(B) The use of soil protecting agronomic practices, such as strip cropping, contour cropping, and conservation tillage.

(C) Land irrigation.

(D) Seeding and planting of sloping, abandoned, or eroded land to water-conserving and erosion-preventing plants, trees, and grasses.

(E) Forestation and reforestation.

(F) Rotation of crops.

(G) Soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops.

(H) Retardation of runoff by impounding the runoff water behind structures, by increasing the absorption of rainfall, and by retiring from cultivation all steep, highly erosive areas and areas already badly eroded.

(I) The use of water quality protection practices, including

nutrient and pesticide management on all lands.<sup>50</sup>

These laws are strong and indirectly appeal to people's feelings about happy, controlled, and pristine grass.<sup>51</sup>

## II. THREE LITTLE WORDS

This Part of the Exposition is about happy, controlled, and pristine grass.<sup>52</sup> Grass in contact with humans can be proven to be happy by using instruments, such as surveys, studies, color analysis, emotional interpretation, spiritual connections, and advice from laborers.<sup>53</sup> Case law is not the only way to determine whether individuals perceive plants' happiness or discomfort, and thus a need for control or regulation of control.<sup>54</sup> An artist, Bob Ross, served in

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<sup>50</sup> Ind. Code Ann. § 14-32-1-1 (2023).

<sup>51</sup> *Id.* "Welfare" and happiness can be compared and are related through the social contract. Mosaiev, 26 J. L. SOC. DEVIANCE \_\_ (2023).

<sup>52</sup> *See supra.*

<sup>53</sup> *See infra.*

<sup>54</sup> Anthony Breznican, *Unhappy Little Trees: The Dark Legacy of Bob Ross*, VANITY FAIR (Aug. 20, 2021), <https://www.vanityfair.com/hollywood/2021/08/bob-ross-documentary-netflix>. "Rob Ross, the television painter known for his dandelion-fuzz hair and pizza-delivery approach to knocking out a landscape (30 minutes or less!) is still beloved, 26 years after his death, for the

the military when he learned to describe trees as being visibly “happy.”<sup>55</sup> He was part of the military when he found that the military knew how to classify the trees, but not paint the “happy” trees.<sup>56</sup> His “‘happy little’ trees” and the words he used to describe them are quite famous.<sup>57</sup>

Ross also filmed wildlife, squirrels in particular, usually in his garden, and he would often take in injured or abandoned squirrels and other animals. Small animals often appeared on his *Joy of Painting* canvases. Ross painted an estimated 30,000 paintings during his lifetime....Bob Ross original paintings are scarce on the art market, with sale prices of

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soothing way he dabbed what he called ‘happy little’ trees and clouds onto his canvases.” *Id.*

<sup>55</sup> Breznican, VANITY FAIR (2021). “Bob Ross,” Wikipedia, [https://en.wikipedia.org/wiki/Bob\\_Ross](https://en.wikipedia.org/wiki/Bob_Ross). “During his 20-year Air Force career, Ross developed an interest in painting after attending an art class.” *Id.* Military instructors painted trees using abstract techniques. “They’d tell you what makes a tree, but they wouldn’t tell you how to paint a tree.” *Id.*

Ross was working as a part-time bartender when he discovered a TV show called *The Magic of Oil Painting*, hosted by German painter Bill Alexander. Alexander used a 16th-century painting style called *alla prima* (Italian for ‘first attempt’), widely known as ‘wet-on-wet’, that allowed him to create a painting within thirty minutes. *Id.*

Ross “began painting and then successfully selling Alaskan landscapes that he would paint on novelty gold-mining pans.” *Id.*

<sup>56</sup> Breznican, VANITY FAIR (2021).

<sup>57</sup> *Id.*

the paintings averaging in the thousands of dollars and frequently topping \$10,000. The major auction houses have never sold any of Ross's paintings....Ross himself was opposed to having his work turned into financial instruments.<sup>58</sup>

The financial benefit indicates that his wording was effective because it described what others enjoyed seeing and what they could believe existed.<sup>59</sup> It was not just abstract, it was a landscape.<sup>60</sup>

Land's happiness is a subject of codes that are also concerned with regulating, conserving, and protecting cultivation, development, and maintenance processes.<sup>61</sup> In Indiana, the importance of protecting the land from dryness and overcultivation is expressed in an environmental piece of legislation.<sup>62</sup> The friendly laws protect industries from reverse suspicion that is inflicted by earth desecrators using artillery, tools, and poison.<sup>63</sup> Industries, such as project management and

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<sup>58</sup> "Bob Ross," Wikipedia.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Sairus Patel, *Trees of Stanford* (Aug. 26, 2021), <https://trees.stanford.edu>.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*



construction, plagued by violations leading to loss of soil and plants are protected after an explanation of endemic mores demonstrates that they are to help the plants not hurt them.<sup>64</sup> The engineering and rationales behind the law are the foundation of the plans made by the people of Indiana to protect plants and their habitats, which are homes for animals and other plants.<sup>65</sup>

Gardeners cultivate happy grass. A tip described as “How to grow greener grass magic bullet # 6. Test the soil pH level” indicates the do-it-yourselfers can help grass.<sup>66</sup> “Grass grows best when it’s growing in the ‘pH happy zone.’ Grasses like a pH level between 6 and 7.2.”<sup>67</sup> “Applying the treatment is as easy as walking around the yard with a spreader.”<sup>68</sup> Color analysis is easy for them. For example, “Wreck your lawn: 4. Over Fertilize! Yep, just skip the directions and pour it on. You’ll kill your whole yard in no time.

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Elizabeth Flaherty, “How to Grow Greener Grass,” Family Handyman (Feb. 22, 2022), <https://www.familyhandyman.com/list/how-to-grow-greener-grass/>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

And if you don't kill it outright, it'll turn yellow and take weeks to heal itself."<sup>69</sup> Do not overfertilize.

An expert of 15 years, the Family Handyman talks about anecdotal evidence and color analysis.

As the in-house turf 'expert' at The Family Handyman for the past 15 years, I've spent...time talking with world-class grass gurus and learning the science of lawns... I've spent even more time...converting a half-acre of rough, overgrown horse pasture to a...quality lawn. My final conclusion is this: Growing greener grass is surprisingly simple and easy.<sup>70</sup>

A lawncare expert can set-up a timer for sprinklers.<sup>71</sup>

Once you know how long to water, use a water timer and you'll know what to set it for every time. Heavy soils should be watered less often and less heavily but for longer periods of time. Sandy soils, on the other hand, can handle heavy, fast watering but dry out faster. In hot, dry weather, you may have to water [differently].<sup>72</sup>

The purpose is to make grass happy.

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Family Handyman (Feb. 22, 2022).

Do not “stress the grass.”<sup>73</sup> “After the grass greens up, that’s generally just the right time” to tell grass that the person tending is happy to make responsible agendas to keep grass happy.<sup>74</sup> Watering and treating are examples, not rules set in stone.<sup>75</sup> A final thought demonstrates an emotional perception of grass’ needs.<sup>76</sup> “How to grow greener grass magic bullet # 5” says that grass needs rest.<sup>77</sup> “Don’t skip the fall fertilizing.” “Before the lawn goes to sleep for the winter, you should feed it well. Even after the grass seems to go dormant, the roots are soaking up nutrients and storing energy for the next growing season.”<sup>78</sup>

Assist the grass to be happy. Organized recording assists the development of an instrument, such as the grass growth chart provided by Dade County.<sup>79</sup> A spiritually and emotionally oriented instrument could indicate happiness and interfuse survival.<sup>80</sup> Common

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Family Handyman (Feb. 22, 2022).

<sup>79</sup> Carmen M. Cusack, Conversation with Jorge Diaz, August, 2006, Miami-Dade County, Florida.

<sup>80</sup> *Id.*

recognition of grass types varies across cultures, but a general understanding is that grass should be happy.<sup>81</sup>

Happy grass is relative to surroundings and treatment.<sup>82</sup> Charts and plans help.<sup>83</sup> “The labeling of plants as annuals, biennials, or perennials goes back to the early Greeks.”<sup>84</sup> The system proposed in this Exposition revolves around grass described as being measurably happy.<sup>85</sup> “This general understanding of plant classifications will help grass managers to understand the normal cycle of their grasses and help them make decisions on how to select forage species and maximize their production.”<sup>86</sup>

The early Americans felt the same way.<sup>87</sup> Growing grass was a decision.<sup>88</sup>

Other practical factors entered into the matter: few navigable rivers, the different

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<sup>81</sup> Oregon State University, “Discuss the Basics of Grass Growth,” *Forages*, <https://forages.oregonstate.edu/nfgc/eo/onlineforagecurriculum/instructormaterials/availabletopics/management/growth>.

<sup>82</sup> Conversation with Diaz (noting canals, runoff, and mangroves).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* Oregon State University, *Forages*.

<sup>85</sup> *See supra.*

<sup>86</sup> Oregon State University, *Forages*.

<sup>87</sup> *See supra.* *See* U.S. CONST., art. I, § VIII.

<sup>88</sup> *See e.g.,* *Lochner v. New York*, 198 U.S. 45 (1905) (contract right).

prairie soil did not respond to the plows available, few railroads extended into the prairie, settlers often did not own enough horses and mules, few available trees for building homes, fences, tools and fuel.<sup>89</sup>

Pristine and wild grass was treated as happy and wild grass that was cultivated was protected as an asset, not to be damaged.<sup>90</sup> The early Americans did not impose changes on the environment, but focused on natural conditions to document what made grass happy.<sup>91</sup> “Cool-season grasses are productive in the spring and fall because of the cooler temperatures during the day and night, shorter photo period, and often higher soil moisture,” they learned; and were valuable perceptions contributing to natural bounty.<sup>92</sup> “This monitoring provides the basis for good management decisions.”<sup>93</sup>

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<sup>89</sup> *Id.* Oregon State University, *Forages*.

<sup>90</sup> *See generally id.*

<sup>91</sup> *See generally id.* *See e.g.*, U.S. CONST., art. I, § VIII.

<sup>92</sup> Oregon State University, *Forages*.

<sup>93</sup> *Id.*

It is a constant report.<sup>94</sup> Good decisions are reported by instruments, whether sentimental or particular.<sup>95</sup> Many specialists can contribute to the development of individualized charts.<sup>96</sup> They sensitively might interpret grass happiness.<sup>97</sup>

Controlled grass is a description in this Exposition of grass that is forced to grow.<sup>98</sup> It is controlled by humans.<sup>99</sup> It is not happy.<sup>100</sup> Some samples and locations may be happy, but it is not growing on its own.<sup>101</sup>

Some is indigenous.<sup>102</sup> Some is invasive.<sup>103</sup> Sometimes, the grass is not able to exist without human

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<sup>94</sup> Suzan Shahin & Mohammed Salem, *Grasses as Food and Feed, GRASSES IN ARID AND SEMI-ARID LANDS: THE MULTI-BENEFITS OF THE INDIGENOUS GRASSES* (Zerihun Tadele) (2018).

<sup>95</sup> *Id.* See generally Oregon State University, *Forages*.

<sup>96</sup> B.J. Ragsdale & T.G. Welch, “Descriptions of Range and Pasture Plants,” Texas A&M AgriLife Extension (Dec. 7, 2021), <https://agrilifeextension.tamu.edu/asset-external/descriptions-of-range-and-pasture-plants/>.

<sup>97</sup> See *supra*.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Infra* note.

<sup>103</sup> Shahin & Salem, “Grasses in Arid and Semi-Arid Lands” (2018). “The main objective of this chapter is to focus on the vital roles of the indigenous grasses in drought areas and how the same could be a perfect solution in the urban planning of such places sustainably.” *Id.*

intervention.<sup>104</sup> It is in contact with humans and does not grow happily.<sup>105</sup> Therefore, it can be assumed that the grass is attacking humans.<sup>106</sup>

It gives the impression that it makes humans ill.<sup>107</sup> Mental illness, physical illness, and social illness are some of the possibilities.<sup>108</sup> People look unhappy around the grass.<sup>109</sup> They look like they are hurt by the

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<sup>104</sup> See generally *id.*

<sup>105</sup> Warren Cornwall, *Fiery Invasions: Around the World, Flammable Invasive Grasses Are Increasing the Risks of Damaging Wildfires*, SCIENCE (Aug. 4, 2022), <https://www.science.org/content/article/flammable-invasive-grasses-increasing-risk-devastating-wildfires>. “In the western United States, two Old World grasses are creating ecological mayhem.” *Id.* “Massachusetts Prohibited Plant List,” Commonwealth of Massachusetts (Jan. 2023), <https://www.mass.gov/service-details/massachusetts-prohibited-plant-list>. “Should Cutting Grass Be Banned?,” Reddit (2022), [https://www.reddit.com/r/DynamicDebate/comments/ujp5iv/should\\_cutting\\_grass\\_be\\_banned/](https://www.reddit.com/r/DynamicDebate/comments/ujp5iv/should_cutting_grass_be_banned/). “I’m thinking of using it as an excuse never to cut my grass because the insects and bugs need somewhere to live, and I can’t be assed [*sic*] to cut it. So double win.” *Id.*

<sup>106</sup> E.g., “Similarly, some indigenous grasses in the drought regions that consume high amount of water should be cultivated wisely.” Shahin & Salem, “Grasses in Arid and Semi-Arid Lands” (2018).

<sup>107</sup> *Infra* note.

<sup>108</sup> See Leonardo DiCaprio, *Wolf of Wall Street* (2013). A person should “learn to do what comes naturally in life” instead of becoming “a drug addict.” *Id.* *Contra* Whole Foods Market, Exton, “Select Caviar,” [https://www.wholefoodsmarket.com/stores/exton?utm\\_source=bing&utm\\_medium=organic&utm\\_campaign=listings](https://www.wholefoodsmarket.com/stores/exton?utm_source=bing&utm_medium=organic&utm_campaign=listings). A circle of life evident in a food web affects grass.

<sup>109</sup> *Id.* Shahin & Salem, “Grasses in Arid and Semi-Arid Lands” (2018). “Grasses are the most plentiful species in the plant kingdom with enormous socio-economic potentials. Growing the indigenous grasses in drought regions can provide the community with great sustainable values, including the cultural, environmental, and economic values.” *Id.*

grass.<sup>110</sup> The grass does not cause the illness, but it makes them unhappy.<sup>111</sup> The grass attacks the situation.<sup>112</sup> It is made to grow elsewhere or could survive elsewhere.<sup>113</sup> The people do not understand that it is the grass that is making them sick.<sup>114</sup>

The grass is responding to situational deprivation.<sup>115</sup> The people are working to get the grass to grow.<sup>116</sup> The grass is not always warring against the people, like prohibited grass, but it is causing people to become ill because they are trying too hard.<sup>117</sup> People

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<sup>110</sup> *Infra* note.

<sup>111</sup> *Infra* note.

<sup>112</sup> *See generally Jersey Shore* (2008).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* Shahin & Salem, “Grasses in Arid and Semi-Arid Lands” (2018).

There is no doubt that the indigenous grasses provide great cultural and social values for the local community. In the old times, such plants had been greatly used in traditional medicine, as the only available resources for therapeutic and medication purposes, which established a strong relationship between these plants and the Bedouin people who historically inhabited the desert regions. *Id.* For example, Buffel grass (*Cenchrus ciliaris* L.) has been used in the Zulu traditional herbal practices as a pain reliever and to cure many diseases, such as menstrual disorders, urinary infections, kidney pain, tumors, sores, and wounds. Also, oil grass (*Cymbopogon jwarancusa* (Jones) Schult.) has been used by Indians to treat blood disorders, vomiting, skin problems, unconsciousness, and abdominal tumors. *Id.*

<sup>115</sup> Shahin & Salem, “Grasses in Arid and Semi-Arid Lands” (2018).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*



who toil to make grass grow, may overexert themselves and go beyond normal parameters.<sup>118</sup> For example, they may travel to different continents. Grass cannot always be taken from one continent to another.<sup>119</sup>

In addition to the suffering of the grass, the grass may lose life. It may die.<sup>120</sup> Life loss is a serious problem that may cause grass to retaliate.<sup>121</sup> It may also cause grass to judge people.<sup>122</sup> Grass can be observed judging people because the grass has an ill effect.<sup>123</sup> The Greeks believed in a tantalian punishment involving fruit just out of reach. The Romans, which called the god Atys, use to believe that grasses could be used to judge people. The Indianan people believe

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<sup>118</sup> *Id.*

It is crucially needed to use each drop of expensive freshwater resource in drought regions cautiously and wisely. This could be done through focusing on cultivating the indigenous industrial gasses that can best adapt and mitigate the harsh environmental conditions, and still produce expensive raw materials of great applications (e.g., food and pharmaceuticals), offering potential ecological and/or landscaping services sustainably. *Id.*

<sup>119</sup> Science (2022).

<sup>120</sup> *Id.*

<sup>121</sup> United States Environmental Protection Agency (EPA), “Lawn and Garden,” <https://www.epa.gov/safepestcontrol/lawn-and-garden>.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

that it does.<sup>124</sup> Grass is not unable to judge, but people should observe grass judging.<sup>125</sup>

Grass does not judge people like humans judge.<sup>126</sup> They, blades of grass, judge people by growing without their craft.<sup>127</sup> People try to make grass grow.<sup>128</sup> Sometimes it does.<sup>129</sup> Other grass may not grow exactly for some people.<sup>130</sup>

The people with the most skill make grass grow.<sup>131</sup> The other people do not.<sup>132</sup> Grass judges how happy it is and then grows according to the skills of the workers.<sup>133</sup> When skilled workers are bad (i.e., get high

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<sup>124</sup> Ind. Code Ann. § 14-32-1-1 (2023).

<sup>125</sup> *Id.*

<sup>126</sup> See e.g., T.I. Khan, A.K. Dular, D.M. Solomon, *Biodiversity Conservation in the Thar Desert; with Emphasis on Endemic and Medicinal Plants*, 23 *THE ENVIRONMENTALIST* 137 (2003).

<sup>127</sup> EPA, <https://www.epa.gov/safepestcontrol/lawn-and-garden>.

Interested in learning more about healthy, environmentally friendly lawn and landscape practices? You can reduce erosion, stream sedimentation, flooding, runoff of pollutants into local waterways, and the risk of pesticide exposure to children, adults, pets, and wildlife. The following videos show lawn care practices....

<https://youtu.be/who0nxEL5b4> <https://youtu.be/b4r88u8euYU>.”

*Id.*

<sup>128</sup> Pub. L. 92-82 (1971). National Forest Management Act of 1976 (P.L. 94-588); Forest Act of 2021 (2021; 117th Congress S. 2950) (legislation proposed in Hawai’i to end illegal deforestation).

<sup>129</sup> EPA, <https://www.epa.gov/safepestcontrol/lawn-and-garden>.

<sup>130</sup> See generally *id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

or are drunk) the grass may judge them.<sup>134</sup> The grass may not judge people who are high or drunk.<sup>135</sup> Often it will by not growing.<sup>136</sup> When grass dies it is a sign of unhappiness.<sup>137</sup> Some grass dies naturally.<sup>138</sup>

Grass grows well in happy soil.<sup>139</sup> The purpose of the Exposition is not to explain happy soil, but to explain happy grass.<sup>140</sup> Happy soil is soil that lets grass grow.<sup>141</sup> Naturally grass grows in happy soil.<sup>142</sup> When soil is polluted by drugs, alcohol, and garbage it is not happy.<sup>143</sup> Grass is happy when soil is free of pollution.<sup>144</sup>

Happy grass has deep roots and plenty of water.<sup>145</sup> Not all grass needs water.<sup>146</sup> Some grass is dry.<sup>147</sup>

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<sup>134</sup> *Id.*

<sup>135</sup> EPA, <https://www.epa.gov/safepestcontrol/lawn-and-garden>. Drugs are analogous to pesticide. *Id.*

<sup>136</sup> *See generally id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *See supra.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> EPA, <https://www.epa.gov/safepestcontrol/lawn-and-garden>.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

Grass may grow in water.<sup>148</sup> It is floating.<sup>149</sup> Grass may root and grow horizontally.<sup>150</sup> It grows in houses.<sup>151</sup> Grass can grow anywhere, as long as it is happy. Happy grass grows in soil normally. It requires sunlight and expert care.<sup>152</sup> It grows where planters put it.<sup>153</sup>

Grass cannot be taken out; it must remain in the soil.<sup>154</sup> Grass in the soil is happy.<sup>155</sup> Happy grass can come back from death.<sup>156</sup> It appears to be dead, but is not.<sup>157</sup> It returns in when it is ready.<sup>158</sup> Happy grass returns when the conditions (i.e., soil and water) are right.<sup>159</sup> Conditions are environmental and subject grass to transition.<sup>160</sup>

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<sup>148</sup> *Id.*

<sup>149</sup> EPA, <https://www.epa.gov/safepestcontrol/lawn-and-garden>.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> See MARY E. BARKWORTH & LAUREL K. ANDERTON, *MANUAL OF GRASSES FOR NORTH AMERICA* (2007).

<sup>155</sup> EPA, <https://www.epa.gov/safepestcontrol/lawn-and-garden>.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

Grass can be transported.<sup>161</sup> Some grass must take root in an indigenous environment, yet some grass may live in exotic soil.<sup>162</sup> Contact with humans may be damaging and may break the law.<sup>163</sup> Though it may be legal to plant grass, generally it is wrong to cause grass to be unhappy.<sup>164</sup>

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<sup>161</sup> Animal and Plant Health Inspection Service (APHIS), “Laws and Regulations,” U.S. Department of Agriculture, <https://www.aphis.usda.gov/aphis/resources/lawsandregs>. International Plant Protection Convention (IPPC) (1951); North American Plant Protection Organization (NAPPO), <https://www.nappo.org/>.

<sup>162</sup> *Id.*

<sup>163</sup> Plant Protection Act, as amended, 7 U.S.C. §§ 7701, *et seq.* (2023); Federal Seed Act, 7 CFR §§ 361, *et seq.* (2023). Lacey Act Title III, 16 U.S.C. §§ 3371-3378 (2023). U.S. Department of Agriculture, “Lacey Act,” Animal and Plant Health Inspection Service (APHIS), <https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/lacey-act/lacey-act>.

The Future of Lacey and Phase VII[:] APHIS is planning for the latest declaration requirement stage: Phase VII. In this phase, Lacey Act declarations will be required for all remaining plant product Harmonized Tariff Schedule (HTS) codes that are not 100 percent composite materials. That means a wide array of imported products—such as...cork—that have never before needed Lacey Act declarations will now need them. In 2023, APHIS will publish a list of affected HTS codes in the Federal Register and will require declarations for those product codes...[six] months later.

*Id.*

<sup>164</sup> Forest Service, “Forests and Grasslands,” U.S. Department of Agriculture, <https://www.fs.usda.gov/managing-land/national-forests-grasslands>.

The Forest Service stewards an impressive portfolio of landscapes across 193 million acres of National Forests and Grasslands in the public trust. The agency’s top priority is to maintain and improve the health, diversity, and productivity of the nation’s forests and grasslands to meet the needs of current and future generations. *Id.*

Unhappy grass is misunderstood.<sup>165</sup>  
Misunderstood grass is uncared-for.<sup>166</sup> It does not  
receive nurturing attention or resources.<sup>167</sup> Lack of  
resources prevents the growers from reaching it

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Native plants are valued for their economic, ecological, genetic, and aesthetic benefits. Using native plant material in vegetation projects maintains and restores native plant gene pools, communities, and ecosystems, and can help reverse the trend of species loss in North America. *Id.*

<sup>165</sup> Emily Swihart, “An Abundant Harvest: Donating Garden Crops to Food Pantries,” College of Agricultural, Consumer & Environmental Sciences Illinois Extension, University of Illinois Urbana-Champaign (July 21, 2023), [extension.illinois.edu/blogs/good-growing/2023-07-21-abundant-harvest-donating-garden-crops-food-pantries](https://extension.illinois.edu/blogs/good-growing/2023-07-21-abundant-harvest-donating-garden-crops-food-pantries).

As the summer days pass by, garden harvest becomes a regularly performed task of our Master Gardeners. The demonstration gardens that were so thoughtfully planned, plants or seeds so carefully planted, and growing plants so lovingly tended to for the past few months are producing delicious, nutritious crops. *Id.*

“Finally, food is fuel for the body, and health will suffer when quality food is unavailable.” *Id.* “Finally, these crops are easy to grow, harvest, and prepare for donation making it easy for the home gardener to share the abundance.” *Id.*

Common questions (and answers)[:] Am I liable for food donations? No, in 1996, President Bill Clinton signed the Bill Emerson Good Samaritan Food Donation Act into law. This standardizes donor ability across all 50 states, the law protects you from liability when you donate to a non-profit and protects you from civil and criminal liability when donating in good faith if the produce later causes harm to the recipient. *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

mentally.<sup>168</sup> They cannot sense what the grass needs.<sup>169</sup>  
It is left to their imaginations and technical skills.<sup>170</sup>  
They may grow the grass, but not with expertise.<sup>171</sup>

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<sup>168</sup> “Many lawns deteriorate from poor maintenance, inadequate drainage, heavy traffic,...or simply because the wrong grass species was planted....Take better care of your lawn and bring it back to life with regular maintenance.” University of California, “Agriculture and Natural Resources,” The UC Guide to Healthy Lawns, <https://ipm.ucanr.edu/TOOLS/TURF/RENOVATE/index.html>.

<sup>169</sup> *Id.*

<sup>170</sup> “St. Augustine Grass Lawn Care Maintenance: What You Need to Know to Maintain Your St. Augustine,” Do My Own, <https://www.domyown.com/how-to-care-for-st-augustine-grass-a-796.html>.

St. Augustine grass is a warm-season turf that is often found in tropical and subtropical regions. In the United States, St. Augustine is common in Hawaii, California, Texas, and Florida, where its name originates (after St. Augustine, Florida). The grass does well in the sun, requiring at least...[six] or more hours of direct sunlight each day, and is also salt-tolerant, perfect for property near oceans. Grass blades are dark green to green-blue and are flat and broad. St. Augustine turf is thick and carpet-like....The grass spreads quickly....St. Augustine grass will stay green year-round in warmer climates but will go dormant and brown in cooler climates. Once the temperatures warm up in the spring, the grass will green-up again. *Id.*

The grass is known as having a meaner personality than other grass. For this reason, people in Florida may not sit on grass as much as in other states. They may not leave the sand as much and may not plant grass in their yards. People using St. Augustine grass may know where to buy, but may not. The grass is for sale, and it may be an asset. Some homes are sold with the St. Augustine feature promoted. Not all Floridians buy grass, mow grass, sit on grass, or export grass to other states. They all conserve grass. Some Americans come to Florida to conserve grass. University of Florida’s Institute of Food and Agricultural Sciences (UF/IFAS), Lovegrass, <https://gardeningsolutions.ifas.ufl.edu/plants/ornamentals/lovegrass.htm>

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Lovegrass is the common name for two species: Elliot’s lovegrass (*Eragrostis elliottii*) and purple lovegrass (*Eragrostis spectabilis*).

Hundreds of members of *Eragrostis* are found worldwide; thirty species are established in Florida alone. The genus name these species share comes from two Greek roots: eros, meaning love, and agrostis, meaning grass. Nathaniel Wolf, the scientist who gave this genus its appealing name, published no explanation for his choice. We think it's safe to assume, though, that he found them just as loveable as we do. In the Sunshine State, lovegrass grows wild in flatwoods, sandhills, and prairies. As native species these are excellent choices for a wildlife-friendly landscape. They need not be confined to wild spaces, however. Both species make excellent borders and accent plants and are very attractive in massed plantings. *Id.*

Furman University, Plant Roots,

facweb.furman.edu/~lthompson/bgy34/plantanatomy/plant\_root.htm.

*Id.* "The growth and metabolism of the plant root system is supported by the process of photosynthesis occurring in the leaves." *Id.* John A.

Tilley, "The Coast Guard & the Greenland Patrol,"

www.navcen.uscg.gov/pdf/iip/history/The\_Coast\_Guard\_and\_the\_Greenland\_Patrol.pdf. MARINE SAFETY MANUAL, VOLUME IX, *Marine Environmental Protection COMDTINST M16000.14* (series),

<https://uscgboating.org/regulations/coast-guard-directives.php>. Outer Continental Shelf National Center of Expertise (OCSNCOE), "Offshore Renewable Energy: U.S. Coast Guard Oversight and Involvement,"

U.S. Coast Guard (updated Dec. 30, 2020),

<https://www.dco.uscg.mil/OCSNCOE/ORE/>.

**Renewable Energy Support Vessels:**

The U.S. vessels that support renewable energy installations **are** subject to U.S. Coast Guard inspection and oversight. These vessels will typically be inspected under 46 CFR Subchapters L, T, or I and may be multi-certificated under multiple Subchapters. Renewable energy support falls within the definition of an Offshore Supply Vessel (OSV) regulated under Subchapter L as defined at 46 CFR 125.160:

'*Offshore Supply Vessel* or *OSV* means a vessel that -

- (1) Is propelled by machinery other than steam;
- (2) Does not meet the definition of a passenger-carrying vessel in 46 U.S.C. 2101(22) or 46 U.S.C. 2101(35);
- (3) Is more than 15 gross tons; and
- (4) Regularly carries good, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation or production of offshore mineral or **energy resources**' [emphasis added] *Id.*

<sup>171</sup> *Id.*



Grass grown without expertise may feel itchy, unwanted, harsh, pointy, rough, hard, and dry.<sup>172</sup> This does not mean the grass is unhappy.<sup>173</sup> Grass may be happy and still feel rough, for example.<sup>174</sup>

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<sup>172</sup> Florida Springs And Aquifer Protection Act, Fla. Stat. §§ 373.801-373.813 (2022), Title 28 373.62 (“periods of sufficient moisture;” “stringent;” “uniform;” “manner;” and “entity”). University of Florida’s Institute of Food and Agricultural Sciences (UF/IFAS), “A Better Lawn on Less Water,” Gardening Solutions, <https://gardeningsolutions.ifas.ufl.edu/care/irrigation/better-lawn-on-less-water.html>. “‘Watering as needed’ means waiting to water until 30 to 50 percent of your lawn shows at least one of the three wilt signs symptoms. These are: folding leaf blades, blue-gray color, and footprints remaining visible in grass.” *Id.*

<sup>173</sup> “There are many cultural practices you can do to create a healthy lawn.” Happy Grass Turf Management, <https://www.happygrassturfmgmt.com>.

<sup>174</sup> Kendra Cherry, “What Does the Color Green Mean? The Color Psychology of Green,” Verywell Mind (July 17, 2022), <https://www.verywellmind.com/color-psychology-green-2795817>.

Manufacturers, advertisers, and others harness green’s various connotations to convey an impression. For example, the packaging of sustainably made products often features green. Likewise, it’s used in cleaning products, often along with blue, to convey freshness and purity. *Id.*

However, grass should be pleasant and wanted.<sup>175</sup>  
Grass that is rough may be cajoled.<sup>176</sup> Happy grass is

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<sup>175</sup> “The healthier your lawn is, the better it keeps up its end of the bargain.” Family Handyman, “How to Keep Grass Green and Achieve a Healthy Lawn,” (Apr. 26, 2023) <https://www.familyhandyman.com/article/how-to-achieve-a-healthy-lawn/>. Not all grass is green. Some grass is yellow because it is unhealthy. “Damaged grass turns yellow, requires more water and nutrients to recover, and is more susceptible to disease.” *Id.* “Mow when the grass is dry and avoid mowing in the heat of the day when you’re more likely to stress the grass — and yourself.” *Id.* “Timing is everything.” *Id.*

<sup>176</sup> 3 CFR, 2008 Comp., p. 27-28; *Title 3 Compilation: The President, “2008 Compilation--Presidential Documents: Proclamations,”* <https://www.govinfo.gov/content/pkg/CFR-2009-title3-vol1/html/CFR-2009-title3-vol1.htm>; George W. Bush, Proclamation 8239 (Apr. 15, 2008); George W. Bush, “Proclamation 8239 of April 15, 2008, National Park Week” (2008), at 27-28.

President Franklin D. Roosevelt once said, ‘There is nothing so American as our National Parks.’ During National Park Week, we underscore our commitment to conserving these magnificent places and recognize the many employees and volunteers who give their time and energy to keep them beautiful for all Americans to enjoy. This year’s theme for National Park Week, ‘Kids In Parks,’ highlights youth programs and initiatives offered by the National Park Service to encourage children to be good stewards of the land. *Id.* at 27.

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Code of Federal Rules recorded the President's wife's agenda. Its meaning was memorialized in this proclamation. She saved many grassy fields and trees.

Serving as the Honorary Chair of the National Park Foundation, First Lady Laura Bush has also played a significant role in preserving our national parks. The First Lady is actively involved in programs such as First Bloom, which teaches children how to preserve native plants across America. In addition, this past Christmas, the White House highlighted our national parks with the theme 'Holiday in the National Parks.'

Our National Parks belong to each of us, and they are natural places to

learn, exercise, volunteer, spend time with family and friends, and enjoy the magnificent beauty of our great land. During National Park

Week and throughout the year, Americans of all ages can pledge to help

maintain and enhance America's national treasures for future generations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of

America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 19 through April 27, 2008, as National Park Week. *Id.* 28.

Laura Bush was linked with ecofeminist values by national pride in grass, including trees and waterways. She provided knowledge and resources to the communities protecting grass.

pleasant and feels good to itself.<sup>177</sup> Grass is happy when grass grows near it.<sup>178</sup> Happy grass is formed by healthy soil, rain, and pleasant animals. Animals contribute to grass while walking on it. They are central to ecosystem welfare.

Grass is happy when it is in an area that sustains its happiness.<sup>179</sup> Unhappy grass demands attention but does not receive it.<sup>180</sup> Unhappy grass is commonly influential over happy grass.<sup>181</sup> Happy grass becomes unhappy when adjacent grass is unhappy.<sup>182</sup> Unhappy grass communicates unhappiness to happy grass.<sup>183</sup> Grass may die.<sup>184</sup> Unhappy grass dies.<sup>185</sup>

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<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> “When feet compress the leaf blades of the turfgrass, the low water levels in the plant tissue prevent the leaf blades from recovering, or ‘springing’ back up, after being pushed down.” Taylor Vandiver, “Proper Watering Techniques for a Healthy and Happy Lawn,” UF/IFAS (July 15, 2013), <https://nwdistrict.ifas.ufl.edu/hort/2013/07/15/proper-watering-techniques-for-a-healthy-and-happy-lawn/>.

<sup>180</sup> *Id.* “Automated irrigation systems are convenient, but can have flaws.” *Id.*

<sup>181</sup> *Id.* “Proper watering techniques are key to creating a happy and healthy lawn.” *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> Vandiver (2013).

Grass is placed well when it grows and other grass notices that it has a hospitable environment.<sup>186</sup> Grass should be happy and other grass knows that.<sup>187</sup> Grass is happy when the neighboring grass is happy.<sup>188</sup> Happy grass tells the neighboring grass that it is happy.<sup>189</sup> It says that it is healthy and growing.<sup>190</sup> The grass grows next to the grass that is happy.<sup>191</sup>

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<sup>186</sup> “As for leaves, they produce all of the food that your turf grass needs for development and growth.” Turf Grass Growth 101, TruGreen, <https://www.trugreen.com/lawn-care-101/learning-center/turf-grasses/dig-deeper/turf-grass-growth-101>. “The main function of a grass plant is to use sunshine to make food or carbohydrates. When the leaves produce more carbohydrates than are needed for growth and reproduction, excess carbohydrates are stored in the plant for later use.” *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Micah Woods, “How Much Did the Grass Grow Underground?,” *Asian Turfgrass Center* (Nov. 22, 2022), <https://www.asianturfgrass.com/post/how-much-did-the-grass-grow-underground/>. “Not only can one find the total amount of growth underground, but it’s also possible to check where that happened because of the different depths.” *Id.*

<sup>191</sup> Woods, “How Much Did the Grass Grow Underground?” “The soil organic matter” is “the organic fraction of the soil excluding the undecomposed living and dead plant and animal material.” *Id.*

It may not grow if adjacent grass is not happy.<sup>192</sup> The grass patch next to it may be happy, but it is not.<sup>193</sup> It can be measured.<sup>194</sup> It commonly occurs following the types of interactions described here.<sup>195</sup> Trees that do not grow well are like grass that possibly is controlled.<sup>196</sup> Even though they are not grasses, the same instruments or others can be used.<sup>197</sup>

A kind of prohibited grass is called “controlled” here.<sup>198</sup> Prohibited grass is like marijuana or coca (i.e., cocaine).<sup>199</sup> Again, plants called “grass” may be prohibited because they hurt humans and prohibit themselves from helping humans.<sup>200</sup> Marijuana has been known to cause child abuse, for example

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<sup>192</sup> *Id.* David Beaulieu, “How to Control Spreading Lawn Grasses,” *The Spruce* (Jan. 4, 2023), <https://www.thespruce.com/grass-stolons-for-lawn-edging-2131114>. “Close inspection of your lawn may reveal different colony areas where different types of grasses have found their ideal growing situation and have come to dominate specific sections of the lawn.” *Id.*

<sup>193</sup> *Id.* TruGreen, <https://www.trugreen.com/lawn-care-101/learning-center/turf-grasses/dig-deeper/turf-grass-growth-101>.

<sup>194</sup> TruGreen, <https://www.trugreen.com/lawn-care-101/learning-center/turf-grasses/dig-deeper/turf-grass-growth-101>.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *See infra*

<sup>199</sup> ORS § 163.575 1(b), (d) (2023).

<sup>200</sup> *Id.*

marijuana given to a minor may be child abuse.<sup>201</sup> Cocaine also causes child abuse, for example cocaine possession may lead to prosecution for contraband when a minor illegally receives a pipe.<sup>202</sup>

Acapulco gold, called “*gracias*,” meaning “thank you” in Spanish, is a type of plant, known as “grass,” “weed,” “herb,” “bud,” and “trees,” that can grow almost anywhere.<sup>203</sup> It is highly toxic to animals and hurts other grass.<sup>204</sup> When grown side-by-side with other grass it may starve and suffocate the grass.<sup>205</sup>

It causes grass, such as happy and pristine grass, to be like controlled grass.<sup>206</sup> This is why laypersons and laborers believe that Acapulco gold, and other grasses, have veritably asked humans themselves not to plant the plants in civilization.<sup>207</sup> Controlled grass requires better attention or more kinds may become like other

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<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *E.g.*, Carmen M. Cusack, Conversations with police departments in 2012, 2015, and 2020 in Alaska, Florida, and Louisiana.

<sup>204</sup> *Id.* See generally, Peta.org.

<sup>205</sup> Plants may experience invasion. See *supra* note *id.*; Cornwall, *Fierce Invasions* (2022); *Homeland Security (HS) Today* (2022).

<sup>206</sup> *Supra* note.

<sup>207</sup> *Supra* notes.

governmentally prohibited plants.<sup>208</sup> The solution is better measuring instruments.<sup>209</sup>

Instruments are those tools that can be considered to be professional standards.<sup>210</sup> Tools are composed of people’s senses and their scientific expertise.<sup>211</sup> Tools make grass happy because they are made of humans’, animals’, and grass’ understanding.<sup>212</sup> Because grass is happy, people are happy in exchange.<sup>213</sup> Science may follow happiness.<sup>214</sup> The scientific understanding is premised on grass surviving.<sup>215</sup> Happy grass survives.<sup>216</sup> Grass reorients when happy people take care of it.<sup>217</sup> It accepts the people’s happiness and considers it.<sup>218</sup>

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<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Supra* note.

<sup>214</sup> *Id.*

<sup>215</sup> *Infra* note.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> Zawn Villines, *What Are the Benefits of Wheatgrass?*, MEDICAL NEWS TODAY (Oct. 17, 2019), <https://www.medicalnewstoday.com/articles/320210>.

Like many plant-based products, wheatgrass contains ingredients that act as antioxidants. These antioxidants may offer health benefits similar to many other plant based foods....Antioxidants help fight chronic inflammation, which occurs when the immune



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system reacts to an unwanted substance. When the body mistakenly reacts to something that is not a threat, some health issues may arise. Rheumatoid arthritis, type 1 diabetes, and psoriasis are all examples of autoimmune diseases. Examples of antioxidants include vitamins, such as A, C, and E. *Id.*

“Farmers mainly grow wheatgrass for animals to eat, but it has become popular as a supplement and a superfood in recent years.” *Id.* Rachel Patterson, “Magical Plants: Grass” (May 22, 2019), <https://www.rachelpatterson.co.uk/single-post/2019/05/22/magical-plants-grass#:~:text=Use long blades of grass for knot magic.,your psychic powers and bring abundance your way.> “Yep grass...the green stuff you have in your lawn, on roadsides, in the park...well pretty much everywhere really – I know it might seem common and boring but it still has magical properties.” Lindsay Curtis, “Health Benefits of 10 Healing Herbs,” Very Well Health (Nov. 1, 2022), <https://www.verywellhealth.com/healing-herbs-5180997>. “Remember that while herbal remedies may be helpful as complementary therapies, they aren’t cures for all that ails you. In addition, they can pose risks and side effects, and their safety and efficacy are not regulated by the Food and Drug Administration (FDA).” *Id.* In this Exposition, unwanted reactions to grass can be included in those assessments of whether the person who took the grass should have taken or properly took the grass. This may not mean that side effects are poor results from insensitivity to grass, but that the grass was working otherwise at the time and place that its properties were intended to heal.

In traditional Chinese medicine, the fresh rhizoma (underground stem) of *Zingiber officinale* Roscoe is used, called *Zingiberis Rhizoma Recens*. Ginger has been used extensively since the 1500s in many traditional medicines worldwide. Over 2,000 years ago, ginger was...valued and sought after for its medicinal properties....It was used to remedy common ailments, such as nausea, pain, and vomiting. Today, ginger has the distinction of being classified as an herb, food, and medicine. Regarding its medicinal properties, ginger is perhaps best known for its ability to help reduce nausea. Research confirms ginger may help relieve nausea and vomiting for people undergoing surgery and pregnancy-related nausea. Ginger may also help relieve chemotherapy-related nausea. Thanks to its anti-inflammatory and antioxidant properties, ginger is also an effective pain reliever. One study found that ginger helped reduce pain and increase mobility in individuals with osteoarthritis. *Id.*

“Pristine” is a term meaning wild and untouched.<sup>219</sup> Pristine grass is away from humans. The greenery in undiscovered parts of the world is pristine. There are layers of Earth that grow grass and much may be uninhabitable by humans.

The pristine world is protected naturally and by the Coast Guard; the Privileges and Immunities Clause in conjunction with high seas law can protect it by preventing people from exercising freedom in the wild; and Americans protect pristine grass by not entering

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Carla Greenwood, “7 Spiritual Benefits of Sweet Grass (+ How to Use It for Cleansing & Protection),” *Out of Stress* (Oct. 7, 2021), <https://www.outofstress.com/spiritual-benefits-of-sweet-grass/>.

The specific meaning of braided sweetgrass varies slightly in different cultures. For example, in the Cree-Ojibway tribes, the three blades are thought to symbolize love, peace, and harmony. To Pagans, sweetgrass symbolizes strength, positivity, and connection to Mother Earth....Sweetgrass was traditionally used by Native American tribes to cleanse the mind, body, and spirit. It was believed that the scent of this herb would be pleasing to the creator and so would incline him to bless a ceremony. *Id.*

“Sweetgrass is one of the four plants that is considered to be sacred by many native cultures including Inuit and Metis tribes, earning it the name of Holy grass. Throughout history, sweetgrass has been revered for its soothing and calming properties which work to repel negative energies and lift the spirit.” *Id.*

<sup>219</sup> Great American Outdoors Act, 54 U.S.C. § 100101 (2020). *Contra* Rachel Nuwer, *There’s No Such Thing As Truly ‘Pristine’ Nature Anymore*, *FUTURE*, BBC (Feb. 8, 2016), <https://www.bbc.com/future/article/20160208-theres-no-such-thing-as-truly-pristine-nature-anymore>. *Cf.* “Do we need a new way to define ‘pristine’?,” *Id.*

protected woods.<sup>220</sup> Some known happy grass, controlled grass, and pristine grass may grow in the wild. Yet, in civilization the pristine grass is the least researched because of its position. Numerous accounts of exploration describe unknown plants, and it may be inferred that pristine natural areas within civilization are similar to those because they are natural, yet possibly healthier because they grow separate from human civilization.

Pristine grass is growing in the Gulf of Mexico. It looks better due to research that is current. Recently, the Coast Guard has limited human trafficking in the Gulf and it has resulted in the abstention of privileged

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<sup>220</sup> U.S. CONST., art. IV, § 2. Great American Outdoors Act. *High Seas Treaty*, March 4, 2023. Secretary of State, “Signing of the High Seas Treaty,” U.S. Department of State (Sep. 21, 2023), <https://www.state.gov/signing-of-the-high-seas-treaty/>.

The United States yesterday signed the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, otherwise known as the High Seas Treaty at the United Nations in New York. The ocean is one global system, and its health is key to the health of our planet. This historic High Seas Treaty creates a coordinated approach to establishing marine protected areas on the high seas, a critical step to conserving ocean biodiversity.... The United States stands with the global community in committing to safeguard the health and resilience of our ocean so that it may continue to sustain us for generations to come. *Id.*

people who have abandoned unwanted vessels and reneged on contracts to voyage there, while sound engineering practices have led to growth and industry.<sup>221</sup> The grass completed a cycle and was never seen by humans. It was healthy grass. Evidence is visible on and around wildlife in the water and near the shore. Also, evidence shows that they enjoyed pristine grass that is new and replenished the area. Activism contributing to this Exposition shows how hard people fought to keep others out of the Gulf. Other areas experience resurgence of pristine grass, and it is assumed that they have other pristine grass.

This work completes a multi-year study on grass in the Gulf performed by the Coast Guard, Homeland Security, the music industry, and actors.<sup>222</sup> Others, such as clinicians, scholars, investigators, and legal

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<sup>221</sup> International Facility Management Association's (IFMA's) World Workplace 2023, September 28, 2023, Denver, Colorado.

<sup>222</sup> *E.g., id.*

authorities contributed.<sup>223</sup> Townspeople and citizens throughout the country helped protect the grass.<sup>224</sup>

The laws in the area demonstrate increased attention and removal of unwanted humans' presence, for example buildings, shows that the grass conservation effort throughout the Gulf has increased in categories identified in this work.<sup>225</sup> The categories

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<sup>223</sup> E.g., Nancy Sanquist, *Robot-proofing FM: Changing the Narrative in Higher Education & Practice*, 33 FACILITY MANAGEMENT J. (FMJ) 052 (2023).

<sup>224</sup> E.g., Lindsey B. King, *Joshua W. Strong: Freelance Photographer*, 31 GRAVEL BIKING 12 (2023). Strong said, "I think it is important that the community do work to welcome, engage, and enable people to enjoy this wonderful sport." *Id.*

<sup>225</sup> Introduction of knowledgeable presence that curbed encroachment for animals, plants, and people is abundant. See, Melissa Lee, "Initial Riverfront for All Plans Submitted to City of New Orleans," Audubon Nature Institute (Aug. 4, 2023), <https://newsroom.audubonnatureinstitute.org/initial-riverfront-for-all-plans-submitted-to-city-of-new-orleans/>; <https://audubonnatureinstitute.org/riverfront-for-all>.

The schematic plans were developed following years of discussions, five public listening sessions, and in-person and online input from more than 1,000 people....' New Orleans has so much investment happening along the riverfront in terms of maritime, tourism, and other developments....' said Ron Forman, Audubon Nature Institute President and CEO. 'More than 300 years ago, this city was first developed right along the Mississippi River. We are confident this project will be a major boost to the original front porch of the city.'

Plans call for additional green space, small entertainment venues, walking and bike paths as well as an elevated walkway and a community center. Once completed, the entire riverfront park and recreation development will span two and a quarter miles from Spanish Plaza through Woldenberg Riverfront Park, Moonwalk to

therefore are relevant to the continuation of pristine grass development.<sup>226</sup> In conclusion pristine grass can be observed through outside evidence but cannot be encroached by humans. Well-intended humans should work with parks, boat companies, tour guides, and arboretums to protect pristine wildlands from afar.<sup>227</sup> The three grasses benefit similarly when humans behave rationally and use instruments within their means.

### III. IN CONCLUSION

This Exposition concludes that humans are to label grass and the utilization of descriptive mechanisms must continue to expand.<sup>228</sup> Grass whether at the edge of an embankment, near the street, on a beach, or in other locations may be subjected to jaywalking, fire, trouncing, and other forces related to civil

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Crescent Park. ‘Once we get a green light from the City, we can begin with the detailed planning and get construction underway,’ said Forman. ‘Our goal is to have at least a portion of this improvement project complete in time to welcome guests to the city for the 2025 Super Bowl.’ *Id.*

<sup>226</sup> *See supra.*

<sup>227</sup> *Id.*

<sup>228</sup> *See supra.* Parts I & II.

disobedience, speech, self-defense, emergency rescue, crime, negligence, terror, and other types of conduct.<sup>229</sup>

This should be studied and reports should be given to benefit plants, animals, people, government offices, businesses, and other entities.

Conclusions can be drawn but must be made slowly. Acapulco gold, “*gracias*,” may be left to the wilds of the jungle and eliminated from civilization at the grass’ behest. It is possible that marijuana and other controlled plants not managed by humans would return. Some may already exist there. Psychiatrists would know whether the use of drugs must be remedied.

Exposure to controlled and even some pristine plants has been bad. That may be reversed. Plants may be used to correct it in natural or pill forms. The exposure to plants that should be separate must not be reintroduced. The government must take authority from people through social programming to end private planting of unhappy and protesting plants. This will avoid search and seizure melees and bring people

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<sup>229</sup> See e.g., Cal. Vehicle Code § 21955.

to a responsible decision-making process.<sup>230</sup> The recommendation of influencing kids to be responsible to plants has been made and the recommendation to increase physical fitness as well.

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<sup>230</sup> Nick Robinson & Elly Page, “Protecting Dissent: The Freedom of Peaceful Assembly, Civil Disobedience, and Partial First Amendment Protection,” CORNELL L. REV. (Apr. 16, 2022), <https://www.cornelllawreview.org/2022/04/16/protecting-dissent-the-freedom-of-peaceful-assembly-civil-disobedience-and-partial-first-amendment-protection/>; <https://live-cornell-law-review.pantheonsite.io/wp-content/uploads/2022/04/Robinston-Page-PDF-final-1.pdf>. Grass may be the subject of protest, including civil disobedience against alleged lawmakers. “For instance, peaceful protesters should generally not face felony charges for trespass connected with a nonviolent assembly.” *Id.* Robin Williams, *Mrs. Doubtfire* (1993). “I can’t live without air.” *Id.*



# **IMPROVEMENT OF THE REGULATORY FRAMEWORK FOR SOCIAL ORDER IN UKRAINE**

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Petrochko, Olena L. Pozdniakova

## **I. INTRODUCTION**

The system of social order in many countries of the world is one of the effective tools for ensuring the system of social services provision both at the national and regional levels. In 1991, since the restoration of independence, Ukraine began to form its own social security system. Due to the absence of such a system in the Union of Soviet Socialist Republics (USSR), or rather due to the functioning of a totalitarian social security system without an extensive network of social service institutions for the population, this system had to be built from scratch. That is why the Ukrainian system of social services for the population for more than 30 years of its existence did not have a clear concept of development and with the change of

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leadership of the Ministry of Social Policy of Ukraine could change radically. In order to avoid such radical changes in the future, it was necessary to define the conceptual frameworks and tools that would outline the development of the social service system. One of those such tools is the social order technology.

Social order provides an opportunity to determine the target expenditures for financing certain categories of populations in need of social services and their volumes by non-profit organizations.

The social order model is one of the progressive tools for improving the system of social services provision, but for its implementation it is necessary to overcome a number of barriers and challenges. In particular, most of the challenges to the development of social order are related to the imperfect regulatory framework in Ukraine, which limits the access of non-governmental organizations to the provision of social services at the expense of the state budget at different levels.

## II. ANALYSIS OF RESEARCH ON THE ISSUE OF THE ARTICLE

The problem of social order and social order in the field of social services has been studied in the works of such scientists as V. Dudarov and V. Popovych, who studied social order as a tool to improve the efficiency of provision of social services at the national and regional levels.<sup>1</sup> K.V. Dubych studied social order as a mechanism of social services provision in Ukraine.<sup>2</sup> The problem of social order is reviewed in the works of T. Semyhina,<sup>3</sup> N.I. Chudyk-Bilousova,<sup>4</sup> and K. Kuli-Ivanchenko.<sup>5</sup> These authors outlined the importance of social order development as a

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<sup>1</sup> V. Dudarov & V. Popovych, *Social Ordering as a Tool for Reporting the Effectiveness of Providing Social Services at the Regional Level*, *Bulletin of NTUU "KPI,"* 2 POL. SCI., SOC., L. 11 (2019).

<sup>2</sup> K.V. Dubych, "Social Order as an Effective Mechanism for Social Service Provision in Ukraine," *Derzhavne Upravlinnya: Theoria & Practika*, 1. [Public Administration: Theory and Practice], (2013) [http://nbuv.gov.ua/UJRN/Dutp\\_2013\\_1\\_14](http://nbuv.gov.ua/UJRN/Dutp_2013_1_14). [in Ukrainian].

<sup>3</sup> T. Semyhina, *Social Order*, in *Entsyklopediya Dlya Fakhivtsiv Sotsial'noysfery [Encyclopaedia For Social Workers]* [in Ukrainian] (I. Zvierieva ed., 2012).

<sup>4</sup> N.I. Chudyk-Bilousova, *Social Order in the System of Social Service Provision*, 63 *UNIVERSYTET-S'KI NAUKOVI ZAPYSKY* 167 (2017). [in Ukrainian].

<sup>5</sup> K. Kuli-Ivanchenko, *Social Order of Self-governance in Ukraine: Constitutional and Legal Research*, Extended abstract of candidate dissertation, National University "Odessa Legal Academy" (2015). [in Ukrainian].

technology of social services in Ukraine and described the prospects of using this technology both in general and within the framework of providing social services to certain categories of clients, in particular children and their families. At the same time, the problem of improving the regulatory and legal framework for social order in Ukraine is not widespread and requires further reflection and research. The purpose of the article is to propose ways and mechanisms for the effective implementation of social order in Ukraine through the improvement of the regulatory framework.

### III. THEORETICAL FOUNDATIONS OF SOCIAL ORDER IN UKRAINE

The development of society depends on the level of efficiency of its institutions and the quality of the correlation between the elements of social statics and social dynamics. According to Article One of the Constitution of Ukraine, Ukraine is a democratic, social, legal state.<sup>6</sup> In particular, the concept of a social

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<sup>6</sup> Constitution of Ukraine,  
<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

state provides for a developed social policy, which, according to David Garland, is the basis of the welfare state.<sup>7</sup> Within the framework of this state model, welfare plays the role of the goal of the functioning of the whole society. That is to say, public institutions function to achieve a high level of social comfort for all members of society.

According to Mozammel Haque, the social policy of the state is always aimed at solving existing social problems in society.<sup>8</sup> If they follow this model, one of the most important problems of social work in modern Ukraine is the redistribution of funds in the field of social security. One of the most important tools for solving this problem is social order. Social order makes it possible to meet the needs of the population in social services by non-governmental providers at the expense of the state budget, and at the same time to involve the

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<sup>7</sup> David Garland, *The Welfare State: A Fundamental Dimension of Modern Government*, 55 EUR. J. SOC. / ARCHIVES EUROPÉENNES DE SOCIOLOGIE / EUROPÄISCHES ARCHIV FÜR SOZIOLOGIE 327 (2014).

<sup>8</sup> Mozammel Haque, *Social Policy: Concept, Goals and Influencing Factors*, Researchgate, (Oct., 2021)

[https://www.researchgate.net/profile/Mozammel-Haque-6/publication/355174750\\_Social\\_Policy\\_Concept\\_Goals\\_and\\_Influencing\\_Factors/links/616443a30bf51d481770621e/Social-Policy-Concept-Goals-and-Influencing-Factors.pdf?origin=publication\\_detail](https://www.researchgate.net/profile/Mozammel-Haque-6/publication/355174750_Social_Policy_Concept_Goals_and_Influencing_Factors/links/616443a30bf51d481770621e/Social-Policy-Concept-Goals-and-Influencing-Factors.pdf?origin=publication_detail).

resources of non-governmental organizations and other public sector organizations to provide social assistance and quality social services to individuals or groups of individuals in need due to difficult life circumstances.

Social order is understood as "a set of measures of organizational and legal nature aimed at solving a social problem in the state or in a separate administrative-territorial unit, carried out by non-profit organizations at the expense of the budget and other sources on the basis of a social contract with public authorities or local self-government bodies."<sup>9</sup> According to the definition, social order enables to provide quality social services to people in difficult life circumstances. The main feature of the social order is that it is aimed at producing social services and other forms of social assistance by non-profit organizations with sufficient experience.

The economic conditionality of the social order is that the possibility to receive state and municipal

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<sup>9</sup> N.I. Chudyk-Bilousova, *Social Order in the System of Social Service Provision*, 63 UNIVERSYTET-S'KI NAUKOVI ZAPYSKY 167 (2017).

funding within the framework of the social order increases the number of potential providers of social services, which automatically reduces the price of one particular service due to the increase in the level of supply in the social services market.<sup>10</sup> In addition to increasing supply in the market of social services, the factor of monopoly in this market is reduced or leveled.

Today, both in Ukraine and in a significant number of countries, social services are provided by specialized social services and institutions financed from the budget. This leads to the fact that the social sphere becomes a non-profit activity, which does not allow private structures to consider it as a sphere of investment. At the same time, the state and local governments invest significant funds in the social sphere. In order to meet the demand for social services of people in difficult life circumstances, state and municipal authorities have to create and support the functioning of hundreds or even thousands of specialized institutions that provide social services. In

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<sup>10</sup> N. Datchenko, *Social Order as a Factor in Improving the Quality of Social Services*, <https://zenodo.org/record/5905660#.Y2K7pHbP02w>.

this form, the system has a low level of efficiency due to the lack of high competition between social service providers. This is due to the fact that most social services are provided by state and municipal institutions, competition between which is possible only in the regional dimension and because large cities and wealthy territorial communities are able to allocate more funding to the social sphere and municipal social service institutions. This causes internal migration within the country due to the uneven level of social comfort in different regions and the availability of social services.

Due to the impossibility of attracting investment funds in the sphere of social services, the development of commercial and non-commercial projects in the sphere of social services at both national and regional levels also looks unrealistic. Despite the possibility of receiving patronage and grant assistance within the framework of social initiatives of business and international charitable institutions, social order is one of the effective mechanisms for involving non-profit organizations in the provision of social services. Since



within the framework of social order it is possible to receive public funds for the provision of social services for different categories of the population, it enables organizations that do not have significant budgets to provide quality social services, in particular for children and their families.

Families with children are a priority category in the use of social services due to the peculiarities of their social status and the potential that a child can realize during his or her life.<sup>11</sup> A child has the highest indicator of social potential compared to representatives of other age and socio-demographic groups of the population. At the same time, the child's social potential may not be realized due to various unfavorable circumstances, which, as a rule, result from the low level of social services provided to their families. Instead, timely ensuring of social services, including through the provision of social services, create conditions for the upbringing, primary socialization, and enculturation of the child in a protected environment of the family,

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<sup>11</sup> J. Petrochko & N. Datchenko, *Ensuring the Best Interests of the Child as a Priority in the Provision of Social Services to Families with Children*, 5 KNOWLEDGE, EDUC., L., MANAGEMENT 150 (2021).

community, and state. High-quality social security for children contributes to the protection of their interests and provides additional resources for harmonization in the family as a social system and institution.

#### IV. INTERNATIONAL EXPERIENCE OF SOCIAL ORDER TECHNOLOGY IMPLEMENTATION

Social order is a common technology in the framework of social services for children in many European countries. In 2013, the European Commission in the document "Investing in children: breaking the cycle of disadvantage"<sup>12</sup> noted the priority of social welfare of children and their families, in particular in the framework of social services for them, access to education, housing, and quality health care. This document focuses on the fact that, first of all, the priority of children in access to these services should be ensured through social services for children and their families, especially those in difficult living

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<sup>12</sup> "Investing in Children: Breaking the Cycle of Disadvantage: European Commission Recommendation of 20.02.2012 no. 2013/112/EU," <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013H0112>.

conditions. This priority should be implemented in accordance with the existing tools of social services, one of which is social order.

According to Alfonso Lara Montero, in the European Union (EU) countries there is a tendency towards decentralization of the social order system and transition to the fact that today most social services are provided at the local level with the involvement of non-governmental organizations.<sup>13</sup> This tendency shows progress in the spread of social order practices at the EU level. This process is still being implemented at the level of individual countries, but it can be predicted that in the future this process will be regulated at the EU level, through the adoption of legal documents that will regulate the sphere of social order at the European level and will be adapted to the legal documents at the national and regional levels.

Romanian scientists O. N. Barbu and C. Stănilă consider the process of establishing the process of providing social services of common interest as an

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<sup>13</sup> ALFONSO LARA MONTERO, INVESTING IN CHILDREN'S SERVICES, IMPROVING OUTCOMES: RESEARCH (2016), AT 11.

important factor in the integration of EU countries into a single social and legal field.<sup>14</sup> In the researchers' opinion, this context is important because it allows the countries of Eastern and Southern Europe to integrate their own legislation in the field of social work to the level of other EU countries. Another aspect is that the implementation of this legislation could be facilitated by non-governmental organizations that are flexible to legal innovations and can operate in several countries at the same time. Within this system, the social order technology could also contribute to the economic integration of the social work services market through the possibility for organizations from different EU countries to apply for contests. This is important as the most worthy organizations could provide social services of a narrow spectrum in dozens of EU countries simultaneously.

The already mentioned rule of the EU single market allows national governments to put the need for

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<sup>14</sup> O. N. Barbu & C. Stănilă, *Services of General Interest and Territorial Sustainability in Romania*, 16 ANNALS OF VALAHIA, UNIV. TARGOVISTE, GEOGRAPHICAL SERIES 67 (2016), <https://doi.org/10.1515/avutgs-2016-0006>. See *id.* at 69-74.

certain social services on the European competition or not.<sup>15</sup> This rule is very important in the context of the responsibility of national governments to their voters, since by not putting certain social services on the general social order competition due to national protectionism, they do not allow local residents to receive the best quality social services that can be provided in the EU, which reduces the level of social services for a particular category of the population due to national selfishness. Therefore, at the EU level, regulations should be developed to limit national protectionism in the field of social order. In the researchers' opinion, an effective mechanism in this area could be the practice of involving people in need of social services in the commissions to determine the winners of the selection of organizations that will provide social services through the mechanism of social order.

According to M. Kajimbwa, evaluating performance based on results, not resources expended,

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<sup>15</sup> European Parliament and Council, "On Public Procurement and Repealing Directive 2004/18/EU," No. 2014/24/EU, (Feb. 26, 2014) <https://eur-lex.europa.eu/eli/dir/2014/24/oj>.

and the use of contracting social service providers is a way that has opened up the possibility for European countries to significantly improve social work services.<sup>16</sup> This European experience should be implemented in the Ukrainian legislation of Ukraine, which will contribute to Ukrainian European integration.

Not in vain the researchers have already mentioned contracting as a technology to improve the quality of social services. It is this technology that is a symbol of social order in European countries. Since contracting is the finalization of the social order procedure. Moreover, the EU has standards of contracting for state and municipal order of social services.<sup>17</sup> Development of a similar form of contract in Ukraine is an important element of further improvement of sphere of social order.

Despite the integration of European legislation in the field of social services, certain national traditions

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<sup>16</sup> M. Kajimbwa, *New Public Management: A Tribute to Margaret Thatcher*, 3 PUB. POL'Y. & ADMINISTRATION RES. 64, 65 (2013).

<sup>17</sup> Putting Quality First, "Contracting for Long-Term Care," Europeat Social Network, [https://www.esn-eu.org/sites/default/files/2021-01/Long\\_Term\\_Care\\_2021\\_Interactive.pdf](https://www.esn-eu.org/sites/default/files/2021-01/Long_Term_Care_2021_Interactive.pdf).

and features should be noted. Especially it should be said about the German principle of subsidiarity, when it is customary to provide financial resources for social security of certain categories of the population, to persons who themselves needed social services.<sup>18</sup> This approach, which is a national feature of financing social work in Germany, has become the basis of the local system of social order, which is being improved at the request of the EU.

The process of standardization of social service provision is not always a guarantee of the quality of social services. Thus, scientists A. Bilson and R. Gotestam came to similar conclusions, analyzing the experience of social order technology implementation in the Nordic countries.<sup>19</sup> In this context, the flexibility of the direct provider of social services is more important, as it being a professional in this field, can in the process of its activity increase the effectiveness of

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<sup>18</sup> E. Pavolini & C. Ranci, *Restructuring the Welfare State: Reforms in Long-term Care in Western European Countries*, 18 J. EUROPEAN SOC. POL'Y 246 (2008).

<sup>19</sup> A. BILSON & R. GOTESTAM, *IMPROVING STANDARDS OF CHILD PROTECTION SERVICES* (2003), AT 104, <https://digitallibrary.un.org/record/565269>.

the results of social services provision within the framework of social order.

In general, the process of determining the scale of efficiency of social service provision should be transformed, since the provider and customer of social services cooperate to achieve maximum results. Therefore, in 2020, the Ministry of Social Policy of New Zealand began to recommend that customers and providers of social services jointly define standards and criteria for determining the effectiveness of social service provision within the framework of social order.<sup>20</sup> This formula promotes maximum liberalization of the process of ordering and providing a specific social service. It is effective in developed societies where the corruption component is minimized. Implementation of this mechanism in developing countries is risky.

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<sup>20</sup> MINISTRY OF SOCIAL DEVELOPMENT OF NEW ZEALAND, SOCIAL SECTOR COMMISSIONING: PROGRESS, PRINCIPLES AND NEXT STEPS (2020), AT 34, [https://www.msdc.govt.nz/documents/about-msdc-and-our-work/publications-resources/planning-strategy/social-sector-commissioning/msdc-social-sector-commissioning.pdf?fbclid=IwAR0r-jL0sgJhCYpMtl18zaz5r5y35Pw0EDD6gQ9S\\_Bm9pheSLsSdKyiqT2Y](https://www.msdc.govt.nz/documents/about-msdc-and-our-work/publications-resources/planning-strategy/social-sector-commissioning/msdc-social-sector-commissioning.pdf?fbclid=IwAR0r-jL0sgJhCYpMtl18zaz5r5y35Pw0EDD6gQ9S_Bm9pheSLsSdKyiqT2Y).



V. Pestoff considers the possibility within the EU countries to involve in the process of social services the maximum number of community members who do not have professional knowledge through volunteering and related technologies.<sup>21</sup> In this case, we can talk about the solidarity of the process of providing social services in the EU countries within the social order technology through the ability of everyone to help people in need of social assistance.

## V. BARRIERS TO SOCIAL ORDER IMPLEMENTATION IN UKRAINE

Despite the proven effectiveness of social order, the Ukrainian realities of the social services organization pose a number of barriers that prevent the implementation of the social order technology in Ukraine. The main barriers include: insufficient funding for joint projects; underdeveloped regulatory and legislative framework; lack of qualification of public organizations; inequality between governmental

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<sup>21</sup> V. PESTOFF, *CITIZENS AND CO-PRODUCTION OF WELFARE SERVICES: CHILDCARE IN EIGHT EUROPEAN COUNTRIES* (2011), AT 1-17.

and non-governmental organizations in terms of access to public funding; lack of up-to-date methodology for calculating the cost of social services that meets the idea of the social services market; and problems of competitive selection and determination of the ratio of price and quality of social services that should be provided within the framework of social order.<sup>22</sup> These barriers to the application of social order technology are complex, so today the development of mechanisms to overcome them is a priority activity for social specialists.

The main marker of the implementation of any social technology is the scale of its application in the real sector of the social service system. Research by a team of Ukrainian scientists shows that "the volume of social order in Ukraine as a whole does not exceed UAH 1 million and is implemented only in 5-6 regions."<sup>23</sup> This indicator is a marker of systematic

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<sup>22</sup> N. Datchenko, *Barriers in the Application of Social Order in Ukraine*, 8 SOC. WORK & EDUC. 430 (2021).

<sup>23</sup> O.V. Shubina, Yu.V. Denysova, O.S. Sanchych, & A.V. Marylova, *Novitni Metody Udoskonalennia Systemy Nadання Sotsialnykh Posluh v Ukrainy* [New Methods of Improvement of Social Service Provision System in Ukraine], 3 ECON. BULL. DONBASS 213 (2020). [in Ukrainian].

regulatory, methodological and organizational problems in the sphere of social order. Therefore, it is important to improve the regulatory framework and strengthen the methodological support of social order for its further development and implementation. If these positions are not strengthened, in the future Ukraine will lose the opportunity to use this progressive tool for the provision of social services, including for children and families with children.

The structure of the social order process consists of three stages: 1. Formation of the social order 2. Fulfillment of the social order and 3. Monitoring and evaluation.<sup>24</sup> Each of these stages has its own specifics, but at the same time each of the stages is important for the formation of a closed cycle of the “social order” technology.<sup>25</sup>

When forming the social order as a process, it is important to assess the needs of the population in social services and determine the subject of the social order.

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<sup>24</sup> J. Petrochko & N. Datchenko, *The Essence and Features of Social Order Implementation in Ukraine*, 2 SCI. BULL. UZHGOROD U.: "PEDAGOGY. SOC. WORK" 155, 158 (2021).

<sup>25</sup> *Id.*

According to the provisions of the Ukrainian legislation, the subject of the social order should include the list of necessary social services defined in accordance with the results of the needs assessment; the list of categories and approximate number of social services recipients; and the amount of budget funds required for the social order. The second stage of the social order envisages development of the task for fulfillment of social order, organization and holding of the tender, and conclusion of the contract for social services provision and its implementation. At the second stage of social order implementation, the key role is played by the factors that influence the quality of services provided within the framework of social order, namely: availability of qualified personnel, experience of non-governmental service provider, and combination of state and non-governmental resources for maximum satisfaction of the population needs. The third structural component of the social order allows it to analyze the effectiveness of the social services provision process. At the same time, it should be taken into account that at each of these stages, individuals

and organizations seeking to provide social services to children and their families through the social order technology face difficulties related to the imperfect regulatory system.

## VI. PROPOSALS FOR IMPROVING THE LEGAL FRAMEWORK OF SOCIAL ORDER IN UKRAINE

In our opinion, the process of improving the legal framework for social order should start with the basic law for the Ukrainian social security system - the Law of Ukraine "On Social Services."<sup>26</sup> Article 10 of this Law provides for equality of rights, duties and responsibility of social service providers in the public and non-governmental sectors.<sup>27</sup> At the same time, the researchers believe that this is only declared, and in real conditions, non-governmental organizations do not have the opportunity to compete on equal terms with state and municipal institutions that provide social services for access to budget funding.

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<sup>26</sup> *The Law of Ukraine "On Social Services,"* 18 BULL. VERKHOVNA RADA (VVR) 73 (2019).

<sup>27</sup> *Id.*

The said Law, in the researchers' opinion, should contain sanctions for individual officials and units of state institutions that directly or indirectly impede non-governmental institutions from providing social services on the terms of social order, especially at the stage of obtaining such a right.

It would also be advisable to adopt a separate Law of Ukraine "On Social Order in Ukraine." Such an initiative was discussed among the professional community in 2009, but Ukrainian lawmakers rejected it, and after that there were no other attempts to create legislative initiatives in this area, which negatively affected the development of the social services market in Ukraine.

Currently, a new attempt to draft a separate Law of Ukraine "On Social Order" is relevant. The development of this draft Law is an important task for both the expert community and the circle of lawyers involved in improving the legal framework for social work. The Law of Ukraine "On Social Order" should clearly define the procedure for organizing social order in general and within the framework of work with

specific groups of clients, in particular children. Within the framework of this Law, the procedure of transparent participation of all those wishing to participate in the competition for social order should be prescribed. The said Law should also answer the question of initiating the social order procedure and its direct funding.

The possibility of combining funding for social order from different budgets (state, community, using private funds and donor support from foreign and international organizations) could be quite progressive. In this case, the organization that will implement the social order will be able to provide better quality social services, including to children and their families in difficult life circumstances.

In view of the importance of the development and adoption of the draft Law "On Social Order," it is advisable to activate the entire professional community of social workers and lawyers, specialists in social legislation. During the military actions that are currently taking place in Ukraine, it is very important to expand the number of tools that could help

Ukrainians, especially children, to receive comprehensive and quality social services. For this purpose, in the researchers' opinion, today it is necessary to consolidate the expert community of social workers to support the development of the social services market, including through the mechanism of social order. Representatives of this environment should take part in: development of the draft Law or even several alternative draft laws "On Social Order;" public discussion, preparation for consideration in the Verkhovna Rada of Ukraine, improvement in the process of parliamentary consideration, and implementation and analysis of the results of the implementation of actions in the perspective of the adopted Law of Ukraine "On Social Order." If the Ukrainian expert community manages to consolidate around the creation of the draft Law "On Social Order," the researchers do not exclude that this will be the beginning of a new qualitative stage of development of the social services market and an important stage in the formation of the Ukrainian social code.



The priority of children and their families for the provision of quality social services should be defined in all subsidiary legislation on child protection. The importance of this priority in the field of social order in Ukraine should be based on the fact that children suffer the most during emergencies, and any delay due to the inability to provide them and their families with quality social assistance worsens the situation and even increases the risks to their lives. In view of that children are the future of both modern Ukrainian society and the state, government agencies, local communities, social services and relevant departments should be able to provide social services to children and their families on an emergency basis. In such a situation, the mechanism of social order has one of the highest coefficients of efficiency precisely to meet the immediate needs of families with children in a qualitative way, and in some emergency cases may provide for the procurement of social services through social order under a shortened procedure.

## VII. CONCLUSIONS AND FURTHER PERSPECTIVES OF THE RESEARCH

Social order is a technology of meeting the needs of the population in social services on a competitive basis by state and non-governmental organizations of relevant competence. Social order is formed by the state or community taking into account the need for the nomenclature and volume of requests from people in difficult life circumstances. Today, in Ukraine, social order remains an innovation in the field of social services for children and their families, although for about 20 years there have been regulatory mechanisms that allow for the implementation of social services for children using the technology of social order. Today, the volume of social services based on this technology is minimal both in terms of the volume of services provided and in terms of financial resources. One of the main mechanisms for further development of social services provision through the mechanism of social order is improvement of the relevant legal framework, in particular the Law of Ukraine "On Social Services" and other elements of this framework. The current

problem is the lack of a law that would regulate the sphere of social order to the maximum extent possible. This role could be fulfilled by the Law of Ukraine "On Social Order," which should be directly developed, finalized, maintained, and implemented by a broad representation of the professional community of social workers of Ukraine.

In the future, the topic of researching the effectiveness of the regulatory framework will not lose its relevance for the entire system of social services in Ukraine, as well as the problem of researching the development of social order in the framework of providing social services to various categories of the population, including children and their families. Ukraine's integration into the EU can synchronize such research with scientists from the countries of the united Europe, which will be the beginning of Ukraine's entry into a unified European social space.

## **BLACK PEOPLE HAVE GOOD SKIN: WHAT IS YOUR PROBLEM ANYWAY?<sup>1</sup>**

Carmen M. Cusack

### I. “UNSUSPICIOUS”<sup>2</sup>

This Essay is about how scams hurt Black skin.<sup>3</sup> Scams are crimes that cause damage when defendants lie and steal.<sup>4</sup> Scams violating family, criminal, immigration, and other law hurt Black people’s skin.<sup>5</sup> Therefore, avoidance is necessary for the health of Black people.<sup>6</sup>

Black people’s skin is sensitive to scams in certain situations.<sup>7</sup> Sexual fraud, sexual violence, domestic violence, and sexual abuse could lead to skin damage caused, for example by apparatuses

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<sup>1</sup> Rosemonde Gérard, "Les Vieux" (1889), “*Car, vois-tu, chaque jour je t’aime davantage, Aujourd’hui plus qu’hier et bien moins que demain.*” *Id.*

<sup>2</sup> EDMOND ROSTAND, CYRANO DE BERGERAC (1900) at 40.

<sup>3</sup> *Id.* Sections I-III.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* See generally, RESTATEMENT (THIRD) OF TORTS (2012).

<sup>6</sup> RESTATEMENT (THIRD) OF TORTS § 46 (2012).

<sup>7</sup> *Id.*

resulting in maiming and burning and exposure to disease.<sup>8</sup> It is sensitive like White people's, thus this

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<sup>8</sup> *E.g.* O.C.G.A. §16-5-60 (2023). Jim Kepner, "HIV and STD Criminalization Laws," Centers for Disease Control and Prevention (Mar. 3, 2023), <https://www.cdc.gov/hiv/policies/law/states/exposure.html>. University of California School of Law (UCLA) Williams Institute, HIV Criminalization in Georgia: Penal Implications for People Living with HIV/AIDS January 2018, <https://williamsinstitute.law.ucla.edu/publications/hiv-criminalization-in-georgia/>. "Black men were more likely to be convicted of an HIV-related offense than White men." *Id.* "However, in some smaller counties, as many as 10% of the residents living with HIV had experienced an HIV-related arrest. The counties with the highest arrest rates among people living with HIV were mostly rural counties clustered in the northern part of the state." *Id.*

Among the remaining 25% of reckless conduct incidents, nearly half (49%) had some sort of concurrent drug offense in the same incident, indicating that the arrest may have been related to the needle sharing subsection of the code, 29% had a concurrent sex offense, indicating that they may have been related to the sexual exposure subsection of the code and 29% had a concurrent sex work offense, indicating that they may have been related to the sex work subsections of the code. *Id.*

"Black men and Black women were more likely to be arrested for HIV-related offenses than their White counterparts: 26% of HIV-related arrests were of White males, while 46% of HIV-related arrests were of Black males; additionally, 11% of those arrested were White females, while 16% were Black females." *Id.* See also Amira Hasenbush, "HIV Criminalization in Georgia: Penal Implications for People Living with HIV/AIDS," The Williams Institute, UCLA School of Law, The Center for HIV Law and Policy (CHLP), (Jan. 2018) <https://www.hivlawandpolicy.org/resources/hiv-criminalization-georgia-penal-implications-people-living-hiv-voids-amira-hasenbush>. "The report was based on arrests and convictions under Georgia's one HIV-related criminal exposure statute, which contains seven separate offenses." *Id.*

There are numerous striking findings in the Williams Institute report on HIV criminalization in Georgia. White women, who make up 3% of PLHIV in Georgia, represented 11% of HIV-related arrests. Yet—perhaps because of disparate HIV rates

Essay may use examples from Whites and other non-Whites to explain the cause and damage, while yet some situations may cause Black skin to be more sensitive.<sup>9</sup>

Not all causes and damage are extreme.<sup>10</sup> Black people may be stressed by scams leading to skin damage, breakdown, and loss of repair mechanisms, for example temporarily have no ability to resist the

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among black people in Georgia—black men and women were more likely to be arrested for HIV-related offenses than their white counterparts: 26% of HIV-related arrests were white men, 46% were black men, 11% were white women, and 16% were black women. Once charged, black men were nearly twice as likely to be convicted of the HIV-related offense (16%) as white men (9%). However, when charged with concurrent offenses (44% of total arrests), white men were more likely (24%) than black men (15%) to be convicted of the non-HIV related offenses and not the HIV-related offense. *Id.*

<sup>9</sup> Andrea Jordan, “Here’s How Eczema on Black Skin Looks Different, and How to Treat It: Plus, How to Stop the Itching ASAP,” *WOMEN’S HEALTH* (Jan. 24, 2022), <https://www.womenshealthmag.com/beauty/a35386534/eczema-on-black-skin/>.

Dr. Robinson agrees that Black patients are more likely to develop eczema, and she says that their skin also tends to be more resistant to treatment. ‘There is a complex mix of factors, including genetics, skin barrier function, and environment that seem to play a role in these differences.’

*Id.*

“All of these treatments are the same no matter what race or ethnicity you are.” *Id.*

<sup>10</sup> RESTATEMENT (THIRD) OF TORTS § 46 (2012).

burning by the sun.<sup>11</sup> Then they may develop ongoing skin conditions and fall victim to other scammers labeling them targets, for example because they cannot recover from scars as easily.<sup>12</sup>

A scar is a patch. While a scar is not the only damage envisioned here it is a poignant image that perpetuates the feeling of being scammed.<sup>13</sup> Healing may cause a scar that then reduces in coarseness throughout the duration of the scar.<sup>14</sup> Scars cannot

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<sup>11</sup> “Sunburn on black skin is often not recognized.” S. KARGER, CURRENT PROBLEMS IN DERMATOLOGY: CHALLENGES IN SUN PROTECTION, Vol. 55 (2021). *See also id.* at Chapter, 62 – 71; Damilola Fajuyigbe & Michèle Verschoore, “Sun Exposure and Black Skin.” *Id.* ARTHUR C. GIESE, HOW SUNLIGHT AGES SKIN LIVING WITH OUR SUN’S ULTRAVIOLET RAYS (1976), at 87. “With continuous exposure to the sun, **black skin** ultimately gets ‘weather-beaten.’” *Id.* *See also*, R. G. Freeman, “Effects of Aging on the Skin,” In *The Skin* (Editors, E. E. Helwig & E. K. Mostopi) (1971), at 244. Roselyn E. Epps & John A. Kenney Jr., *Diseases of Black Skin*, DERMATOLOGY (O. Braun-Falco et al., Editor) (2000), at 1681. “Many problems described as racial actually reflect availability of care, occupational patterns, economic status and other sociologic issues.” *Id.* at 1681. Olayemi Bello, Holger Sudhoff, & Peter Goon, *Sunburn Prevalence is Underestimated in UK-Based People of African Ancestry*, 14 CLINICAL, COSMETIC & INVESTIGATIONAL DERMATOLOGY 1791 (2021). “In total 69% reported that the episode of sunburn occurred when they were not using sunscreen, and another 10% could not recall whether sunscreen was used.” *Id.*

<sup>12</sup> *Generally supra* note.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

recede as well in some Black people.<sup>15</sup> Their skin must be preserved.<sup>16</sup> To do this, lawyers should focus on reducing scam activity, helping Black people to recover from scams, and disseminating important tips to avoid scams.<sup>17</sup> Section Two discusses examples of laws and scams.<sup>18</sup> Section Three describes advocative procedures, tips, and thoughts.<sup>19</sup> Recommendations and philosophies for Blacks are included in the concluding Section.<sup>20</sup>

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<sup>15</sup> See, Molly Burford, “9 Types of HIV Rash,” Very Well Health, (June 28, 2023) <https://www.verywellhealth.com/hiv-rash-5198418>.

“A rash is one of the symptoms associated with a new and recent HIV infection.” *Id.* “In people with HIV, it is one of the most common skin conditions.” *Id.* “In the U.S., psoriasis is more common in [W]hite people than Black people. However, in Black people, it may be more likely to cover larger areas of the body.” *Id.*

<sup>16</sup> Claire Sissons, “How Rashes Look on Darker Skin and Their Treatments,” MEDICAL NEWS TODAY, (Dec. 23, 2020) <https://www.medicalnewstoday.com/articles/rash-on-black-skin>. “On darker skin, the blisters may be gray or white.” *Id.*

<sup>17</sup> *Supra* and *infra* Sections I-III.

<sup>18</sup> *Infra* Sections II.

<sup>19</sup> *Infra* Sections III.

<sup>20</sup> *Infra* Sections IV.



## II. "FIGHTING ABILITIES"<sup>21</sup>

### A. "Together"<sup>22</sup>

The *L.E. v. K.E.W.* case uses the Prevention of Domestic Violence Act (PDVA) to defend victims against scams.<sup>23</sup> The case is applicable to Black people who suffer skin damage during domestic violence.<sup>24</sup> An expanded analysis of romance scams is presented in Subsection C after explication of different detrimental skin conditions is discussed in the next Section.<sup>25</sup> Though the history provided typifies a victim's struggle to prove that injuries sustained under criminal law also prove that a scammer damaged the victim in additional ways, the scam itself is a separate crime giving rise to actionable consequences under family law.<sup>26</sup>

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<sup>21</sup> Smithsonian, "Popular and Pervasive Stereotypes of African Americans," National Museum of African American History and Culture, <https://nmaahc.si.edu/explore/stories/popular-and-pervasive-stereotypes-african-americans>.

<sup>22</sup> "SUZANNE SOMERS (Live In Vegas)," *Youtube*, (Oct. 8, 2008) <https://www.youtube.com/watch?v=dxcdyKzSNtY>. The "first time" makes a "new attitude." *Id.*

<sup>23</sup> N.J.S.A. 2C:25-17 to-35 (2019).

<sup>24</sup> *L.E. v. K.E.W.*, No. A-5712-17T1 (N.J. Sup. Ct., 2020).

<sup>25</sup> *Infra* Sections II and III.

<sup>26</sup> *Infra* note.

L.E., Plaintiff-Respondent, overcame a defense by K.E.W., Defendant-Appellant.<sup>27</sup> The higher court held that the trial court correctly ruled that the defendant was a household member under a domestic violence statute PDVA.<sup>28</sup> New Jersey's appellate court found the defendant elaborately deceived in an alarming and seriously annoying manner disturbing the plaintiff with a ruse resulting in quasi-criminal harassment.<sup>29</sup> The defendant bilked a charity and

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<sup>27</sup> L.E. v. K.E.W., No. A-5712-17T1 (N.J. Sup. Ct., 2020). This matter was heard by the court in the Appellate Division on October 2, 2019 and decided on January 22, 2020.

<sup>28</sup> N.J.S.A. 2C:25-17 to-35 (2019).

<sup>29</sup> L.E. v. K.E.W., No. A-5712-17T1 (N.J. Sup. Ct., 2020) (citing *Desiato v. Abbott*, 261 N.J. Super. 30, 33 (App. Div. 1992)). A flexible list of factors may be needed. This approach is used to determine "family-like setting." *Id.* "Household" has greater comprehensiveness than "family." *Id.*

We identified five factors to consider in evaluating whether a person is a 'household member' within the meaning of the PDVA:

1. Constancy of the relationship.
2. Over-night stays at each other's residence.
3. Personalty [*sic*] items such as jewelry, clothing and personal grooming effects stored at each other's residences.
4. Shared property arrangements, such as automobile usage, access to each other's bank accounts and one mailing address for billings or other legal purposes.
5. Familiarity with each other's siblings and parents socially in dining and/or entertainment activities together, and/or attendance together at extended family functions such as weddings. *Id.* at 34.

moved in with the plaintiff. Similar to the case at bar, the defendant used a close proximity to the victim to create an injury.<sup>30</sup> In this case, this injury is not just domestic violence.<sup>31</sup> The damage caused in a victim's home may be domestic violence.<sup>32</sup> Physical cons leaving physical scars relate to interpersonal violence.<sup>33</sup> Therefore this case is analogizable.<sup>34</sup>

The plaintiff was a pastor's wife at a church where the defendant posed as a cancer patient in need.<sup>35</sup> The defendant showed a picture of another cancer victim at a hospital to the victim to deceive the victim.<sup>36</sup> The victim believed the picture.<sup>37</sup> The scammer later did admit the fake nature of the photo.<sup>38</sup>

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<sup>30</sup> N.J.S.A. 2C:33-4 (2019); PDVA (2015); Tribuzio v. Roder, 356 N.J. Super. 590, 595 (App. Div. 2003) ("household member" has a "special opportunity for `abusive and controlling behavior.'" *Id.* (quoting Jutchenko v. Jutchenko, 283 N.J. Super. 17, 20 (App. Div. 1995))).

<sup>31</sup> *Infra* Section III.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *See* Section IV.

<sup>35</sup> *Id.*

<sup>36</sup> L.E. v. K.E.W., No. A-5712-17T1 (N.J. Sup. Ct., 2020).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

The court quoted *Fireman's Fund of N.J. v. Caldwell*.<sup>39</sup> The trial court alluded to the significance of skin in similar cases saying that a "household" definition is "chameleon-like."<sup>40</sup> The statement is not meant to hide the type of case at bar, but shows great attention to skin in other senses.<sup>41</sup> Though the case centers around domestic violence the perpetrator would have attacked in another state and had a prior history.<sup>42</sup> The circumstance in this case favored the plaintiff, specifically recovery through a final restraining order (FRO), but the case was remanded to the lower court to find how the victim was at risk for further abuse by the defendant.<sup>43</sup>

The victim in this case is like Blacks suffering from skin damage.<sup>44</sup> Skin damage is one type of injury.<sup>45</sup> It can be caused by stress, direct contact, or

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<sup>39</sup> *Fireman's Fund of N.J. v. Caldwell*, 270 N.J. Super. 157, 163-64 (Law Div. 1993).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> R.G., 449 N.J. Super. at 219 (quoting N.G., 426 N.J. Super. at 409).

<sup>43</sup> *Id.* L.E. v. K.E.W., No. A-5712-17T1 (N.J. Sup. Ct., 2020).

<sup>44</sup> *See* Section IV.

<sup>45</sup> *Id.*

indirect exposure to hazards.<sup>46</sup> The damage calculation is for the court.<sup>47</sup> Injury proof is part of the elements.<sup>48</sup> For example fraud requires a lie made with intent, reliance by the victim, and damage to the plaintiff.<sup>49</sup> The law community should cautiously allow victims of several crimes to propose theories under different bodies of law to recover for scams affecting Black skin.<sup>50</sup>

Normally, few victims will emerge after a scam into the system.<sup>51</sup> The absence of direct help for Black's skin is calling for more attention to private remedies, such as advocacy, deterrence, and social conscience programming.<sup>52</sup> While some victims prefer to stay out of court and seek holism, such as the pastor's wife that spent her time practicing faith healing arts, the avoidance of the system cannot

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Infra* note.

<sup>49</sup> Restatement (Second) of Torts § 525 (1977).

<sup>50</sup> L.E. v. K.E.W., No. A-5712-17T1 (N.J. Sup. Ct., 2020).

<sup>51</sup> *See generally* Section I.

<sup>52</sup> Whole Woman's Health v. Hellerstedt, 579 U.S. 582 (2016) (no number of victims is too low).

allow multiple crimes to affect the scam victims.<sup>53</sup> Therefore recovery may be facilitated by this research.<sup>54</sup>

This research demonstrates that Black people, and others, can be damaged by aggravating and persistent scams.<sup>55</sup> The scams are often described as other problems, such as domestic violence.<sup>56</sup> When Black people's skin suffers, scams affecting Blacks and scams across all relevant legal areas should be researched to recover for Blacks.<sup>57</sup> Skin damage discussed in the next Subsection may not be obvious and may occur in the future, therefore fields of law prepared to assign responsibility should be researched.<sup>58</sup> Congruent fields may be managed affectively to offer more solutions for different types of damage and recovery.<sup>59</sup>

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<sup>53</sup> David North, "The Victims of Marriage-Related Immigration Fraud Tell Their Stories," Center for Immigration Studies, (Aug. 31, 2020) <https://cis.org/North/Victims-MarriageRelated-Immigration-Fraud-Tell-Their-Stories>.

<sup>54</sup> See generally Section IV.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> See *infra* Subsection B.

<sup>59</sup> *Id.*

B. "First Time"<sup>60</sup>

For con artists, “romance scams are a transaction, not a crime.”<sup>61</sup> The aggressors harbor criminal intent.<sup>62</sup> One explained that conning is his motive for making women fall in love.<sup>63</sup> “That’s my main occupation — online. I want somebody to be my lover, my fiancé.”<sup>64</sup> “She wanted to see me. Sometimes I feel like, wow, this lady, she’s really in some misery or pain because she really wants to see me and she can’t see me.”<sup>65</sup> He thinks like they do.<sup>66</sup> “He shows me himself naked, full naked. And I will make sure to make him happy, like he will fall in love with me.”<sup>67</sup>

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<sup>60</sup> Somers (2008).

<sup>61</sup> Sean Rubinsztein-Dunlop, Lesley Robinson, and Suzanne Dredge, “Meet the Scammers: Could This Be Your Online Lover?,” Four Corners/ABC Investigations, (Feb. 11, 2019) <https://www.abc.net.au/news/2019-02-11/ghana-meet-the-scammers/10785676>.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> ABC Investigations (2019).

After the con, the victim thinks differently.<sup>68</sup> One victim thought that he wanted her life.<sup>69</sup> “I suspect my last husband tried to kill me. He may have been slowly poisoning me, most likely with arsenic.”<sup>70</sup> “It [may] look like the victim [is] growing sicker with age or ill health, or suffering from cholera in acute poisoning cases.”<sup>71</sup> “We quickly met with an attorney to create a will.”<sup>72</sup> “Shortly after we signed the will, I discovered more betrayals.”<sup>73</sup> “Some have urged me to take legal action, but it’s too late.”<sup>74</sup>

The damage is emotional and physical.<sup>75</sup> “While many scars will fade with time, deep scarring that results from trauma may only fade with medical intervention.”<sup>76</sup> “For example, eczema can cause the

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<sup>68</sup> *Id.*

<sup>69</sup> *Infra* note.

<sup>70</sup> Kerry McAvoy, “How I Nearly Lost My Life in a Marriage Scam,” Good Men Project, (Feb. 20, 2021) [https://goodmenproject.com/featured-content/how-i-nearly-lost-my-life-in-a-marriage-scam/..](https://goodmenproject.com/featured-content/how-i-nearly-lost-my-life-in-a-marriage-scam/)

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Steph Coelho, *How to Treat Scars on Black Skin*, MEDICAL NEWS TODAY, (Feb. 25, 2022) <https://www.medicalnewstoday.com/articles/scars-on-black-skin>.



skin to appear brown, gray, or purple.”<sup>77</sup> “Fine scars may even fade on their own.”<sup>78</sup> The scars may demonstrate hostility more than on other lighter or darker parts.<sup>79</sup> “Hyperpigmentation is when spots of skin are darker than the surrounding skin,” so injuries stand-out.<sup>80</sup> Features may appear distinct, for example show personality, and the shades vary.<sup>81</sup>

People may be likelier to fall for scams when their skin is sensitive, and scars may change the sensitivity, for example “cause irritation in those with sensitive skin.”<sup>82</sup> “A doctor will advise a person on how long.”<sup>83</sup> Elevated pores may correlate with scars.<sup>84</sup> “Black people may also have other symptoms, such as dark circles around the eyes. They may also be prone to developing a form of eczema called papular eczema, which involves small goosebump-like protrusions.”<sup>85</sup> “For the best results,

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *See id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Coelho, *How to Treat Scars on Black Skin*.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

a person should speak with a dermatologist.”<sup>86</sup> “If home remedies are not working, it is best to seek a dermatologist’s help.”<sup>87</sup> When possible home treatment should exclude a scammer because that would make it worse or do damage.<sup>88</sup>

### C. "New Attitude"<sup>89</sup>

Black skin exposed to scams is likelier to get hurt than skin not exposed to them.<sup>90</sup> Crime increases the likelihood of damage.<sup>91</sup> Trauma also can cause damage.<sup>92</sup> Some traumatic events expose them to unprovoked violence, serious and severe sunburns, and diseases contracted outdoors.<sup>93</sup> Scams can include fraudulent sale and buying schemes, child abduction, and divorce.<sup>94</sup>

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Coelho, *How to Treat Scars on Black Skin*.

<sup>89</sup> Somers (2008).

<sup>90</sup> See Coelho, *How to Treat Scars on Black Skin*.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

Blacks exposed to scams are likelier to hurt their skin.<sup>95</sup> They may traumatize and abuse victims causing skin problems from emotional and physical injuries and irritation.<sup>96</sup> Falling in love is a scam for some Black people.<sup>97</sup> They are set-up by con artists seeking to ask them for money later.<sup>98</sup> The tort of intentional infliction of emotional distress may offer a remedy when criminal law falls short.<sup>99</sup> This tort may require proof, but the following elements may be satisfied: intent to behave in an extreme and outrageous way; causation arising from reckless disregard; and extreme emotional distress or damage.<sup>100</sup>

The law does not show great deference for Blacks, but a plain reading demonstrates how broad laws show attention to the needs of those who would be harmed.<sup>101</sup> Some laws may be used to prevent,

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<sup>95</sup> *Id.*

<sup>96</sup> Coelho, *How to Treat Scars on Black Skin*.

<sup>97</sup> Alain Tambe Ebot, *Advance Fee Fraud Scammers' Criminal Expertise and Deceptive Strategies: A Qualitative Case Study*, INFO. & COMP. SEC. (2023).

<sup>98</sup> *Hughes v. Pair*, 46 Cal.4th 1035, 1050 (2009).

<sup>99</sup> § 46 (2012).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

slow perpetuation, and end injury to the Black image.<sup>102</sup> While laws cater to Blacks' problems and solutions, Blacks can prevail under legal theories that harm related to race or not.<sup>103</sup> On top of that, the law can be used by Blacks to stop other Blacks who are misusing the law.<sup>104</sup>

The federal government's authority can be used to aid Blacks victimized by false relationships, such as fraudulent marriage, in §275(c) of the Immigration and Nationality Act (INA) or 8 U.S.C. § 1325.<sup>105</sup>

(a)Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading

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<sup>102</sup> *Id.* 18 U.S.C. § 1015. Naturalization, citizenship or alien registry; § 1025. False pretenses on high seas and other waters; § 1030. Fraud and related activity in connection with computers; § 1038. False information and hoaxes. NC G.S. 14-32.5 (2023).

<sup>103</sup> *See* § 46 (2012).

<sup>104</sup> *Id.*

<sup>105</sup> INA (1952). 8 U.S.C. § 1325 (2023).

representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.<sup>106</sup>

Abuse, abandonment, and adultery empty the Black partner of vital energy causing skin to become vulnerable to increasing toxic variables.<sup>107</sup> False marriage can weaken the skin.<sup>108</sup>

Scientific insight explains that the people are not weak.<sup>109</sup> “The studies identified by the search yielded prevalence rates of 3.4% to 20.3% for domestic physical violence against men. Most of the affected men had been violent toward their partners themselves.”<sup>110</sup> Among males “10.6–40% of them reported having been abused or maltreated as

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<sup>106</sup> 8 U.S.C. § 1325 (2023).

<sup>107</sup> *Id.* See § 46 (2012).

<sup>108</sup> *See* § 46 (2012).

<sup>109</sup> *Infra* Section IV.

<sup>110</sup> Verena Kolbe and Andreas Büttner, *Domestic Violence Against Men—Prevalence and Risk Factors*, 117 DTSCH ARZTEBL INT. 534 (2020).

children.”<sup>111</sup> “The reported consequences of violence include mostly minor physical injuries, impaired physical health, mental health problems such as anxiety or a disruptive disorder, and increased consumption of alcohol and/or illegal drugs.”<sup>112</sup> “Alcohol abuse, jealousy, mental illness, physical impairment, and short relationship duration are all associated with a higher risk of being a victim of domestic violence.”<sup>113</sup> They are victims.<sup>114</sup>

Experts have built ways for Blacks to escape ignorance of scams.<sup>115</sup> They also escape networks of abuse that turn into criminal lifestyles.<sup>116</sup>

The first contribution identifies four processes by which individuals build scamming criminal expertise as they transition from scammers-in-the-making to full-blown active scammers. The second contribution identifies the rationalizations used by scammers-in-the-making and scammers to justify transitioning into scamming and

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> See e.g., Coelho, *How to Treat Scars on Black Skin*.

<sup>116</sup> *Infra* note.

engaging in scamming criminality. The third contribution explains how the digital environment contributes to the processes of building scamming criminal expertise and why scammer's [sic] deceptive tactics are sometimes successful.<sup>117</sup>

Expertise shoos scammers. Demonstrating expertise by researching law enforcement and rights in this Essay is one tactic to protect, label, and avenge Black skin.<sup>118</sup>

The Federal Bureau of Investigation (FBI) is sensitive to Blacks' romance scams leading to bad skin conditions.<sup>119</sup> Bad conditions related to domestic deception may involve tainted beauty products and infectious tonics.<sup>120</sup> Blacks scar readily

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<sup>117</sup> Ebot, *Advance Fee Fraud Scammers' Criminal Expertise and Deceptive Strategies*, INFO. & COMP. SEC.

<sup>118</sup> *Supra* Section I; *infra* Section IV.

<sup>119</sup> "How We Can Help You: Romance Scams," Federal Bureau of Investigation (FBI), <https://www.fbi.gov/how-we-can-help-you/safety-resources/scams-and-safety/common-scams-and-crimes/romance-scams>.

<sup>120</sup> *E.g.*, Shiboli Chakraborti, "11 Best Soaps For Dark Skin That Improve Its Tone – 2023," StyleCraze, (July 11, 2023) <https://www.stylecraze.com/articles/best-soap-for-dark-skin/>.  
Melanie Rud, "The 14 Best African Black Soaps," Byrdie, (Oct. 28, 2022) <https://www.byrdie.com/black-soap-reviews-2442556>.

"African black soap is a good hydrating soap made from natural ingredients that can help with acne, moisturize dry skin, and also due

from traumatic domestic violence and behavioral diseases, also linked in cases to romantic and familial failure.<sup>121</sup> The following is a general description of how people get hurt by romance scams, which is just one example of a scam that may be hurting Black skin:<sup>122</sup>

Romance scams occur when a criminal adopts a fake online identity to gain a victim's affection and trust. The scammer then uses the illusion of a romantic or close relationship to manipulate and/or steal from the victim. The criminals who carry out romance scams are experts at what they do and will seem genuine, caring, and believable. Con artists are present on most dating and social media sites.<sup>123</sup>

Con artists scam those they do not pity or protect physiologically.<sup>124</sup> Strong organizations and people

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to its antibacterial and anti-inflammatory properties, can soothe skin while achieving a deep pore cleanse." *Id.*

<sup>121</sup> Steph Coelho, *What Causes Discoloration on Black Skin?*, MEDICAL NEWS TODAY, (Feb. 26, 2021) <https://www.medicalnewstoday.com/articles/black-skin-discoloration#hyperpigmentation>. "Skin discoloration can happen on any type of skin. However, it may be more apparent when it occurs on darker skin." *Id.*

<sup>122</sup> FBI, Romance Scams.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*



that follow them too can get scammed, warn others, and spot scams that are in progress.<sup>125</sup>

Experts have been hurt, too.<sup>126</sup> They are in need of forthrightness.<sup>127</sup> Doctors who met patients online and caused damage are an example, and a woman with a skin condition from a romance that gives bad information to a doctor is another twist in an example.<sup>128</sup> “The scammer’s intention is to establish a relationship as quickly as possible, endear himself to the victim, and gain trust. Scammers may propose marriage and make plans to meet in person, but that will never happen.”<sup>129</sup> The person may spend less on skincare to accommodate the scammer or may share cosmetic items to provide luxury leading to skin irritation.<sup>130</sup> “Eventually, they will ask for money.”<sup>131</sup> The con will be irresistible.<sup>132</sup>

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<sup>125</sup> *Id.*

<sup>126</sup> *Contra id.*

<sup>127</sup> *Id.*

<sup>128</sup> *See* FBI, Romance Scams.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

A con artist committing scams may pervade other industries to cause scams, such as immigration, revitalization, environmental compliance, and municipal authority.<sup>133</sup> They may contaminate the Black person's skin, cause stress, and reap attacks from additional victims on the original victim for financially supporting the scammer.<sup>134</sup>

Scam artists often say they are in the building and construction industry and are engaged in projects outside the U.S. That makes it easier to avoid meeting in person—and more plausible when they ask for money for a medical emergency or unexpected legal fee. If someone you meet online needs your bank account information to deposit money, they are most likely using your account to carry out other theft and fraud schemes.<sup>135</sup>

Black people have been described as being oppressed by scams.<sup>136</sup> Even though they have shown more fortitude by accepting others during times of need, momentarily, because they have had

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<sup>133</sup> *Id.*

<sup>134</sup> FBI, Romance Scams.

<sup>135</sup> *Id.*

<sup>136</sup> *See e.g. id.*

nowhere else to go in society.<sup>137</sup> Therefore they must be assured their money should not be used by scammers, which can hurt their appearance.<sup>138</sup>

### III. “NEXT”<sup>139</sup>

More advocacy is warranted.<sup>140</sup> Black people may not believe, as a whole, that they need special advocacy, which is why information should be generated.<sup>141</sup> Advocacy does not need to be firm, but should prepare those who are ready to react for themselves and alert other Blacks to potential future scams causing skin damage.<sup>142</sup> Government agencies provide examples of advocative strategies.<sup>143</sup>

The FBI proposes dependable ways to avoid being scammed.<sup>144</sup> These work for avoiding romance

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<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> “Man Searches Crowded Bus For Least-Wounded Person To Sit Next To,” *The Onion*, (Oct. 13, 2023)

<https://www.theonion.com/man-searches-crowded-bus-for-least-wounded-person-to-si-1850907125>.

<sup>140</sup> FBI, Romance Scams.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

scams, Internet-based scams, financial scams, and other kinds, and are especially useful for Black people seeking to protect their skin because they reiterate the importance of image communication and relying on skin to interpret actions.<sup>145</sup>

### Tips for Avoiding Romance Scams:

Be careful what you post and make public online. Scammers can use details shared on social media and dating sites to better understand and target you.

Research the person's photo and profile using online searches to see if the image, name, or details have been used elsewhere.

Go slowly and ask lots of questions.<sup>146</sup>

Blacks using online platforms should slowly research who they talk to so that the person is in less of a position to hurt their skin.<sup>147</sup> If the person turns

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<sup>145</sup> *Id.*

<sup>146</sup> FBI, Romance Scams.

<sup>147</sup> Catholic Legal Immigration Network, *Practice Advisory: Sham Marriages and Marriage Fraud: A Summary of Recent Case Law and Tips for Practitioners*, (Dec. 15, 2021) <https://www.cliniclegal.org/resources/family-based-immigration-law/spousal-petitions/practice-advisory-sham-marriages-and-matter-of-mensah>, 28 I&N Dec. 288 (BIA 2021); *Bark v. INS*, 522 F.2d

out to be a good friend, then the wait will have paid off, but if not then the self-protectiveness will improve their chances of avoiding trauma, irritation, pain, exposure to elements, disease, misuse, injury, and conflict.<sup>148</sup>

Conflict is when people fight.<sup>149</sup> It can occur in a Black person's emotions when a person wants to advance a romance but the scammer removes access.<sup>150</sup> Victims suffering from inner and outer strife complain that perpetrators stir conflict.<sup>151</sup> Conflict plays a dual role.<sup>152</sup> It occurs above and

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1200 (9th Cir. 1975); *Oddo v. Reno*, 27 F. Supp. 2d 529 (E.D. Va. 1998); *Matter of P. Singh*, 27 I&N Dec. 598 (BIA 2019); *Joseph F. Risoli P.E., LLC v. Johnson*, 274 F. Supp. 3d 88 (D. Conn. 2017); *Matter of Pak*, 28 I&N Dec 113 (BIA 2020); *Matter of R.I. Ortega*, 28 I&N Dec. 9 (BIA 2020).

In order for U.S. Citizenship and Immigration Services (USCIS) to make a section 204(c) finding, there must be 'substantial and probative evidence' in the record that the beneficiary attempted or conspired to enter into a fraudulent marriage. In *Matter of P. Singh*, the BIA clarified the relevant standard of proof and set forth a burden-shifting analysis for determining whether a beneficiary is subject to the 204(c) bar. (*Id.* at 2).

<sup>148</sup> *Id.*

<sup>149</sup> *See* FBI, Romance Scams.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

under the outer layer of the skin during domestic violence.<sup>153</sup>

Conflict labels can help people to remember the types of situations that can harm skin.<sup>154</sup> Conflict may be evident to laymen for example it gets labeled when skin gets saggy and hangs.<sup>155</sup> Pain may be felt when skin seems rejuvenated by a new online interaction and then the Black person seems detectable.<sup>156</sup> After the scam ensues, the person's skin returns to normal, but the pictures from and products purchased during that time cause tension and injury, emotionally and physically.<sup>157</sup>

Some caution should be paid to other people's *modus operandi*.<sup>158</sup> The person may seem sweet, but limitations should guide the Black person to avoid the scam.<sup>159</sup>

Beware if the individual seems too perfect or quickly asks you to leave a

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> See FBI, Romance Scams.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

dating service or social media site to communicate directly.

Beware if the individual attempts to isolate you from friends and family or requests inappropriate photos or financial information that could later be used to extort you.

Beware if the individual promises to meet in person but then always comes up with an excuse why he or she can't. If you haven't met the person after a few months, for whatever reason, you have good reason to be suspicious.

Never send money to anyone you have only communicated with online or by phone.<sup>160</sup>

Blacks should not generously give money to help scammers because the con artists may be taking scarce resources from Blacks, who have special skin regimens.<sup>161</sup>

Blacks who have financial concerns should be especially cautious.<sup>162</sup> They may have constrained

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<sup>160</sup> *Id.*

<sup>161</sup> FBI, Romance Scams.

<sup>162</sup> Anthony Hill, "In-Depth: Top Scams That Are Targeted against the Black Community; How to Avoid Falling Victim," ABC, (Aug. 12, 2021) <https://www.abcactionnews.com/news/in-depth/in-depth->

budgets and not be able to afford to remove the scammers and cons from their lives.<sup>163</sup> Limited Blacks may also suffer from impaired communication.<sup>164</sup> Due to budgetary constraints Blacks may not be able to afford telephones, Internet, post office boxes, and other modes of communication.<sup>165</sup>

Blacks may not be capable of communicating non-consent to scammers during cons to advance relationships to something legitimate.<sup>166</sup> Blacks also may lack the means to express themselves using certain linguistic skills because they come from

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top-scams-that-are-targeted-against-the-black-community-how-to-avoid-falling-victim. According to a story by American Broadcasting Company (ABC) covering the American Association of Retired Persons (AARP), “41% of African Americans say they were targeted by a scam.” *Id.* “Willie almost fell for a scam by someone he trusted: a former classmate.” *Id.* “If they really want to speak with you, they’ll leave a voicemail.” *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* According to ABC and AARP, African Americans are targets. *Id.*

<sup>165</sup> *See id.* People of other racial and ethnic backgrounds are also targeted at about the same percentage rate, but this is the first time AARP has studied in detail the types of scams that target the Black community.

<sup>166</sup> Katherine Skiba, “Education, Action Needed to Deter Fraud Affecting Black Americans,” *AARP*, (Aug. 3, 2021) <https://www.aarp.org/money/scams-fraud/info-2021/survey-black-adults-targeted-by-scams.html>. “The survey was conducted from Sept. 14 to Oct. 2, 2020, over landlines, cellphones and online.” *Id.*



distinct diaspora backgrounds causing breakdown between Blacks.<sup>167</sup> Blacks have linguistic skills suitable to their environments where they are utilized by the resources.<sup>168</sup> They cannot analogize those linguistic skills in relationships that are instigated by scams.<sup>169</sup>

When the scam persists and the relationship does not grow, Blacks may get injured.<sup>170</sup> In any economic group domestic violence can cause injury, but poorer Blacks may be likelier to receive disproportionately worse injuries although wealthier Blacks could suffer unfair hurt when poorer Blacks attack them.<sup>171</sup> Bite marks are a source of hurt in domestic violence that illustrate attacks on status.<sup>172</sup> Love may be a way

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<sup>167</sup> “Consumer Fraud in America: The Black Experience Facebook Twitter LinkedIn by BVA BDRC,” *AARP*, (Aug. 2, 2021), <https://www.aarp.org/pri/topics/work-finances-retirement/fraud-consumer-protection/scam-experiences-african-american-black.html> (citing Matthew Petrie, *Consumer Fraud in America: The Black Experience*, AARP Research, Washington, DC, (Aug. 2021) <https://doi.org/10.26419/res.00456.001>).

<sup>168</sup> *See id.*

<sup>169</sup> *Id.*

<sup>170</sup> *See id.*

<sup>171</sup> *Id.*

<sup>172</sup> Jessica Washington, “Identifying Domestic Violence Bruises on Black Skin Might Become a Lot Easier,” *Yahoo*, (Feb. 21, 2023) <https://www.yahoo.com/lifestyle/identifying-domestic-violence-bruises-black-181814782.html>.

that bite marks are left, but fighting shows hostility.<sup>173</sup>

Despite intimacy romance scams likely lead to violence for some Black people.<sup>174</sup> Over 40 percent of Black women suffer from intimate partner violence throughout their lives.<sup>175</sup> However, Black survivors of domestic violence lack direct evidence.<sup>176</sup> Even a bite mark may look suspicious but not cause a prosecutor to believe that a con was the cause.<sup>177</sup> In cases where Blacks fight back, they may be questioned.<sup>178</sup> Ability to prove injuries decreases around con artists.<sup>179</sup> Courts want to help, but insurers may thwart insured survivors and uninsured survivors may fail to receive any help because some medical practitioners think that “bruises” can be less likely to “see on darker skin tones.”<sup>180</sup>

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<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Washington, “Identifying Domestic Violence Bruises on Black Skin Might Become a Lot Easier” (2023).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

Blacks are confronted by con artists and dismantled from the system because of their economic problem.<sup>181</sup> Blacks are usually unable to avoid some scams because many Blacks live in poverty.<sup>182</sup> They have no access to government offices due to corruption and scams in many cities.<sup>183</sup> Blacks cannot relate to the majority advocating for Blacks to be free from all types of scams.<sup>184</sup>

#### IV. “NEED”<sup>185</sup>

This Essay describes four reasonings to help Blacks.<sup>186</sup> First, Black skin is sensitive and demonstrates damage.<sup>187</sup> Second, scams hurt skin.<sup>188</sup>

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<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *See infra* note.

<sup>185</sup> Alexis Soloski, *Justice Smith Doesn't Need Your Assumptions*, THE NEW YORK TIMES, (Mar. 5, 2021) <https://www.nytimes.com/2021/03/05/arts/television/justice-smith-generation-hbo.html>.

<sup>186</sup> Patrice Yursik, “20 Black Mixologists You Need on Your Radar,” *Food & Wine*, (June 27, 2023) <https://www.foodandwine.com/drinks/black-mixologists-bartenders-drinks-instagram>.

<sup>187</sup> *See supra* Section I.

<sup>188</sup> *See supra* Section II.

Third, curricula can end scams.<sup>189</sup> Fourth, Blacks can benefit from sociolegal programming.<sup>190</sup>

They must receive help through sociolegal programming that ends scams.<sup>191</sup> Help cannot just attack the problem arising after their skin suffers.<sup>192</sup> Blacks will benefit from additional help.<sup>193</sup> Help available to Blacks may preserve their children, marriages, pets, businesses, and the American way of life.<sup>194</sup>

A brief discussion about Black skin and American resolutions is effective.<sup>195</sup> Black women, for example, and the culture that supports their skin may encourage reclaiming the courts.<sup>196</sup> Courts are powerful enough to shape their communities through brief discussions, such as hearings and

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<sup>189</sup> See *supra* Section III.

<sup>190</sup> See *infra* Section IV.

<sup>191</sup> *Id.*

<sup>192</sup> See *supra* Section III.

<sup>193</sup> *Id.* Yursik, *Food & Wine* (2023). “Patrice is the creator of Afrobella.com, a popular award-winning Black beauty and natural hair blog.” *Id.*

<sup>194</sup> See FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (2008).

<sup>195</sup> See *infra* Section IV.

<sup>196</sup> Carmen M. Cusack, “Courts in a Woman’s World: Reclaiming Courts by Transforming Neglect, Jealousy, and Vengeance among Mothers,” Abstract, Gender and Sexuality Studies 2024 Conference (July 2023).

supervision.<sup>197</sup> An aggressor can be molded and a person in a vulnerable position may be assisted.<sup>198</sup>

Sociolegal programs that increase control over con artists and want to be in charge of a court proceeding expose the victims to the aggressors' tactics further to disseminate tools of authority and increase awareness.<sup>199</sup> Participation by Black women may show particular avenues of escape and ways to avoid damage, like how gender roles and even human-animal relationships are affected.<sup>200</sup> The example of programming assisting Black women affected by romance scams demonstrates how the problem would be worsened without courts that normally have been involved with family and criminal matters; yet expands the remedies throughout other bodies of law protecting skin and helping scam victims.<sup>201</sup> Courts, aiding organizations, Black victims themselves, and outsiders, barring inept contributors, can replace

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<sup>197</sup> *Id.*

<sup>198</sup> *See infra* Section II.

<sup>199</sup> Cusack, Abstract (July 2023).

<sup>200</sup> *Food & Wine* (2023). "Follow them...for....tips." *id.*

<sup>201</sup> Cusack, Abstract (July 2023).

high-strung intercession with positive group pressure.<sup>202</sup> The complaint that Black problems are channeled through the court system is a subject that is researched in the field of law, but can unite with this research due to the preceding recommendation.<sup>203</sup>

Blacks suffering from scams affecting their skin should avoid becoming involved in court cases when they require Blacks to enter the courthouse and interact with others, even aggressors, in a way that may not facilitate rehabilitation.<sup>204</sup> More quickly than a lengthy or difficult proceeding, the solution is to use common methods to solve Black problems if they have skin problems and are not in court.<sup>205</sup> Neighborhood police interested in supporting their community members can be helpful without the courts as well.<sup>206</sup> This presents an end to cycles of

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<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

domestic violence described in this Essay dealing with scams.<sup>207</sup>

Mothers deliberately using the system as a protective device that cannot be mobilized, a common scheme among scam artists, need to be made more attentive and considerate when using the system.<sup>208</sup> Instead of ushering them, and their victimized children for example, toward fathers and final decisionmakers, they must take responsibility to teach them loving kindness.<sup>209</sup> The people forced to use the courthouse to air problems are being treated like terrorists, experiencing a lot of suspicion and very little trust when they claim that they need a method to stay out of court and get results.<sup>210</sup> The answer is not just alternative resolutions.<sup>211</sup>

Diversion from court through neighborhood and family toning goals will help victims benefit when culprits follow trends and teach children to trend.<sup>212</sup>

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<sup>207</sup> Cusack, Abstract (July 2023).

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

Their innate status, for example motherhood, could be used to remedy problems with counselors and antagonists who see them as victims rather than as neighbors or loved ones.<sup>213</sup> Different gender tendencies may be used systemically, rather than criminally, to bring order.<sup>214</sup> When scammers reproduce, they must act like they want to raise children, including at times their animal companions, if they want to teach children how to rear children.<sup>215</sup>

Some Black women can be vengeful, but when children learn not to overuse courts, those people hurting their mothers and fathers will learn a bigger lesson, if one is deserved, about how the community, and eventually the country, is healing them.<sup>216</sup> Children will seek retribution for their parents to discuss Black women as mothers, describe their gender frailty as strength, and make it useful for resolving the courts' problems.<sup>217</sup> Those with cases

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<sup>213</sup> Cusack, Abstract (July 2023).

<sup>214</sup> *Id.*

<sup>215</sup> Carmen M. Cusack, *A Right Not to Parent One's Children*, 18 J. L. & SOC. DEVIANCE 103 (2019). Cusack, Abstract (July 2023).

<sup>216</sup> Cusack, Abstract (July 2023).

<sup>217</sup> *Id.*



or skin problems that allow them to stay out of court will seem like the courts cannot hear these matters unless there is the right legal issue.<sup>218</sup>

Black women should use their emotions to improve their situations and seek informal resolutions, such as mediation and addiction intervention between the victim and victimizer, who sometimes remain friends or family.<sup>219</sup> If not in a binary relationship, then some are likely to be jealous of other Black women after equal protection fails.<sup>220</sup> When aggressors are inculcated and assigned family values to uphold, the court case is canceled, Black people will be treated with more trust, and Black females would be allowed to resolve problems amicably.<sup>221</sup>

Concluding for Blacks, remarks against scams will indicate to them that they can avoid them.<sup>222</sup> With consistent messages and input from experts,

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<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *See supra* Section III.

Blacks can avoid and heal from scams.<sup>223</sup> Without that the hopefulness and possibility will decrease leading audaciously to scamming of Blacks.<sup>224</sup> Therefore, it is recommended through this Essay, for the promotion of Blacks that they protect their skin, and when required by law (e.g., children), the skin of others.<sup>225</sup>

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<sup>223</sup> *Id.*

<sup>224</sup> *Infra* note.

<sup>225</sup> “The Facts on Children’s Exposure to Intimate Partner Violence,” Futures without Violence, [https://www.futureswithoutviolence.org/userfiles/file/Fact sheet on Children Exposed to IPV 2013.pdf](https://www.futureswithoutviolence.org/userfiles/file/Fact%20sheet%20on%20Children%20Exposed%20to%20IPV%202013.pdf).

# THE CYCLICAL NATURE OF REPRODUCTIVE COERCION IN AMERICA

Rebekah Carson

## I. INTRODUCTION

America has had a long-standing history of disregarding individuals' rights regarding reproduction, especially those who come from marginalized communities.<sup>1</sup> Legal professionals should urge state and federal legislators to enact laws to identify the extent of reproductive coercion or coercive control, utilize this description to educate special courts, and apply disciplinary action to those who have practiced such acts.<sup>2</sup>

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<sup>1</sup> Paola Alonso, *Autonomy Revoked: The Forced Sterilization of Women of Color in 20th Century America*, Texas Woman's University, <https://twu.edu/media/documents/history-government/Autonomy-Revoked--The-Forced-Sterilization-of-Women-of-Color-in-20th-Century-America.pdf> (last visited Jun. 30, 2023); See also Willow S. Clouse, *The Forced Sterilization of Black Women as Reproductive Injustice*, RAMIFICATIONS 1 (2020).

<sup>2</sup> See, e.g. Carmen M. Cusack & Matthew E. Waranius, *American Capitalism and the Protestant Work Ethic: "I'll Always Be Your Slave,"* 25 J. L. SOC. DEVIANCE 40 (2023) (discussing slaves and reproductive rights). Carmen M. Cusack, *Nonconsensual Insemination:*

Unfortunately, as of today, only California seems to have taken legislative steps to criminalize certain reproductive coercive acts, such as stealthing.<sup>3</sup> Congress has also taken some legislative steps in passing laws that mirror this California law.<sup>4</sup> Under the Stealthing Act of 2022, a survivor might recover “compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.”<sup>5</sup> Congress also passed the Consent is Key Act in 2022, allowing for the United States Attorney General to increase the “amount provided to a State under the covered formula grant if the State has in effect a law that authorizes a civil action, for damages and such equitable relief as may be appropriate, against a person who engages in nonconsensual sexual protection barrier removal.”<sup>6</sup>

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*A Pilot Study*, 2 ONLINE J SOC. SCI. RES. 61 (2013). Carmen M. Cusack, *50 State Survey of Prosecutors’ Willingness to Prosecute Nonconsensual Insemination*, 6 FAMILY & INTIMATE PARTNER VIOLENCE Q. 7 (2014).

<sup>3</sup> See Anne Branigin, *Condom ‘Stealthing’ is Sexual Violence, Bill Says. Here’s What to Know*, THE WASHINGTON POST (Jun. 15, 2022), <https://www.washingtonpost.com/nation/2022/06/15/condom-stealthing-bill-congress/>.

<sup>4</sup> *Id.*

<sup>5</sup> H.R. Res. 7920, 117th Cong. (2022).

<sup>6</sup> H.R. Res. 7928, 117th Cong. (2022).

However, these laws are simply not enough as these cases are simply falling through the cracks of the legal system.<sup>7</sup> Those within the legal system, including our courts, need to be better educated regarding this type of domestic violence.

This Article discusses domestic violence, specifically reproductive abuse and coercion, in Section I. A cycle of abuse is described as well as the legal implications of reproductive coercion. In Section II, the history of James Marion Sims, M.D., L.L.D., a slave doctor, is compared to present day reproductive coercion to produce a synthesized analysis. The final part, Section III, determines future paths for educating and correcting Americans.

## II. DOMESTIC VIOLENCE TODAY

Domestic violence, also known as domestic abuse and intimate partner violence, is defined by the

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<sup>7</sup> See Clouse (2020), at 8-9.

emotional need for the abusive partner to keep power and control over the victim using a pattern of abuse.<sup>8</sup>

## A. Types of Domestic Violence

### 1. Forms

While each type of domestic violence may have similar underlying power imbalances, the way the imbalance is carried out differentiates among the various types of domestic violence.<sup>9</sup> Some of the most common types of domestic violence consist of the following: emotional abuse, financial abuse, reproduction abuse and coercion, sexual abuse and exploitation, stalking/cyberstalking, and litigation abuse.<sup>10</sup> While most of these forms may appear self-explanatory, reproduction abuse and sexual abuse are often mistaken and confused as being the same. This is related to the nature of abuse. In order to

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<sup>8</sup> *Forms of Abuse*, WomensLaw.com, <https://www.womenslaw.org/about-abuse/forms-abuse> (last visited Jun. 26, 2023); *Domestic Violence*, Office of Violence Against Women, <https://www.justice.gov/ovw/domestic-violence>

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

differentiate between the two types, activists must analyze the conduct associated with the abuse, as discussed in this Article, to guide courts further regarding this important legislation.

## 2. Reproductive Abuse and Coercion

Dr. Charvonne Holliday Nworu, assistant professor at Johns Hopkins Bloomberg School of Public Health, established that “[w]hat differentiates reproductive coercion from sexual violence or sexual coercion is the intention to achieve pregnancy.”<sup>11</sup> Additionally, Nworu stated that “[t]actical forms of reproductive coercion span coercion, deception, and manipulation.”<sup>12</sup> However, reproductive coercion does not always look the same case-by-case.<sup>13</sup> Reproductive coercion is behavior that “interferes

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<sup>11</sup> Nayanika Guha, *Here’s What You Need to Know about Reproductive Coercion*, Prism, (Mar. 29, 2022) <https://prismreports.org/2022/03/29/what-you-need-to-know-reproductive-coercion/>.

<sup>12</sup> *Id.*

<sup>13</sup> See *id.*

with the autonomous decision-making of a woman, with regards to reproductive health.”<sup>14</sup>

A 2019 study investigated how 550 sexually-active high school females were affected by reproductive coercion and relationship abuse.<sup>15</sup> Of those 550 females, 12% reported recent—within the last three months—reproductive coercion, and 17% reported physical or sexual adolescent relationship abuse, with no significant demographic differences.<sup>16</sup> Based upon these results, the study concluded that about one in eight females had experienced reproductive coercion within the last three months.<sup>17</sup>

The types of conduct included within reproductive coercion are varied and multi-faceted. Types of conduct that are typically categorized as reproductive coercion include: pregnancy coercion,

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<sup>14</sup> K.T. Grace & J.C. Anderson, *Reproductive Coercion: A Systematic Review*, 19 TRAUMA VIOLENCE ABUSE 371 (2018).

<sup>15</sup> Amber L. Hill, Kelley A. Jones, Heather L. McCauley, Daniel J. Tancredi, Jay G. Silverman, & Elizabeth Miller, *Reproductive Coercion and Relationship Abuse Among Adolescents and Young Women Seeking Care at School Health Centers*, 134 OBSTETRICS & GYNECOLOGY 351 (2019).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*



condom manipulation, pregnancy pressure, nonconsensual insemination, and birth control sabotage.<sup>18</sup> Birth control sabotage include, but are not limited to: hiding, withholding, and destroying birth control pills, or even withholding finances needed to purchase birth control.<sup>19</sup> Examples of pregnancy coercion include: threatening to have a baby with someone else if the person does not conceive, using physical violence to coerce a pregnancy, and forcing partners to terminate a pregnancy against their will or injuring them to cause a miscarriage.<sup>20</sup> Additional examples of reproductive coercion are lying about having a vasectomy or being

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<sup>18</sup> Guha (2022); *See also Reproductive and Sexual Coercion*, The American College of Obstetrics & Gynecology, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2013/02/reproductive-and-sexual-coercion> (last visited Jun. 30, 2023).

<sup>19</sup> *Intimate Partner Violence and Reproductive Coercion*, Planned Parenthood (Aug. 2012), [https://www.plannedparenthood.org/files/3613/9611/7697/IPV\\_and\\_Reproductive\\_Coercion\\_Fact\\_Sheet\\_2012\\_FINAL.pdf](https://www.plannedparenthood.org/files/3613/9611/7697/IPV_and_Reproductive_Coercion_Fact_Sheet_2012_FINAL.pdf); *See also* National Domestic Violence Hotline, *Reproductive Coercion*, <https://www.thehotline.org/resources/reproductive-coercion/> (last visited Jun. 30, 2023).

<sup>20</sup> Guha (2022).

on birth control.<sup>21</sup> This conduct is often manipulative, and a mixture of physical and emotional responses.

Examples of birth control sabotage and condom manipulation might include breaking a condom on purpose, destroying contraceptives, or forcibly removing vaginal rings, contraceptive patches, or intrauterine devices, and creating barriers to access healthcare appointments to obtain birth control.<sup>22</sup>

Another type of birth control sabotage is stealthing.<sup>23</sup> Stealthing, a type of domestic violence, is defined as the nonconsensual removal of a condom either before or during sexual intercourse.<sup>24</sup> A 2014 study investigated whether male negative attitudes toward women increase the likelihood of condom sabotage, deception, and forceful condom use

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<sup>21</sup> *Reproductive abuse*, mycwa, <https://www.mycwa.org.uk/reproductive-abuse> (last visited Jun. 30, 2023).

<sup>22</sup> Guha (2022).

<sup>23</sup> See National Domestic Violence Hotline, *Stealthing*, <https://www.thehotline.org/resources/stealthing/#> (last visited Jun. 26, 2023).

<sup>24</sup> *Id.*

resistance tactics.<sup>25</sup> This study found that the group of men with negative attitudes toward women were more likely to use deceptive condom resistance strategies.<sup>26</sup> Their use of condom sabotage or physical force tactics were similar to the other groups.<sup>27</sup> Additionally, this study found that 80% of the sample had successfully performed one condom resisting tactic since the age of 14 and that they had used any tactic an average of 48 times. These tactics were acts categorized as straightforward to those defined as deceitful, and even coercive or aggressive.<sup>28</sup> Physical force was the least used condom evasion tactic.<sup>29</sup> Ultimately, this study found that the men who had reported positive attitudes toward women reported the lowest total rates of condom use resistance behavior.<sup>30</sup> Thus,

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<sup>25</sup> K.C. Davis, C.A. Stappenbeck, J. Norris, W.H. George, A.J. Jacques-Tiura, T.J. Schraufnagel, & K.F. Kajumulo, *Young Men's Condom Use Resistance Tactics: A Latent Profile Analysis*, 51 J. SEX RES. 454 (2014).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Davis (2014).

<sup>30</sup> *Id.*

domestic violence may be associated with specific types of reproductive coercion.

## B. The Cycle of Abuse

While relationship can vary, a systematic pattern of behaviors in domestic violence situations makes these relationship appear similar.<sup>31</sup> The first phase is the *Honeymoon Phase*.<sup>32</sup> This phase occurs at the beginning of the relationship, and the abusive partner appears to be charming, charismatic, and even sincere.<sup>33</sup> The next phase is called the *Tension Building Phase*.<sup>34</sup> This phase often begins with subtle controlling behaviors.<sup>35</sup> This phase usually causes the other partner to feel as if they are walking on thin ice in order to avoid conflict.<sup>36</sup> This then transitions into the *Explosive Incident Phase*. This phase tends to make the affected partner question the

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<sup>31</sup> See The Network la Red, *What is Partner Abuse*, <http://www.tnlr.org/en/what-is-partner-abuse/> (last visited Jun. 26, 2023).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

relationship or even leave the relationship because the abusive partner begins to use a tactic, or tactics, of abuse to control the other partner.

Next, in the *Hearts and Flowers* phase, the abusive partner typically will try to prevent the affected partner from leaving.<sup>37</sup> The abusive partner may try to buy flowers, do other acts of kindness, or simply apologize for the abuse towards the other partner.<sup>38</sup> The abusive partner may try to blame the abuse on drugs, alcohol, or stress.<sup>39</sup> The cyclical nature begins then. The acts of kindness can be viewed as just that; however, most of the time, the abusive partner is still trying to control the other partner.<sup>40</sup> The affected partner may feel relief that the explosive incident is over; however, the tension then begins to escalate again.<sup>41</sup> This cycle is often repeated at an increasingly rapid rate over time.<sup>42</sup> This cyclical nature makes domestic violence an

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<sup>37</sup> See *id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

alarming issue because the relationship is fraught not with an isolated fight or a one-off incident of abuse. For these reasons, the long-lasting cycle of abuse has caught the eye of some legal systems.<sup>43</sup>

### C. Legal Implications of Reproductive Coercion

While not all states have specified which acts of reproductive coercion receive specific legal implications, if any, California has done so.<sup>44</sup> Governor Gavin Newsom approved AB 453, a California Assembly bill, signed into law on October 7, 2021.<sup>45</sup> This bill amended California's civil definition of sexual battery and made stealthing a

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<sup>43</sup> Simone Shah, *What is Stealthing? The Sexual Misconduct Gaining Legal Attention Around the World*, Time (Mar. 15, 2023, 4:22 PM), <https://time.com/6263384/netherlands-stealthing-consent/#>.

<sup>44</sup> See Isabella Grullón Paz, *California Makes 'Stealthing,' or Removing Condom Without Consent, Illegal*, The New York Times, <https://www.nytimes.com/2021/10/08/us/stealthing-illegal-california.html> (last updated Nov. 10, 2021).

<sup>45</sup> *Id.*; *Sexual Battery: Nonconsensual Condom Removal.*, Openstates, <https://openstates.org/ca/bills/20212022/AB453/> (last visited Jun. 30, 2023).

civil offense.<sup>46</sup> This being the act of removing a condom without consent during intercourse.<sup>47</sup> While this bill presented an important step forward, the law took substantial time and resources for enactment. Assemblywoman Cristina Garcia, a sponsor of the bill, said the “measure would give victims another resource to hold perpetrators accountable.”<sup>48</sup> Christina Garcia had been trying to pass legislation criminalizing stealthing since 2017.<sup>49</sup> Alexandra Brodsky brought widespread attention to stealthing in her 2017 study.<sup>50</sup> In her study, Brodsky stated that stealthing is “rape-adjacent” and stated the need for stealthing to become a new tort in order to provide both “victims with a more viable cause of action and

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<sup>46</sup> *Nonconsensual condom removal.*, Openstates, <https://openstates.org/ca/bills/20212022/AB453/> (last visited Jun. 30, 2023).

<sup>47</sup> Shah (2023).

<sup>48</sup> Isabella Grullón Paz, *California Makes ‘Stealthing,’ or Removing Condom Without Consent, Illegal*, The New York Times, <https://www.nytimes.com/2021/10/08/us/stealthing-illegal-california.html> (last updated Nov. 10, 2021).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

to reflect better the harms wrought by nonconsensual condom removal.”<sup>51</sup>

While California seems to be the only state in the United States to pass legislation for this behavior, it is not the only jurisdiction in the world to do so.<sup>52</sup> In other countries, stealthing has been defined as a crime or falls within the definition of rape,<sup>53</sup> due to the nonconsensual nature of stealthing.<sup>54</sup> In October 2021, when the California law went into effect, the Australian Capital Territory criminalized stealthing.<sup>55</sup> Canada, Germany, the United Kingdom, and New Zealand have all found

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<sup>51</sup>Brodsky, Alexandra, 'Rape-Adjacent': Imagining Legal Responses to Nonconsensual Condom Removal (2017). Columbia Journal of Gender and Law, Vol. 32, No. 2, 2017, Available at SSRN: <https://ssrn.com/abstract=2954726>  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2954726](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2954726); See also Amanda Kippert & Hannah Craig, What Are Grey Rape and Stealthing?, domesticshelters.org (Apr. 18, 2022), <https://www.domesticshelters.org/articles/identifying-abuse/what-are-grey-rape-and-stealthing#>.

<sup>52</sup> See Kippert & Craig (2022).

<sup>53</sup> Kippert & Craig (2022).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*; *Nonconsensual condom removal.*, Openstates, <https://openstates.org/ca/bills/20212022/AB453/> (last visited Jun. 30, 2023); See also Isabella Grullón Paz, *California Makes 'Stealthing,' or Removing Condom Without Consent, Illegal*, The New York Times, <https://www.nytimes.com/2021/10/08/us/stealthing-illegal-california.html> (last updated Nov. 10, 2021).



stealthingly to be rape or sexual assault.<sup>56</sup> Legal scholars have studied this behavior and established its legal implications, and, now, courts may collect a bevy of treatments to simplify paths for Americans seeking similar remedies for similar types of this domestic violence.

### III. AMERICA'S HISTORY OF REPRODUCTIVE COERCION

With new advancements and enacted laws in modern society, reproductive coercion and responses thereto have evolved and grown. However, the United States has always known and been exposed to reproductive abuse.<sup>57</sup> Fairly recently, women did not have the autonomy to make reproductive decisions, and such coercion continues in the twenty-first century.<sup>58</sup> One of the most historically well-known attacks on women's reproductive autonomy was by

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<sup>56</sup> Kippert & Craig (2022).

<sup>57</sup> Alonso (2023).

<sup>58</sup> *See id.*

James Marion Sims, M.D., L.L.D.<sup>59</sup> An examination of this well-known example illustrates the importance of legal attention and development to address this type of domestic violence.

A. The History of James Marion Sims, M.D., L.L.D.

In 1833, Dr. Sims began his medical education at what is now known as the Medical University of South Carolina.<sup>60</sup> He later transferred to study at Jefferson Medical College.<sup>61</sup> After the deaths of his first two patients, both of whom were infants, Dr. Sims relocated to Alabama.<sup>62</sup> After his relocation, he became renowned as a skillful general surgeon and built a private eight-bed hospital in the rear of his home. Dr. Sims then began treating enslaved persons on local plantations.<sup>63</sup> This was not then uncommon

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<sup>59</sup> See Jonathan Tavares, Charles J. Yeo, & Pinckney J. Maxwell, IV, *James Marion Sims, M.D., LL.D.*, 78 DEP'T. SURGERY GIBBON SOC. HIST. PROFILES 9 (2012).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

for doctors to do.<sup>64</sup> In 1808, the United States Congress banned the importation of African-born enslaved people.<sup>65</sup> Thereafter, slave-owners increased the number of births per enslaved woman as an economic strategy.<sup>66</sup> Because of the increased birth rates, doctors were hired by slave-owners to examine women in relation to their fertility.<sup>67</sup>

During this time, Dr. Sims wrote that “[i]f there was anything I hated, it was investigating the organs of the female pelvis.”<sup>68</sup> However, in 1845, Dr. Sims was requested to care for a woman who had incurred injuries on her pelvis.<sup>69</sup> This was the first time during which Dr. Sims used what is now known as the “Sims position.”<sup>70</sup> This position allowed for better insight into the injuries and, upon this

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<sup>64</sup> See Chris Fitzpatrick, *The ‘Father of Gynaecology’ Dr James Marion Sims and His Brutal Experiments on Slaves*, THE IRISH TIMES (May 14, 2023), <https://www.irishtimes.com/opinion/2023/05/14/revisiting-the-legacy-of-sims-the-father-of-gynaecology-who-performed-brutal-experiments-on-enslaved-women/>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Tavares (2012), at 9.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

discovery, Dr. Sims became elated.<sup>71</sup> Dr. Sims then used a bent pewter spoon, purchased from a hardware store, as what is now known as the Sims speculum.<sup>72</sup> This began his long practice of gynecology.<sup>73</sup> Dr. Sims began examining the enslaved women who had vesicovaginal fistulas, an abnormal opening between the bladder and the vagina.<sup>74</sup> Using this new speculum and position, Dr. Sims wrote: “I saw everything as no man had ever seen before. . . . I soon operated upon the fistula, closing it in about an hour’s time.”<sup>75</sup>

While this operation failed, Dr. Sims became hyper-focused on curing vesicovaginal fistulas. In Dr. Sims’ autobiography, he wrote that he had “ransacked the country” to find “cases” to operate on.<sup>76</sup> Dr. Sims acquired eleven enslaved females with the condition, promising the slave-owners to

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> See *id.*

<sup>74</sup> Tavares (2012), at 9. M. Stamatakos, C. Sargedí, T. Stasinou, K. Kontzoglou, *Vesicovaginal Fistula: Diagnosis and Management*, 76 *INDIAN J. SURG.* 131 (2014).

<sup>75</sup> *Id.* at 9.

<sup>76</sup> Fitzpatrick (2023).

“lodge, board, and treat them.”<sup>77</sup> This resulted in a three-year practice of repeated operations on these women.<sup>78</sup> There were three enslaved women in particular, Lucy, Anarcha, and Betsey, that were operated on several times.<sup>79</sup> Anarcha had over 30 surgeries.<sup>80</sup> During these operations, Dr. Sims did not use anesthesia, even though anesthetics were available, because he did not believe these operations brought upon enough pain to necessitate them.<sup>81</sup> Additionally, starting in 1849, Dr. Sims ceased the use of silk sutures and began using silver sutures during these operations.<sup>82</sup> This change was beneficial because the use of the silk sutures allowed the surgical site to become infected and reopen.<sup>83</sup> After this change, Dr. Sims performed the first successful vesicovaginal operation on a woman named Anarcha.<sup>84</sup>

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<sup>77</sup> Tavares (2012), at 10.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Tavares (2012). [REVISE SHORT CITATION].

<sup>84</sup> *Id.*

Dr. Sims was awarded medals and honors, became president of the American Gynecological Society, and even became renowned as the “Father of American Gynecology.”<sup>85</sup> However, these awards were not gained without the forced participation of other human beings. The eleven enslaved women were in a seemingly never-ending cycle of indescribable pain, such as Anarcha, who suffered over 30 unsuccessful surgeries.<sup>86</sup> While science indicates that the use of silk sutures could lead to infections and re-opening of the surgical sites, this scientific breakthrough was found by forcing eleven enslaved women to endure three aggravating years of medical experimentation.<sup>87</sup> While Dr. Sims searched for a cure, he also ignored a basic pillar of medicine: “Primum, non nocere.”<sup>88</sup> This meaning “first, do no harm.”<sup>89</sup> Unfortunately, these practices

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *primum non nocere*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/primum%20non%20nocere> (last visited Jun. 30, 2023).

were not illegal or unknown as some may wish to believe.

In 1861, the Alabama Supreme Court decided that any enslaved individual “has no legal mind, no will which the law can recognize.”<sup>90</sup> Even if an enslaved woman experienced sexual violence at the hands of a slave-owner, there was no afforded legal protection or escape.<sup>91</sup> These women had no physical or legal protection from these invasive and excruciating surgeries. Reproductive coercion and these forced acts have many similarities. Those who have been affected by reproductive coercion are similar to those eleven enslaved persons because both forced acts have removed all physical autonomy for these women.<sup>92</sup> While there is no longer a widespread epidemic of slavery, individuals are still being forced into reproductive slavery.<sup>93</sup>

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<sup>90</sup> Fitzpatrick (2023).

<sup>91</sup> *Id.*

<sup>92</sup> National Underground Railroad Freedom Center, *Black Resistance: Reproductive Justice*, Freedom Center Voices (Apr. 14, 2023), <https://freedomcenter.org/voice/black-resistance-reproductive-justice/>; See also Clouse (2020), at 9.

<sup>93</sup> See Corey G. Johnson, *Female Inmates Sterilized in California Prisons without Approval*, Reveal (Jul. 7, 2013),

## B. The Continual History

“[S]lavery very much depended on the control over bodies and thus the control over reproduction.”<sup>94</sup> Dr. Sims was not an isolated perpetrator in American history. During the time of enslavement, many women even turned to self-administered abortions.<sup>95</sup> However, the end of slavery did not end the control over Black women’s bodies.<sup>96</sup> During the 1950s and 1960s, society saw a shift from forcing reproduction to trying to stop their reproduction altogether.<sup>97</sup> This influenced the “eugenics movement,” focused on creating the “perfect race.”<sup>98</sup> Margaret Sanger, a woman involved in the movement for reproductive rights among poor and endowed females, stated that eugenics supported “more children from the fit, less from the unfit.”<sup>99</sup> Then, sterilization began being forced upon people

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<https://revealnews.org/article/female-inmates-sterilized-in-california-prisons-without-approval/>.

<sup>94</sup> Clouse (2020), at 3.

<sup>95</sup> *Id.* at 3.

<sup>96</sup> *Id.* at 3.

<sup>97</sup> *Id.* at 3.

<sup>98</sup> *Id.* at 3.

<sup>99</sup> *Id.* at 3.



of color, as they were viewed by supremacists as an inferior group of society.<sup>100</sup>

The most common procedures of sterilization were a hysterectomy, the removal of the uterus, and tubal ligation, the blocking of a woman's fallopian tubes through either cutting, burning, or tying.<sup>101</sup> In many states, Black women were often sterilized against their will.<sup>102</sup> This trend began because in 1907 when the United States government allowed state legislators to enact laws to sterilize anyone who was "unwilling and unwitting."<sup>103</sup> These non-consensual procedures were often completed in the hospital post-birth of a child or were done after being told they had a reproductive condition, when they did not, that could only be fixed with surgery.<sup>104</sup> By the 1930s, 33 states allowed the sterilization of "unwanted" members of society.<sup>105</sup>

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<sup>100</sup> Clouse (2020), at 6.

<sup>101</sup> *Id.* at 5.

<sup>102</sup> *Id.* at 6.

<sup>103</sup> *Id.* at 6.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

Specifically, Fannie Lou Hamer, a woman of color, was subjected to a forced hysterectomy.<sup>106</sup> In 1961, Hamer went to the Sunflower County hospital for a procedure to remove a tumor.<sup>107</sup> During her visit, she was sterilized without her consent.<sup>108</sup> At this time, they referred to this type of hysterectomy, one performed on indigent women of color, as a “Mississippi appendectomy.”<sup>109</sup> Hamer stated that about six out of ten women of color that go to the hospital are sterilized by having their tubes tied.<sup>110</sup>

### C. Comparing History to Reproductive Coercion

Today, there is so much more knowledge available to understand reproductive coercion.

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<sup>106</sup> Sanjana Manjeshwar, *America’s Forgotten History of Forced Sterilization*, BERKELY POL. REV. (Nov. 4, 2020), <https://bpr.berkeley.edu/2020/11/04/americas-forgotten-history-of-forced-sterilization/>.

<sup>107</sup> *Black Liberation Archives | WEEK 1 | Fannie Lou Hamer Taught Us*, Center for Constitutional Rights (Feb. 1, 2021), <https://ccrjustice.org/home/blog/2021/02/01/black-liberation-archives-week-1-fannie-lou-hamer-taught-us#>.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*; Rosalind Early, “*The Sweat and Blood of Fannie Lou Hamer*,” National Endowment for the Humanities, <https://www.neh.gov/article/sweat-and-blood-fannie-lou-hamer#>.

<sup>110</sup> Center for Constitutional Rights (2021).

Using this knowledge, legal scholars and legislators can examine the practices of Dr. Sims and forced sterilization under a theoretical microscope to see how similar they were to what is now known as reproductive coercion. As previously discussed, a 2014 study found that men with reported positive attitudes toward women also reported the lowest total rates of condom use resistance behavior, which is a type of reproductive coercion.<sup>111</sup> Here, Dr. Sims had expressly shown his hatred towards female genitalia in the beginning of his career. After taking interest in the gynecological needs of slave-owners, Dr. Sims was not concerned with the physical ailments of the women involved.<sup>112</sup> Rather, Dr. Sims was simply helping slave-owners who needed assistance to maintain their economic needs and he made the decision that these women did not need anesthesia for extremely painful procedures.<sup>113</sup>

Even though Dr. Sims' actions occurred during the United States period of slavery, the forced

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<sup>111</sup> Davis (2014).

<sup>112</sup> *Id.*

<sup>113</sup> *See Id.*

sterilizations by others were roughly 65 years after the abolishment of slavery.<sup>114</sup> These acts of reproductive coercion removed the autonomy of these women.<sup>115</sup> These types of acts are not just in the past. In California, a report found that, between 2006 to 2010, more than 150 female prisoners were illegally forcibly sterilized.<sup>116</sup> Even though there are laws that try to stop forced sterilization, this practice still occurs today.<sup>117</sup> Public outrage over sterilization abuse in Alabama and New York also still continues today.<sup>118</sup> Since the 1970s, it has been illegal to pressure anyone to be sterilized; however, women are still being sterilized against their will.<sup>119</sup> Kimberly Jeffrey, a former inmate, stated that she was pressured by a doctor, while she was sedated and strapped to a surgical table for a C-section in 2010.<sup>120</sup> Jeffrey stated that she was horrified and resisted.<sup>121</sup>

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<sup>114</sup> Clouse (2020), at 7.

<sup>115</sup> National Underground Railroad Freedom Center (2023).

<sup>116</sup> Clouse (2020), at 8.

<sup>117</sup> *Id.* at 8-9.

<sup>118</sup> Johnson (2013).

<sup>119</sup> *See id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

The current analogy between legislation, federal and in California, is not enough to delve into the variety of needs and solutions.

The federal legislation allowed for those affected by this coercion to be awarded compensatory damages, punitive damages, injunctive relief, and declaratory relief under the Stealthing Act of 2022.<sup>122</sup> The federal legislation also allowed for the United States Attorney General to increase funding to states through the Consent is Key Act in 2022.<sup>123</sup> However, neither Act expressly allowed for educational resources to educate those working in this field. Neither legislation made it a criminal act to remove the reproductive autonomy from another using annotations that include every timely term and already defined form of violence, malpractice, and injury.

Although these forced acts have occurred throughout the history of the United States, reproductive coercion is a modern version of these

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<sup>122</sup> H.R. Res. 7920, 117th Cong. (2022).

<sup>123</sup> H.R. Res. 7928, 117th Cong. (2022).

forced actions. Reproductive coercion is how these actions have evolved throughout society as women have gained other rights. These cases have been permitted by some processes within the judicial system to slip through the cracks. It was not until the 1990s that some jurisdictions began to create specialized domestic violence courts.<sup>124</sup> States designed special domestic violence courts to “process cases more efficiently and deliver more consistent rulings about domestic violence statutes.”<sup>125</sup> Additionally, some domestic violence courts incorporate rehabilitation and deterrence of repeat offenses. This system could also be applied to intimate partners similar to those systems that help victims to defend against criminal actions by doctors and jailers.<sup>126</sup> Domestic violence court participation has had a statistically significant impact on repeat offenders.<sup>127</sup> These courts do not always uniformly

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<sup>124</sup> *Domestic Violence Courts*, National Institute of Justice, <https://nij.ojp.gov/topics/courts/domestic-violence-courts>.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Practice Profile: Domestic Violence Courts*, National Institute of Justice (Oct. 22, 2018), <https://crimesolutions.ojp.gov/ratedpractices/78#mao>.

implement results in a national fashion.<sup>128</sup> As a result, these types of cases may still go unnoticed and not litigated.

#### IV. LOOKING TO THE FUTURE OF REPRODUCTIVE RIGHTS

Reproductive coercion is a painful and tragic part of American history that some people, institutions, states, and even the federal government may refuse to acknowledge using legal education to resolve matters. However, in order to look forward and establish a better future, courts must look to the past for answers. Currently, only one state in the United States, California, has made stealthing, a form of reproductive coercion, illegal as a distinguishable form of sexual violence. This distinguishment helps domestic violence courts to aid survivors in a consistent way. This lack of legal education and action is simply an injustice. The eleven enslaved women that Dr. Sims examined and experimented upon were not afforded any type of autonomy in their

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<sup>128</sup> *See id.*

reproductive matters. Surgery after surgery, any fragment of bodily autonomy they felt they had was stolen from them. Any human that is a survivor of reproductive coercion is removed of their reproductive autonomy.

Dr. Sims ignored a basic pillar of medicine, “do no harm.”<sup>129</sup> Due to the deeply-rooted moral similarities of the medical field and the legal field, experts should not ignore this thought process. These acts of violence and manipulation have continued. While these newer acts of manipulation have resulted in physiologic manipulation, they still result in removing all autonomy in one’s reproductive health. The legal system was built to help those in need and punish those who caused harm. Stripping away the reproductive autonomy from an individual is one of the most harmful things a human can do to another. Without easy access to punishment and damages, those in need are not better off than their ancestors hurt by Dr. Sims.

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<sup>129</sup> Merriam-Webster, <https://www.merriam-webster.com/dictionary/primum%20non%20nocere>.



Currently, there is not enough education regarding this type of domestic violence flowing evenly through the courts. States within the United States need to implement a widespread plan to educate the current legal system on how to properly address this issue. While the Center for Court Innovation has established that "[c]riminal domestic violence charges are challenging to prosecute and adjudicate," they have also outlined the seven key principles of developing domestic violence courts.<sup>130</sup> The Center has also helped gather data regarding the confirmed amount of criminal domestic violence courts within the United States.<sup>131</sup> As of December 2009, only 208 criminal domestic violence courts were confirmed within the United States.<sup>132</sup> This deficiency can no longer be tolerated. The cost of intimate partner violence exceeded \$8.3 billion in the

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<sup>130</sup> See *Criminal Domestic Violence Courts: Key Principles*, courtinnovation.org,

[https://www.innovatingjustice.org/sites/default/files/documents/DV\\_Criminal\\_Fact\\_Sheet.pdf](https://www.innovatingjustice.org/sites/default/files/documents/DV_Criminal_Fact_Sheet.pdf).

<sup>131</sup> *A National Compendium of Domestic Violence Courts*, Center for Court Innovation (Dec. 2009),

[https://www.innovatingjustice.org/sites/default/files/national\\_compendium.pdf](https://www.innovatingjustice.org/sites/default/files/national_compendium.pdf).

<sup>132</sup> *Id.*

United States.<sup>133</sup> Additionally, survivors lost a total of 8 million days of paid work each year.<sup>134</sup> While these numbers show the sheer amount of loss Americans experience each year in domestic violence, it may not even show or make-up for the amount of individuals who lose their own reproductive autonomy.

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<sup>133</sup> Economic Impact of Domestic Violence, Center for Domestic Peace, <https://centerfordomesticpeace.org/economic-impact-of-domestic-violence/>.

<sup>134</sup> *Id.*