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## ABSTRACT BOOKLET CONTENTS

Journal Contents.....	iii
Law and Yoga	
Michal Tamir.....	1
No Stroking in the Pokey: Promulgating Penological Policies Prohibiting Masturbation among Inmate Populations	
Carmen M. Cusack.....	3
Activism Unshackled & Justice Unchained: A Call to Make a Human Right out of One of the Most Calamitous Human Wrongs to Have Taken Place on American Soil	
Angela A. Allen-Bell.....	5

History behind the First Amendment’s  
Establishment Clause as it Applies to Public  
and Private Schools: Has the Highest Court  
Inadvertently Moved toward Not Respecting the  
Establishment Clause?

Amir Tavakkoli .....7

A Quandary of the Legislature’s Making: Applying  
Parental Consent Statutes to Minors without Parents  
*In re Anonymous 5*, 286 Neb. 640 (2013)

Kaeanna Wood.....9

# Journal of Law and Social Deviance

Volume Seven

2014

## JOURNAL CONTENTS

Editor's Introduction.....i

Contribution.....ii

### Law and Yoga

Michal Tamir.....1

No Stroking in the Pokey: Promulgating  
Penological Policies Prohibiting Masturbation  
among Inmate Populations

Carmen M. Cusack.....80

Activism Unshackled & Justice Unchained: A Call  
to Make a Human Right out of One of the Most  
Calamitous Human Wrongs to Have Taken Place on  
American Soil

Angela A. Allen-Bell.....125

History behind the First Amendment’s  
Establishment Clause as it Applies to Public  
and Private Schools: Has the Highest Court  
Inadvertently Moved toward Not Respecting the  
Establishment Clause?

Amir Tavakkoli .....203

A Quandary of the Legislature’s Making: Applying  
Parental Consent Statutes to Minors without Parents  
In re Anonymous 5, 286 Neb. 640 (2013)

Kaeanna Wood.....242

## LAW AND YOGA

Michal Tamir

The Article will review values from the philosophy of yoga. Section II describes some characteristics of the legal system that contribute to the gap between law and justice, and this Section explains why insights from the philosophy of yoga can help to diminish this gap. Section III explains what yoga is and the essence of yoga philosophy, with particular emphasis on the new readings of the yoga sutras of Patanjali. Section IV examines how yoga philosophy's commitment to inner truth can also dictate legal and moral behavior, and how this philosophy could be used by all the legal practitioners to narrow the gap between law and justice. Section V highlights the emphasis that yoga philosophy places on exploration and examination, with its emphasis on understanding that we know much less than we do not know, and the importance of this insight to the legal world. Section VI explores the importance of being "present" in yoga mantras. Based on the importance of this value, applying yoga philosophy to legal cases cautions against analyzing current cases solely through a view of the

Tamir

past because doing so leads to a distorted view of the present, thereby reducing the present to a need to satisfy the doctrine of precedent. This insight helps narrow the gap between law and justice. Section VII shows how moral values and basic justice in the yoga sutras gain their validity from striving for inner truth. This Section also reviews two “Yamas”—precepts, recommendations or restraints—that, if followed, can also improve the implementation of justice in the legal world. The last Section concludes with a call to the legal practitioners to adopt the humility inherent in the yoga philosophy—that is, the acknowledgement that we do not know everything and that we should strive to explore things out of the usual categorizations—and thus to promote justice and narrow the gap between justice and law.

**NO STROKING IN THE POKEY:  
PROMULGATING PENOLOGICAL  
POLICIES PROHIBITING  
MASTURBATION AMONG INMATE  
POPULATIONS**

Carmen M. Cusack

Most U.S. prisoners are prohibited from masturbating by state and federal policies. In Section II, this Article explains that prisoners have little right to privacy, and why public masturbation is not socially acceptable within prison or in the general population. An important reason for maintaining this taboo is the high comorbidity between public masturbation and other paraphilic sex crimes. Thus, states' policies support that public masturbation among inmates could negatively impact society within prison, and upon inmates' reentry into the general population. Section III further justifies proscriptions on masturbation by arguing that frequent masturbation can adversely affect inmates' desires to improve themselves while in prison. Inmates should use their vitality, time, and energy to learn, rehearse, and engage in more sophisticated, productive, and deeply satisfying coping skills and activities. Section IV discusses examples that link masturbation and sex abuse

Cusack

within prison and the general population to argue that elimination of all sexual contact in prison, including masturbation, is essential to protect inmates from such abuse. This Section explains why all sexual contact in prison should be considered to be nonconsensual. In male correction facilities, the presence of semen on a person or object ought to be considered evidence of a crime, especially when assault has been alleged. A defense of masturbation should not thwart the potential strength of this evidence. The state's interest in investigating and punishing sexual assault perpetrated by inmates or guards justifies policies that eliminate consensual emissions and masturbation. If male or female prisoners cannot refrain from voluntary or involuntary masturbation, then mental health professionals should treat them.

**ACTIVISM UNSHACKLED &  
JUSTICE UNCHAINED: A CALL TO  
MAKE A HUMAN RIGHT OUT OF  
ONE OF THE MOST CALAMITOUS  
HUMAN WRONGS TO HAVE TAKEN  
PLACE ON AMERICAN SOIL**

Angela A. Allen-Bell

This Article examines whether, during a darker period in United States history, government officials committed acts that are consistent with or akin to what is statutorily recognized as domestic terrorism against American citizens—specifically, members of the Black Panther Party (the “BPP”). Section II analyzes the purpose, goals and legacy of the BPP. Section III elucidates as to whether members of the BPP fell prey to behaviors consistent with or akin to what is statutorily recognized as domestic terrorism. The conclusion is presented in section IV. This Article details the grave and calamitous nature of the harm done to BPP members and to the BPP at large, in hopes that the profound damage be acknowledged and those responsible be officially held accountable. Acknowledging shortcomings, being accountable for wrongdoings, and reconciling

Allen-Bell

transgressions gives birth to social growth. Consecrating a union between unaccountability for wrongdoing and unrepentance will forever divide what could have been and what should have been.

**HISTORY BEHIND THE FIRST  
AMENDMENT'S ESTABLISHMENT  
CLAUSE AS IT APPLIES TO  
PUBLIC AND PRIVATE SCHOOLS:  
HAS THE HIGHEST COURT  
INADVERTENTLY MOVED  
TOWARD NOT RESPECTING THE  
ESTABLISHMENT CLAUSE?**

Amir Tavakkoli

This Article discusses how the U.S. Supreme Court has inadvertently strayed from the Establishment Clause's intent. This Article explores and explains the application of the Establishment Clause within public and private schools.

First, this article analyzes major U.S. Supreme Court decisions regarding the Establishment Clause, and shows how the movement by the U.S. Supreme Court has neglected the struggle waged by Thomas Jefferson and James Madison; the Court is not respecting the separation of church and State and the purpose of the Establishment Clause. The following cases will be analyzed to illustrate the trend toward judicial activism and away from framer's intent: *Everson v. Board of Education* (1947), *McCullum*

Tavakkoli

v. Board of Education (1948), *Zorach v. Clauson* (1952), *Epperson v. Arkansas* (1968), *Stone v. Graham* (1990), *Mueller v. Allen* (1983), *Wallace v. Jaffree* (1985), *Witters v. Washington Dept. of Servs. for Blind* (1986), *Lee v. Weisman* (1992), *Zobrest v. Catalina Foothill School Dist.* (1993), *Mitchell v. Helms* (2000), *Santa Fe Independent School Dist. v. Doe* (2000), *Good News Club v. Milford Central School* (2001), and *Zelman v. Simmons-Harris* (2002).

## **A QUANDARY OF THE**

Tavakkoli

**LEGISLATURE’S MAKING:  
APPLYING PARENTAL  
CONSENT STATUTES TO  
MINORS WITHOUT PARENTS  
*IN RE ANONYMOUS 5*,  
286 NEB. 640 (2013)**

Kaeanna Wood

*InreAnonymous5* marked the first opportunity for the Nebraska Supreme Court to consider a waiver of parental consent. In this case, the Nebraska Supreme Court denied the Petitioner authorization for an abortion without parental consent because: 1) she did not establish that she was a victim of abuse or neglect by a parent or guardian; and 2) she did not establish that she was sufficiently mature and well-informed to make a decision without parental consent.

Nebraska Supreme Court’s decision as to the Petitioner’s immaturity is antithetical for two reasons. First, the Petitioner had no parent or guardian. Dissenting Justice Maurice Connolly wrote that the decision left the Petitioner in “legal limbo—a quandary of the Legislature’s making.” Nebraska’s parental consent statute results in an impermissible, absolute ban on the Petitioner’s right

to an abortion because she is a minor ward of the state and such parental consent is impossible for her to obtain. Second, *In re Anonymous 5* held that the Petitioner was not mature enough for an abortion, but was mature enough to raise a child. Carrying and possibly raising a child demands the same, or even more, maturity than deciding whether to bear a child.

This Article argues three points: 1) the Nebraska Supreme Court lacked jurisdiction to entertain the Petitioner's request for judicial bypass; 2) the new law does not serve a significant state interest so as to outweigh a minor ward's right to privacy; and 3) the law results in an impermissible, absolute ban violating the Petitioner's constitutional right to obtain an abortion. Finally, this Article addresses possible remedies for the Petitioner and recommends actions for states with similar parental consent statutes.