**Joan H. Hollinger. Law 281.1**

**Creating and Sustaining Children and Families: 21st Century Challenges**

**VERY TENTATIVE SYLLABUS**

**THE READINGS will be EXCERPTS selected from cases, briefs, articles and statutes and will be responsive to student interest in different topics. If you have questions about the scope of the seminar, please send questions to Prof. Hollinger,** [**jhollinger@law.berkeley.edu**](mailto:jhollinger@law.berkeley.edu)**.**

**First Week: Overview of traditional and emerging approaches to determining parentage**

The marital presumption

Biology and paternity testing

The legitimacy-illegitimacy distinction and its dismantling by the Supreme Court

The “holding out” presumption

Psychological, functional, and de facto parental presumptions

Assisted reproduction and parentage based on Intent-to-Parent

Adoption—excerpts from Hollinger articles

Expectations for seminar: How to develop a feasible research and writing project

http://www.law.berkeley.edu/library/dynamic/guide.php?id=86

**Second Week: From Coitus to Commerce: Consequences of separating reproduction from sex**

Case studies: *Baby M.* compared to *Johnson v. Calvert* and *Buzzanca*

Are sperm or egg donors “parents”?

Are transfers of frozen-embryos subject to adoption laws? If not, then what rules?

Significant California parentage cases 2000-present

The Uniform Parentage Act of 2002 (UPA)

Infertility Tourism and intercountry “sales” of genetic material and babies

**Third Week: Equal or disparate treatment for mothers and fathers when children are relinquished for adoption?**

The Supreme Court and unwed fathers: *Stanley, Quilloin, Caban, Lehr*

The Uniform Adoption Act (UAA)

Putative Father Registries and “thwarted fathers”

Case Studies: - When a mother successfully revokes her consent to adoption

- When a father is unable to veto or withhold his consent

- When both birth parents rights are violated but adoptive parents retain custody of child

**Fourth Week: Searching for ways to protect children from abuse and neglect**

Excerpts from:

Jill Duerr Berrick, Take Me Home (2009)

Michael Wald, *Preventing Maltreatment or Promoting Positive Development –Where Should A Community Focus Its Resources?* (2008)

Don Duquette, *A Vision for Child Welfare Reform*, 41 U. Mich. J.L. Reform 317 (2007)

Katherine Boo, *Swamp Nurse*, New Yorker, Feb 6, 2006

H. Boonstra, *Home Visiting & The Obama Administration* (2009)

Emily Bazelon, *A Question of Resilience*, NY Times Mag (2006)

Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. Rev. 637 (2006)

**Fifth Week: “Matching” prospective parents and children: Challenging the use of racial, ethnic and religious criteria when public agencies place children in foster care or adoption**

Case Study: Transracial adoption and the story behind the federal Multi-Ethnic Placement Act [MEPA] that prohibits States and federally-funded agencies from delaying or denying a child’s foster care or adoptive placement on the basis of the child’s or the prospective parent’s race, color, or national origin

*Palmore v. Sidoti* (U.S. 1984) and Hollinger Guide to MEPA

Case Study: Religious matching by child-placing agencies in New York and other States before 1980

Child Welfare League Standards for Evaluating Prospective Parents

Excerpts from articles by Bartholet, Banks, Woodhouse, and Allen and others on the use and abuse of social science research in debates about transracial and trans-ethnic placements

**Sixth Week: Criteria for Matching, continued: Sexual orientation and parenting**

Case Studies: Litigation successfully challenging state bans on adoptive or foster placement of children by gays, lesbians or unmarried couples

Florida *Gill* opinion and Hollinger *amicus* brief

Arkansas *Cole* opinion and Hollinger *amicus* brief

Michael Wald,*Adults' Sexual Orientation and State Determinations Regarding Placement of Children*, 40 Fam. L.Q. 381 (2006)

Excerpts from expert testimony of child and developmental psychologist Michael Lamb in *Perry v.Schwarzenneger* [Prop 8 litigation] and in pending challenges to the federal DOMA

**Seventh Week: The Mobile Family: Ensuring interstate recognition of adoption and other parentage determinations**

The UCCJEA, the PKPA and the Full Faith and Credit Clause of the federal Constitution

Case Studies: *Miller v Jenkins* and interstate recognition of custody and visitation orders New York Court of Appeals decisions

Florida: *Embry v. Ryan* (2009)

California & Texas pending litigation

U.S. Supreme Court: Resolving conflict between Fifth and Tenth Circuits on scope of full faith and credit for adoption decrees and on equal protection for non-marital children

**Eighth Week: The Mobile Family: Ensuring protection for children across national borders**

Readings from and about the Hague Convention on Intercountry Adoption, the U.S. Intercountry Adoption Act, and the State Department and USCIS Regulations

Documentary on adoptions from Guatemala: *Goodbye Baby*

Case Study: Special Juvenile Immigration Status (SIJS) and how to obtain it

**Ninth - Eleventh or Twelfth Weeks:** No regular class meetings. Instead, there will be individual and small group meetings with Hollinger and Bay Area experts to assist students with their projects.

**Final 2-3 weeks of semester:** Presentations of student projects and paper drafts with readings suggested by student-presenters. Written and oral comments by other students. [Not set in stone: Perhaps only two weeks of presentations, depending on enrollment and whether we meet for two or three hours.]

**Final papers due on last day of exam period [unless other arrangements have been made and agreed upon].**

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