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INADVERTENT MARRIAGE AND THE LAW OF UNINTENDED CONSEQUENCES

by Jonathan Wilson

Amidst all the brouhaha over access in Iowa to same-gender marriage, some somber reflection is probably in order. The reality is that legal marriage comes with rights *and responsibilities*. Legally recognized marriage creates a new set of “defaults” for the relationship between married partners, gay or straight.

Here’s a sample: real estate titled in only one of their names cannot be refinanced or sold without the spouse’s signature; during their lives together, each spouse is legally liable for the support of the other spouse [Iowa Code §252A.3(1)]; and upon the death of one, the survivor has a right to “elect against the will” and receive essentially one-third of the decedent’s estate regardless of the testamentary wishes expressed in a will or the manner in which property was titled. Plug those facts into your current estate planning -- your plans perhaps to keep your assets separate and provide for their separate disposition -- and marriage may actually require some thoughtful changes, and you may need to “get thee to a lawyer” pronto.

But there’s more, and this is where things could really get dicey. Iowa law recognizes so-called “common law marriage.” In fact, the law (without any need for amendment) already reads broadly, “A *man or woman* who was or is held out as the *person’s* spouse by a *person* by virtue of a common law marriage is deemed the legitimate spouse of such *person*.” [Iowa Code §252A.3(6)] A couple deemed married by the common law is legally married for all purposes just as surely as the couple that goes to the courthouse and gets a marriage license. A split up requires a court-approved dissolution of the marriage before either partner can “re-marry” or undo those marital “defaults.” Skip that step before a new marriage (by common law or otherwise), and there’s a criminal violation of Iowa Code §726.1 that reads (again without any need for amendment), “Any *person*, having a living *husband or wife*, who marries another, commits bigamy;” and “any *person* who marries another who the *person* knows has another living *husband or wife* commits bigamy.” So *both* parties to that second marriage would be criminals who can, hopefully, serve their time in the same jail cell.

Common law marriage is something unfamiliar to most cohabiting straight couples, let alone gay ones, and certainly the common law didn’t recognize marriage between persons of the same gender. But, with the state of Iowa allowing access to legal marriage by this alternate path for over a century, coupled with the Iowa Supreme Court’s equal protection ruling, it’s axiomatic that the state *must* now recognize similarly the “common law” marriage of same-gender couples.

Just three elements must exist to create a common law marriage: (1) intent and agreement to be married; (2) continuous cohabitation; and (3) a public declaration that the parties are spouses. [See *In Re Marriage of Martin*, written by Iowa Supreme Court Justice Cady, who also wrote the same-gender marriage decision.] But get this; the intent and agreement can be implied, there is no particular time that cohabitation must exist, and a substantial representation of marriage to some third party is enough *even though other public declarations may be to the contrary*.

Talk about easy. Talk about the not uncommon practice of cohabiting, same-gender couples who refer to their partners as husband/wife or spouse (rather than using the distasteful labels of “boyfriend,” “girlfriend,” “lover,” or “significant other”). Talk about a practice that

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CALENDAR

▼ The next FFBC meeting is 7:00 A.M., Friday, August 7, 2009 at Hoyt Sherman Place. Our speaker will be Judge Robert Hanson.

▼ R.S.V.P. by Friday August 5 to JonathanWilson@davisbrownlaw.com or 288-2500 by phone.

needs to stop. Talk about getting married without ever having to ask -- just live together and introduce your "spouse" to others and, if they don't object on the spot, you're married.

Talk about mucking up asset ownership without even trying. Talk about unlimited liability to support your ex, of all things. Talk about complicated estate litigation. Talk about inadvertent crimes. Talk about unexpected and unintended consequences! Ignorance of the law is no excuse, and ignorance in this context will *not* be bliss.

Vander Linden-Thompson Marriage Celebration

FFBC vice president Allen L. Vander Linden and his partner Michael L. Thompson were married at Plymouth United Church of Christ on Saturday afternoon, July 11, at 1:30.

The four groomspersons in the wedding party were the two men's children: Andrea Vander Linden, Mark Vander Linden, Ian Thompson, and Eric Thompson. Ushers for the service were the groomspersons' partners and significant others: Juliann Cohen, Suzy Kuhl, Muna Coobtee, and Yvette Arana -- who, with their own children (several in their parents' arms), all preceded the white-tuxedo-clad grooms in procession up the aisle to the altar, to the festive strains of the Triumphal March from Giuseppe Verdi's opera *Aida*.

Officiant for the service was Matt Mardis-LeCroy, minister for spiritual growth at Plymouth Church -- whose Open and Affirming policy Allen (and many other gay and straight Plymouth members) worked hard to help the congregation adopt over 15 years ago, and to put into action ever since.

The Scripture readings chosen by Allen and Michael were from the Book of Ecclesiastes (4:9 - 12), beginning "Two are better than one," and Paul's letter to the Galatian churches (3:28) in which the apostle insists that under the covenant of Christ and his sacraments "there is no longer Jew nor Greek, there is no longer slave nor free, there is no longer male and female...." To which Matt added, in the spirit of Paul: "there is no longer gay nor straight." He also noted -- referring to the ceremony's sanctified setting and in his own capacity as a modern-day minister -- that "it is truly a God Thing that we are doing here!"

Special music was provided by members of the Des Moines Gay Men's Chorus who sang Robert Seeley's "Marry Us," conducted by their music director, Rebecca Gruber, and accompanied by the pianist/organist for the service, John Lytle.

After the congregational pledge of support and the couple's exchange of vows and rings, Matt came to the crux of the service, the Announcement of Marriage. "...and according to the laws of the Great State of Iowa" he proclaimed, to proud and prolonged applause.

All were invited, following the ceremony, to a gala reception at the newly married couple's home in Urbandale.

"Actually, Plymouth Church has been marrying same-sex couples for over 15 years," Matt Mardis-LeCroy wrote in an E-mail later. "The only difference now is that the State has started to recognize the marriages we had been performing all along. And Michael and Allen were not even the first same-sex couple to be 'legally' married at Plymouth; there have been two others that I know of, and there may well be more."

Bound by the Right to Choose

By James Flansburg

Sometimes I wonder what my life would have been like as an accountant. Safe, reliable, and somewhat predictable. That's no disrespect to accountants. It's a statement of fact. It seems all my life time I have gravitated toward professions that have occasionally made me a lightning rod.

Twenty-some years in the media, for instance. And when I decided to leave journalism altogether, it was like going from the frying pan into the fire: I joined Planned Parenthood of Greater Iowa.

I'm not masochistic. I have been blessed -- perhaps cursed -- with a strong inner sense of justice. That's simply standing up for what's right, even though keeping quiet would be a far, far easier route to take.

There are plenty of others who take that more difficult route. One Iowa, a partner of Planned Parenthood of Greater Iowa, is one of them. At first glance, you may not see a connection, but it boils down to one word: choice. Choice to marry the person you love. Choice to make your own difficult, personal medical decisions.

On a plaque at Planned Parenthood is our shared commitment with One Iowa: "the right to individual autonomy in all matters related to adult consensual sexuality, gender expression and reproduction."

As partners, One Iowa and Planned Parenthood have been there for each other. We attend each other's forums and events. We share one another's victories; we commiserate over the outrages.

But together, our resolve grows. And our voices become stronger.

Cheney's argument that torture worked to save American lives (which may or may not be true), makes the age-old and discredited claim that the ends justify the means. Anyone who openly advocates such a value system so ardently as to justify illegal torture would most certainly be able to justify lying as well. So, by making the argument, Cheney reveals himself as untrustworthy. If one can justify illegal torture because the ends purportedly justify the means, one would inevitably lie about the assertion that the torture did save American lives.

Members of the First Friday Breakfast Club also have chosen the path least taken. It's something to celebrate. It makes us stronger; it makes our lives more worthwhile. Indeed, we will leave the Earth a better place than we found it.

James Flansburg is the Director of Communications for Planned Parenthood of Greater Iowa.

Bruno

Review by Gary Kaufman

Bruno has to be the gayest character to hit the big screen in a long, long time. Bruno is a character created by Sach Baron Cohen, who brought us Borat. This time around his character is an over-the-top gay man. As we are introduced to Bruno, he is the host of "Funky Side", his hit TV fashion show, the top-rated late-night fashion show in "every German speaking country, apart from Germany itself." However, Bruno fell from the top of the fashion world when, to make a statement, he showed up at La Prada in an all Velcro suit with disastrous, slapstick results. Bruno, whose words had indicated what was in and what was out in the fashion world, was suddenly out himself. He decides that the fashion world was really vacuous, and decides to travel to Los Angeles to become a celebrity. He wants to be "the biggest superstar to come out of Austria since Hitler!" He wants to be "the biggest gay male star since Schwarzenegger!"

Thus, Bruno begins his trek to become world famous. A lot of the humor in Bruno is generated by people not knowing what is going on who are confronted with this over-the-top gay man who continues to do more and more outrageous things to provoke a reaction from the unknowing participants. When he attempts to have a celebrity show in Los Angeles he manages to get Paula Abdul to come in to be interviewed about her causes; he freaks her out when he offers her some food served on a naked Mexican. The word gets out about how outlandish he is and no celebrities will allow themselves to be interviewed by Bruno. Finally, he gets the chance to show a marketing test group a pilot version for his new show, "A-List Celebrity Max-Out," with his featured "exclusive interview of Harrison Ford." Unfortunately his exclusive interview was basically Harrison Ford walking to his car telling Bruno to "F**k Off!" as Bruno *attempts* to interview him. Denied the interview content, Bruno felt forced to fill in time by showing Bruno dancing, including an extreme close-up of his penis doing all types of incredible movements ending with it actually *saying*, "Bruno." Not surprisingly, the pilot did not go over well with the test group. One person wrote, "It was worse than cancer!"

But Bruno continues his quest to become famous. He tries an interview with former presidential candidate Ron Paul; visits a psychic to talk to the spirit of Milli of Milli Vanilli during which he performs a rather detailed mime of kissing the

spirit of Milli in the most private places; and appears on a black version of Jerry Springer to reveal that Bruno had adopted a black baby from Africa that he got in exchange for a red iPod. The dumbfounded expressions of those who are exposed to this foolishness seem to be genuine. Sometimes ugly. Always funny.

Toward the end of the film Bruno notices that the one thing famous male superstars have in common is that they are all *supposedly* straight, so Bruno decides he must become straight. He visits one of those conversion ministers in the South, goes to a straight swingers party, and finally stages a new pilot with his very heterosexual show, "Straight Dave's Man Slammin' Maxout" where he invites a lot of wrestling fans to enjoy a very straight wrestling match. However, the audience eventually discovers that Straight Dave really isn't all that straight. It is situations like this that provoke a negative reaction from the audience. The movie ends with Bruno singing his charity song with Sting, Bono, Elton John, Chris Martin, Slash, and Snoop Dogg. Snoop Dogg ends the song with the lyrics, "Hey, Hey, He's Gay. OK!" Which I think represents progress for the cause. But whether the film does or not represent progress for the gay cause, go with your posse of gay friends and see Bruno together, it will be one hoot of an evening!

BRIEFS & SHORTS

Be sure to RSVP for the August 7 meeting no later than August 5. Contact JonathanWilson@davisbrownlaw.com or call 288-2500. Our speaker will be Polk County Judge Robert Hanson.



Thanks to Michael Thompson for his efforts in organizing the FFBC booth during Pride activities.



Volunteers are needed for a new membership committee to be chaired by Scott Klinefelter.



Our September speaker will be Iowa Supreme Court Justice Mark Cady.



Consider making a tax-deductible contribution to the First Friday Breakfast Club Scholarship Fund .

FFBC

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Des Moines, Iowa*

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From the Editor Collective Catharsis

When I was in graduate school at Drake University in the 1970s, I enrolled in a seminar on tragedy taught by the late, great Dr. Curtis Page. In addition to the various “tragic” dramas we were assigned to read—writers from Euripides to Arthur Miller—our class was to come up with a universal definition of the word “tragedy.” Dr. Page was not satisfied with the various definitions of the word put forward by lexicographers and writers in the genre. One of the aspects of the word the class did agree on was the need for “catharsis,” a purifying or figurative cleansing of the emotions. From Ancient Greece to the modern world, humans need to rinse their souls in a satisfying manner from time to time. While catharsis is one element of tragedy, it is not the be-all and end-all of that word.

In today’s world, the word “tragedy” has degenerated to being any unfortunate circumstance that befalls people whether it be a fatal automobile accident or the untimely death of a celebrity. The recent demise of Michael Jackson is a case in point. More than one media reporter commented that the singer’s death was a “tragedy.” I wouldn’t personally classify Jackson’s passing as “tragic” but rather “unfortunate.” The need for catharsis regarding his death, however, was evident.

While I believe the media hyped Jackson’s death to death, there is no denying that a vast number of people felt the need to cleanse their souls regarding the life and work of this talented performer. It seems that from time-to-time it becomes necessary for people to purge themselves collectively. It happened in the 1960s after the assassination of JFK, in the 1970s after the death of Elvis, and in the 1990s after the fatal accident in Paris of Princess Diana. The world, for the most part, paused and mourned the passing of these icons, and that is probably a good thing. Cultural literacy evolves from generation to generation, but certain elements seem to endure and bind us together. These collective experiences do just that.

The members of my seminar would every week alter and apply our ever-changing definition of “tragedy” to various dramatic works. Toward the end of the class, we came up with a version of the word we thought would be the definitive meaning. Using that definition, I wrote a paper that proved **Camelot** to be the world’s first musical tragedy. My paper so enraged one member of the class that she asserted that if that were the case, **The King and I** preceded Lerner and Loewe’s classic by a decade! Needless to say, the definition the class agreed on got tossed out. We never did find a definition everyone could agree on, and that is a good thing. Reaching consensus is desirable, while blind adherence to an idea—or a definition—can be dangerous. Adolph Hitler and Joseph Stalin are proof of that.

Now we all will have to keep abreast of the word “king” as it applies to popular music. Will it be Michael Jackson or Elvis Presley? It’s an honorific that makes no difference to me, but it will be debated hotly by others.

Steve Person