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Psychic Charlatans, Roving Shoplifters, and Traveling Con Artists:

Notes on a Fraudulent Identity

By Alexandra Oprea†

I aspire to become a lawyer one day. But as I check the boxes marked “other” on law school applications, I think back to when I first became aware of Romani marginality in the legal system. I was a sophomore in college and was interning at the nearby family court. As the judge adjourned another case, the court reporter, clerk, and attorneys began to engage in the usual banter. After a case involving a rambunctious teen, an older white woman serving as the clerk said something to the effect of, “If that were my kid, I’d give him to the Gypsies.” After crying in the bathroom, I returned to the courtroom and told them that unfortunately for them, I was “a Gypsy.” ² I tried to explain the term “Roma,” our origins, and the problematic nature of what was said. I calmly explained that her statement presenting Romani parentage as a form of punishment is based on deeply-seated stereotypes of Roma as baby-thieves and generally suspect people. They responded defensively, and I quit my internship.

Reflecting on the incident, I wondered, what if there was a Romani fortuneteller³ fighting to regain custody of her children from the state? Or what if the judge were in criminal court, and the defendant was Romani? With such stereotypes so deeply ingrained within the collective psyche, what prospects for justice are there for Roma and Romani women in particular? I have recently confronted this question again in the context of fortunetelling.

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1. The Roma originated in India about one thousand years ago and spread primarily to Europe and the Americas, as well as to other parts of the world. Walter O. Reyrauch & Maureen Anne Bell, Autonomous Lawmaking: The Case of the ‘Gypsies.’ 103 YALE L.J., 323, 340-41 (1993).

2. Many activists and laypeople consider the term “Gypsy” an insult. See id. at 334-45. In addition, it is a misnomer, reflecting the erroneous belief that the Roma came from Egypt. Walter O. Reyrauch, REVIEW ESSAY: The Romani People: A Long Surviving and Distinguished Culture at Risk: We are the Romani People: Ame sam e Rromane Dzene. By Ian Hancock Hatfield. 51 AM. J. COMP. L. 679, 681 (2003).

3. I refer to a Romani fortuneteller because this is one situation in which the judge would be more likely to know her background (i.e., because of the close association between fortunetelling and “Gypsies”).
Studying at Columbia, away from my Romanian Romani community, I have befriended American Romani women with psychic shops in the vicinity. Hearing about their run-ins with the law has led me to think more about how the law and the legal system function to situate, define, and assign a certain negative worth to Romani identity. Moreover, Romani women are more vulnerable to the law than are Romani men: because they are more likely to be recognized as a “Gypsy” due to the fortunetelling identifier, they are situated at the interface between their community and non-Romani society. Thus, this paper looks at some examples of how the law structures Romani identity, and how this racialization intertwines with gender-based subordination to shape the life chances of American Romani women psychics. In order to give the reader some context, I begin by briefly outlining the historical treatment of Roma in the United States. In the second and third parts of the paper, I discuss contemporary manifestations of historically-rooted anti-Romani prejudices and in the last sections, I look at how this racism compounds the internal subordination faced by Romani women.

I. HISTORICAL DISCRIMINATION AGAINST ROMA IN THE UNITED STATES

Because Roma are a scarcely-known group, I start by providing readers with some background information. Originating in India and settling primarily in Europe, Roma made their way to the Americas during the fifteenth century. Countries such as Germany and England shipped their Romani populations to their colonies in America; most were sent to work as slaves. But it was in the late nineteenth century that Roma began to arrive en masse after emancipation from slavery in the area now known as Romania. Seen as undesirable Others, many were deported upon arriving at Ellis Island.

Those who were not deported encountered anti-Romani sentiments which became institutionalized through laws. Several states implemented laws to monitor “Gypsies” by requiring them to register with the police upon entering a state and pay for licenses to reside in their respective states. For example, a Pennsylvania law stated:

4. When I say “Romanian Roma,” I am referring to the recent immigrants. I use the term American Roma to refer to the Romani communities that have been in the U.S. for centuries, many of whom came over in the late 1800s after being liberated from slavery in the area now known as Romania. See Ian Hancock, The Pariah Syndrome (Karoma, 1987) “The Contemporary Situation of Gypsies in North America,” http://www.patrin.com.

5. I have found critical race theory and intersectionality as espoused by Kimberlé Crenshaw, particularly useful in conceptualizing this process. See Kimberlé Williams Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, 357, 357-82 (Kimberlé Williams Crenshaw, ed., 1995).


It is illegal in Pennsylvania to be a Gypsy without a license. Any Gypsy who insists on being what he was born—a Gypsy—without a license, is liable to up to $100 fine and 30 days in jail. A constable may confiscate and sell a convicted Gypsy’s possessions to satisfy the sentence. Any person may demand to see a Gypsy’s license. If the Gypsy cannot produce a license, the person may turn the Gypsy in to any convenient justice of the peace.8

Many of these state statutes have remained in force until the recent past: the last was only removed from the New Jersey law books in 1998 by then-governor Christine Todd Whitman.9

In addition to the legal targeting of Roma, the racialization of Roma has also been achieved through ascribing to them an innate criminality. The word “gypped” itself gives insight into public perceptions of Romani people as cheats and swindlers. In 1918, the American Institute of Criminal Law and Criminology echoed these views:

They are the living example of a whole race of criminals, and have all the passions and all the vices of criminals. They murder in cold blood in order to rob, and were formerly suspected of cannibalism. This race, so low morally, and so incapable of cultural and intellectual development, is a race that can never carry on any industry.10

These negative attitudes prevail into the second half of the twentieth century as indicated by opinion polls showing that out of fifty-eight groups, “Gypsies” received the lowest scores when ranked according to their estimated social standing.11

II. CONTEMPORARY DISCRIMINATION IN THE CRIMINAL JUSTICE SYSTEM: ORDINANCES THAT CRIMINALIZE LIVELIHOOD

Though the explicitly anti-Romani laws referred to above are no longer in effect, legal racism against Roma is still manifested more subtly, but just as insidiously, through ordinances banning fortunetelling. Since fortunetelling is the primary income-generating activity for many Romani women, laws that outlaw

8. Id.
fortunetelling preclude them from earning a living. Several states have such ordinances, reflecting the prejudicial belief that fortunetelling is inherently fraudulent.\textsuperscript{12} For example, Kansas City Ordinance 10-14 provides that:

It shall be unlawful for any person for pay to tell or pretend to tell fortunes or reveal or attempt to reveal future events in the life of another by means of occult or psychic powers, faculties or forces, clairvoyance, prophecy, astrology, palmistry, necromance, cards, talismans, charms, potions, magnetism or magnetized articles or substances, oriental\textsuperscript{13} mysteries or magic of any kind or nature... (emphasis added)\textsuperscript{14}

Other states, such as New York, prohibit fortunetelling for profit.\textsuperscript{15} Thus, whereas earlier oppression of Roma occurred directly through statutes criminalizing their background and identity; contemporary oppression occurs through statutes that criminalize activities tightly bound with American Romani identity. Barry Fisher, an attorney who has worked with American Roma, concurs: "These laws have often been used as a means of excluding or marginalizing the Roma people."\textsuperscript{16} This can perhaps be understood as a trajectory from de jure racism that is explicit about its racial purpose to a more subtle type of de facto\textsuperscript{17} racism that utilizes racially-coded language and functions through disparate impact. Despite the prevalence of these anti-fortunetelling statutes, some positive signs have emerged. In 1985, the Supreme Court of California held that an

\textsuperscript{12} Anti-fortunetelling laws may reflect either anti-Romani bias or intellectual bias against the practice. Interview with Gerard Lynch, Columbia Law Professor, in N.Y., N.Y. (Dec. 5, 2006). I believe that since Roma are so closely associated with the practice, it is not purely the latter.

\textsuperscript{13} The statute's mention of "oriental" attests to the racialized nature of this prohibition and probably refers to the Eastern origins of fortunetelling.

\textsuperscript{14} Turner v. Kansas City, 191 S.W.2d 612, 613 (Mo. 1945). The law in question allowed Kansas City "[t]o regulate, prohibit, or suppress any act, conduct, pursuit, employment, practice,... whatsoever, which may be injurious or detrimental to the public morals, health, safety, comfort, convenience, prosperity or general welfare...; to regulate or prohibit... fortune tellers, clairvoyants and palmists,...; and to punish any and all persons who may engage in such game or games or who keep or frequent such houses or places, or who set up or permit the same, or who conduct lotteries, or sell lottery tickets..." Id. (emphasis added) (citing Kansas City Charter art. I, § 1, para. 44).

\textsuperscript{15} "A person is guilty of fortune telling when, for a fee or compensation which he directly or indirectly solicits or receives, he claims or pretends to tell fortunes, or holds himself out as being able, by claimed or pretended use of occult powers, to answer questions or give advice on personal matters or to exorcise, influence or affect evil spirits or curses; except that this section does not apply to a person who engages in the aforesaid conduct as part of a show or exhibition solely for the purpose of entertainment or amusement. Fortune telling is a class B misdemeanor." N.Y. Penal. §165.35 (2007)


\textsuperscript{17} For a discussion of the de jure/de facto segregation distinction, see Keyes v. Sch. Dist. No. 1, 413 U.S. 189, 225 (Powell, J., concurring in part and dissenting in part).
ordinance banning fortunetelling violated the state's constitution. In so doing, the court rejected arguments casting fortunetelling as a strictly commercial activity, finding that "[t]he act of telling fortunes goes beyond the mere proposal of a transaction. It involves the passing of ideas and information—some valid, some questionable, some false—between the fortuneteller and the client." It rejected the outright ban in favor of deciding on a case-by-case basis whether there was an intent to defraud. Thus, the court recognized that there is some value in the exchange of ideas between psychic and client. Indeed, from what I have observed, many Romani psychics engage in what is comparable to therapy, listening to the client's problems and offering them hope for the future.

In response, the city argued that the ordinance was justified in that it did not ban fortunetelling altogether, but rather only when engaged in for pay. However, the court recognized the hypocrisy inherent in outlawing psychics and fortunetellers from collecting pay for their services:

It must also be noted that there are many persons other than professional fortunetellers who purport to predict the future: e.g., astrology columnists in daily newspapers, economists who prognosticate interest rates and other business conditions, investment counsellors who forecast stock market trends, sportswriters and oddsmakers who predict the winners of athletic contests, horserace handicappers, pollsters who forecast election returns, and clergymen who describe the concept of a hereafter.

In refusing to single out fortunetellers as uniquely engaged in predicting the future, the court recognized that forecasting the future for pay is otherwise generally not treated as illegitimate. Fraudulent fortunetelling would have to be dealt with then by criminal law and its attendant inquiry into the intent to defraud.

III. CONTEMPORARY DISCRIMINATION IN THE CRIMINAL JUSTICE SYSTEM: PROFILING AND PRACTITIONER PREJUDICE

As the preceding section illustrates, some states, such as California, experienced a shift from ordinances banning fortunetelling outright to statutes attempting to combat it through the regulation of fraud. Though these statutes do not expressly mention "Gypsies," during police investigations as well as actual litigation, there is still an implicit understanding that the fortunetellers are

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18. Spiritual Psychic Science Church v. Azuza, 39 Cal. 3d 501. The ordinance in question stated, "No person shall practice or profess to practice or engage in the business or art of astrology, augury, card or tea reading, cartomancy, clairvoyance, crystalgazing, divination, fortune telling, hypnotism, magic, mediumship, necromancy, palmistry, phrenology, prophecy, or spiritual reading, or any similar business or art, who either solicits or receives a gift or fee or other consideration for such practice, or where admission is charged for such practice." Id. at 506.
19. Id. at 511.
20. Id. at 515.
Roma—an understanding that brings with it long-standing stereotypes of Gypsy criminality.

Contemporary manifestations of this presumed criminality are underscored by police department “Gypsy Divisions,”21 a focus on “Gypsy scams,” articles like “GYP-sies: The People and their Criminal Propensity,”22 books like License to Steal: Traveling Con Artists: Their Games, Their Rules, Your Money,23 and others.24 In License to Steal, for example, the author, a fraud investigator, pairs up with an anthropologist to focus on “Gypsy” crimes. An Orange County New York website similarly warns of such scams: “Summer time is the time when Gypsy contractors begin to invade the area, just like the Gypsy moth, except these contractors cause more damage!”25 Before discussing how the criminality stereotype functions to taint occupations primarily engaged in by Roma, it is useful to understand how readily-accessible these stereotypes are—to the point where “Gypsy” is reflexively deployed as a criminal identity.

Take for instance a 1989 case, K-Mart Corporation v. West Virginia Human Rights Commission and Abdul Baram, involving a Syrian family who sued after clerks and security officers followed them both in and outside of K-Mart based on the assumption that they were “Gypsies” and hence shoplifters.26 The Barams’ complaint alleged that “Gypsies” was a racial term and K-Mart responded by saying it “was not meant racially, but rather as a generic term used to describe roving bands of shoplifters.”27 The court accepted the use of “Gypsies” as a proxy for shoplifters. It also negated the racial dimension of the Barams’ being confused for Roma and consequently profiled, but acknowledged that “one officer later testified at the hearing that ‘gypsies’ were usually of darker skins [sic], wore loose fitting clothes, and wore rancid perfume.”28

I want to highlight that the court not only erred29 in accepting the conflation of “Gypsy” identity with criminality, but it also committed a grave error in ignoring the fact that not all people are equally susceptible to this type of treatment—brown-skinned people are more likely to fit the profile. Thus, even if

22. The article was published as a three-part series in a police magazine in 1981 and was written by the then-head of the Illinois State Police Gypsy Activity Project, Terry Getsay. Id.
27. Id. at 282.
28. Id. at 278.
29. The court concluded that the Barams did not suffer discriminatory treatment. Id. at 280. The court based its decision on the fact that the Barams were not actively deterred from shopping and their finding that the police had probable cause for warning K-Mart about “Gypsies” who had recently stolen from another store. Id. at 282.
the court did not recognize “Gypsy” as a racial term, the fact that this unwritten policy resulted in the targeting of people of color (the Baram family) combined with the officer’s use of skin color and cultural descriptors should have led the court to view the policy as suspect. In fact, one could say that the court went to great efforts to resist recognizing the racial overtones of the case.

There is also an indisputably strong link imagined between “Gypsies” and “confidence crimes”—crimes committed not by force but by gaining one’s trust. “Professionals against Confidence Crimes,” a consortium of law enforcement officers, further exemplifies this link when it features on its website an article on “The Gypsies’ Greatest Trick.” Another website devoted to warning the public of such crimes is “www.GypsyPsychicScams.com,” which poses the following questions: “How could a whole culture of people—Gypsies—really be that focused on crime and ripping people off without any conscience at all? How could they do it so convincingly?” What is even more troubling is that Fox News sanctions this website during a broadcast on “Fake Psychics.”

It is crucial to analyze how License to Steal, the above-mentioned website, and other inflammatory connections between Roma and crime all attempt to circumvent charges of racial profiling. They claim that “Gypsies” are a criminal sect of the Romani population and that when they refer to “Gypsies” as criminals, they do not apply the label to the population as a whole. Upon closer inspection, however, this assertion does not hold up. Consider how the previously-mentioned anti-“Gypsy” laws served to regulate the movement of all Roma, notwithstanding their failure to refer to the group by the proper term. After all, “Gypsies” and Roma are the same people; the former is just the derogatory name for the group. Underscoring the fact that criminalizing “Gypsy” identity is indistinguishable from policing Romani people as a whole is the fact that when discussing the origins of “Gypsies,” many of these works point to the Indian origin of “Roma.” The conflation of these two appellations thus reveals the targeting of Roma in general.

Adding another facet of legitimacy to this type of profiling, Erik Grant Luna’s “Of Gypsies, Juries and Judges: Constitutional Adjudication in Trial

30. Justice Miller’s dissent provides some insight into how the court should have ruled. See id. at 283. (Miller, J., dissenting).
33. This website was endorsed by Fox News during a program the network aired on “Fake Psychics,” which immediately played upon accessing website. GYPSY PSYCHIC/ SPIRITUALIST SCAMS, http://www.gypsypsychicscams.com/index.html.
34. In answering the question, “What is a Gypsy exactly and where do they come from?”, the website claims that “The Romani people originally hail from India, which explains why the Gypsies you see and may be dealing with right now look so dark in hair color. Gypsies are a very strict, closed society that has lived outside the law of every nonGypsy culture they feed off of.” Id.
Courts is the only law review article to substantively discuss “Gypsies” and fortunetelling. In light of the scarcity of alternative portrayals, it is important to carefully analyze the image of Roma this article projects. Luna begins his article by creating a dichotomy between a conniving Gypsy psychic and a helpless old man. He paints a disturbing picture (characteristic more of a John Grisham novel than a law review article) of “a consummate carnival crook” who manipulates a “vulnerable elderly man” for profit. He bases his analysis on his experience working as one of the prosecutors in the case of The People v. Marks, involving a Romani fortuneteller accused of defrauding an elderly man of a large sum of money over a period of about ten years. Ultimately, the court held that the First Amendment protected Marks’s actions. According to Luna, since either way the jurors would have to determine whether Marks genuinely believed what she was prophesying, they should have been solely advised on the criminal statute and not have been instructed as to the First Amendment issue. This assertion rests on two related assumptions: 1) that fortunetelling is an economic exercise with no social worth and 2) that lying is a trait inherent to Roma.

Luna argues primarily that constitutional questions should have been kept out of court to avoid “jurisprudential distortions.” His underlying assumption is that fortunetelling—Gypsy fortunetelling in particular—is a purely commercial enterprise with no speech element worth protecting. However, probing further into the practice, it is interesting to note that Roma refer to fortunetelling as drabarimos. The root of the word drab means medicine, and the literal meaning of drabarimos is “healing.” Barry Fisher, an attorney who has worked extensively with American Roma, connects drabarimos to the First Amendment: “This practice... has been identified as a form of religious healing that the Roma call drabarimos, believing that it is a gift from God.”

What Luna omits from his argument is equally telling as what he includes. Not once in his article does he explicitly assert or support the notion that Marks did not believe what she was preaching, though his argument rests on this crucial point. He believes that the proper decision—convicting Marks for the conniving charlatan she is—would have been reached if the First Amendment issue were avoided (or at least not presented to the jury). Taking her fraudulence as self-evident, he proceeds to build his case, reasoning that excluding constitutional questions would deliver a decision that would be more favorable in his opinion. The lens matters and he knows that. In this case, a constitutional law lens

36. Id. at 303.
38. Luna, supra note 35, at 308.
39. Id. at 304.
40. A fortuneteller is referred to as a “drabarni” which would translate into “healer.” (I am fluent in Romanes, the Romani language)
41. Protecting Religious Freedom, supra note 16.
provided more leeway in terms of allowing jurors to believe that Marks believed
the information she was transmitting to the client. This was possible because
there is an assumption that fortunetelling has some inherent worth (a "to each his
own" type of lens that allowed for diversity in belief-related speech). I believe
that the criminal lens operates much differently and is less flexible in terms of
allowing for a variety of reasonable beliefs.

At the heart of Luna’s argument is a vision of citizenship that does not
extend to Roma. Their presumed criminality renders them ineligible for
constitutional protection. Simply put, if “Gypsies” are involved, it is a matter to
be dealt with solely by criminal law, despite the fact that there are elements of
speech and communication. In effect, it is as though this element is nullified by
the mere fact that a Romani person utters the statement.

I believe that this a priori assignment of guilt reflects the deep prejudices
that society harbors against Roma. Luna frames his argument in a way that
depicts all fortunetelling as an attempt to swindle innocent victims. The case
itself was mounted on the back of an eight-month investigation—something
which Luna mentions matter-of-factly, thus normalizing the suspicion
surrounding Roma. Indeed, he reinforces this assumption throughout his article
by using terms such as “psychic vultures” and “psychic charlatans.” Aside
from these obvious slurs, he additionally errs by using the unique facts from the
Marks case—large sums of money and an elderly man—to represent all
fortunetelling.

The more transparent flaws in Luna’s article—the manner in which he
engages in shameless racial profiling by mentioning the background of the
defendant and using the pejorative term “Gypsies”—should not be overlooked.
Because Americans seldom confront different portrayals of Roma, reading about
“Gypsies” in a context of criminality serves only to reinforce preexisting
stereotypes. Moreover, the fact that his article appears in an established
publication such as a law review speaks to the lack of political correctness
surrounding Romani identity in the United States.

IV. HOW RACE MAGNIFIES INTERNAL PATRIARCHAL OPPRESSION

As illustrated above, Luna constructs a disturbing dichotomy: innocent
citizens deserving of the government’s protection—those duped by Gypsy
psychics—versus Gypsy perpetrators undeserving of the government’s
protection. But this belief is not unique to Luna. Rather, it reflects a larger
phenomenon within American society: the construction of Roma as outside the
law. Roma remain too much of a racial Other to be included within American
society. They lack the status of a legitimate racial group, which has driven
Romani communities into hiding. This trend takes its greatest toll on women

42. Luna, supra note 35, at 355.
43. Id.
44. In my experience, Roma do not generally reveal their background and are especially
and girls within these communities.

Although there are no statistics on the Romani populations in the United States, unofficial figures estimate that there are around a million.\textsuperscript{45} The fact that many Roma do not reveal their identity out of fear makes it particularly difficult to address their marginalization. Due to internal patriarchy, institutionalized racism, and the suspicion with which mainstream society views Romani identity, Romani women can be denied access to education and regular employment. This restricts their choices and leaves them vulnerable to patriarchal structures\textsuperscript{46} and subordinate positions within the community. Due to the antagonistic relationship between the legal system and Roma and the cultural value placed on shielding the family from shame, addressing internal abuses such as domestic violence is also particularly difficult—a difficulty that is compounded by the community's general illiteracy.\textsuperscript{47}

In response to anti-Romani ordinances and racism, as well as an assimilationist educational system, some families pull their children out of school early. This especially affects young girls, as the families are afraid that associating with \textit{gadje}, or non-Roma, will result in losing their values and virginity. As a result of centuries of subordination, traditional American Roma live in fairly insulated communities, where tradition mandates that marriages be arranged at ages younger than those of the general population.\textsuperscript{48}

Because there have been no affirmative measures taken by the government to integrate Roma and counter the historical and current marginalization they face, American Roma are not well represented in the professions or higher education. Although Romani women are often the main breadwinners, axes of racist and patriarchal subordination join to severely limit their employment options. Consequently, a disproportionate number of American Romani women are employed as fortunetellers. Although no official statistics exist, I would not think it unreasonable for the majority of those who engage in fortunetelling as a profession to be Romani. When we view this in its historical context, it is evident that “it is an important element of the Roma’s social and economic structures,


\textsuperscript{46} I want to note that these problems are not unique to Romani communities. I base my conclusions about Romani communities on my experiences within them.

\textsuperscript{47} Ian Hancock, \textit{The Schooling of Romani Americans}, (1999) \url{http://www.geocities.com/patrin01/schooling.htm}.

\textsuperscript{48} These practices are contested by women within the community and are negotiated in various ways. My point is not to portray American Romani women as ciphers, but rather to identify traditional doctrine that intersects with race to exacerbate their oppression. In addition, it should be noted that not all American Roma live within the community they were born into; some are assimilated.
given that their historically enforced nomadism impeded them from engaging in agriculture or other stable means of economic survival. 49 Moreover, from the perspective of patriarchy, telling fortunes from one’s home is convenient in that it allows the woman to be in the home, away from gadje, 50 and to care for her children while earning an income, unstable as it may be. I do not mean to imply that fortunetelling is a liberating profession for Romani women—it’s not. There is no health insurance, no 401K plan, and no sick leave. It is also clearly unsafe, as it entails allowing strangers into your home. However, without the government taking affirmative steps to encourage Romani integration, it seems to be the best option available to these women and should not be criminalized by the government.

V. CONCLUSION

My point has been to discuss Roma (and Romani women in particular) in a way that deviates from traditional discourses on us; I sought to scrape the surface of this project by exposing how Romani identity in the United States has been criminalized and how this criminalization intersects with gendered subordination to limit Romani women’s opportunities. In addition to deconstructing the maligned image of Roma in the United States, this paper is an attempt to challenge the unchecked profiling of fortunetellers that results in the incarceration of a disproportionate number of Romani women. More broadly, it is an attempt to include Romani women in existing discourses on legal racism and sexism. I hope that at the very least it serves to provide a critical lens through which to view incendiary discourses on Roma and foster critical consciousness on laws impacting Romani women. The hopeful activist in me also believes that it will prompt members of the legal profession to incorporate Romani struggles into broader gender and racial justice struggles.

49. Protecting Religious Freedom, supra note 16.
50. Non-Roma persons.