

Retired judge takes on the 'Scarlet eLetter'

By the Mercury News

Some lawyers become judges and disappear from notice. Not so Eugene Hyman, who took controversial stands while on the Santa Clara County Superior Court bench. Now, in an article for a local law review, he proves he's no less outspoken since he retired.

In a 44-page article in the Santa Clara Law Review, Hyman sounds off on what he and scholars dub the "Scarlet eLetter."

The term, derived from the fictional disgrace of the adulterous Hester Prynne in Nathaniel Hawthorne's novel, refers to the "scarlet criminal record (of female offenders) that endures with equal stigma" in this electronic age.

Hyman decries the host of "collateral consequences" that dog women with even low-level criminal records, including denial of jobs, housing, welfare and civic rights, as well as struggles over child custody. His primary concern is for their children, who pay the price of their mothers' transgressions, no matter how long ago they occurred.

It's hard to argue with his impassioned call to arms: "It is unconscionable and cruel," Hyman wrote, "to haphazardly deny a single mother and child a roof over their head and basic sustenance for a nonviolent drug offense."

But there's no consensus nationwide on the remedies he discusses, including diversion programs in which someone who committed such crimes as petty theft would be ordered to complete a specially designed program of classes to avoid a criminal record. Even more controversial is the notion of stamping a "past-due date" on older records, meaning they would essentially expire after eight years or so.

The article follows at least three other outspoken stances Hyman took while on the bench. He retired in March 2011.

In a 2005 op-ed piece, he advocated letting judges nominate Supreme Court nominees.

In 2010, he declared a man who had been accused of murder factually innocent over the objections of then-District Attorney Dolores Carr's office. The judge used the opportunity to defend Judge Andrea Bryan, the target of a rare blanket boycott by prosecutors after she ruled against them in a molestation case. Also in 2010, Hyman wrote an op-ed piece in the Mercury News urging then-District Attorney-elect Jeff Rosen to focus on prison reform.