WOMEN'S ANNOTATED LEGAL BIBLIOGRAPHY

BATTERED WOMEN & DOMESTIC VIOLENCE

Beth Bjerregaard & Anita Neuberger Blowers, *The Appropriateness of the Frye Test in Determining the Admissibility of the Battered Woman Syndrome in the Courtroom*, 35 U. LOUISVILLE J. FAM. L. 1-23 (1996).

This article examines the admissibility of expert testimony in the context of the battered woman syndrome in homicide cases where a battered woman kills her abuser and presents a self-defense claim. The authors believe that the *Frye* test is inappropriate to determine the admissibility of expert testimony on the battered woman syndrome because it is too restrictive and fails to give the courts sufficient guidance. Furthermore, the authors suggest that a more appropriate test is the test under the Federal Rules of Evidence (Rule 702), which shifts the focus from reliability of the methodology to the helpfulness or probative value of the testimony. The article concludes that judges should retain their discretion to determine an expert's qualifications, as well as the probative value of such testimony, but that the admissibility of the syndrome should depend only on the relevance of such testimony in a specific case.

Sara Cobb, *The Domestication of Violence in Mediation*, 31 L. & SOC'Y REV. 397-404(1997).

This article examines the frequency of violent crimes and issues regarding pain and suffering occurring in community mediation sessions. According to the author, mediation possesses its own method of discourse, that traditionally has had the effect of diluting the violence suffered by the victim. The article suggests that effectively challenge this dilution or "domestication" of violence, opponents must step outside of the mediation discourse in order that the issues can be more clearly examined.

Lisa Marie DeSanctis, *Bridging the Gap Between the Rules of Evidence and Justice for Victims of Domestic Violence*, 8 YALE J.L. & FEMINISM 359-407 (1996).

This article provides a chronology of the author's work in drafting a legislative proposal on the admissibility of uncharged acts as evidence in domestic violence prosecutions. Though opponents criticize the admissibility of uncharged acts as overly prejudicial, the author argues that jurors must be allowed to weigh such evidence. Furthermore, the author contends that since society remains legally inexperienced with domestic violence, it is unlikely that jurors will improperly value evidence of the defendant's uncharged acts. Concluding that the Federal Rules of Evidence 413-414 are a necessary step toward prosecuting rape and molestation crimes, the author states similar legislation allowing evidence of prior uncharged acts is needed to assist prosecutors with domestic violence cases.

David L. Faigman & Amy J. Wright, *The Battered Women Syndrome in the Age of Science*, 1997 ARIZ. L. REV. 67-115 (1997).

Traditionally, women victims of domestic violence charged with domestic homicide have been unable to avail themselves of the self-defense doctrine because of its requirement of imminent danger and use of a proportional amount of force. Battered Women Syndrome was introduced to support justification claims by battered women. The author criticizes the doctrine for lacking scientific foundation and for demeaning women and undermining the justice system by shifting the focus of self-defense from the reasonableness of a woman's actions to her mental deficiency and helplessness. The note suggests that the legal system should abandon the use of the Battered Women's Syndrome as a defense.

Leslie G. Espinoza, Symposium, *Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender*, 95 MICH. L. REV. 901-37 (1997).

Traditionally, attorneys have handled clients in a detached and categorical manner. If clients who are victims of sexual or domestic abuse are treated with more sensitivity and counseling by lawyers, the author believes that this will create a "deeper understanding" between clients and lawyers, as well as better solutions. The author notes that legal counsel is usually racially biased, and that minority women have difficulty presenting a full narrative to their attorneys. The article concludes that lawyers need to be empathetic to their clients's circumstances to evaluate their needs and problems. The author is not optimistic about future improvements in relations between lawyers and their clients.

Berta Espinoza Hernandez-Truyol, *Sex, Culture and Rights: A Re/Conceptualization of Violence or the Twenty-First Century*, 60 ALB. L. REV. 607-34 (1997).

This article discusses what is necessary for women to achieve gender equality on both an international and domestic level. In order to achieve this end, the author argues that societies must learn that violence against women manifests itself in ways other than the use of physical force. Violence also has economic, cultural, sociological and psychological implications. The author proposes that most cultures accept violence against women as being an aspect of the cultural norm. The article concludes that women will achieve gender equality when worldwide societies reconceptualize their notion of violence.

Kerrie E. Maloney, Note, *Gender-Motivated Violence and the Commerce Clause: The CivilRights Provision of the Violence Against Women Act After* Lopez, 96 COLUM. L. REV. 1876-1939 (1996).

This Note analyzes the Violence Against Women Act of 1994 which enables a person who suffered from gender motivated violence to recover both compensatory and punitive damages from the assailant. Congress partially relied on the Commerce Clause to pass the act. Congress, however, may have exceeded its constitutional authority according to the Supreme Court's decision in *United States v. Lopez*. After examining the law, the author offers an alternative analysis of the Act to determine its constitutionality pursuant to the commerce clause. She concludes that Congress had authority to

pass the Violence Against Women Act pursuant to the Supreme Court's interpretation of the Commerce Clause.

Victoria F. Nourse, *Where Violence, Relationship, and Equality Meet: The Violence Against Women Act's Civil Rights Remedy,* 1996 WIS. WOMEN'S L.J. 1-35 (1996).

This article traces the history of the Violence Against Women Act ("VAWA") from its legislative beginning through its enactment in 1994. The VAWA was enacted to facilitate the prosecution of crimes committed against women. Its purpose was to create a crime committed against women that existed in a relationship, such as "acquaintance rape, marital rape and incest." As a result of the VAWA, there are ways to prosecute men who violate women that have some sort of previous connection to the victim. Furthermore, the author also discusses the constitutional and jurisdictional challenges of the VAWA.

Myrna S. Raeder, *The Double-Edged Sword: Admissibility of Battered Women Syndrome By and Against Batterers in Cases Implicating Domestic Violence,* 67 U. COLO. L. REV. 789-816 (1996).

In this article, the author discusses the failure of the American public to seriously consider the problems associated with domestic violence and its effects on our legal system. The author uses the O.J. Simpson murder trial as a springboard for her arguments against what she perceives to be a poor public perception of a growing legal issue, the use of testimony regarding battered woman syndrome ("BWS"), its effects on victims and its relevance to a trial. The author suggests that the court's evidentiary policy regarding BWS is flawed and must be improved to afford a better means of giving a jury the social science background to ensure proper verdicts. The author concludes that this note BWS is an imperfect theory that sorely needs evidentiary framework to ensure that verdicts are not given on the basis of myths and misconceptions.

Carolyn Weiss, *Recent Development, Title III of the Violence Against Women Act: Constitutionally Safe and Sound,* 75 WASH. U. L. Q. 723-49 (1997).

To address the rising problem of violence against women, Congress, in 1994, passed the Violence Against Women Act ("VAWA"). In recent district court cases, the constitutionality of Title III of the VAWA has been challenged under the Commerce Clause. This article examines the legislative history of the enactment of VAWA, em-

phasizing the history behind the writing of Title III. The article also reviews recent Commerce Clause cases and considers them in light of the history of VAWA. The author concludes that Title III is valid under the Commerce Clause because it seeks to protect individuals from bias-related violence.

CHILD ABUSE

Susan J. Becker, *Child Sexual Abuse Allegations Against a Lesbian or Gay Parent in a Custody or Visitation Dispute: Battling the Overt and Insidious Bias of Experts and Judges*, 74 DENV. U. L. REV. 75-158 (1996).

This article examines the relationship between homosexual parents and experts during child custody hearings, in which child sexual abuse has been alleged. The author acknowledges that expert testimony plays a critical role in determining custody, and she is particularly concerned with the difficulty gay and lesbian parents face in overcoming stereotypes of sexual deviancy. The goal of the article is to make judges, attorneys and experts aware of their personal prejudices and preconceived notions, as well as offer a legal standard by which to judge the admissibility of expert testimony. The author accomplishes these goals by offering suggestions on how to balance biases with the principles of justice.

Jorge L. Carro & Joseph V. Hatala, *Recovered Memories, Extended Statutes of Limitations and Discovery Exceptions in Childhood Sexual Abuse Cases: Have We Gone Too Far?*, 23 PEPP. L. REV. 1239-75 (1996).

Childhood sexual abuse is a serious crime that often goes unreported. Due to an increase in awareness and media exposure to childhood sexual abuse, many victims are coming forward with decade old claims of abuse. Some victims have clear memories, while others have recovered repressed memories. Complaints with recovered memories pose the dangers of false memories, thereby creating a credibility issue that makes it difficult to distinguish between false and true claims. The validity of recovered memory theory is being questioned and needs to be treated cautiously. The author argues that courts should halt the use of discovery exceptions and use stricter standards in the application of recovered memory theory.

Ward S. Connolly, *Sexual Abuser Insurance In Alaska: A Note On* St. Paul Fire & Marine Insurance Co. v. F.H.; K.W., 13 ALASKA L. REV. 265-88 (1996).

In analyzing *St. Paul Fire and Marine Insurance Co. v. F.H.; K.W.*, the author discusses whether intentional torts such as sexual abuse should be insurable under Alaskan law. After reviewing the facts of the case and history of Alaskan law on intentional torts, the note compares Alaskan law to the law in other states. The author then provides a legal analysis of the Ninth Circuit decision of *St. Paul Fire* and concludes that intentional torts such as sexual abuse should not be insurable because it would relieve the abuser from personal liability.

Jessica L. Hamblen & Murray Levine, *The Legal Implications and Emotional Consequences of Sexually Abused Children Testifying as Victim-Witnesses*, 21 LAW PSYCHOL. REV. 139-79 (1997).

This article analyzes how jurors perceive the credibility of children's testimony in sex abuse cases and ways to minimize the psychological effects and distress on child victim-witnesses of sexual abuse. The authors argue that the way to maintain a child's credibility, and simultaneously decrease the negative effect of testifying on the child is through the presence of corroborating evidence and limitations on the number of times the child is required to testify. The authors conclude that the use of some courtroom measures such as closed circuit television and preparing a child for the courtroom experience will reduce a child victim-witness's distress.

Wendy J. Kisch, Note, *From the Couch to the Bench: How Should the Legal System Respond to Recovered Memories of Childhood Sexual Abuse?*, 5 AM. U. J. GENDER & L. 207-46 (1996).

The prevalence of child sexual abuse and the consequences for its victims into adulthood has led to increased assistance for victims, and stronger punishment for abusers. However, many problems have resulted from reliance on repressed memories of an abused child where there was an unfounded acceptance of the validity of the memories. The author suggests several ways to protect therapy patients and their families from unnecessary harm: through the regulation of therapists; obtaining a patient's informed consent before performing memory recovery procedures; prohibiting the use of questionable memories as evidence; and providing a legal

remedy for those who are injured by a therapist's negligent treatment of recovered memories.

Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 34 AM. CRIM. L. REV. 1-70 (Fall 1996).

Thousands of American infants are killed by their mothers each year. Through case studies, the author provides a vivid picture of modern American and cross-cultural infanticide. The author discovered that judges and juries, who determine the fate of these women, often feel empathy for women who kill their offspring and resist equating these homicides with murder and therefore impose lighter sentencing for these crimes. The author argues that laws should not solely punish mothers for the crime of infanticide but should also hold those who drove the mother to commit this crime responsible as well. The author concludes that society must stop its tolerance of American infanticide in order for this heinous crime to be abolished.

Louis M. Natali & R. Stephen Stigall, *"Are You Going to Arraign his Whole Life?": How Sexual Propensity Evidence Violates the Due Process Clause*, 28 LOY. U. CHI. L.J. 1-40 (1996).

Rules 413, 414 and 415 of the Federal Rules of Evidence require a district court to admit propensity evidence whenever a federal prosecutor or plaintiff offers such evidence in sexual assault and child molestation cases. Traditionally, courts have excluded evidence of prior bad acts because the jury may give the evidence too much weight. The authors contend that the new rules of evidence violate the Due Process Clause of the Constitution because they contradict the historical prohibition of propensity evidence, require the jury to make irrational and arbitrary inferences, and prevent a fundamentally fair trial. The authors conclude that these unconstitutional rules are the result of political pressure to be tough on crime.

Kathy Pezdek and Chantal Roe, *The Suggestibility of Children's Memory for Being Touched: Planting, Erasing, and Changing Memories*, 21 LAW & HUM. BEHAV. 95-106 (1997).

This article compares children's relative vulnerability to altered, newly planted or erased memories. The authors use a statistical study to show that while it is relatively easy to suggest to a child a change in a touch that he actually experienced, it is less likely that a completely new touch can be planted in memory or that a touch

actually experienced can be erased from memory. The article concludes that it is inappropriate to allow testimony regarding the probability of suggestively planting memories based on research that has been limited to investigation of changing memories.

Marcia Sprague & Mark Hardin, *Coordination of Juvenile and Criminal Court Child Abuse and Neglect Proceedings*, 35 U. Louisville J. Fam. 239-323 (1997).

This article discusses how in cases of child abuse and neglect, there will often be two simultaneous yet separate court proceedings, one in criminal court and the other in juvenile court. The author stresses that a failure of the two courts to coordinate their efforts will result in a waste of resources and prolong the pain of the victims. The author offers and explains methods of coordination available within the legal limitations. It is of paramount importance that child protection agencies and prosecutor's offices discuss their mutual cases if an effort to reduce victim's suffering will succeed.

James Frederick Watson, *The Use of Facilitated Communication in Child Abuse* Prosecutions, U. RICH. L. REV. 447-72 (1997).

This article explores the new phenomenon of facilitated communication which has recently appeared nationwide in criminal prosecutions, primarily as the result of sexual abuse allegations apparently made by children suffering from severe developmental disorders. Facilitated communication is a technique which assists nonverbal and nonexpressive people in communicating through a typewriter, keyboard, letter board, or other similar device, and has been occasionally admitted in courts. The recent trend is for courts to view facilitated communication as an alternative means of communication rather than a scientific principle subject to the standards of scientific evidence. The author argues that this approach is too simplistic and that facilitated communication should be characterized as scientific evidence, subject to the appropriate evidentiary standards, which most likely would preclude its use in future prosecutions.

CHILD CUSTODY

Marc J. Ackerman & Melissa C. Ackerman, *Child Custody Evaluation Practices: A 1996 Survey of Psychologists*, 30 FAM. L.Q. 565-86 (1996).

The Keilin and Bloom ("K&B") study attempted to quantify the practice of the mental health profession with regard to the child custody evaluation procedure; it is the standard for child custody evaluation practiced by the mental health profession. The authors conducted a new study based on the foundation of the K&B study to expand, compare, and contrast the findings of their new study with the K&B study. The new study provides attorneys with a template by which they may judge a psychologist's findings. The article concludes that both child custody evaluation procedures and psychologists are more sophisticated and complex. The author encourages further research in this area.

Anjana Bahl, *Color-Coordinated Families: Race Matching in Adoption in the United States and Britain*, 28 LOY. U. CHI. L.J. 41-94 (1996).

This article examines the racial-matching practices undertaken by adoption agencies, local authorities and the courts, in order to determine if they are in a child's best interests. The article focuses on whether a system in which race is eliminated as a factor in the placement process, is preferable to racial matching. The focus of the article is accomplished by considering arguments both in favor and against race-matching policies, as well as the legal implications of such policies in the United States and Britain. The author concludes that transracial adoptions offer children the true objective of the adoption process, the opportunity to live in stable, permanent family environments.

Martha Bailey, *"Rights of Custody" Under The Hague Convention*, 11 B.Y.U. J. PUB. LAW 33-53 (1997).

The Hague Convention protects both the rights of custody and the rights of access to a child and provides remedies for a breach of these rights, namely abduction. Under the Convention, rights of custody are given more protection than rights of access. However, access parents are sometimes held to have maintained rights of custody, thus allowing them to enjoy the rights and remedies of custodial parents afforded by the Convention. The author reviews and examines two Canadian Supreme Court cases, concluding that those courts have narrowly construed the rights of "access parents"

under the Convention as compared to other courts. The author criticizes the Court's interpretation of those rights because they ignore international precedent.

Sharon F. Bass, *The Public Foster Care System and the Transracial Placement of African-American Children: Exploring the History and the Issue*, 4 U. PA. J. L. & SOC. CHANGE 73-89 (1997).

This article examines the history of African-Americans in the child welfare system and the need for families of all races to adopt African-American children. The author argues that transracial adoption is a useful alternative for providing African-American children with families, due to the changing social dynamics and the high number of African-American children in the foster care system. The author concludes that white families that adopt African-American children can change their own lifestyle in a way favorable to the child's development, such as through acknowledging the child's racial identity, promoting the child's heritage, and having African-American social workers address the concern of transracial adoption.

Jennifer Benning, Note, *A Guide For Lower Courts In Factoring Religion Into Child Custody Disputes*, 45 DRAKE L. REV. 733-49 (1997).

This Note addresses the need for lower courts to consider religion as a factor in the "best interests of the child" doctrine in custody disputes, because in many marriages that are religiously mixed, divorce rates are high. According to the author, courts that do consider religion in child custody matters take varying positions on the issue and also differ as to the weight it should be given in determining the best interest of the child. The author concludes that state legislatures, and specifically Iowa, should enact precise child custody statutes to provide guidelines for courts to evaluate religion as a factor in child custody cases, and to ensure uniform application of the factor.

Allison Strazzella Brantley, In the Interest of R.E.W: *Visitation Rights of Homosexual Parents in Georgia*, 48 MERCER L. REV. 1751-59 (1997).

This article discusses the issue of visitation rights for non-custodial homosexual parents, in the context of a Georgian Court of Appeals decision, *In the Interest of R.E.W.* Applying a best interest of the child standard, the courts awarded visitation to the homosexual

parent. The author supplies both a factual and a legal background for the rights of this parent to have visitation privileges with his child. In addition, the article implies that the tolerant precedent set by the court in this case may be an indication that courts in Georgia are taking a more permissive view regarding homosexuality.

Naomi R. Cahn, *Reframing Child Custody Decisionmaking*, 58 OHIO ST. L.J. 1-59 (1997).

When it comes to issues of child custody, there is a strong legal presumption that the parents are most fit and will act in the best interest of the child. However, with the growing number of non-parents, such as grandparents or relatives of the child, seeking custody of the child, the legal system has struggled with the definition of "parent" and the right to be given parental status. The author suggests that courts should look at all possible custodians of the child and then examine the child's best interest to determine child custody, rather than limit itself to the conventional definition of "parent."

Linda L. Chezem & Sarah L. Nagy, *Judicial Abrogation of a Husband's Paternity: Can a Third Party Seek to Establish Paternity Over a Child Born into a Marriage While that Marriage Remains Intact?*, 30 INDIANA L. REV. 467-85 (1997).

The Indiana paternity statute does not address whether a third party can legally question the paternity of a child into an intact marriage. However, the Indiana Supreme Court recently decided to permit for such inquiries to take place. This article discusses the many implications of this decision and demonstrates how it puts the interests of the child behind that of the third party. The author criticizes the court for making law when the statute is silent on an important issue, and warns against such practices in the future.

Ruth-Arlene W. Howe, *Transracial Adoption (TRA): Old Prejudices and Discrimination Float Under a New Halo*, 6 PUB. INT. L.J. 409-72 (1997).

Transracial adoption occurs when adoptive parents are of a different race than the adopted child. Transracial adoption is a result of the low availability of white babies, the lack of approved African-American applicants, and the large number of African-American children up for adoption. To further promote transracial adoption, Congress has passed a law that prohibits the use of race as a

factor in child placement. The author is concerned that transracial adoption is a form of "cultural genocide," where the child is in an environment that does not foster cultural awareness. The author suggests that, in order for transracial adoption to work, white parents that adopt African-American children need to educate their children about their cultural roots and background.

Randy Frances Kandel, *Squabbling in the Shadows: What the Law Can Learn from the Way Divorcing Couples Use Protective Orders as Bargaining Chips in Domestic Spats and Child Custody Mediation*, 48 S.C. L. REV. 441-95 (1997).

The article discusses the use of protective orders by parents as a method to gain an advantage in child custody disputes. The author examines the actual language of three mediation sessions and shows how it has become increasingly important for parents to know how to use legal arguments in asserting their rights against each other. The author concludes that the parent who is successful in obtaining a protective order against the other parent will usually have a stronger case for child custody since they have demonstrated that they can provide a safe home for their child.

Lynn Kleiman, *Caring For Our Own: Why American Adoption Law And Policy Must Change*, 30 COLUM. J.L. & SOC. PROBS. 327-68 (1997).

This article analyzes the current state of American adoption laws and gives insight to why and how they must change to ensure that American born children are adopted. While American adoptive parents do successfully adopt, the author suggests that because of our current laws, these parents often have no choice but to look outside of the United States to find children. The author suggests that obstacles, such as provided protections for the biological parents, resistance to transracial adoption, and a growing disparity between the number of children available and eligible parents, are making it difficult for adoptive parents to resist looking to international avenues for adoption. The author concludes that the United States must focus its energies on addressing these problems and, consequently, finding homes for American children who need them.

Keri B. Lazarus, *Adoption Of Native American And First Nations Children: Are The United States And Canada Recognizing The Best Interests Of The Children?*, 14 ARIZ. J. INT'L & COMP. L. 255-84 (1997).

The removal of Native American and First Nation children from their communities in the United States and Canada pose a variety of problems for those children. Many of these problems are rooted in conflicting cultural ideas of family. The author reviews reforms in the area of the adoption of Native American and First Nation children in both the United States and Canada and identifies some of the problems with the various jurisdictional, placement, and cultural issues in each country. Pointing to the changes in Native American Child welfare laws in the United States, the author proposes solutions for Canada, such as the modification of the "best interests of the child" standard used by courts to decide adoption issues to include the cultural interests of the child and its community.

Cynthia R. Mabry, *"Love Alone is Not Enough!" In Transracial Adoptions Scrutinizing Recent Statutes, Agency Policies, and Prospective Adoptive Parents*, 1996 WAYNE L. REV. 1347-423 (1996).

Historically, state laws have prohibited transracial adoptions. The article argues that the Multiethnic Placement Act of 1994 (MEPA), which allowed states and agencies to consider a child's cultural, ethnic, or racial background and the potential parent's ability to satisfy the child's cultural and ethnic needs, should not have been repealed. The author states that MEPA would have survived a constitutional challenge. The author concludes that each adoption should be considered on an individual basis, and that a racial preference should only be considered if it is expressed by a child.

Alexandra Maravel, *Intercountry Adoption and the Flight from Unwed Fathers' Rights: Whose Right Is It Anyway?*, 48 S.C. L.REV. 497-575 (1997).

The article discusses the international flight of biological mothers who place their children up for adoption against the will of the biological father. Presently, it is possible for an unwed biological mother to put her child up for adoption in a foreign country which does not require paternal consent. The effect is to negate the father's parental rights under U.S. law and to force the father to litigate the custody issue in a foreign country. The author concludes that the United States should ratify the Hague Convention on In-

tercountry Adoption because it will create uniformity amongst nations with regard to when an unwed father must consent to adoption, thereby eliminating the benefits of international flight.

Mary Ann Mason & Ann Quirk, *Are Mothers Losing Custody? Read My Lips: Trends in Judicial Decision-Making in Custody Disputes 1920, 1960, 1990, and 1995*, 31 FAM. L.Q. 215-36 (1997).

The author traces custody law in appellate court decisions through three different time periods. First, the author examines the 1920's where mothers were presumed to be the most fit parent for custody. Next, the study looks at the 1960's and the impact of the California Family Law Act. Finally, the year 1990 and 1995 are used to demonstrate the most recent trends in custody law including gender neutral custody laws and mandatory joint custody. In conclusion, the author notes that custody battles have remained relatively the same, mothers and fathers are granted custody nearly half the time.

Nicole M. Raymond, Comment, *The Child Support Recovery Act of 1992 — Is the Federal Government's Involvement in the Criminal Enforcement of Child Support at an End After* United States v. Lopez?, 101 DICK. L. REV. 417-50 (1997).

The nonpayment of child support, traditionally confined to the domain of state law, is especially problematic when the non-paying parent and child reside in different states. In 1992 Congress passed The Child Support Recovery Act (CSRA), imposing criminal sanctions on parents who willfully fail to pay their child support obligations where the child lives in another state. In light of the decision in *United States v. Lopez*, the CSRA has been challenged as an unconstitutional use of Congress' commerce powers. The author of this Comment distinguishes the CSRA from *Lopez* and argues that the CSRA is not only constitutional with regard to the commerce clause, but it also comports with principles of federalism, comity and the Tenth Amendment.

M. Kyle Rominger, *Valuing S Corporation Earnings in Child-Support Calculation*, 35 U. LOUISVILLE J. FAM. L. 145-59 (1996).

This article describes how courts view "S" corporation earnings, which receive special tax treatment under the Internal Revenue Code, in defining a parent's income for child support purposes. The author argues that courts should do more than just look at the statutory definitions to determine whether S corporation earnings

are personal income for child support. The author concludes that personal income which is excluded through retained S corporation earnings does not prejudice a shareholder's ex-spouse or children. The reason the author gives is because the ex-spouse or children would not receive the retained earnings even if the family had stayed together, and therefore should not be included in defining a parent's income for child support purposes.

Ellie J. Spielberger, Note, *Whose Right Matters Most? Father's Rights, Joint Custody, and Domestic Violence*, 4 HYBRID U. PA. J.L. & SOC. CHANGE 55-72 (1997).

This Note discusses the relationship of father's rights groups and their efforts to establish a joint custody presumption with legislation designed to protect victims of domestic violence. The author argues that domestic violence should be taken into greater consideration in custody determinations and that father's rights group movements should not be permitted to trivialize the domestic violence issues, due to the fact that it injures women victims, as well as the children. The author concludes that the best way to implement such a concept is by legislative and court reform for battered women, and by limiting the ability of father's rights groups to shield themselves from claims of discrimination and joint custody presumptions.

Andrea K.R. Stevens, Note, *The Hysteria Continues: When a Non-Parent's HIV Infection Threatens Parental Rights*, 35 U. LOUIS. J. FAM. L. 161-79 (1996-97).

This Note explores the extent to which HIV infection of a non-parent affects or should affect the rights of a parent. The author examines *Newton v. Riley*, a case in which the custodial rights of a parent were challenged because of a household member's HIV infection. In *Newton*, expert medical testimony was presented to indicate that HIV is not normally communicated through casual household contact. The author argues that the court's primary consideration in such custody cases should be the parent's ability to care for the child. The Note concludes that case history indicates that HIV infection of any household member, parent or non-parent, taken as the sole factor in a custody case, should be insufficient to divest a parent of his or her parental rights.

Christa Wiertz-Wezenbeek, *Visitation Rights of Nonparents and Children in England and the Netherlands,* 31 FAMILY L.Q. 355-68 (1997).

It has been estimated that 3.7 million European children will have divorced parents by the year 2000, making visitation very difficult for grandparents and ex-cohabitators, such as step-parents from subsequent marriages. This article discusses the recent changes in European laws and the visitation rights of non-parents and children in England and the Netherlands. For example, grandparents can petition for visitation rights. The author compares the law of both countries and suggests that the European focus on parental responsibility, rather than parental authority is a model for other legal systems.

CHILD RIGHTS

Matthew C. Bazzano, *Child Labor: What The United States and its Corporations can do to Eliminate its Use,* 18 J. Pub. Law & Pol'y 200-25 (1997).

The use of child labor has long been the focus of reform, as it results in pure exploitation, reduced wages for adult workers, diminished educational opportunities, and poorer working conditions for both young and old laborers. Countries which do not allow the employment of children contribute to the problem by consuming goods which come from such countries, as well as having subsidiaries in countries where child labor is tolerated. The article examines the positions of both the critics and advocates of child labor, reviews various measures used in the United States to abate the use of child labor and discusses problems which reforms of child labor face. The author proposes several solutions, such as a new definition of "international workers rights," a focus on the need for the education of these children, instead of their use as laborers.

Linda A. Chapin, *The Uses and Abuses of Parental Liability Laws to Control Juvenile Delinquency in the United States,* 37 SANTA CLARA L. REV. 621-80 (1997).

The point at which society should intervene in the parent-child relationship, and the nature of that intervention is not clear when the child commits acts of juvenile delinquency. The author discusses parental liability laws and the presumptions in which they are based upon; a child's behavior is based primarily upon a par-

ents actions or inactions, and a presumed universal model of adequate parenting. The author then discusses the different approaches used in dealing with juvenile delinquency such as the juvenile court system as a substitute for "good" parenting, and the statutory expansion of both tort and criminal parental liability laws. The author discusses California's approach of reporting parents to parenting classes as an alternative to criminal prosecution. Lastly, the author reviews theories and research on causes of juvenile delinquency. The author concludes that parental liability laws provide only a limited solution to the problem of juvenile delinquency, especially when acts of juvenile delinquency are due to other factors than parental supervision and control.

Gregory Z. Chen, Note, *Youth Curfews and the Trilogy of Parent, Child, and State Relations*, 72 N.Y.U. L. REV. 131-174 (1997).

This Note examines the relationships among parent, child, and state regarding youth curfews and the constitutional issues of balancing state interests with individual rights. The author presents a policy overview of curfew laws, discusses Supreme Court case law dealing with the issue, and argues that the majority of youth curfews reflect state intrusion upon the family. Ultimately, the author suggests that courts scrutinize curfews for individual rights infringements in order to establish a stable and consistent basis for these ambiguous laws.

Peter M. Cicchino, *The Problem Child: An Empirical Survey and Rhetorical Analysis of Child Poverty in the United States*, 5 J.L. & POL'Y 5-105 (1996).

The child poverty rate in the United States is steadily increasing. The conservative response to the problem of poverty in general is to blame the poor for their poverty and to reduce the amount of governmental aid to poor families. Since this type of response would be politically unpopular when applied to children, the conservatives have instead proclaimed to be assisting poor children by cutting off their means of support. The author criticizes this compassionate rhetoric as inherently inconsistent with the conservative policy of eliminating poor relief. The author concludes that the Progressives should take advantage of these inconsistencies by focusing on the plight of poor children that is the unavoidable result of conservative policies.

Linda F. Giardino, Note, *Statutory Rhetoric: The Reality Behind Juvenile Justice Policies in America*, 5 J.L. & POL'Y 223-75 (1996).

States at present are undecided as to whether their juvenile justice systems should focus on rehabilitation or on punishment. The author discusses the case law and statutory provisions to show how various juvenile justice systems transfer certain juvenile offenders to the adult criminal justice system in a response to public outcry. Instead the focus should be on helping the offenders to change as rehabilitation was the states' enumerated statutory goal. The author calls for an end to the increase in the punitive nature of some states' juvenile justice systems. She stresses the notion that the rehabilitation of juvenile offenders is still plausible.

Michael David Jordan, *Parents' Rights and Children's Interests*, 10 CAN. J.L. & JURISPRUDENCE 363-85 (1997).

This article discusses the problems arising from the development and enforcement of an educational policy that objectifies children in failing to focus primarily on the children's interests. The author argues that, while the interests of the parents, the state, and the community are often foremost considerations in educational policy making, such interests become convoluted by other political matters and subsequently fail to focus on the child. Instead, the author favors implementing a system of children's rights, similar to the procedures taken with incompetent adults, in which parents advocate educational policies for their children by endorsing what the child would choose for himself or herself, were the child capable of such decision making.

Scott A. Kizer, Note, *Juvenile Curfew Laws: Is There A Standard?*, 45 DRAKE L. REV. 749-65 (1997).

The Note addresses the constitutionality of juvenile curfew laws and the difficulty in determining the standards courts should apply when analyzing these ordinances. The author argues that the Supreme Court's refusal to review this issue has left local governments and lower courts without precise standards, resulting in the absence of guidelines to draft constitutional curfew laws and a lack of uniformity or predictability in court decisions. The author concludes that because these ordinances present fundamental constitutional questions and the criteria for granting certiorari are met, juvenile curfew laws are ready for Supreme Court review.

David Yellen, *What Juvenile Court Abolitionists Can Learn from the Failures of Sentencing Reform*, 1996 WIS. L. REV. 577-602 (1996).

As a solution to rising juvenile crime rates, particularly among violent offenders, an increasing amount of juveniles are being tried as adults. Recently, a number of commentators have called for a complete abolition of the juvenile court's delinquency jurisdiction. The author criticizes this response as being inadequate for juvenile offenders. Instead, the author offers sentencing guidelines and structuring waiver criteria within the current juvenile justice system as a solution.

DISCRIMINATION

Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117-87 (1997).

This article explores women's roles in law school legal writing programs. The author examines the frequency that women accept legal writing positions because they are unable to obtain more prestigious positions in legal academia. After providing a history of legal education and a description of the academic legal community's condescending attitude toward legal writing, the author argues that this attitude maintains the hierarchy within legal academia. The author concludes that law school education will improve if legal writing professors are given more respect, and advises that women should be apprehensive of accepting legal writing positions because career advancement from these positions is limited.

Chelmer L. Barrow, Jr., and Kirk A Easley, *The Role of Gender and Race on the Time Delay for Emergency Department Patients Complaining of Chest Pain to Be Evaluated by a Physician*, 15 ST. LOUIS U. PUB. L. REV. 267-302 (1996).

The authors conducted a study to ascertain whether black or female Emergency Department ("ED") patients complaining of chest pain face longer waiting times than their white or male counterparts. The authors renewed and compared results from waiting times of 3129 adult patients at an urban university hospital in 1993. The authors conclude that women complaining of chest pain wait significantly longer than males before being evaluated by an ED physician.

Susan Bisom-Rapp, *Scripting Realities in the Legal Workplace: Women Lawyers, Litigation Prevention Measures, and the Limits of Anti-Discrimination Law.* 6 COLUM. J. GENDER & L. 323-85 (1996).

The article demonstrates the systematic disadvantages experienced by women in law firms by examining the effects of social processes, institutional norms, and cultural beliefs on women attorneys. The task, the article speculates, is to end the assumption that the lawyer is a male without significant family responsibilities, and adds that women will never be equals in the legal profession so long as "pregnant attorney" is a contradiction in terms. The author concludes that instead of directing energy into litigation prevention strategies, firms should evaluate and revise the current conception of lawyering that disadvantages women.

Eve B. Burton, *More Glass Ceilings Than Open Doors: Women as Outsiders in the Legal Profession,* 65 FORDHAM L. REV. 565-72 (1996).

This article examines the role of a women lawyers in a corporate law firm. The author argues that women have yet to achieve a leadership role in these firms because of the likelihood they will leave the firm or work part-time after having children, thereby preventing these women from billing extensive hours. The author further contends that the only way to remedy this situation is to evaluate an individual's performance on the quality of his or her work, rather than the billable hours accrued.

Elizabeth Chambliss, *Title VII as a Displacement of Conflict,* 6 TEMP. POL. & CIV. RTS. L. REV. 1-54 (1997).

The article addresses how under Title VII, the role of Equal Employment Opportunity Officers is to act as scapegoats whose purpose is to contain conflict and displace it away from employers and courts. This mechanism helps to privatize and internalize workplace conflict, which is both politically and legally preferable. The author notes that under Section 704(a) of Title VII, employees are protected from the retaliatory actions of their employers if they oppose illegal employment practices, but EEO officers do not enjoy the same protection. The author concludes that in order for the displacement of conflicts to workplace procedures to be effective, the protection of Section 704(a) must extend to EEO officers.

Cathryn L. Claussen, *Title IX And Employment Discrimination In Coaching Intercollegiate Athletics*, 12 ENT. & SPORTS L. REV. 149-68 (1995).

The coaches of female sports teams, regardless of the sex of the coach, and female coaches have long been the subject of discrimination. This discrimination is readily apparent in the lower salaries paid to both the men and women coaching women's teams and women coaches in general. The use of Titles VII and IX may prove to be effective weapons in combating this discrimination. In reviewing, *Cohen v. Brown University, Stanley v. University of Southern California, Pitts v. Oklahoma,* and *Tyler v. Howard University,* the author analyzes how the use of Title IX can remedy employment discrimination in women's sports by equalizing the salaries of men and women coaches, decreasing the gap between the numbers of male and female coaches, and increasing the quality of coaching generally.

Ruth Colker, *Pregnancy, Parenting, and Capitalism,* 58 OHIO ST. L.J. 61-83 (1997).

The author criticizes the Pregnancy discrimination Act (PDA), because it does not provide pregnant women with any protection. Furthermore, the author argues that the PDA does little to protect fetuses from hazards at the workplace for pregnant workers. The article contrasts the PDA with Canada and Western Europe, which have adopted ways of accommodating the health of fetuses and rights of pregnant women. These countries provide benefits such as paid leave for pregnant women and their partners and pregnancy related insurance benefits for all women. The author suggests that the U.S. follow Canada and Western Europe in accommodating the needs of pregnant workers in an effort to protect both the women and their children.

Durmeriss Cruver-Smith, Book Summary, eds. *Corporate Victimization of Women,* 18 WOMEN'S RTS. L. REP. 257-59 (1997).

Elizabeth Szockyji and James G. Fox, have compiled a book examining the injustices women have endured by corporations. The author, in a detailed summary, describes the seven articles in *Corporate Victimization of Women* which include womens' personal accounts of sexual harassment in the workplace, unequal wages, and leakage of breast implants. The author concludes that this book aims to enlighten women of the unfair treatment they have

experienced in order to combat continued discrimination in the corporate world.

Gary La Free & Christine Rack, *The Effects of Participants' Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Civil Cases,* 30 L. & SOC'Y REV. 767 -96 (1996).

Scholars have concluded that alternative dispute resolutions are susceptible to bias by analyzing the results of 312 adjudicated and 154 mediated small claims civil cases in New Mexico. In cases where there was one Anglo mediator, higher monetary outcomes were awarded to Anglo claimants; in cases where there were two female mediators, minority female claimants received lower monetary outcomes. The authors comment that alternative dispute resolutions is commonly used as an alternative to the courtroom. The authors criticize mediation for replicating the bias effects common in judicial decisions. The authors also suggest that mediators clearly distinguish mediation from adjudication, explain the options mediation has to offer, and develop uniform goals for agreement between the parties.

Susan K. Grebeldinger, *How Can a Plaintiff Prove Intentional Employment Discrimination If She Cannot Explore the Relevant Circumstances: The Need for Broad Workforce and Time Parameters in Discovery,* 74 DENV. U. L. REV. 159-205 (1996).

The "Circumstantial Individual Disparate Treatment" theory is the most common way for employees to prove intentional employment discrimination when there is no direct evidence of discrimination. The theory allows the plaintiff to proffer circumstantial evidence in order to create an inference of discrimination. At all times the burden of proving the alleged discrimination rests with the plaintiff. Since the plaintiff must prove her case inferentially, the need for broad workforce and time parameters, in the discovery process becomes increasingly important. The author concludes that without these broad discovery demarcations, it is very difficult for the plaintiff to discharge her burden of proof.

Becky Hoover Hernstein, *Shannon Faulkner and The Citadel: The Effects of Using Litigation as an Instrument of Social Reform,* 5 CIRCLES 4-17 (1997).

The author examines a variety of questions concerning the "test case" method of battling institutionalized gender discrimination, within the context of the recent challenge to The Citadel's admis-

sion policies. Faulkner's case is the ideal example of test case litigation, whereby a single plaintiff attempts to advance the cause of the class. Specifically, the author compares the interests of the plaintiff with that of the attorney, who may have different goals. The article concludes that the benefits of test case litigation may be overshadowed by the emotional and psychological costs to the plaintiff.

Wynn R. Huang, *Gender Differences in the Earnings Of Lawyers,* 30 COLUM. J.L. & SOC. PROBS. 267-323 (1997).

This article discusses the existing inequities in occupations and earnings between genders. The article suggests that gender differences in earnings, or wage discrimination, is justified by employees by focusing on education, experience, and labor force attachment, instead of individual productivity. This problem, which the author notes exists across all occupations, is no stranger to the legal industry. The author illustrates, through surveys and charts, the "apparent" differences between men and women's place of employment and salaries earned while performing identical jobs. In addition, the article suggests that the majority of women lawyers can be found at the bottom of the industry, working predominately in the lower-paying sectors and in lower-paying specialties of law. The author concludes that unless steps are taken to lessen this job prestige and salaries gap between genders, it will continue to grow.

Lori Klein, *Doing What's Right: Providing Culturally Competent Reunification Services,* 12 BERKELEY WOMEN'S L.J. 20-44 (1997).

This article proposes that culturally competent reunification services should be provided to families in child dependency cases. The author argues that currently, many child dependency services are discriminatory and thus should be required to provide a representative who can communicate with families whose cultures are different than those of most Americans. The author suggests several strategies for litigating the discrimination of child dependency services both at trial and on appeal. The author concludes that advocates should continue to encourage child welfare agencies to meet cultural differences within different families and that courts should be required to provide these services for every family.

Douglas E. Ray, *Title VII Retaliation Cases: Creating a New Protected Class,* 58 U. PITT. L. REV. 405-34 (1996).

This article addresses the anti-retaliation provisions of Section 704(a) of Title VII, which protects employees who file charges or

engage in protected activity from an employer's retaliatory actions. The article suggests that unless the employees who file charges are protected from retaliatory measures, the mechanisms that protect against discrimination will have no effect. There has been a trend among recent court cases supporting the movement toward employee protection. The author concludes that the anti-retaliation provisions of Title VII will provide discriminated-against employees access to the courts and protective agencies.

Deborah L. Rhode, *Myths of Meritocracy*, 65 FORDHAM L. REV. 585-94 (1996).

The author of this article discusses the challenges that face the legal profession to fully assimilate women as equals into the workplace and allow for equal justice under the law. This article discusses the myths associated with female employment at a corporate firm including the myths of equal opportunity and the myth of choice. The article concludes that it is beneficial to allow members of firms, both male and female, to have time for personal and family needs to reduce job dissatisfaction, stress, depression, and substance abuse.

Willy E. Rice, *Race, Gender, "Redlining," and the Discriminatory Access to Loans, Credit, and Insurance: A Historical and Empirical Analysis of Consumers Who Sued Lenders and Insurers in Federal and State Courts, 1950 - 1955*, 33 SAN DIEGO L. REV. 583-623 (1996).

The author asserts that the insurance industry and lending institutions discriminate against women, unmarried persons, inner-city businesses, low socioeconomic applicants, racial minorities, and residents of low-income neighborhoods by refusing these groups access to insurance and capital. The author contends that federal and state courts are inappropriate forums for resolving anti-discrimination suits that arise from these practices because they are financially unequipped, overburdened, and practice race and gender discrimination. Therefore, the author suggests that specialized courts should be created or attorneys should settle as quickly as possible.

Cynthia A. Savage, *Culture and Mediation: A Red Herring*, 5 AM. U.J. GENDER & L. 269-92 (1996).

The author questions the effectiveness of mediation in situations involving cultural diversity. One of the primary obstacles to mediation among culturally diverse parties is the tendency to stereotype

and define culture with a single identifying characteristic such as race or ethnicity. The author suggests a more effective approach to defining culture known as "value orientations", which synthesizes the effects of multiple cultural, subcultural and individual influences on the identity of the individual participant.

William G. Somerville III, *Avoiding Lawsuits for Employment Discrimination*, 20 AM. J. TRIAL ADVOC. 277-303 (1996-1997).

According to the author, the recent availability of punitive damages for employment discrimination and harassment actions will likely increase such suits. The effect of damage awards is that employer's must seriously consider implementing practices that will limit their liability. The article discusses discrimination laws based on religion, sex, age, and disability and highlights various ways employers can comply with these laws. In conclusion, the author suggests that employers utilize employee discipline and promotion procedures that are well-documented and evaluated according to policies composed of objective criteria.

Charles Spitz, Note, *Gender Equity in Intercollegiate Athletes as Mandated by Title IX of the Education Amendments Act of 1972: Fair or Foul?*, 21 SETON HALL L. J. 621-56 (1997).

This note examines the history of Title IX, as well as those cases that have been initiated in order to insure that schools comply with its mandate, gender equity in federally funded educational programs. This note focuses specifically on the interpretation of Title IX in three United States Court of Appeals decisions. The author analyzes the effects and ramifications these interpretations have had on women for the past twenty-five years. The author concludes that regardless of the benefits of Title IX, it has created an unequal "playing field" for male athletes.

Michael Straubel, *Gender Equity, College Sports, Title IX and Group Rights: A Coach's View*, 62 BROOK. L. REV. 1039-74 (1996).

The article addresses the current debate of how to apply Title IX, a statute prohibiting gender discrimination in education activities receiving federal funding for college athletics. According to the author, women do not participate in collegiate sports at the same frequency as men. Therefore, an interpretation of Title IX which makes proportionality synonymous with equality does not benefit women's teams and only harms men's teams by causing budget cuts and team size caps. Instead, the author argues that either fe-

males should be encouraged at young ages to participate in athletics in order to bring men's and women's participation into proportion, or in the alternative Title IX's interpretation and application must take these different participation levels into consideration.

Judith P. Vladeck, *Response to Glass Ceilings and Open Doors: A Modest Proposal for Change*, 65 FORDHAM L. REV. 595-601 (1996).

The author states that a moratorium should be place on the study of women's role in the legal workplace. For she believes that it is time to move forward toward resolving this problem with aggressive measures to make the role of women equal to that of their male counterparts. The author cites six specific remedies to correct this question including: mandatory continuing legal education, mandatory tracking of work performed, reporting requirements, Bar Association hot lines and dispute resolution procedures, ethical standards for judges, and appointment of more women to the bench. The author concludes that it is not sound business to discriminate based on gender.

GAY RIGHTS

Paula L. Ettelbrick, *Wedlock Alert: A Comment on Lesbian and Gay Family Recognition*, 5 J.L. & POL'Y 107-66 (1996).

This article focuses on the struggle of homosexuals to achieve legal recognition of homosexual family relationships to obtain social acceptance and benefits given to married couples. The author compares the strategy of obtaining the legal right to same-sex marriages to the strategy of expanding family definitions to include relationships that include relationships other than marriage. In advocating the latter strategy, the author concludes that families are ultimately grounded in love and commitment, rather than the legal recognition of a marriage. Therefore, according to the author, proponents of homosexual relationships should seek to expand society's concept of family.

Clark Freshman, *Privatizing Same-Sex "Marriage" Through Alternative Dispute Resolution: Community-Enhancing Versus Community-Enabling Mediation*, 44 U.C.L.A. L. Rev 1687-1771 (1997).

This article discusses the possibility of utilizing alternative resolutions to disputes in same-sex relationships, outside of litigation, such as arbitration, mediation or negotiation. A more privatized

process operating within the "shadow of the law" might provide greater sensitivity to the problems same-sex couples might encounter. The author explores the how individualism and community norms play a part in this mediation and how the law is an example of how community values affect dispute resolution. The author concludes that individuals involved in disputes should consider the values and norms of many, rather than a single community and adopt those that relate to their unique situation.

Devjani Mishra, *The Road to Concord: Resolving the Conflict of Law over Adoption by Gays and Lesbians,* 30 COLUM. J.L. & SOC. PROBS. 91-136 (1996).

In the United States, during the past decade, states have sharply diverged regarding their policy towards adoption by gays and lesbians. The author evaluates this conflict in adoption law and demonstrates that the approach in the child's "best interest" favors recognition of these adoptions over prohibition. Though many of the arguments used to deny recognition to gay and lesbian individuals have focused on their sexuality, the author argues that the basic right of parent and child to each other's comfort and support provides a compelling reason to allow gays and lesbians to become adoptive parents. The note concludes that an adoptive parent's and adopted child's liberty interest requires adoptions by gays and lesbians to be given full faith and credit in every state.

Robert J. Morris, *"What Through Our Rights Have Been Assailed?" Mormons, Politics, Same- Sex Marriage, and Cultural Abuse in the Sandwich Islands,* 18 WOMEN'S RTS. L. REP. 129-203 (1997).

The article addresses the Mormon Church's modern view regarding homosexuality as a sin, particularly with respect to the legalization of same-sex marriage in Hawaii. The author argues that this position is not traceable to Mormonism roots, and in fact, the tactics and rhetoric employed by the Mormon Church against homosexuals are historically similar to attacks waged against the Mormons regarding polygamy. The author concludes that this new position is attributed to the Mormon Church's forced abandonment of polygamy in exchange for viewing heterosexual monogamy as righteous and natural.

Cynthia M. Reed, *When Love, Comity and Justice Conquer Borders: INS Recognition of Same-Sex Marriage,* 28 COLUM. HUM. RTS. L. REV. 97-134 (1996).

Under current Immigration and Naturalization Service ("INS") law, homosexual marriages are not legally recognized and thus these couples do not receive the same immigrations benefits as heterosexual married couples. In the 1970's, the INS reasoned that same-sex marriages were not legal because the law did not recognize gay relationships. However, in 1990, Congress repealed the homosexual exclusion and thereafter the Hawaii Supreme Court recognized same-sex marriages. The author suggests that progress has been made, but there is still a need for recognition of same-sex marriage, particularly with respect to immigration policies.

Teemu Ruskola, Article, *Minor Disregard: The Legal Construction of the Fantasy That Gay and Lesbian Youth Do Not Exist,* 8 YALE J.L. & FEMINISM 269-331 (1996).

The population of gay and lesbian youths is imperceptible, and therefore the topics of their health, safety, and other problematic issues are treated as unimportant. This article criticizes the social and institutional misconception that homosexual youths do not exist, citing as a consequence the immense void of ignorance within which it is impossible for gay and lesbian youths to publicly identify themselves. The author examines the current social and political strata which make public identification of homosexual youth inconceivable, and suggests the legal system should recognize gay and lesbian youth in order to confront issues which traditionally remain ignored.

Norman C. Simon, Note, *The "Evolution" of Lesbian and Gay Rights: Reconceptualizing Homosexuality and* Bowers v. Hardwick *from a Sociobiological Perspective,* 1996 ANN. SURV. AM. L. 105-45 (1996).

This Note addresses the role that sociobiology can play in advocating lesbian and gay human rights. The author maintains that the science of sociobiology places the mounting genetic evidence regarding homosexual behavior into an evolutionary context, and further explains how the biologically-driven desire for same-sex intimacy is "evolutionarily natural." Three distinct theories to explain the evolutionary basis for homosexuality are presented: the balanced superior heterozygote fitness theory, the kin-selection theory, and the population control theory. The author suggests that courts should use the "universal human need of bonding" as

their guiding principle, and thereby acknowledge that substantive due process rights are essential for lesbians and gay men.

HARASSMENT

Lisa Bloom, *Gretel Fights Back: Representing Sexual Harassment Plaintiffs Who Were Sexually Abused As Children*, 12 BERKELEY WOMEN'S L.J. 1-19 (1997).

This article addresses the issue that many sexual harassment plaintiffs were sexually abused as children. The author discusses the pros and cons of allowing a plaintiff's prior sexual abuse to be used in current sexual harassment litigation. The author suggests that the personal decision of disclosure should be up to the client and should be made before filing litigation in order to ensure that the client's wish for or against disclosure is satisfied. The author concludes that while many attorneys correctly choose to suppress their client's prior sexual abuse, in some cases, there are instances where the claimant can use the prior history of abuse to improve their chance for winning current litigation.

Lynn T. Dickinson, Note, *Quid Pro Quo Sexual Harassment: A New Standard*, 2 WM. & MARY J. WOMEN & L. 107-24 (1995).

The Note identifies two flaws with the current construction of quid pro quo sexual harassment claims. First, these claims are only allowed if the sexual conditions are explicit, and second, recovery is only allowed for actual tangible harm, but not for any intangible harm. The author suggests a new approach to expand the coverage of these claims. The determinative test should be whether a reasonable person would understand a supervisor's response to a request for benefits to be conditioned on sex. The author concludes that if the response is found to imply a condition of sexual exchange, then the employer will be liable for this unlawful behavior, and all types of remedies should be available to the victim, regardless of the type of loss involved.

Deborah Epstein, *Free Speech at Work: Verbal Harassment as Gender-Based Discriminatory (Mis) Treatment*, 85 GEO. L.J. 649-66 (1997).

This article addresses Professor Volokh's reply to the author's critique of his earlier work concerning workplace harassment law and the freedom of speech. The author criticizes Volokh's conclusion that the law's restriction of speech results in the constitutional failure of workplace harassment law. The author agrees that some em-

ployers are suppressing worker speech that is not restricted by hostile environment harassment law. The author, as a solution, suggests forming an anti-harassment policy that sets forth a clear definition of gender-based harassment and includes concrete examples, as well as providing workers and managers with in-depth training. The author concludes that workplace harassment law does not present a constitutional violation of free speech.

Katherine M. Franke, *What's Wrong With Sexual Harassment?*, 49 STAN. L. REV. 691-772 (1997).

This article explores the nexus between sexual harassment and sex discrimination under Title VII of the Civil Rights Act of 1964. After arguing that the Supreme Court has failed to address adequately sexual harassment as a form of sexual discrimination, the author provides arguments offered by feminists advocating a cause of action for sexual harassment under Title VII. These arguments, however, are discredited by the author when she shows that each is inapplicable in instances of same-sex sexual harassment. The author concludes that sexual harassment is a form of sexual discrimination because it is used to label feminine women as sex objects and to reinforce masculine men as superior and dominating, thereby perpetuating gender stereotypes. The author urges courts to consider this theory of same-sex sexual harassment as sexual discrimination, rather than dismissing same-sex sexual harassment as lacking discrimination because a male is not harassing a female.

Robert J. Gregory, *You Can Call Me a "Bitch" Just Don't Use the "N-Word": Some Thoughts on* Galloway v. General Motors Service Parts Operations *and* Rodgers v. Western-Southern Life Insurance Co., 46 DEP. L. REV. 741-77 (1997).

Racial and sexual harassment are both prohibited under Title VII of the Civil Rights Act of 1964 and, in theory, are governed by the same legal standards. Nevertheless, the author notes that in practice, the courts have given different treatment to claims of racial and sexual-harassment; treating the former as more sever, while showing more tolerance to the latter. The author uses two court decisions to illustrate the disparate treatment and urges courts to strive for a more uniform approach to comparable claims of race and sex-based harassment.

Mary Lee Leahy, *The Hope for Equal Protection Under the Law for Women Realized in Illinois,* 21 S. ILL. U. L.J. 287-96 (1997).

The article examines Section 18 of the Illinois Constitution which prohibits equal protection violations by the state or local government on the basis of sex. The author discusses Illinois' delegates attempt to gain support for Section 18 in 1970 and how this provision has been an important tool to stop inferior treatment of women in Illinois. The author provides cases of wage discrimination and sexual harassment to demonstrate that Illinois no longer tolerates sexual discrimination. The article concludes that through legislation, Illinois has successfully provided a redress for victims of sexual harassment.

Sam Middlemiss, *Civil Remedies for Victims of Sexual Harassment: Delictual Actions,* 1997 JURIDICAL REV. 241-49 (1997).

In light of recent developments in British employment law, which has expanded an employer's personal duty of care, the author argues that the foundation exists for sexual harassment victims to seek remedy through the law of delict, which is similar to American tort law. The author discusses the difficulties a victim of sexual harassment may face in carrying the burden of proof in a delictual claim as well as the lack of precedent allowing recovery in such a situation. Focusing on intentional delict, nervous shock, and vicarious liability, the author explains possible avenues by which a victim of sexual harassment may seek recourse. The author concludes that a remedy for sexual harassment in delict will further the statutory remedy, which only allows recovery against the employer, by providing redress against both the employer and the harasser.

Pamela J. Papish, *Homosexual Harassment or Heterosexual Horseplay? The False Dichotomy of Same-Sex Sexual Harassment Law,* 28 COLUM. HUM. RTS. L. REV. 201-34 (1996).

This article provides an analysis of the law regarding same-sex sexual harassment, and whether it is cognizable under Title VII. The author traces the inability of the courts to reconcile the differences between an openly or admittedly homosexual defendant, and a heterosexual one. Often in the case of heterosexual same-sex harassment, the behavior is dismissed as "merely horseplay". The article also provides a discussion of the current emphasis on the causation element of Title VII claims. The author concludes by

suggesting alternative approaches that will enable plaintiffs to allege a same sex harassment claim.

Lori L. Park, *Fair Representation and Conflict of Interest: Sexual Harassment Complaints Between Co-Workers*, 6 DALHOUSIE J. LEGAL STUD. 121-55 (1997).

The article addresses the issue of the inherent conflict of interest faced by a union when two of its members are locked in a sexual harassment suit. The union is bound by a duty of fair representation, developed in the United States and adopted by the Canadian labor board, which grants a union the exclusive power to fairly represent its members and requires a union to take into consideration the competing interests of its members and to make non-discriminatory and fair decisions in good-faith. The author reviews decisions made by the labor board and discusses the reaction of two national Canadian unions to sexual harassment claims involving two of its members. The author concludes that to resolve the conflicts of interest faced by the unions in these situations, it is best to allow a union member to pursue his or her grievance individually through arbitration and without interference or representation from the union.

Ellen R. Peirce, *Reconciling Sexual Harassment Sanctions and Free Speech Rights in the Workplace*, 4 VA. J. SOC. POL'Y & L. 127-223 (1996).

This article addresses the competing interests of Title VII and First Amendment rights in the workplace. Increasingly, courts are asked to determine whether instances of verbal insults and pictorial expression in the workplace, in the absence of threats or requests for sexual favors, constitute hostile environment sexual harassment under Title VII, or protected expression under the First Amendment. The author concludes that limited constraints on free speech must be imposed in the workplace to curtail sexual harassment and to satisfy the government's substantial interest in making the workplace equally open to men and women and free from discrimination.

Amy Rubin, *Peer Sexual Harassment: Existing Harassment Doctrine and its Application to School Children*, 8 HASTINGS WOMEN'S L.J. 141-68 (1996).

This article discusses the ignorance surrounding sexual harassment in schools. According to the author, the lack of recognition at this

early stage is vital to the prevention of sexual harassment in the workplace and in society. The legislative and judicial efforts against harassment in schools are discussed, and the use of workplace harassment as a model for school harassment is criticized. The author suggests the following: a program designed to create awareness of sexual harassment, legislation requiring sexual harassment policies in each school district, and training for the faculty responsible for protecting students from and punishing students for such harassment.

Eugene Volokh, *What Speech Does "Hostile Work Environment" Harassment Law Restrict?*, 85 GEO. L.J. 627-648 (1997).

The article discusses speech that is restricted under hostile work environment sexual harassment law. The author considers how political, artistic, religious, and socially themed speech, if sufficiently "severe or pervasive," can create a hostile environment. The author advocates a zero-tolerance policy toward any speech which might create a hostile environment, because even though each statement will lack power to create a hostile environment individually, taken together these comments will have an aggregate effect. The author recommends that employers act preemptively to restrict the broadest type of potentially offensive remarks in order to avoid a fact-finder determination that the statement is too "severe or persuasive."

Richard L. Weiner, et al., *Perceptions of Sexual Harassment: The Effects of Gender, Legal Standard, and Ambivalent Sexism*, 21 LAW & HUM. BEHAV. 71-91 (1997).

According to Title VII of the Civil Rights Act of 1964, employers may not subject workers to intimidating, hostile, or offensive working environments because of their gender. The court determines whether a reasonable person would find the conduct so pervasive and severe as to create a hostile working environment. Some courts, however, use a reasonable woman standard. The authors conducted a study to determine the legal effect of the reasonable woman standard and concluded that men who were high in hostile sexism chose to ignore this standard, instead using themselves as the reference point for reasonable behavior. The authors conclude that expert testimony is necessary to give meaning to the reasonable woman standard because otherwise the juror will use his or her own personal standard.

HEALTH, HIV & AIDS

Allison N. Bender, Note, *Testing the Fourth Amendment for Infection: Mandatory AIDS and HIV Testing of Criminal Defendants at the Request of a Victim of a Sexual Assault,* 21 SETON HALL LEGIS. J. 467-501 (1997).

This Note analyzes various aspects of mandatory AIDS and HIV testing on criminals, ranging from the emotional to the constitutional implications, and the effect on victims of sexual assault. The author focuses on the Fourth Amendment, and relevant New Jersey legislation, N.J.S.A. §§ 2A:4A-431 and 2C:43-2.2, which was recently declared unconstitutional, as a violation of the reasonableness requirement of the Fourth Amendment. Finally, the author outlines the arguments for and against testing. The Note concludes that it is the courts responsibility to decide if a victim's right to know whether he or she was infected supersedes a defendant's right to privacy.

Janine P. Felsman, Note, *Eliminating Parental Consent and Notification for Adolescent HIV Testing: A Legitimate Statutory Response to the AIDS Epidemic,* 5 J.L. & POL'Y 339-82 (1996).

The author encourages states to best serve their interests by providing teenagers with confidential testing and counseling programs to combat the alarming increase in HIV among minors. The issues discussed by the author include the different approaches taken by various courts and legislatures, the negative impact that the parental consent requirement has on a minor's decision to test, and the constitutional rights of minors to have confidential testing. After analyzing the rights of parents and minors as well as the states' interests, the author concludes that minors must be given the right to receive HIV testing free of the parental consent requirement.

Blake M. Guy, Note, *Female Genital Excision and the Implications of Federal Prohibition,* 2 WM. & MARY J. WOMEN & L. 125-69 (1995).

This Note discusses attempts at federal regulation of female genital excision in the United States. The author identifies the reasons that certain cultures tolerate female genital excision and the efforts of several countries to forbid it. The author discusses the significance of the United States informing immigrants that-t this immoral practice will not be tolerated. Additionally, the article discusses the potential problems with prohibiting this custom in America, because of the moral authority that is provided by the

different cultures that tolerate it. The author concludes that federal legislation should be enacted prohibiting female genital excision, but cautions against the potential resistance to its enforcement.

Gary R. Hillerich et al., *Selecting and Presenting a Failure to Diagnose Breast Cancer Case,* 20 AM. J. TRIAL ADVOC. 253-76 (1997).

This article addresses the importance of attorneys carefully selecting medical malpractice cases involving the diagnosis of breast cancer. More middle-aged American women die from breast cancer than any other disease, and its misdiagnosis is the basis for most medical malpractice claims. The author maintains that in order to properly evaluate a potential claim and develop themes and trial strategies, attorneys should be familiar with basic medical terms and have a fundamental knowledge of the disease. The author also notes recent appellate decisions which have ruled that doctors must use every method available to them in diagnosing breast cancer, including making referrals to specialists.

J.P. Howlett, Note, *Women and HIV: The Barriers to Protection,* 5 CIRCLES 20-48 (1997).

This Note addresses the obstacles that women face in protecting themselves from HIV infection and in obtaining proper treatment once infected. The author contends that legislation, which mandates the testing of pregnant women, newborn babies, and alleged prostitutes, fails to protect women from infection. The model of HIV which sees gay men and intravenous drug users as the primary people at risk excludes women from medical research, distorts the reality of heterosexual transmission, and hinders physicians from giving appropriate preventative counseling to women. Women's traditional gender roles and the lack of a cohesive community serve as additional barriers to treatment and prevention. The author concludes that these barriers must be taken into account when trying to treat and prevent AIDS in women.

Theresa M. McGovern, *Mandatory HIV Testing and Treating of Child-Bearing Women: An Unnatural, Illegal, and Unsound Approach,* 28 COLUM. HUM. RTS. L. REV. 469-499 (1997).

The article discusses the problems with mandatory HIV testing of pregnant women. The author explains how the intended goal of protecting infants is not always accomplished, and how the drug AZT, which is used to test the fetus, may have a harmful effect on

the mother. Additionally, courts should consider the constitutional issue of a woman's right to privacy. All of these concerns must be weighed against a state's interest in a fetus prior to viability. The author concludes that courts should not require this type of testing because the benefits of it might not outweigh its flaws.

INTERNATIONAL ISSUES

Finnuala Ni Aolain, *Radical Rules: The Effects of Evidential and Procedural Rules on the Regulation of Sexual Violence in War,* 60 ALB. L. Rev. 883-905 (1997).

This article examines the legal recognition of sexual offenses committed during the conflict in Yugoslavia by the International Criminal Tribunal. There has been a re-evaluation of the procedural mechanisms which apply to legal claims of sexual offenses. The existing rules of evidence fail to consider the female perspective and consequently make assault charges difficult to prove. International law has not adequately addressed crimes of sexual violence. The author concludes that those who wish to restructure international humanitarian law, with respect to crimes against women, must constantly emphasize the centrality of law regarding those crimes.

Margaret Chon, *Being Between,* 17 LOY. L.A. ENT. L.J 571-81 (1997).

The author reviews *Chinese Women Traversing Diaspora: Memoirs, Essays, and Poetry,* a volume in a larger series titled "Gender, Culture, and Global Politics." *Chinese Women Traversing Diaspora* is a collection of works by Chinese immigrant women that reflects their encounters and struggles within their professions, their language, and the intertwined issues of sex, gender, and race issues imposed by their native Chinese culture and their "Western" domiciles. The author notes that *Chinese Women Traversing Diaspora* uses the individual experiences of the authors to create a common base for the struggles of Asian women. The tensions between each culture begin to resolve themselves through the use of a collective voice.

Geraldine A. DelPrado, *The United Nations And The Promotion And Protection Of The Rights Of Women: How Well Has The Organization Fulfilled Its Responsibility?,* 2 WM. & MARY J. WOMEN & L. 51-72 (1995).

The article discusses that the United Nation's Charter was the first international instrument to specifically include language that men and women should have equal rights. Since the United Nations was

established in 1945, it has established two approaches to gender equality. One approach is based on policy pronouncements while the other is based on treaty. The author examines both policies and determines whether having two distinct approaches to achieve gender equality is efficient, or will impede the goal of obtaining equal rights for women. The author concludes that while the United Nations has provided a place for women to promote gender equality, continued efforts in this area are needed.

Evelyn Figuera, Note, *Disarming Nicaraguan Women: The Other Counterrevolution*, 6 COLUM. J. GENDER & L. 273-321 (1996).

This Note provides an analysis of the role women played in the success of the National Sandinista Liberation Front (FSLN) during the Nicaraguan Revolution. The FSLN, however, only supported their efforts if the revolution could be advanced. The author argues that for women to be fully integrated into society, Nicaraguan men would have to share their roles as military leaders, contribute to the support of the family and allow women to control their own reproductive lives. The author concludes that although there was an initial attempt to integrate women, the Sandinistas exploited their women to achieve their own personal goals.

Allison E. Graves, Note, *Women in Iran: Obstacles to Human Rights and Possible Solutions*, 5 AM. U. J. GENDER & L. 57-92 (1996).

The Revolution of 1979 in Iran brought the Ayatolleh Khomeini and his traditional Islamic views to power, and denied women rights they previously enjoyed, such as the rights to the bridal price, divorce and autonomy in dress. Iranian women have made efforts to further feminist ideals outside of Iran. The decision in *Fatin v. INS* was a stepping stone, holding that activist women in Iran were a persecuted group that could find asylum in the U.S. if they could prove their membership in the class. The author suggests that in addition to the chance to have a place where ideas can freely be expressed, pressures of international human rights under the channels of the United Nations may prove to be a promising route in improving conditions for the women in Iran.

Azizah al-Hibri, *Islam, Law, and Custom: Redefining Muslim Women's Rights*, 12 AM. U. J. INT'L L. & POL'Y 1-44 (1997).

This article examines Muslim women's rights under Islamic Law and attempts to close the communication gap between Muslim and non-Muslim counties regarding these rights. Specifically, the au-

thor looks to women's educational levels and personal status codes to help remedy gap caused by an unfamiliarity with Muslim Law. In exploring personal status codes, the article focuses on three specific issues: the right of a woman to contract her own marriage, the duty of the wife to obey her husband, and the right of the wife to initiate divorce. The author attempts to dispel any myths as to a woman's rights in Islamic countries, and helps close the gap of miscommunication.

Beth Ann Isenberg, Note, *Genocide, Rape, and Crimes Against Humanity: An Affirmation of Individual Accountability in the Former Yugoslavia in the Karadzic Actions*, 60 ALB. L. REV. 1051-79 (1997).

The Note urges that United States law, under the Alien Tort Act as addressed in *Kadic v. Karadzic*, and international law, establish the foundation and standards for allowing the United States as a forum for trials alleging the violations of human rights and international law committed in Bosnia. Further, the author argues, that the United States has incentives to allow these claims under the Torture Victims Protection Act. The author concludes that access to the United States courts is not only permissible, but also necessary in light of the United States' position to influence the development and protection of fundamental liberties.

Janice A. Lee, Note, *Family Law of the Two Chinas: A Comparative Look at the Rights of Married Women in the People's Republic of China and the Republic f China*, 5 CARDOZO J. INT'L & COMP. L. 217-247 (1997).

This Note compares family law in China and Taiwan with respect to the role of women as wives. The author uses a historical perspective to analyze the influence of religion, economics and political change on the role of women in China and Taiwan. The author explains that early challenges to Confucianism themes of male supremacy came from male feminists, precipitated by a tendency to accept Western values because of a weak Chinese military. The author concludes that although Chinese and Taiwanese women are beginning to gain some power, they are still viewed as inferior and subordinate due to ingrained traditional values.

Garbriela T. Mastaglia and Valerie Oosterveld, *Women's Rights Under Labor Law: A Comparative Study of Argentina and Canada,* 19 LOY. L.A. INT'L & COMP. L.J. 915-968 (1997).

This article discusses labor equality rights in Argentina and Canada, and analyzes the laws designed to protect working women in both countries. While Argentina has instituted rights of a "protective" nature, concerning maternity leave and marital status, Canadian labor laws focus on "equality" standards, concerning pay equity and equality in job opportunities. The article examines the strengths and weaknesses of the "protective" and "equality" approaches and suggests that each system integrate factors taken from the other's approach.

Chen Reis, *Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict,* 28 COLUM. HUM. RTS. L. REV. 629-55 (1997).

This article discusses the appropriateness of holding children liable for their actions in armed conflict. The author begins with an examination of childrens' participation in the recent genocides in Rwanda and the criminal punishment they now face for their actions. After discussing implications for the United States, the author suggests that International Humanitarian Law demonstrates that in non-international conflicts, children should not be held criminally responsible for their actions. Instead, the author concludes that society has a duty to rehabilitate child soldiers from the horror they experience from participating in war.

Danielle Rifkin, Note, *Midwifery: An International Perspective — The Need for Universal Legal Recognition,* 4 IND. J. GLOBAL LEGAL STUD. 509-36 (1997).

The author contends that the principal provider of care to expecting mothers who have had a normal pregnancy should be midwives. Focusing on the success of midwifery in European nations as well as the World Health Organizations support of midwifery, the author criticizes Canada and the United States for maintaining restrictive laws on midwifery. The author points to the lobbying power of physicians who have a vested interest in maintaining their hold on child birthing as a major obstacle to joining ranks with the European community. The author concludes that Canada and the United States follow the system established by the United Kingdom and give midwives a recognized professional status.

Shirley C. Wang, Note, The Maturation of Gender Equality Into Customary International Law, 27 N.Y.U. J. INT'L L. & POL. 899-932 (1995).

International law has begun to recognize human rights and provide for the protection of these rights throughout the world. Among these rights, the author notes, is the idea of gender equality and the nondiscrimination of women. The author suggests that because international law is beginning to recognize these rights as an international norm, women will be better protected against any violation of their rights. For the most part, there is an acceptance of the principles of gender equality internationally. However, the Note concludes there are still areas throughout the world hesitant to observe these principles.

JUVENILE DELINQUENCY

Jeffery A. Butts, *Speedy Trial in the Juvenile Court*, 23 AM. J. CRIM. L. 515-54 (1996).

Delays in juvenile delinquency proceedings reflect the friction between due process safeguards and the need for punishment and efficient crime control. The effects of such delays tend to lessen the impact of arrests and punishment on a juvenile, degrade the force of deterrence, and create dockets that result in congestion, plea bargains, and lenient dispositions. The author advocates the careful review of management, policy, and administrative factors as a means to streamline the juvenile proceedings process while keeping intact the due process considerations that are essential in a legitimate penal system. The author suggests that if such changes are ineffective, a serious look at the Sixth Amendment right to a speedy trial in juvenile delinquency proceedings could strike the necessary balance between efficiency, meaningful punishment, and due process.

Naomi R. Cahn, *Pragmatic Questions About Parental Liability Statutes*, 1996 WIS. L. REV. 399-445 (1996).

The use of parental liability statutes reflects the growing concern for the rising rates of juvenile delinquency and a search for a means of punishment that is meaningful and effective. The author argues that the use of parental liability statutes, statutes which hold parents liable for the delinquency of their children, is too punitive and does not take into account socioeconomic factors that are linked to juvenile delinquency. Furthermore, the author ar-

gues that such statutes are reactionary in nature and do little to curb the increase in juvenile delinquency. The author advocates the use of preventative measures such as Head Start programs, public welfare program reforms, home visiting programs, or the inclusion of parents at the dispositional stage of juvenile proceedings.

Rachel Devlin, *Female Juvenile Delinquency and the Problem of Sexual Authority in America, 1945-1965*, 9 YALE J.L. & HUMAN. 147-82 (1997).

The article discusses female juvenile delinquency after World War II and its understanding by psychoanalysts. The author suggests that this delinquency resulted from Oedipal disturbance and increased hostility between daughters and fathers. The author explains that after 1945, this delinquency led to the formation of the Wayword Minor Court, known informally as the "Girl's Term." The author concludes that female delinquency was a consequence of the tension between fathers and their adolescent daughters, and the father was at fault for failing to realize the critical role that he played in his daughter's development and then acting accordingly.

Thomas A. Hughes, *Opening the Doors to Juvenile Court: "Is There an Emerging Rule of Public Access?,"* 19 COMM. & LAW 1-50 (1997).

In the past, juvenile court proceedings were conducted as private hearings to keep the child and the rehabilitation of the child from public scrutiny. However, with the growing number of juveniles committing serious or violent crimes and an emerging public claiming their right of public access to juvenile court proceedings, many courts are permitting public access to juvenile proceedings. The author suggests courtroom proceedings should remain open due to the many societal benefits. The author also suggests that to justify a closed proceeding, there must be a compelling government interest.

Alan J. Lizotte, et. al., *Patterns of Illegal Gun Carrying Among Young Urban Males*, 31 VAL. U. L. REV. 375-89 (1997).

This article provides a detailed examination of illegal gun carrying among young males, significantly finding a correlation between higher homicide rates and increased gun carrying. Discussed are different reasons for carrying guns, the connection between juvenile delinquency, and how drug and gang-related problems are often associated with the illegal possession of guns. The authors

conclude that while anti-gang and anti-drug programs may reduce illegal gun carrying among urban youth, a great deal more attention must be paid to the specific problem of illegal gun possession among young urban males in particular.

Eric R. Lotke, *Youth Homicide: Keeping Perspective on How Many Children Kill*, 31 VAL. U. L. REV. 395-418 (1997).

This article addresses juvenile violence by placing the problem in perspective according to the range and limits within which youth violence actually occurs. First, the author emphasizes the isolated range of youth homicide by pointing to specific segments of society affected by youth violence. Next, the study discusses American crime rates in general, then uses absolute numbers rather than percentages to examine how many children commit homicides and the methods used by those children. Finally, the author suggests several possible modes for reducing youth homicide, including prevention, law enforcement, punishment, and media influences.

Daniel S. Nagin et al., *Adolescent Mothers and the Criminal Behavior of Their Children*, 31 L. & SOC. 137-62 (1997).

The article details a study to determine the association between adolescent childbearing and the criminality of the offspring by examining the behaviors and characteristics of the parents. The authors suggest three explanations for this affiliation: (1) "the life course-immaturity account" which presumes adolescents are incapable of being effective parents; (2) "the persistent poor parenting-role model account" which presumes some people, irrespective of age, are ineffective parents; and (3) "the diminished resources account" which focuses on the consequences of economic deprivation. The authors conclude that there is no support for the first account and that criminality of offspring is rooted in the more constant behaviors or circumstances which dominate the second and third accounts.

Franklin E. Zimring, *Juvenile Violence in Policy Context*, 31 VAL. U. L. REV. 419-26 (1997).

This article provides information concerning recent patterns of juvenile violence in the United States, and measures the occurrences of life-threatening violence committed by different age groups. The author then discusses distinguishing factors separating juvenile violence from violence committed during adulthood, and the policy implications arising from these distinctions. Finally, the arti-

cle draws a connection between juvenile violence and an increase in gun use, discusses other pervasive methods of juvenile violence, and addresses ways in which the juvenile justice system affects delinquency.

LAW & LITERATURE

Megan E. Abbott, *The Servant's Gaze: Nelly Dean's Rise To Power In* Wuthering Heights, 18 WOMEN'S RTS. L. REP. 108-28 (1997).

The article states that critical characterizations of Nelly Dean, the housekeeper and narrator in Charlotte Bronte's *Wuthering Heights*, have traditionally focused on her power as a tool of patriarchal control. The author, however, argues that Nelly's surveillant control, or her gaze, is the mechanism of her power. The author traces Nelly's gradual consolidation of power through four stages and relates Nelly's viewing positions to Lacan's study on the gaze and Foucault's Panopticon architectural models. The article concludes that in addition to Nelly's prominent and controlling position in the household, her position as the central narrator attributes ultimate control over the story despite her societal position as a servant.

Marina Angel, *Susan Glaspell's Trifles and a Jury of Her Peers: Woman Abuse in a Literary and Legal Context,* 45 BUFF. L. REV. 77-844 (1997).

Susan Glaspell examined the abuse of women and their position as beings closed out of the legal system in her 1916 play about a woman who kills her abusive husband. The story serves as an allegory for the state of the legal system, both then and now. Men's perception of the crime symbolizes the traditional view of the system as male-dominated and created, while women's perceptions represent the system within our increasingly diverse society. The author illustrates how through the use of literature Ms. Glaspell challenges and compels her audience to rethink their moral beliefs and understanding of the law.

David Ray Papke, *Peace Between the Sexes: Law and Gender in* Kramer vs. Kramer, 30 U.S.F. L. REV. 1199-1208 (1996).

This article discusses the development of peace between the genders as seen in the movie *Kramer vs. Kramer.* The article suggests that the movie provides the public with disguised insight into the workings of our legal system through its premise that a mother and

father can exercise their contempt for each other and resolve their personal conflicts. The article further suggests that because most movie-based portrayals of the legal system are from the male point of view, viewers are often shown legal inaccuracies. Despite the criticisms, however, the article concludes that *Kramer vs. Kramer,* and other movies of this genre, successfully use legal proceedings to provide the public with a modern demonstration of peace between genders.

MATRIMONIAL

Cynthia Grant Bowman, *A Feminist Proposal to Bring Back Common Law Marriage,* 75 OR. L. REV. 709-79 (1996).

This article analyzes the history of the common law marriage doctrine and the negative impact its abolition in many jurisdictions has had on women. The author argues that the four elements of the doctrine — capacity, agreement, cohabitation, and holding out — benefitted women by protecting their welfare, reliance and investment in relationships of trust, and recognizing their contributions of labor and commitment. The author concludes that the doctrine should be revived because the concerns that motivated its abolishment are outweighed by the disparity its nonrecognition has caused upon poor women and women of color.

Ira Mark Ellman and Stephen D. Sugarman, *Spousal Emotional Abuse as a Tort,* 55 MD. L. REV. 1268-1343 (1996).

The article addresses the consideration of spousal emotional abuse as a fault-based tort in an action for divorce. By bringing a divorce action as a tort, it may be possible to recover money damages without actually revising no-fault divorce statutes. The author concludes that it is premature for the courts to make tort law available for claims between divorcing spouses, apart from cases in which the abusive conduct is criminal. The reason being that neither divorce lawyers nor personal injury lawyers want to argue such claims since juries will not grant large awards sufficient to cover the expense of litigating such issues.

Beth Leigh Grorud, Book Review, *Kidding Ourselves: Breadwinning, Babies, and Bargaining Power,* 18 WOMEN'S RTS. L. REP. 243-55 (1997).

In this review the author proposes that women will only achieve economic equality when there is gender equality in division of la-

bor in the home. The author, in her review of this book, explains and analyzes the book's author's theories and finds them to be valuable for obtaining an egalitarian marriage. However, Grorud ultimately rejects the author's proposals for economic equality as she finds them unrealistic for lower income women and unaccepting of intrinsic gender differences that we should embrace.

Daniel J. Guttman, Note, *For Better or Worse, Till ADR Do Us Part: Using Antenuptial Agreements to Compel Alternatives to Traditional Adversarial Litigation,* 12 OHIO ST. J. DISP RES.175-91 (1996).

This Note addresses how the stress resulting from estranged spouses engaging in traditional divorces often exacerbates the already highly charged emotional environment, making a civil parting of the ways difficult to achieve. Thus, the author notes that there has been a trend to seek out alternative methods to the traditional proceedings, an alternative forum where the participants will feel less hostile an combative toward one another. The author concludes that those parties who work to settle their own divorces outside of the traditional arena often achieve greater satisfaction with less hostility.

Lee Hargrave, *Community Property Considerations in Law Suits by and Against Spouses,* 57 LA. L. REV. 439-49 (1997).

This article examines how Louisiana law governing the prosecution and defense of civil actions by married persons with community property conflicts with constitutional due process. The author describes the due process problems that arise when one spouse may represent community property in a legal action, despite lacking involvement in the events that precipitated the action. The article discusses whether one spouse can or must be the legal representative of the others and whether this violates the Due Process Clause of the Fourteenth Amendment because a spouse might be bound by a decision without being adequately represented. The author concludes that judicial discretion will enable due process to dominate conflicting Louisiana civil procedure law.

Heather Hodges, Note, Dean v. The District of Columbia: *Goin' to the Chapel and We're Gonna Get Married,* 5 AM. U. J. GENDER & L. 93-146 (1996).

The Note discusses the failure of courts to legally recognize same-sex marriages through an analysis of *Dean v. The District of Columbia.* The author states that same-sex couples advance arguments focus-

ing on statutory interpretation, but that courts reject these arguments because same-sex unions do not fit the legislative definition of "marriage" due to the fact that the main purpose of marriage is procreation. The author recognizes that the immediate solution may lie with the legislature rather than in the courts, but suggests that same-sex litigants may have more success with Constitutional arguments. Specifically, the author discusses the use of equal protection claims based on gender discrimination because privileges from marriage, such as governmental benefits, parental and adoptive rights, are reserved for heterosexual couples.

Joan M. Krauskopf & Sharon Burgess Seiling, *A Pilot Study on Marital Powers as an Influence in Division of Pension Benefits at Divorce of Long Term Marriages*, 1996 DISP. RESOL. 169-89 (1996).

This article explores the authors' hypothesis that, due to a power imbalance during divorce negotiations, women are receiving less pension benefits than they are entitled. The article focuses on a small pilot project funded by the Hewlitt Foundation on Dispute Resolution, which was established specifically to research this hypothesis. The research methodology and the tentative findings from the project are delineated, as well as the applicable laws and aspects of power in negotiation. The authors conclude that preliminary indications show that the use of legal counsel and specific legal procedures may counteract the power imbalance.

Victoria L. Lutz and Cara M. Bonomolo, *My Husband Just Trashed Our Home; What Do You Mean That's Not A Crime?*, 48 S.C. L. REV. 641-56 (1997).

The article questions the rationale of many states that refuse to impose criminal consequences on the destruction of marital property by one spouse, when all states make it a crime to destroy the property of another. The author presents a history of laws that criminalize property damage, such criminal mischief offenses, the relevant statutes and their application in domestic violence suits. The article concludes that criminal mischief statutes should be applied in domestic violence suits because damage to property is often easier to establish legally than damage to the person, and establishing criminal mischief may strengthen a case of domestic abuse.

Craig A. Sloane, Note, *A Rose By Any Other Name: Marriage and the Danish Registered Partnership Act*, 5 CARDOZO J. INT'L & COMP. L. 189-215 (1997).

This Note explores the definition of marriage with a focus on same-sex marriages. The author argues that same sex marriages should be legalized because they have been socially acceptable and approved by various societies and religions throughout history. After discussing the legality of same sex marriage in Denmark and ancient and third world societies, the author concludes that same-sex marriages are starting to receive recognition but are not completely accepted by society.

Mark Strasser, Note, *Loving the Romer Out of Baehr: On Acts in Defense of Marriage and the Constitution*, 58 U. PITT. L. REV. 279-323 (1997).

The author argues that the Defense of Marriage Act (DOMA), which is designed to prevent states from being forced to recognize same sex marriages, is unconstitutional because it encroaches upon an area that is traditionally reserves for state regulation. The author also feels that DOMA is a disaster and clearly an attempt to discriminate against a disfavored group, mainly homosexuals. The Note criticizes DOMA and claims that it will result in the destabilization of familial relations. The author concludes that DOMA will have adverse public policy implications and claims that it fails to serve its alleged purpose because the only states that DOMA would allow to have such right already have it.

Esther Suarez, Note, *A Woman's Freedom to Choose her Surname: Is it Really a Matter of Choice?* 18 WOMEN'S RTS. L. REP. 233-42 (1997).

The author identifies the different procedures available to women who want to change their surnames. The author argues that reforms must be made to make this process less confusing and more convenient. In addition, women should not be forced by way of tradition to relinquish their birth-given names. The author concludes with a suggestion that a woman's assumed name should be her birth-given name, with the burden of changing a name being imposed only on one who chooses to adopt another name.

Christopher B. Wyrick, *Till Death Do Us Part—Including Our Taxes: Inequities Abounds in Spousal Joint and Several Tax Liability and the "Innocent Spouse" Rule*, 6 KAN. J. L. & PUB. POL'Y 163-79 (1997).

The author argues that the Internal Revenue Code ("IRC") provisions regarding innocent spouses should be revised and liberalized so as to provide innocent spouses with greater protection from the IRS. Through examining the background of the IRC § 6013(e), the innocent spouse exception, the author analyzes the legal communities reaction to the court's use of the exception and evaluates the inclusion of joint and several liability. The author concludes that in current day America, the use by the IRS of the spousal joint and several liability for federal income tax is unconscionable and not justified by the collection of more revenue.

MISCELLANEOUS

Betty Barteau, *Thirty Years of the Journey of Indiana's Women Judges: 1964-1994*, 30 IND. L. REV. 43-195 (1997).

The focus of this article is on the growth of women judges in Indiana. The author traces women's struggles in becoming lawyers and judges in the United States and examines the hindrances that exist to discourage women attorneys from becoming judges. The scope of the article encompasses a biography of Indiana's women judges in the county, superior, circuit, and appellate courts. Finally, the author discusses the ways women judges affect the legal system by analyzing distinctive characteristics women bring to the bench.

William Bentley Ball, *Economic Freedom of Parental Choice in Education: The Pennsylvania Constitution*, 101 DICK. L. REV. 261-80 (1997).

Due to the rising cost of education, parents who desire non-public education for their children do not essentially have freedom of choice in education. In Pennsylvania, the parental response is a movement to obtain legislation whereby parents would receive state financial assistance called school choice grants. The author contends that the 1996 Parental Choice Proposal is a valid tax-supported public interest program that does not violate the Establishment Clause or any other provisions of the Pennsylvania Constitution. The author concludes that the constitutionality of the provision will enable it to withstand the scrutiny of the courts of Pennsylvania.

Christopher L. Blakesley, *Scientific Testing and Proof of Paternity: Some Controversy and Key Issues for Family Law Counsel*, 57 LA. L. REV. 379-437 (1997).

This article argues that although DNA testing is an effective evidence tool in paternity suits, it should not be considered a panacea. Presentation of DNA evidence to the fact-finder, potential for error during DNA testing and Fourth Amendment search and seizure issues are some of the problems with DNA blood and tissue testing that this article explores. The author concludes that while DNA testing should be used, judges must not treat it as a fix-all that relieves them of their duty to apply law to facts.

Margaret F. Brinig, *The Family Franchise: Elderly Parents and Adult Siblings*, 1996 UTAH L. REV. 393-428.

This article explores the relationship of family members irrespective of traditional family law, such as custody, divorce and adoption issues. The author notes that it is difficult to apply substantive law to emotions like love and trust. The author uses the family franchise model to illustrate a family in which parents are positive figures and siblings maintain close relationships. The sovereign nation model exemplifies a family in which the parents are negative figures and siblings are more individualistic. The author concludes that no-fault divorce, lowering the emancipation age to eighteen and attractive private pension funds have caused the sovereign nation model to dominate American society.

Tanya Broder, *A Street Without An Exit: Excerpts From The Lives of Latinas in Post-187 California*, 7 HASTINGS WOMEN'S L.J. 275-314 (1996).

Proposition 187 is a welfare reform initiative targeting undocumented immigrants in California by denying public education, social services and non-emergency health care. This article contains excerpts from interviews with women and children affected by this proposal. The affected individuals interviewed describe why they came to this country and how their lives have changed since Proposition 187. The author's goal is to expose the unintended side-effects of the law and illustrate the importance of examining the underlying economic, political and personal relationships that gave rise to immigration and poverty that created the need for effective reforms.

Elizabeth P. Bruns, *Cruel and Unusual?: Virginia's New Sex Offender Registration Statute,* 2 Wm. & MARY J. WOMEN & L. 171-99 (1995).

Many states have enacted statutes requiring sex offenders to register upon entering a community. The goal of these statutes is to deter repeat offenses and to protect children and others from becoming victims of recidivists. This article examines the Virginia sex offender registration statute and its constitutionality under the Eighth Amendment. The author argues that Virginia must not violate the constitutional rights of its citizenry while protecting its children. While some may argue that registration for sex offenders is cruel and unusual punishment, it seems that the statute will be upheld as constitutional.

Jocelyn Downie and Susan Sherwin, *A Feminist Exploration of Issues Around Assisted Death,* 15 ST. LOUIS U. PUB. L. REV. 303-30 (1996).

To ensure that concerns about the oppression of women become part of the recent public debate regarding assisted death, it is essential that the issue be addressed from a feminist perspective. The authors believe that without a feminist analysis, recently contemplated policy revisions and case precedents around assisted death may have a negative and disproportionate impact on women. The authors believe that a feminist analysis will support a permissive policy with respect to assisted death and avoid the risk of increased oppression Ultimately, the authors argue that the best way for members of oppressed groups to avoid risks of harm under assisted death policies is to eliminate their oppression; only then can society be confident that policies will be fairly administered.

Laura Epstein, Comment, *Women and Children Last: Anti-Competitive Practices in the Infant Formula Industry,* 5 AM. U.J. GENDER & L. 21-55 (1996).

The infant formula industry's policy of refusing to advertise directly to consumers allows pediatricians to recommend only a favored few brands. This policy discourages price competition, forcing women to pay higher prices. This Comment argues that legal challenges based on antitrust arguments will not effect lasting changes on the lack of market competition and high-priced formula rates. Rather, the author suggests that instead of recommending only a few specific brands, medical institutions should provide free formula samples of all brands on a rotating basis, by

request only. Such tactics would supply new mothers with choices of several different brands of formula which range in price; thereby re-establishing competitive prices in the infant formula market.

Clark Freshman, *Re-visioning the Dependency Crisis and the Negotiator's Dilemma: Reflections of the Sexual Family and the Mother-Child Dyad,* 22 L. & SOC. INQUIRY 97-127 (1997).

Many individuals such as the ill, the very young and elderly cannot care for themselves and are dependent on their loved ones, children or friends to take care of them. However, many of these caretakers do not have the formal right to benefits such as parental or family leave and are unable to obtain a more involved role providing care for their loved ones. The author suggests that by re-visioning ones identity and negotiating for benefits not formally given, individuals can enrich their lives while taking care of their loved ones.

Neil Gilbert, *Welfare Reform: Implications and Alternatives,* 7 HASTINGS WOMEN'S L. J. 323-37 (1996).

This article discusses the radical reform of the Aid to Families with Dependent Children Act (AFDC), that includes a block grant type of funding that puts a cap on the amount of money spent each year on welfare, a five year limit on receiving benefits, and requires recipients to work within two years of receiving benefits. The author argues that the problems with this reform are that people may not be able to secure jobs within two years due to lack of skill or education, and that it does not account for what will happen to children after the five year limit. The author concludes with a child centered alternative to welfare reform that includes (I) practical assistance and protection through home health visits and supervision of child care practices, and (ii) increased supervision and regulation of financial affairs by case mangers assigned to individual families.

Alice Hearst, *Constructing the Family in Law and Policy,* 22 L. & SOC. INQUIRY 131-48 (1997).

The author discusses the legal and policy responses to single mothers, as illuminated by Linda Gordon's *Pitied but Not Entitled: Single Mothers and the History of Welfare* and Martha Albertson Fineman's *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies.* First, the author examines Gordon and Fineman's views on patriarchy, motherhood, and family ideology. The note then explores the authors' belief that the presence or

absence of a male wage earner has influenced social control over single mothers. The note concludes by suggesting that Gordon and Fineman are correct in their hypotheses; that to remedy the injustices of the domestic sphere more care must be given to women and children.

B. J. Jones, *The Indian Child Welfare Act: In Search of a Federal Forum to Vindicate the Rights of Indian Tribes and Children Against the Vagaries of State Courts*, 73 N.D. L. REV. 395-457 (1997).

This article examines the Indian Child Welfare Act, which attempts to curtail the problem of cultural dissonance by stopping the mass removal of Indian children from their homes and ensuring that, when removal is necessary, the children are placed in homes similar to their cultured backgrounds. The author argues that these objectives are often unrealized because state agencies often abuse their authority and fail to heed federal mandates. Finally, the author concludes that federal courts must actively protect tribes and families from the state courts' improper use of authority granted to them by Congress.

Lundy Langston, *Sweep Searches — The Rights of the Community, and the Guarantees of the Fourth and First Amendments: Moms of the Chicago Public Housing Complex, Revisit Your Civil And Constitutional Rights And Save Your Babies*, 11 WIS. WOMEN'S L. J. 259-82 (1996).

Drug trafficking, gangs, and violence plague the Chicago Housing Authority Projects, resulting in unsafe living conditions for adults and children living there. The author advocates a temporary initiative where the residents of Chicago Housing complexes would consent to controlled sweep-searches of the buildings to seek out the drugs and illegal arms that are at the core of the crisis. While the author acknowledges that such an initiative is a partial waiver of the Fourth Amendment guarantee against unlawful search and seizure, she asserts that the rights of individuals should be balanced against those of the community.

Margaret C. Livnah, Note, *Branding the Sexual Predator: Constitutional Ramifications of Federal Rules of Evidence 423 through 415*, 42 CLEV. ST. L. REV. 169-95 (1997).

Federal Rules of Evidence 413 through 415 allow prosecutors to admit into evidence a defendant's prior acts of sexual violence or child molestation. These rules were developed in response to the

public outcry that the legal system does not provide for the growing violence against women and children. The author suggests that the new rules will be used improperly by the jury and prejudice the defendant. However, the author also suggests that it may be premature to determine whether the Federal Rules of Evidence compromise the constitutional rights of defendants.

Rania Nanos, Note, *The Views of a Child: Emerging Interpretation and Significance of the Child's Objection Defense Under the Hague Child Abduction Convention*, 22 BROOK. J. INT'L L. 437-65 (1996).

The author focuses on the "Child's Objection" exception of the Convention on the Civil Aspects of International Child Abduction ("Convention"), which allows a child to object to being returned to his or her country of official residence. The article addresses the primary purpose of the convention and scholarly criticism of the possible arbitrary uses of the "Child's Objection" as a defense. The author provides an analysis of the various interpretations of the Convention by courts in the United States, Northern Ireland, Scotland, and England in order to demonstrate that courts have not used the "Child's Objection" capriciously. The author concludes that the "Child's Objection" exception furthers the primary purpose of the Convention and suggests ways to eliminate the possible arbitrary use of the exception.

Darcy O'Brian, *Power to Hurt, Inside a Judge's Chambers: Sexual Assault, Corruption, and the Ultimate Reversal of Justice for Women*, 18 WOMEN'S RTS. L. REP. 261-62 (1997).

The book accounts the actions of Chancellor David W. Lanier of Dyersburg, Tennessee toward many of the women and their families who appeared before him in family court. The Chancellor sexually assaulted a number of these women and used his office to intimidate them into powerlessness. Although Lanier was convicted of violating these women's civil rights and was sentenced to twenty-five years in prison, the Sixth Circuit, sitting *en banc*, ordered Lanier's release. The book describes how these women were victimized and degraded, and champions their cause for dignified treatment.

Jacob Septimus, Note, *The MPAA Ratings System: A Regime of Private Censorship and Cultural Manipulation*, 21 COLUM.-VLA J.L. & ARTS 69-93 (1996).

The Note discusses the current rating system of the Motion Picture Association of America (MPAA) and identifies two main problems with it: the effect that an NC-17 rating has on independent film makers, and the increased sex and violence found in R-rated movies. The author addresses these problems by proposing an additional and more effective rating that would restrict films to adults and minors accompanied by adults, with no rating categorically excluding minors. The author concludes that the current system, with this modification, will work if pressure is applied on the MPAA by independent film makers, parents, public interest groups, and the government to adopt this new rating.

James Smith, *"Student Initiated Prayer": Assessing the Newest Initiatives to Return Prayer to the Public Schools*, 18 CAMPBELL L. REV. 303-31 (1996).

The latest attempt to avoid the Supreme Court's prohibition on school sponsored prayer has been to re-label it "student-initiated" prayer. In this article, the author contends that this is an incorrect way to describe this prayer practice because it is not truly initiated by the students. The author discusses the impetus for "student-initiated" prayer statutes, guidelines and policies, and gives a summary of existing provisions as well as detailed accounts of the "student-initiated" prayer efforts, particularly in Florida and Mississippi. The author then challenges the new initiatives on constitutional grounds. The author concludes that school sponsored prayer causes divisiveness and degradation of religion.

Dan Subotnik, *"Sue Me, Sue Me, What Can You Do Me? I Love You" A Disquisition on Law, Sex, and Talk*, 47 FLA. L. REV. 311-409 (1995).

The article evaluates the desirability of a tort action for misrepresentations designed to secure sexual benefits, known as a sex fraud action. The author considers the arguments of those dealing with sexual deception and seeking more honest relationships versus lying as an inevitable part of the social order. The author concludes that it is not desirable for society to allow such an action for sex fraud because deception is so common in our lives. Further, the author notes that such a regulation is hard to monitor and would

discourage people from communicating for fear of uncovering old lies.

Carl Tobias, *Dear President Clinton,* 19 WOMEN'S RTS. L. REP. 39-42 (1997).

The article is disguised as an open letter to President Clinton congratulating him for winning a second term while admonishing him to carefully consider his judicial appointments. The author lauds the President for his choice of appointees during his first term and hopes that his choices during his second term will be just as praiseworthy. The President has made choices that enhance racial and gender diversity without compromising judicial quality. The author concludes that the President has an opportunity to construct a judiciary which more closely resembles society and help to rectify the judicial bias fostered by the appointments made by previous Republican administrations.

Lea Vandervelde & Sandhya Subramanian, *Mrs. Dred Scott,* 106 YALE L.J. 1033-122 (1997).

Harriet Robinson Scott was Dred Scott's wife whose contributions toward freedom have been historically ignored. In addition, Ms. Scott could have raised legal claims for freedom which differed from her husbands. The case of *Dred Scott v. Sanford* eclipsed Mrs. Scott's plight for freedom of family continuity, cohesion, autonomy and privacy within her husband's case. Thus, Mrs. Scott's contribution to her family's freedom was significantly downplayed. The authors strongly suggest that Mrs. Scott's contribution in searching for security, dignity, and freedom should not be overlooked.

Debra L. Weiss, Comment, *The Sex Offender Registration and Community Notification Acts: Does Disclosure Violate an Offender's Right to Privacy?,* 20 HAMLINE L. REV. 557-602 (1997).

The Jacob Wetterling Crimes Act requires states to adopt provisions mandating that sex offenders register with the proper legal authorities. Twenty-four states have also enacted community notification provisions by which information about the offender is distributed to the community. The author contends that sex offenders have a confidentiality interest protected by the right to privacy in the disclosure of their personal information but that their rights are dependent upon the severity of the crime or the nature of the offense. The author argues that with regard to a high risk offender, the state's interest in the health and safety of its citizens

outweighs the offender's privacy rights, and therefore notification is constitutional. With regard to a low or moderate risk offender, notification is unconstitutional because the state has alternative means to insure the health and safety of its citizens like restricted zones of residence.

PORNOGRAPHY

Glen Kubota, *Public School Usage of Internet Filtering Software: Book Banning Reincarnated?*, 17 LOY. L.A. ENT. L.J. 687-731 (1997).

Although the Internet allows access to a vast amount of information useful to children and adults, the appearance of obscene and pornographic web-sites and the threat of predation on children via the Internet causes concern among parents and public schools. A reaction to these fears has been the emergence of Internet filtering software that blocks a child from accessing certain web-sites that are inappropriate for children. The author argues that, the use of some of this software in the schools is censorship. The author reviews the available software, the various legislative efforts to control the Internet, and the reactions of the courts in determining the constitutionality of the legislation. He concludes that the use of predetermined blocking, a database that contains blocked web-sites deemed inappropriate, would pass constitutional challenge.

Alan Lewine, *Making Cyberspace Safe for Children(?): A First Amendment Analysis of the Communications Decency Act of 1996*, 18 HAMLINE J. PUB.L. & POL'Y 78-147 (1996).

The Communications Decency Act of 1996 was passed by President Clinton through the signing of the 1996 Telecommunications Act of 1996. Section 502 prohibits indecent or patently offensive material to be displayed where it may be accessible by minors. The author argues that this provision is unconstitutional because it interferes with the First Amendment and is an unconstitutional expansion of federal power. Furthermore, the author argues that the Communications Decency Act is ambiguous and will make it difficult for courts to determine future proceedings.

Robert W. Peters, *There is a Need to Regulate Indecency on the Internet*, 6 CORNELL J. L. & PUB. POL'Y 363-81 (1997).

In 1988 Congress amended the federal child pornography laws and a federal law prohibiting interstate distribution of obscenity in response to the widespread use of the Internet. The Supreme Court

has ruled that Internet communication is protected by the First Amendment, but the protection is not absolute. Congress enacted the Communications Decency Act of 1996 ("CDA") to curb the growing problem of minors gaining access to obscene material on the Internet. The author argues that through the use of law and screening techniques, society will be able to keep obscene material away from minors.

Tonya Plank, Note, *Expanding the Feminine Sexual "Imaginary:" A Response to Drucilla Cornell's Theory of Zoning Pornography*, 18 WOMEN'S RTS. L. REP. 215-31 (1997).

The author argues that zoning of sexually explicit materials is important from a feminist perspective in order to prevent the image of one woman from dominating popular thought. The article begins with a discussion of prior attempts at regulating pornography and the reasons for their failure. The author then partially adopts the feminist approach advocated by Drucilla Cornell, but identifies its flaws. The author concludes with her own suggestion of a zoning model and a more general definition of pornography which encompasses more than Cornell's model, but not more than other models which have failed.

RAPE & SEXUAL ASSAULT

Kenneth Winchester Gaines, *Rape Trauma Syndrome: Toward Proper Use In The Criminal Trial Context*, 20 AM. J. TRIAL ADVOC. 227-52 (1997).

This article discusses the use of rape trauma syndrome ("RTS") as evidence to explain a victim's inconsistent or unusual behavior and as evidence of lack of consent. The author states that while RTS was developed as a therapeutic tool to aid in the diagnosis and treatment of psychiatric patients, prosecutors have used RTS as an evidentiary tool to establish a causal link between rape and specific clinical symptoms. The author argues that due to the difficulties associated with rape prosecutions, use of RTS should be permitted, but limited to explaining the victim's unusual behavior where the defendant seeks to use that behavior as evidence that no rape occurred. The author concludes that use of RTS as evidence of lack of consent is improper because it is highly prejudicial, and it is not a scientifically reliable test of whether rape occurred.

Mustafa K. Kasubhai, Note, *Destabilizing Power in Rape: Why Consent Theory in Rape Law is Turned on its Head*, 11 WIS. WOMEN'S L.J. 37-74 (1996).

This note explores the power imbalance in rape law, manifested by the silencing of the victim's consent. The author evaluates the ways in which consent is used in other regulated social interactions, and contrasts such consent requirements to consent in rape law. The note suggests implementing a legal requirement that focuses greater attention on perpetrators of rape. The author further argues that there should be a presumption of non-consent; if an alleged rapist fails to ask and thereby did not obtain consent, then a rape conviction should follow. The author concludes that the law should realign consent in rape law with the understanding of consent in other areas of the law.

Heidi Kitrosser, *Meaningful Consent: Toward a New Generation of Statutory Rape Laws*, 4 VA. J. SOC. POL'Y & L. 287-338 (1997).

This article is about the need for further reform of age-based provisions, combined with fundamental changes to legal conceptions of "consensual" and "coercive" sex in statutory rape laws. The author suggests that the time has come to make substantive inquiries into the nature and elements of meaningful consent and coercion, and to re-examine age and status in determining whether sex was consensual or coercive. The author concludes that states should adopt a positive and progressive definition of consent when making determinations on whether sex was consensual, and also that sex within certain categories should be subject to an affirmative defense.

Gregory M. Matoesian, *"You Were Interested in Him as a Person?": Rhythms of Domination in the Kennedy Smith Rape Trial*, 22 L. & SOC'Y INQUIRY 55-91 (1997).

This article is a study that explores the theoretical and linguistic implications of the Kennedy Smith rape trial using transcripts and live testimony as data. The author shows how the defense attorney used linguistic strategies such as poetic structure, categorization work and linguistic ideologies to generate inconsistencies in the victim's testimony, thereby reducing her credibility. The author concludes that these linguistic techniques transform the victim's consistencies into consistent irrationality, making prosecution in rape cases difficult.

Morrison Torrey, *Feminist Legal Scholarship on Rape: A Maturing Look at One Form of Violence Against Women*, 2 WM & MARY J. WOMEN & L. 35-49 (1995).

This article addresses feminist legal scholarship and its evolution regarding violent crimes against women, particularly rape. The characterization of rape as a crime of violence rather than as a sexual crime came about through the influence of liberal feminism and its effect on legislative reform. Decision-makers in the criminal legal system are now being educated to become more sensitive to the issues surrounding violent crime against women. The author suggests that this education of legal decision-makers is vital in bringing about reform in the justice system regarding violence against women.

Lea Vandervelde, *The Legal Ways of Seduction*, 48 STAN. L. REV. 817-901 (1996).

This article tracks the historical development of sexual assault and the resulting entitlement to damages. Although it would be expected that the common law would have responded to this problem in its early stages, legal means of redress for sexual assault and its consequences took time to develop. The author suggests that the development of current laws regarding sexual assault are as much a result of changing social norms as the proactive attribute of our common law system.

Shawn J. Wallach, Note, *Rape Shield Laws: Protecting the Victim at the Expense of the Defendant's Constitutional Rights*, 8 N.Y.L. SCH. J. HUM. RTS. 485-521 (1997).

By examining the history of rape shield statutes along with a case-by-case analysis of differing judicial interpretations of these statutes, this Note argues that abuses of judicial discretion and lack of legislative input lead to infringements of defendants' rights. According to the author, contemporary rape shield laws violate the accused's constitutional rights. Therefore, this note advocates the necessity of a Supreme Court ruling regarding rape shield laws that will either provide consistency to their interpretation or allow for more rigorous legislative guidelines.

REPRODUCTIVE RIGHTS

Lori B. Andrews, *Prenatal Screening and the Culture of Motherhood*, 47 HASTINGS L.J. 967-1006. (1996).

New technological advances in prenatal testing allow for a new, simpler, and safer test, called fetal cell sorting, which can identify possible problems both at birth and further into the future. The author provides empirical data regarding the negative effects such thorough prenatal testing can have on a mother's emotional well-being and self-image, personal relationships, and relations with insurers and employers. From the data compiled, the author concludes that such simple and revealing testing should never become mandatory and provides both policy and legal arguments supporting women's right to refuse testing.

David Boonin-Vail, *A Defense of "A Defense of Abortion": On the Responsibility Objection to Thomson's Argument*, 107 ETHICS 286-313 (1997).

The author criticizes Jarvis Thomson's article, *A Defense of Abortion*, which states that abortions should be limited to instances in which a woman has not consented to intercourse, such as rape. However, when a woman is partially responsible or consents to intercourse, Thomson believes that the fetus has acquired the right to use the woman's body, thus precluding abortion. The author rejects Thomson's arguments and suggests that a woman is not necessarily responsible for the fetus because she consented to intercourse.

Ronald Chester, *Freezing the Heir Apparent: A Dialogue on Postmortem Conception, Parental Responsibility, and Inheritance*, 33 HOUS. L. REV. 967-1025 (1996).

This article discusses the controversy that has developed over new reproductive technology and how the law addresses these problems in various ways. One of the most widespread forms of assisted reproductive technology is the freezing of male sperm. The Supreme Court has ruled that men do have the right to pass on the sperm even if they are dead but the sperm may or may not be protected by his procreative liberty. Since there is no concrete way to deal with assisted reproduction, the author provides suggestions to reconcile some of the emerging problems arising in the area of reproductive technology. The author concludes that in the future society will be able to answer these issues of reproductive technology more definitively.

Ruth Colker, *Pregnant Men Revisited or Sperm is Cheap, Eggs are Not*, 47 HASTINGS L.J. 1063-80 (1996).

This article discusses the reproductive status of women following divorce, particularly the custody of frozen embryos. The author argues that because women have a limited supply of eggs and face declining fertility over time, they are reproductively 'poorer' than men. These reproductive differences are generally ignored by the courts. Nevertheless, the author argues that they should be considered in the resolution of disputes.

James G. Connell, Note, *Norplant and the New Paradigm of International Population Policy*, 2 WM. & MARY J. WOMEN & L. 73-106 (1995).

The Note discusses how increased population worldwide has resulted in policies that discourage new births. The author suggests that the solution to population control lies in granting power to feminists who will consider issues such as the quality of life. Demographic goals that advocate long-term contraceptives, such as Norplant, will not be encouraged under this new policy since they cause women to lose control over their reproduction for five years and are not guaranteed to be safe. The author concludes that the international community should promote family planning that considers the personal needs of women, and long-term contraception should not be an option.

Margaret M. Donohoe, *Our Epidemic of Unnecessary Cesarean Sections: The Role of the Law In Creating It, The Role of The Law in Stopping It*, 11 WIS. WOMEN'S L. J. 197-241 (1996).

The use of cesarean sections as an alternative for vaginal birth has skyrocketed since the development and perfection of the procedure has reduced the incidence of death in delivering mothers. The author argues that the use of cesarean section is the result of several factors, including a misguided reliance on technology by doctors, mothers, and society at large, and the possible fear of malpractice suits by obstetricians and hospitals. Further, the author argues that the use of cesarian sections is often unnecessary and potentially more dangerous to the mother. The author suggest numerous ways to reduce the use of cesarean section by doctors and hospitals, such as incentives for doctors and hospitals by insurance companies.

Deborah A. Ellis & Yolanda S. Wu, *Of Buffer Zones and Broken Bones: Balancing Access to Abortion and Anti-Abortion Protestors' First Amendment Rights in Schenck Pro-Choice,* 62 BROOK L. REV. 547-83 (1996).

Courts have been faced with the issue of protecting the safety of patients and providers of reproductive health care without violating freedom of speech rights of anti-abortion protesters. In the recent case of *Pro-Choice Network v. Schenk,* the Second Circuit upheld provisions in an injunction allowing restricted access to abortion clinics in New York. *Schenck* set forth minimal restrictions such as a fifteen-foot buffer zone and moving bubble zone. The authors agree with the *Schenck* decision because it is an appropriate balance between protecting access and free speech. The authors also suggest that the Supreme Court recognize the wisdom of the *Schenck* court.

Francoise L. Pearson, *Liability For So-Called Wrongful Pregnancy, Wrongful Birth and Wrongful Life,* 114 SOUTH AFRIC. L.J. 91-107 (1997).

This article explores whether doctors who use medical technology to eliminate the possibility of conception, or who engage in genetic manipulation, should be held liable for unexpected pregnancies or genetic defects. In analyzing law from the United States, England, South Africa, Germany, Israel and Australia, the author examines potential claims from the parents of an unwanted child, the child himself, and wrongful birth claims from the parents of a child born with undiagnosed birth defects. In most countries, judges have held that any child is blessing, but have nevertheless awarded damages where a doctor's negligent actions have caused an unwanted birth. The author concludes that increased knowledge, which enables doctors to control genetic and reproductive issues, requires doctors to assume liability when their negligence causes unwanted births or genetic defects.

Elizabeth A. Reilly, *The Rhetoric of Disrespect: Uncovering the Faulty Premises Infecting Reproductive Rights,* 5 AM. U.J. GENDER & L., 147-205 (1996).

Although the Supreme Court upheld a woman's constitutionally protected right to choose to abort a pregnancy, the author notes that this reproductive choice remains fragile due to faulty premises imbedded in court decisions. The Supreme Court has consistently viewed women through their reproductive capacity rather than as

independent persons, with interests, needs and the ability to make difficult choices. The article criticizes reproductive choice based on an extension of a right to privacy rather than trust in the moral capacity of women to make difficult choices. The author suggests that when these faulty premises are purged, courts will be able to formulate a new, more solid foundation for abortion jurisprudence.

SPOUSAL SUPPORT

Lewis Becker, *Spousal and Child Support and the "Voluntary Reduction of Income" Doctrine,* 29 CONN. L. REV. 647-725 (1997).

In child and spousal support cases where a party has voluntarily reduced his or her income, courts usually base a support order on earning capacity rather than on actual income. However, where an income reduction was not motivated by a desire to avoid support payments, the voluntary income reduction doctrine becomes problematic. The author brings forth different tests that courts have used to calculate support payments in cases where there is a reduction of income. The author suggests that asking whether a party's conduct is "voluntary" is useless and irrelevant. Rather, the author argues that courts should look to the complex legal and policy issues surrounding the reduction of one party's income to develop a uniform child and spousal support guideline.