WOMEN'S ANNOTATED LEGAL BIBLIOGRAPHY

ABORTION

Randall P. Bezanson, *Emancipation as Freedom in* Roe v. Wade, 97 DICK. L. REV. 485-512 (1993).

The author contends that the Supreme Court did not clarify a woman's constitutional freedom in the plurality opinion of *Planned Parenthood v. Casey*, —U.S.—, 112 S.Ct. 2791 (1992) after having left this issue questionable in *Roe v. Wade*, 410 U.S. 113 (1973). This Article argues that the Court used equality reasoning in order to justify its decision, which was a mistake because it is subordinate to freedom. The author supports this with the analysis of terms which have become familiar as a result of the *Casey* decision. The author further argues that the Court erred by allowing the government to retain an active role in the participation of the abortion decision which does not promote freedom of the type articulated in *Roe v. Wade.*

Jamin B. Raskin, Roe v. Wade *and the* Dred Scott *Decision: Justice Scalia's Peculiar Analogy in* Planned Parenthood v. Casey, 1 AM. U. J. GENDER & L. 61-84 (1993).

This article examines Justice Scalia's dissent in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, in which he compared the

Court's decision in *Roe v. Wade*, to the holding in *Dred Scott v. Sandford*. By examining Scalia's methodology, the author argues that such a comparison is inappropriate, that the methodology of the *Dred Scott* court bears no resemblance to the *Roe* court. However, Scalia's dissent adopts the very same methodology he criticizes in *Dred Scott* and *Roe*: strict textual analysis and a study of relevant social tradition.

Florian Miedel, *Is West Germany's 1975 Abortion Decision a Solution to the American Abortion Debate?: A Critique of Mary Ann Glendon and Donald Kommers*, 20 N.Y.U. REV. L. & SOC. CHANGE 471-515 (1994).

Within two years after the United States Supreme Court held that there was a constitutional right to choose an abortion, the West German Federal Constitutional Court ruled abortions illegal except under special circumstances. This Article expounds the various changes in both nations' abortion laws and offers the opinions of two scholars, Donald Kommers and Mary Ann Glendon, known for their comparative analysis of American and German abortion regulations. The author argues that the fundamental differences between German and American legal and social systems render their preference for German views unpersuasive and unworkable.

Kathryn Kolbert & David H. Gans, *Responding to* Planned Parenthood v. Casey: *Establishing Neutrality Principles in State Constitutional Law*, 66 TEMP. L. REV. 1151-80 (1993).

This essay argues that waiting periods, biased counseling laws, and restrictions on funding, impede a woman's ability to obtain reproductive healthcare. In *Casey*, 112 S.Ct. 2791 (1992), the Supreme Court upheld some of the most restrictive abortion regulations to date. The authors propose that government invoke neutrality principles which would constitutionally protect women by demanding "treat" government decisions involving reproduction equally with other medical decisions.

Brian J. Leslie, *Poland, Abortion, and the Roman Catholic Church*, 17 B.C. INT'L & COMP. L. REV. 453-84 (1994).

Since 1956, Poland has permitted abortions at any stage of pregnancy in order to protect women's privacy and to prevent "back-alley" abortions under unsanitary conditions. However, since the fall of Communism in 1989, the Polish government has placed many restrictions on abortions and birth control due to pressure

from the Catholic Church. Even though the Polish Constitution guarantees the separation of Church and State, the Church has gained power in politics. If the Church succeeds, a fetus will have an absolute right to life in Poland, in violation of Poland's constitution as well as the European Convention's rules on human rights.

Curtis Boyd, *The Morality of Abortion: The Making of A Feminist Physician*, 13 ST. LOUIS U. PUB. L. REV. 303-14 (1993).

The author offers an autobiographical account of his evolution from a devout Baptist farm-boy to an obstetrician/gynecologist who began performing abortions even before they were legalized by *Roe v. Wade*. The stories he relates, of incidents experienced by him, his family, the staff at his abortion clinic and his patients, reveal the threats and violence inflicted by anti-abortion activists. Despite the constant fear and harassment, he remains devoted to providing women an alternative to living a life "ruined" by an unintended pregnancy. It is his contention that opposition to abortion is rooted in men viewing women and children as property, a view that is now obsolete.

William F. Colliton, Jr., *Contraception and Abortion: Is There a Connection?*, 13 ST. LOUIS U. PUB. L. REV. 315-26 (1993).

Contraception is logically connected to abortion since it facilitates the kinds of relationships and attitudes that lead to abortion. Since contraceptive action is anti-life, life issues are raised, especially because some contraceptives actually work as abortifacients. The author contends that our contraceptive culture has led to medical and social problems including the epidemic of teenage pregnancies, STDs and the increased number of divorces and single-parent families, and it is the teachings of Planned Parenthood that have contributed to our cultural sexual demise. Therefore, according to the author, the only solution is the return of teaching chastity in our homes, schools and churches.

Michael Stokes Paulsen, *The Doubtful Constitutionality of the Clinic Access Bill*, 1 VA. J. SOC. POL'Y & L. 261-89 (1994).

This Article was prepared as written testimony on the Freedom of Access to Clinic Entrances Act of 1993. The authors believe that the terms of the Act limit constitutionally protected speech. It is unclear from the language of the Act what types of physical acts will invoke punishment. They contend that the Act is not neutral and will penalize pro-life offenders and not pro-choice offenders.

The authors think that the penalties are extremely harsh in relation to the offense. Although some of these changes have been instituted since the Act's passage, the authors conclude that the Act remains unconstitutional.

Mark A. Graber, *The Ghost of Abortion Past: Pre-*Roe *Abortion Law in Action*, 1 VA. J. SOC. POL'Y & L. 309-81 (1994).

Before the Supreme Court decision in *Roe v. Wade*, 410 U.S. 113 (1973), the lack of enforcement of restrictive abortion laws allowed doctors to discriminate in their abortion practices. The author argues that any future restrictions on abortions will be poorly implemented because people arguing for anti-abortion laws do not have the power to ensure the laws' enforcement. This Article analyzes the law and the reality of pre-*Roe* and post-*Roe* and concludes that abortions will be performed regardless of the existence of restrictive laws. Just as in the pre-*Roe* years, restrictions on abortion will cause race and class discrimination in the accessibility of safe abortions.

Alexander Morgan Capron, *Life's Sacred Value - Common Ground or Uncommon Battleground*, 92 MICH. L. REV. 1491-1502 (1994) (reviewing RONALD DWORKIN, LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM (1993)).

Ronald Dworkin's book suggests replacing the debate over abortion and euthanasia rights and interests with a discussion of the intrinsic value of human life. This Book Review argues that Dworkin's alternative analysis will fail to spawn harmonious discussions between pro-life and pro-choice advocates. In addition, Dworkin fails to clarify his position on legalized physician participation in euthanasia practices. The reviewer concludes that Dworkin's interesting and lucid arguments remind us of the importance of the value of human life.

Elizabeth A. Silverberg, Note, *Looking Beyond Judicial Deference to Agency Discretion: A Fundamental Right of Access to RU 486?*, 59 BROOK. L. REV. 1551-615 (1994).

The Food and Drug Administration recently imposed an important ban on RU 486, a French abortifacient drug which a woman could administer privately to terminate pregnancy. According to the author, by imposing the ban, the FDA violated procedural requirements for issuing regulations and acted arbitrarily. Through a

discussion of how RU 486 will impact existing Supreme Court interpretations of the right to privacy, birth control and abortion, the author analyzes the effect of the ban on women's participation in health care policy, and concludes that the public's right to make their voices known in response to agency decisions will be significantly curtailed.

Kelly Sue Henry, Planned Parenthood of Southeastern Pennsylvania v. Casey: *The Reaffirmation of Roe or The Beginning of The End?*, 32 U. LOUISVILLE J. FAM. L. 93-113 (1993-4).

In *Roe v. Wade*, 410 U.S. 113 (1973), the Court maintained that the Equal Protection and Due Process Clauses of the Fourteenth Amendment guarantee a fundamental right to an abortion during the early stages of pregnancy. Throughout the first trimester, a woman has this fundamental right unless the state can show a compelling interest to curtail that right. The author explores whether the Court's holding in *Casey*, upholding some of the most restrictive abortion regulations to date, is a reaffirmation of *Roe v. Wade* in determining the boundaries of state intervention, or the first of many decisions to come that will overturn *Roe* and give the states more power to decide the abortion issue.

Roy Bowen Ward, *The Use of the Bible in the Abortion Debate* 13 ST. LOUIS U. PUB. L. REV. 391-408 (1993).

Many anti-abortionists base their opposition on religious grounds, most noticeably on Christian grounds. However, there is no explicit reference to abortion in the Christian Bible. The author of this Article, therefore, explores the passages within the Old and New Testaments to determine Biblical views on abortion. After a thorough review of relevant passages concerning the laws on miscarriage, the womb, and birth stories, the author concludes it is likely that Christian women were terminating pregnancies, with or without the knowledge of those who wrote the New Testament. Therefore, concludes the author, the use of the Bible in condemning abortions is a misuse.

Donald P. Kommers, *The Constitutional Law of Abortion in Germany: Should Americans Pay Attention?*, 10 J. CONTEMP. HEALTH L. & POL'Y 1-32 (1994).

The author recounts Germany's legal approach to abortion and offers suggestions as to what Americans may learn. In 1992, Germany enacted an abortion statute which balances the State's inter-

est in protecting life with a woman's interest in self-determination. Although abortion remains illegal, the State no longer punishes abortions performed within the first three months of pregnancy. The German experience shows that a balancing of interests is possible and American courts would be well advised to pay attention to the German experiment.

Eugene F. Diamond, M.D., *Parental Notification and Public Policy*, 13 ST. LOUIS U. PUB. L. REV. 381-90 (1993).

The author contends that the public and private programs aimed at reducing unwed adolescent pregnancy and the incidence of teenage abortions, have failed. Although the federal component of this program cost $1.3 billion, occurrences of unwed pregnancies, abortions, venereal diseases and sexual promiscuity have all increased. Maintaining that neither ignorance nor failure of contraception greatly contribute to pregnancy out of wedlock, the author proposes enacting a national parental notification statute to reduce the incidence of pregnancy and abortion in the adolescent age group. It is contended that the American public and medical profession support parental notification as it can combat peer pressure and lead to a decrease in adolescent pregnancies.

Brian W. Clowes, *The Role of Maternal Deaths In The Abortion Debate*, 13 ST. LOUIS U. PUB. L. REV. 327-80 (1993).

This Article disputes the claims by pro-abortion activists regarding the number of illegal abortion deaths in both the United States and in foreign countries. Through a study of the figures, the author contends that these claims have been exaggerated and lack scientific support. Furthermore, the author alleges that there is improper reporting of maternal deaths arising from complications due to legal abortion, and henceforth attempts to estimate the correct number. The author refutes the assertion that abortion is safer than childbirth as unscientific and false, and then discusses the revival of the "self-help" abortion and the various dangers it presents.

Teresa Nicholson, Note, *European Abortion Law: An Analysis And Comparison Of Abortion Law In The European Union And The United States*, 24 CUMB. L. REV. 573-86 (1994).

The status of abortion laws in Europe are examined to provide insight into the problems the United States could potentially confront in view of *Planned Parenthood v. Casey*, 112 S.Ct. 2791 (1992).

Background is presented to explain the establishment and political apparatus of the European Community. The current conflict between European Union law and Irish law is compared to the United States where, if the trend follows *Casey*, each state would create its own abortion laws. According to the author various and conflicting abortion laws would lead to widespread dissatisfaction on the part of all sides of the debate.

John S. McCarfrey & Julie Novkov, *The Emperor Wears No Clothes: Life's Dominion and Dworkin's Integrity*, 21 REV. L. & SOC. CHANGE 183-231 (1993-94) (book review).

This is a review of Professor Ronald Dworkin's book, *Life's Dominion*, in which Professor Dworkin attempts to explain the nation's division over the issue of abortion in terms of religious differences. However, the authors of this Article argue that the abortion debate is fundamentally related to the question of women's roles in society. After describing Professor Dworkin's techniques of argument, the authors conclude that by focusing on the fetus rather than the role of women, he fails to recognize the fundamental difference of both views and their irreconcilability.

AIDS

Steven Eisenstat, *Capping Health Insurance Benefits for AIDS: An Analysis of Disability-Based Distinctions under the Americans with Disabilities Act*, 10 J.L. & Pol. 1-49 (1993).

In *McGann v. H&H Music*, 946 F.2d 401 (5th Cir. 1991), *cert. denied*, 113 S.Ct. 482 (1992), the Court held that employers were free to eliminate all medical coverage for treatment of AIDS. This Article examines whether health care exclusions based upon specific disabilities violate the Americans with Disabilities Act of 1990 ("ADA"). The author concludes that if the Interim Guidance rules of the EEOC are upheld, then setting a benefit cap or exclusion on AIDS would not be justified under the ADA, unless similar caps were placed on comparable illnesses. The ADA is, however, a stop-gap measure, as changes to the entire health care system are needed.

Laura Pincus, *The Americans with Disabilities Act: Employers' New Responsibilities to the HIV-Positive Employees*, 21 HOFSTRA L. REV. 561-601 (1993).

The Americans with Disabilities act of 1990 ("ADA") imposes new requirements and demands more of employers in order to protect

the civil rights of disabled persons. This Article analyzes the impact the ADA has upon employers of HIV-infected employees. The author focuses on the operating legal framework, the responsibilities to accommodate HIV-infected employees and the potential liability for AIDS transmission. The author suggests a need for an HIV policy in the workplace and advises employers on how to develop both a plan to comply with the ADA and an education program by which to implement this plan.

Juan P. Osuna, *The Exclusion From the United States of Aliens Infected With the AIDS Virus: Recent Developments and Prospects for the Future*, 16 HOUS. J. INT'L L. 1-41 (1993).

Since 1987, HIV-infected aliens have been denied entry into the United States. This Article traces the background behind the addition of HIV to the list of diseases which have this exclusionary effect as well as the impact of the Immigration Act of 1990. The author then explores President Clinton's plan to lift the HIV ban and the support and opposition his proposal met in Congress. Some of the major issues raised by the admission to the United States of persons with HIV are public health considerations, cost concerns and racial bias. Finally, the author speculates on the long-term impact of the HIV-exclusion, predicting that immigrants will continue to be tested under the Clinton Administration but the exclusion will be implemented in a flexible manner.

William N. Eskridge, Jr. & Brian D. Weimer, Book Note, *The Economics Epidemic in an AIDS Perspective*, 61 U. CHI. L. REV. 733-74 (1994) (reviewing TOMAS J. PHILIPSON AND RICHARD A. POSNER, PRIVATE CHOICES AND PUBLIC HEALTH: THE AIDS EPIDEMIC IN AN ECONOMIC PERSPECTIVE (1993)).

In *Private Choices and Public Health*, Philipson and Posner use economic theory, specifically a rational behavior model that assumes individuals will alter their behavior in response to the increased risk of AIDS, to explain the trends in HIV infection. While the authors of this Book Note clearly recognize the importance of Philipson's and Posner's theory, they criticize the behavior-based model for its lack of sophistication. According to the authors, the model does not effectively predict the trends in HIV infection and wrongly assumes that individuals make rational decisions with regard to sexual matters.

Mary A. Crossley, *Of Diagnoses and Discrimination: Discriminatory Nontreatment of Infants with HIV Infection*, 93 COLUM. L. REV. 1581-667 (1993).

This Article emphasizes the importance of "harmonizing legal protection with existing ethical standards" regarding medical treatment of infants with HIV. In the Baby Doe case, a newborn with Down syndrome died of starvation six days after his parents refused to consent to surgery to correct an obstruction of his digestive tract. This case is cited as an example of the selective nontreatment of newborns. The author believes, however, that the passage of the Americans with Disabilities Act offers hope that children will receive aggressive treatment for these life-threatening conditions.

Peter Burge, *Setting Limits on Involuntary HIV Antibody Testing Under Rule 35 and State Independent Medical Examination Statutes*, 44 FLA. L. REV. 767-805 (1992).

This Article discusses privacy rights in relation to court mandated HIV testing. The author argues that privacy rights are not sufficiently protected by a requirement that a litigant's HIV status be "in controversy" before a court can order HIV testing. In order to decrease future damage awards, defendants will always place a plaintiff's HIV status "in controversy" by suggesting that HIV positive individuals have a shorter life span. The author concludes that privacy rights will be better protected by legislation which mandates HIV testing in civil litigation *only* when HIV status is directly related to liability determinations.

Michael Bruyere, *Damage Control for Victims of Physical Assault-Testing the Innocent for AIDS*, 21 FLA. ST. U. L. REV. 945-78 (1994).

The author examines state and national, proposed and enacted, legislation which would make AIDS testing mandatory for people who have been accused of physical crimes. The view is that testing will protect the rights of the victims, who will be able to discover whether they have contracted AIDS. Bruyere focuses on the constitutional issues involved, the state interests and the medical basis for such statutes. One such pending statute is the Violence Against Women Act of 1993, which requires testing certain sex offenders for the HIV virus. The author concludes that although this act is constitutional, an amendment to this legislation should be enacted which protects the rights of the victim, as well as the rights of the accused.

Gary I. Strausberg & Randal D. Getz, *Health Care Workers with AIDS: Duties, Rights, and Potential Tort Liability*, 21 BALTIMORE L. REV. 285-310 (1992).

The authors suggest that HIV positive health care workers can be held liable in tort for transferring the HIV virus to their patients or for failing to inform a patient of their condition. In discussing the possible tort issues involved, such as battery, misrepresentation, strict liability and emotional distress, they conclude that negligence is the cause of action most likely to be successful against an HIV positive health care worker. Nevertheless, where there is a risk of HIV transmission, disclosure should be mandated and failure to disclose should be actionable.

Jody B. Gabel, Note, *Liability for "Knowing" Transmission of HIV: The Evolution of a Duty to Disclose*, 21 FLA. ST. U. L. REV. 981-1029 (1994).

The author advocates that knowingly placing another's life in danger by the possible transmission of HIV is a despicable act deserving civil punishment or criminal sanction. The Note discusses the evolution of a legal duty to fully disclose one's HIV-positive status when in a position where transmission is possible. It also explores punitive action for knowing transmission including criminal prosecution in both the military and civilian sectors. Finally, the author proposes that the duty to disclose should extend to HIV-positive health care workers who perform procedures where exposure is likely.

Kevin J. Curnin, Note, *Newborn HIV Screening and New York Assembly Bill No. 6747-B5: Privacy And Equal Protection of Pregnant Women*, 21 FORDHAM URB. L.J. 857-926 (1994).

Proposed N.Y. Assembly Bill No. 6747-B5 attempts to respond to pediatric AIDS by mandating HIV testing for all babies born in the state and requiring disclosure to all mothers whose babies test positive. The test would also indicate the mother's HIV status. In effect, this would impose mandatory HIV testing on new mothers, potentially infringing on the mother's constitutional right to privacy and equal protection. In arguing that the bill is unconstitutional, the author suggests an alternative, which combines fully funded counselling, recommended voluntary testing and family-oriented follow up care.

John M. Naber & David R. Johnson, *Mandatory HIV Testing Issues in State Newborn Screening Programs*, 7 J.L. & HEALTH 55-68 (1992-93).

The surge of HIV infection in newborns has created much discussion within the legal, scientific and public health communities as to how to respond to the epidemic. Although mandatory newborn HIV screening is appealing to some, the authors argue that such a proposal is neither efficient nor ethically defensible. Issues of informed consent, confidentiality, possible newborn screening refusal and the privacy implications upon new mothers outweigh any possible benefits of mandatory screening. Legislators in New Jersey and Michigan introduced measures concerning required, non-anonymous HIV testing of newborns, but the efforts in both states were unsuccessful.

Taunya L. Banks, *The Americans With Disabilities Act and the Reproductive Rights of HIV-Infected Women*, 3 TEX. J. WOMEN & L. 57-98 (1994).

The Americans with Disabilities Act of 1990 ("ADA") protects those with disabilities, including HIV-positive women, from discrimination by granting them equal access to health care. This Article argues that HIV-positive women who are counselled not to bear children receive unequal, separate and less effective medical treatment in violation of the ADA. This discrimination is exacerbated by the fact that most HIV-positive women are poor women of color. The author claims that an amendment to the ADA, stating that discrimination in reproductive matters against disabled people is unlawful, is needed in order to guarantee reproductive autonomy.

BATTERED WOMEN

Aileen McColgan, *In Defence of Battered Women Who Kill*, 13 OXFORD J. LEGAL STUD. 508-29 (1993).

This Article analyzes the use of self-defense as a viable defense for battered women who have killed their abusers. The author argues that self-defense provides more assistance to battered women who kill in the UK than the defense of provocation. A comparison with similar approaches taken in the United States and Canada shows that the UK law of self-defense is more readily available for use as a defense. The author concludes that the requirement that the defendant's use of force be reasonable must be applied to cases other

than the traditional one-on-one standoff in order for the defense to be successful.

Michelle J. Anderson, *A License To Abuse: The Impact of Conditional Status on Female Immigrants*, 102 YALE L.J. 1401-30 (1993).

Research has shown that female conditional residents are easily abused due to their position in society as immigrants married to citizens or legal permanent residents. The author argues that the current statutory framework governing these women, including the Immigration Marriage Fraud Amendments of 1986 and the Immigration Act of 1990, facilitate a husband's control. The Article examines the specific categories of women who are conditional residents, and suggests that these women should be allowed to self-petition for their immigration status.

Pamela Goldberg, *Anyplace but Home: Asylum in the United States for Women Fleeing Intimate Violence*, 26 CORNELL INT'L L.J. 565-604 (1993).

Violence against women is increasingly being recognized as a human rights violation and, as a result, feminist advocates are seeking to establish intimate violence as a basis for an asylum claim. This Article discusses United States asylum law and analyzes the standard for proving asylum eligibility by describing each prong of the standard and explaining how a woman fleeing intimate violence meets this standard. The author concludes that failure of the state to recognize gender-based persecution claims and to protect women from acts of violence is, in itself, persecution.

Casey G. Gwinn & Anne O'Dell, *Stopping the Violence: The Role of the Police Officer and the Prosecutor*, 20 W. ST. U. L. REV. 297-317 (1993).

San Diego has the largest specialized prosecution unit in America for the handling of misdemeanor domestic violence cases. Through a discussion of the "San Diego experience," which began in 1986 when a San Diego Municipal Court judge was accused of beating his pregnant girlfriend, the author explores national trends in the investigation and prosecution of domestic violence cases. The trends described are: establishing coordinated community responses; designing early intervention strategies; developing a focus on the abuser rather than the victim; eliminating victim blaming policies; and creating long-term accountability for the abuser.

David W. Hanson, *Battered Women: Society's Obligation to the Abused*, 27 AKRON L. REV. 19-56 (1993).

This Article examines the problem of battered women and the application of the Battered Woman's Syndrome (BWS) as a defense to homicide. The author analyzes how each state has decided cases in which BWS was used, and focuses on the state of Ohio. The author proposes that due to the extensive occurrence of violence against women, and the inability to use BWS as a component of any currently viable legal defense (e.g. self-defense), BWS, standing on its own, should be granted the status of an acceptable defense to homicide. He further challenges Congress or the Supreme Court to step forward and recognize BWS as an acceptable homicide defense.

Sheilah L. Martin, *Some Constitutional Considerations on Sexual Violence Against Women*, 32 ALBERTA L. REV. 535-55 (1994).

In the context of Canadian law, the author examines the ways in which women's constitutional rights can inform our understanding of sexual violence and mandate proper treatment by the courts. The Canadian *Charter of Rights and Freedoms* (1982) has had wide ranging implications for sexual assault laws — from the court's recognition of the battered women's syndrome to rights of equality under the *Charter*. The *Charter* is a beginning to an egalitarian approach to women's jurisprudential issues.

Marjory D. Fields, *The Impact of Spouse Abuse on Children and its Relevance in Custody and Visitation Decisions in New York State*, 3 CORNELL J.L. & PUB. POL'Y 221-52 (1994).

Research shows that New York courts consider evidence of domestic violence in making custody and visitation decisions. The author recognizes the need for family law practitioners who understand the social and psychological implications of the legal problems they confront. Psychological and sociological studies are examined, as is the efficacy of batterers' treatment programs. The Article concludes with a discussion of New York State cases and some practice suggestions for family law practitioners.

Beth I. Z. Boland, *Battered Women Who Act Under Duress*, 28 NEW ENG. L. REV. 603-35 (1994).

By addressing the admissibility of evidence of past abuse in the context of a self-defense claim, this Article analyzes how such a standard would apply under the context of duress or coercion.

Through a review of the case law and literature, the theoretical and practical aspects of such a possibility are discussed. Such evidence should be admissible, the author concludes, so as to provide justice to battered women who stand accused of fighting back against their batterers; for it is they who are rightfully asserting claims of self-defense or duress.

Joan Zorza, *Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Police Domestic Violence Studies*, 28 NEW ENG. L. REV. 929-90 (1994).

This Article examines numerous studies around the country in order to determine whether arrest of batterers is the most effective means of deterring domestic violence. The author notes various flaws in the experiments which limit their value in formulating effective policies for the reduction of domestic violence. A policy of concerted effort between police, prosecutors and corrections officials is suggested as the most effective strategy for deterrence of repeated instances of domestic violence.

BIOTECHNOLOGY

Isaac Rabino, *How European and U.S. Genetic Engineering Scientists View the Impact of Public Attention on Their Field: A Comparison*, 19 SCI. TECH. & HUM. VALUES 23-46 (1994).

The development of biotechnology and recombitant DNA genetic engineering has evoked much public interest in both Europe and the United States. This Article is a comparison of two research studies that were conducted to determine the possible impact of public attention upon this field. The author concludes that the majority of researchers felt it is important to be open and informative with the public about the methods and aims of their research in order to counter the negative public image and attention.

Joan M. Ferretti, *Looking for the Big Picture - Developing a Jurisprudence for a Biotechnological Age*, 10 PACE ENVTL. L. REV. 711-49 (1993).

As biotechnology and law are becoming more intertwined, the author contends that society can learn much from the last fifty years of organic chemical technology. This Article asserts that a lack of foresight in regulatory responses in the past would be eliminated in the future by cooperation between government regulation and the common law. After the principal ethical considerations and social norms involved are established, the author proposes the en-

actment of statutes which specifically define the responsibilities of the parties before damage to public health or the environment occurs. This regulation should allow for recovery by individuals affected by technological processes as well as the general public.

Convention on Biological Diversity, 4 TOURO J. TRANSNAT'L L. 47-102 (1993).

The Convention on Biological Diversity is an agreement between nations regarding conservation of biological diversity, the use of its components and the equitable sharing of the arising benefits. The agreement outlines the necessary steps that each signatory must take to further the protection and development of biodiversity, as well as restore and rehabilitate existing degraded sources of biodiversity. The agreement also includes the general requirements for conservation, education of the public, cooperation among nations and procedures for settling disputes.

David R. Downes, *New Diplomacy for the Biodiversity Trade: Biodiversity, Biotechnology, and Intellectual Property in the Convention on Biological Diversity*, 4 TOURO J. TRANSNAT'L L. 1-46 (1993).

This Article focuses on the debates that took place during the convention on Biological Diversity. The author centers his discussion on two arguments regarding the international "biodiversity trade". First, that the countries which develop genetic-based biotechnology should share with the countries from which the genetic resources are taken. Second, that countries should have rights of access to genetic resources in other countries. The author concludes by analyzing the terms of the debate and proposes specific actions aimed at multilateral and domestic levels.

Jennifer Carow, Note, Davis v. Davis: *An Inconsistent Exception to an Otherwise Sound Rule Advancing Procreational Freedom and Reproductive Technology*, 43 DEPAUL L. REV. 523-75 (1994).

Davis v. Davis, 842 S.W.2d 588 (Tenn. 1992), concerned a custody battle over seven frozen preembryos, produced by the couple when they underwent in vitro fertilization (IVF) procedures. Before the preembryos could be implanted, the couple filed for a divorce. The Tennessee Supreme Court was forced to address the rights of the preembryos as well as the IVF participants' fundamental rights of privacy and procreational choice. This Note analyzes the *Davis* decision in light of previous constitutional precedent and discusses

the opinion's future impact on disputes involving frozen embryos and constitutional rights.

Alexander M. Capron & Vicki Michel, *Law and Bioethics,* 27 LOY. L.A. L. REV. 25-40 (1993).

This Article discusses the genesis and history of bioethics from medieval casuistry to bioethics' current status as a subdivision of moral philosophy. Bioethics addresses the ethical problems created by modern medical technology. The authors attempt to distinguish law and bioethics from other "law and" disciplines and they describe where the field stands today. The authors conclude that bioethics has grown in importance within the law and will continue to do so; therefore, a more cohesive scheme is needed to dictate who will make important ethical decisions.

Dan L. Burk, *Patenting Transgenic Human Embryos: A Nonuse Cost Perspective,* 30 HOUS. L. REV. 1597-1669 (1993).

In arguing that the patent system should not be used to provide an economic incentive for human gene therapy, the author claims his approach may save high societal costs. The article discusses basic gene structure and gene therapy, the purposes and procedures of the patent system, and the issues surrounding "patentability" of humans or sub-human creatures. After asserting that economic incentive does not advance beneficial gene therapy, the author concludes that this issue will be dictated by society's values.

John D. Ingram, *In Vitro Fertilization: Problems and Solutions,* 98 DICK. L. REV. 67-83 (1993).

This Article examines the legal, ethical and social issues involved with *in vitro* fertilization. By examining medical history, the controversy over when life begins and when neo-nates should be afforded legal protection, the author defines the legal status applicable to embryos, and how this classification affects the legal control over embryos created for *in vitro* fertilization. Legal issues facing each of the primary participants in the fertilization process are explored, and the author proposes provisions to determine the disposition of embryos in the event of unexpected contingencies.

David C. Blickenstaff, Comment, *Defining The Boundaries of Personal Privacy: Is There a Paternal Interest in Compelling Therapeutic Fetal Surgery?*, 88 Nw. U. L. Rev. 1157-99 (1994).

This Comment examines the paternal interest in compelling therapeutic fetal surgery. The author discusses the latest fetal surgery technology, the law governing court-ordered medical treatment, the woman's right to be free of interference from parties other than the father, and the father's rights in contexts other than fetal surgery. After presenting both arguments concerning an enforceable parental interest, the author concludes that the father's rights are negative ones, meant to protect him against state interferences, and are not to be used affirmatively to overcome the woman's right to be free from physical intrusion.

Stephanie J. Owen, Davis v. Davis: *Establishing Guidelines For Resolving Disputes Over Frozen Embryos*, 10 J. Contemp. Health L. & Pol'y 493-511 (1994).

In 1992, the Tennessee Supreme Court, in the case of *Davis v. Davis*, 842 S.W. 2d 588 (Tenn. 1992), gave Mr. Davis custody of a frozen embryo thereby protecting his right not to become a parent against his will. This Article discusses the legal status of the embryo and analyzes the effect of the *Davis* decision on In Vitro Fertilization ("IVF"). The author proposes to resolve disputes over frozen embryos by encouraging future spouses to sign pre-conceptual (pre-IVF) agreements in order to avoid potential disputes in advance.

E. Donald Shapiro, et al., *The DNA Paternity Test: Legislating The Future Paternity Action*, 7 J. L. & Health 1-48 (1992-93).

This Article discusses how to eradicate the problem of determining paternity through the use of DNA profiling and a DNA paternity test. The DNA paternity test is significant because whereas the older paternity test could only exclude a putative father, the newer and more precise test can conclusively include the putative father into a group of possible fathers. Therefore, state legislatures need to react swiftly to embrace this new technology by creating statutes which reflect the near precision of the new test and by adopting model legislation such as the Uniform Paternity Determination Act.

David R. Downes, *New Diplomacy for Biodiversity Trade: Biodiversity, Biotechnology, and Intellectual Property in the Convention on Biological Diversity*, 4 TOURO J. TRANSNAT'L L. 1-47 (1993).

The focus of negotiations on the Convention on Biological Diversity centered mainly on the distribution of perceived economic benefits from biotechnological exploitation of biodiversity. Emphasizing international "biodiversity trade" which advances issues linking biodiversity and biotechnology, the debate focused on how to allot economic benefits between countries and what rights countries have to genetic resources in other countries. In addition to posing several steps parties to the Convention could take to address these issues, the author suggests that the Convention serve as a framework for establishing a minimum standards requirement for regulating genetic resources transactions.

Vannesa Merton, *The Exclusion of Pregnant, Pregnable, and Once-Pregnable People (a.k.a. Women) from Biomedical Research*, 19 AMERICAN J.L. & MED. 369-451 (1993).

This Article delineates the ways in which women have been disadvantaged, as they are continuously excluded from being subjects of biomedical research, and explores the methods and rationales for the exclusion of women. Displaying the fallacies in the current methods of exclusion, the author argues that researchers have more risk of potential liability from the exclusion of women, even pregnant women, then from their inclusion. Therefore, the current exclusionary practices should be replaced by the strategy proposed by the author, which defines eligibility criteria for research subjects by hormonal status and not gender.

A. Yasmine Rassam, *"Mother," "Parent," and Bias*, 69 N.D. L.J. 1165-93 (1994).

In *Anna J. v. Mark C.*, 286 Cal. Rptr. 369 (Cal. Ct. App. 1991), the Supreme Court of California recently upheld the award of the legal title "mother" to the woman who carried an embryo, formed of a donor's egg and her own husband's sperm to term, rather than to the egg's donor. Although this case is an example of statutory interpretations by the court, the statute was actually enacted before in vitro fertilization. According to the author, novel cases beg for judicial creativity, such as a "dynamic feminist" approach, which would encourage judges to favor statutory definitions that do not discriminate on the basis of gender or sexual orientation.

Hollace S.W. Swanson, *Donor Anonymity In Artificial Insemination: Is It Still Necessary?*, 27 COLUM. J.L. & SOC. PROBS. 151-90 (1993).

Artificial Insemination by Donor ("AID") is now used by more than 80,000 women in the United States. This Article questions the continued need for donor anonymity in the practice of AID and criticizes the present state of AID record-keeping. The author describes the historical factors which led to the development of donor anonymity, and then explains how these factors have changed over time. In light of these changes, the author concludes that record-keeping should be governed by statutes requiring more detailed records and expanded access to those records.

Keith J. Hey, *Assisted Conception and Surrogacy-Unfinished Business*, 26 J. MARSHALL L. REV. 775-819 (1993).

This Article advocates a comprehensive analysis and statutory enactment covering all of the various medical and legal aspects of assisted conception and surrogacy arrangements. Such a statutory enactment is necessary because current case law varies amongst jurisdictions. The legislature must develop a code which will provide guidance to those involved in the process, both the providers and the recipients, including unborn children.

CHILD ABUSE

Debra L. Losnick, *Symposium: Domestic Violence and Child Abuse, Foreword: Juvenile Court - Making It for Children*, 20 W. ST. U. L. REV. 293-96 (1993).

This Article focuses on the proper procedure for dealing with children in the courtroom. The roles of both the child's attorney and the judge are briefly discussed. The author suggests that the child's attorney must be candid with the child and put forth the child's best interest while making sure that the child understands what is happening procedurally. The author further suggests that the judge should minimize the child's stress by, for example, giving the child a teddy bear; using the child's name instead of the term "minor"; or empowering older children by making parental visits subject to the child's consent.

Nancy Kaser-Boyd, *Post-Traumatic Stress Disorders in Children and Adults: The Legal Relevance*, 20 W. ST. U. L. REV. 319-34 (1993).

Adult criminal behavior has been linked to childhood abuse and other traumatic childhood experiences. This Article explores the

victim-to-perpetrator process by studying extreme cases of childhood abuse, specifically, extreme forms of physical and sexual abuse. The author contends that a history of abuse is relevant to a criminal act and suggests that the criminal justice system should consider an individual's history of severe trauma at trial and at sentencing. The author suggests that failure to recognize an individual's past results in revictimization by the criminal justice system.

Maria L. Imperial & Jeanne B. Mullgrav, *The Convergence Between Illusion and Reality: Lifting the Veil of Secrecy Around Childhood Sexual Abuse*, 8 ST. JOHN'S J. LEGAL COMMENT. 135-56 (1992).

This Article discusses civil damage awards in New York state to adult survivors of childhood sexual abuse. The authors summarize crime victim compensation law and relevant statute of limitations issues in New York, which present obstacles for the survivors of childhood sexual abuse who seek compensation. In arguing that the statute of limitations should not bar these types of claims, the authors conclude that the New York State Legislature should eliminate the statute of limitations on civil actions initiated by adult survivors of childhood sexual abuse.

Jean Montoya, *Something Not So Funny Happened on the Way to Conviction: The Pretrial Interrogation of Child Witnesses*, 35 ARIZ. L. REV. 927-87 (1993).

The author demonstrates how pretrial interrogation of child witnesses leads to criminal indictments without the child molester ever being "caught in the act" or the child displaying any unusual characteristics. Through the use of social evidence, Montoya concludes that this will lead to the falling out of the trial system. The author considers the statute proposed by Professor Lucy McGough, video taping of child witnesses by a neutral professional, as a modest attempt to solve the problem. Montoya proposes that the video taping of child witnesses, to obtain justice, should include the adversarial interviewing of the child.

Catherine Erin Naughton, Comment, *The Cry of a Child Left Unanswered: Pennsylvania's Treatment of Battered Children who Kill Their Parents*, 98 DICK L. REV. 85-105 (1993).

This Article examines the Battered Child Syndrome and the circumstances that surround its use as a defense to the charge of murder in the state of Pennsylvania. The author argues that the defense should be available and proven by the presentation of ex-

pert medical testimony. Further, the author compares the defense to the Battered Women Syndrome defense. The author concludes that testimony on Battered Child Syndrome is necessary to effectively administer justice in the Pennsylvania courts.

Isabelle Coet, *False Memory Syndrome: Assessment of Adults Reporting Childhood Sexual Abuse*, 20 W. ST. L. REV. 427-33 (1993).

This Article describes False Memory Syndrome and gives an outline of a consultation report used in the assessment of adults alleging injuries from sexual abuse as children. To determine whether there is a likelihood of sexual abuse, the author suggests that the examiner consider all the factors. However, since this model is not flawless, the author concludes that for False Memory Syndrome to be accepted as an admissible defense, further research is required.

Bertram F. Griffin, *From Pain to Hope: Report from the Ad Hoc Committee on Child Sexual Abuse, Canadian Conference of Catholic Bishops*, 2 JURIST 459-61 (1993).

The booklet *From Pain to Hope* is written to assist the Canadian dioceses in establishing guidelines and policies concerning the sexual abuse of children in the Church and society. Extended pastoral care of victims and their families, preventive strategies, and affirmative local activities which would include helping church members in the effort to break the cycle of sexual abuse, are some of the authors suggestions. The core of the report includes fifty similar recommendations to Catholics, bishops, those responsible for priests in a diocese, and the Canadian Catholic Conference.

David J. Crump, *Child Victim Testimony, Psychological Trauma, and the Confrontation Clause: What Can the Scientific Literature Tell Us?*, 8 ST. JOHN'S J. LEGAL COMMENT. 83-105 (1992).

In *White v. Illinois*, 112 S.Ct. 736 (1992), the Supreme Court held that a child victim's hearsay statements could be used even without the child's testimony and without a showing of necessity. The Court also held that the hearsay statements must comply with the traditional and established exceptions to the hearsay rule. This Article supports the holding in *White*, and argues that scientific research demonstrates that a strict necessity test could cause child victims to suffer unnecessary psychological trauma. The author concludes that the strict necessity test should be supplied by a uniform rule consistent with the *White* decision.

Janet Mosher, *Challenging Limitation Periods: Civil Claims by Adult Survivors of Incest*, 44 U. TORONTO L.J. 169-222 (1994).

According to the author, statutes of limitation unfairly prevent victims of incest from bringing actions against their assailants. She explains that while statutory limitations make sense in many cases, in cases of incest, the limits simply deny the victim the right to a day in court. These victims are unable to commence an action within the typical ten year cut-off period either because they are dependent on their attackers or because they suffer from emotional wounds. The author argues that in incest cases, unless the defendant can show good reason why the victim could have brought the case earlier, the "ultimate" limitation period should not apply.

Melissa Searle, Symposium, *Munchausen Syndrome by Proxy: A Guide for California Attorneys*, 20 W. ST. U. L. REV. 393-426 (1993).

This Article examines the historical background, medical prototypes, legal principles, and "practical approaches to prosecuting Munchausen Syndrome By Proxy, a form of child abuse, by analyzing revelant case law." Focusing on the danger posed to the child who remains in the same household as the offending parent, the author suggests that the court must interject its power to ensure that the child remains safe from further abuse.

Megan J. Ballard, Comment, *A Practical Analysis of the Constitutional and Legal Infirmities of Norplant as a Condition of Probation*, 7 WIS. WOMEN'S L.J. 85-106 (1992).

This Comment analyses whether judicially imposed Norplant Contraceptive implantation as a condition of probation for convicted female child abusers rehabilitates abusive mothers, or legally assures that no harm will come to their children. Constitutional challenges are discussed as interference with an offender's exercise of fundamental rights. Focus is on the idea that Norplant impermissibly intrudes on a woman's privacy right to reproductive autonomy as well as her right to refuse medical treatment.

Matthew W. Hull, *Child Sexual Abuse And The Discovery Rule: Do Adult Survivors Of Child Sexual Abuse Have Causes Of Action Against Their Childhood Abusers?*, 14 J. JUV. L.U. LA VERNE C. L. 82-92 (1993).

Many adult survivors of child sexual abuse assert that they recall the memory of their abuse only in adulthood and are therefore

unable to bring suit during the allowed statutory period. The article discusses the application of the "Discovery Rule," which would toll the running of the statute of limitations in civil actions of this nature. The author supports the current trend applying the rule, because application is consistent with the functions served by statutes of limitations and the use of the discovery rule; it avoids harsh results and gives the victim a day in court.

DISCRIMINATION

Kathleen L. Soll, *Gender Bias Task Forces: How They Have Fulfilled Their Mandate And Recommendation For Change*, 2 S. CAL. REV. L. & WOMEN'S STUD. 633-48 (1993).

By May 1993, thirty-eight jurisdictions had established gender bias task forces to determine the degree of gender bias in a given court system. This Article examines the totality of past state and federal court task forces and identifies how they have satisfied their common mandate. The author determines the degree of success of each task force and recommends solutions to address the problems identified by the task forces. The author concludes that each jurisdiction must continue to take responsibility for its biases and be willing to take measures that more successfully combat them in order to ensure equal protection.

Barbara A. Babcock, *Report of the Ninth Circuit Gender Bias Task Force, Introduction: Gender Bias in the Courts and Civic and Legal Education*, 45 STAN. L. REV. 2143-49 (1993).

As a preface to the Ninth Circuit 1992 Task Force report on gender bias in the legal community, the author explores the origins of the women's movement and highlights the suggestions made to reform the system. With the rise of women in the legal profession a greater number of states have focused their attention on what the meaning of gender bias is, and how it can be stopped. The Ninth Circuit was the first court to investigate gender bias through a task force. The author concludes that in order to eradicate gender bias in the legal profession, reform must begin with the education of future lawyers enrolled in law schools throughout the United States.

Ruth B. Ginsburg, *Sex Equality and the Constitution: The State of the Art*, 14 WOMEN'S RTS. L. REP. 361-6 (1992).

The author asserts that litigation of gender-based discrimination is grounded in the Constitution. The article discusses the Supreme Court's adherence to one standard of review for equal protection legislation and another for fundamental rights. The Supreme Court is sharply divided, as evidenced by a series of decisions in the 1970's, as to the appropriate classification for sex discrimination cases. The decisions discussed provide little direction as to the position of the Supreme Court on sex discrimination. The author recognizes this dilemma and concludes by calling for the ratification of the Equal Rights Amendment as a way to lead the Court on this issue.

Alfred W. Blumrosen, *Society in Transition III: Justice O'Connor and the Destablization of the* Griggs *Principle of Employment Discrimination*, 14 WOMEN'S RTS. L. REP. 315-33 (1992).

The Supreme Court, in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), held that Title VII was violated by employer practices which had a disparate impact on minorities and were not justified by "business necessity," regardless of the employer's intent. This Article examines Justice O'Connor's application of *Griggs* in her majority opinion in *Watson v. Fort Worth Bank and Trust*, 487 U.S. 977 (1988), as well as subsequent Justice O'Connor opinions. The author concludes that Title VII's main objective is the improvement of minority and female employment opportunity and not the avoidance of preferential treatment which Justice O'Connor developed in *Watson*.

Edward J. McCaffery, *Slouching Towards Equality: Gender Discrimination, Market Efficiency, and Social Change*, 103 YALE L.J. 595-676 (1993).

This Article explores the current gender gap between the salaries of men and women and suggests a model using efficiency as a normative ideal from which to begin narrowing the gap. The author contends that today's labor markets are a product of economic distortions created in an era of male domination. This may explain why statistics that suggest improvement are out of synch with the perception of retrenchment. The author finally argues against letting market forces shape the level of efficient discrimination.

Elizabeth F. Defeis, *Equity and Equality for Women - Ratification of International Covenants as a First Step*, 3 SETON HALL CONST. L.J. 363-408 (1993).

Despite the major accomplishments women have made in the past two decades, women have still not achieved equality. One problem impeding the progress of the women's movement is that there is no constitutional force behind the principle of equality for women based on the current interpretation of the Equal Protection Clause and the Equal Rights Amendment. However, a global campaign for women's rights has achieved recognition as human rights. This recognition prompted the proposal of the Convention on the Elimination of all Forms of Discrimination Against Women. Should this provision be implemented, it would provide the global force and substance that the struggle for women's equality requires to progress further.

Gender and Justice in the Courts 8 GA. L. REV. 539-809 (1992).

On March 15, 1989, the Supreme Court ordered the creation of the Georgia Commission on Gender Bias in the Judicial System at the request of the Council of Superior Court Judges. The Commission was ordered to review the Georgia court system to determine the existence of gender bias, and to make recommendations to the Supreme Court as to what, if anything, should be done. This Article presents the Commission's findings. Although no flagrant gender bias was discovered in Georgia's courts, evidence was found which showed that some gender bias does exist within Georgia's judicial system. The Commission then made recommendations as to how to remedy these problems and alleviate the injustice they created.

Sally A. Piefer, *Sexual Harassment From the Victim's Perspective: The Need for the Seventh Circuit to Adopt the Reasonable Woman Standard*, 77 MARQ. L. REV. 85-114 (1993).

As sexual harassment in the workplace has increased, the "reasonable woman" standard has gained greater acceptance. This standard accounts for the discrepancies in gender perspective between men and women. The author asserts this standard would allow more successful sexual harassment claims by female employees. The Sixth and Ninth Circuits have adopted this standard and the author argues that the Seventh Circuit should follow suit. Abolishing the two-prong test and adopting a singular female perspective

should have a stronger impact on appropriate behavior in the workplace.

Nancy Kubasek, et al., *Comparable Worth in Ontario: Lessons the United States Can Learn,* 17 HARV. WOMEN'S L.J. 103-32 (1994).

Comparable worth is a legislative plan to pay men and women equally for performing different jobs that have equal or comparable value. Studying a plan known as the "Pay Equity Act," which was implemented in Ontario, Canada, the authors analyze the system, which has experienced some problems in trying to fairly "compare" male and female job classes. However, the authors contend that comparable worth legislation in the U.S. would benefit women by allowing them to achieve situational equality with men in the work force as has been accomplished to some extent in Ontario.

Thomas J. Gehring, *Hostile Work Environment Sexual Harassment After* Harris*: Abolishing the Requirement of Psychological Injury,* Harris v. Forklift Systems, Inc., 19 T. MARSHALL L. REV. 452-74 (1994).

Under Title VII, employees subjected to unwelcome sexual advances may bring an action against their employers. In the past, many circuit courts have held that in order to prevail, the plaintiff must endure the harassment long enough to prove psychological harm. Finally, in 1993, the United States Supreme Court held that psychological trauma is not necessary. An employee subjected to sexually abusive behavior for any length of time may be entitled to compensation. The author is hopeful that this holding will encourage employers to try to limit sexual harassment problems in the future.

Meagan G. Mayer, In Re Marriage of Iverson: *Dubious Benefits In Reducing Judicial Gender Bias* 3 UCLA WOMEN'S L.J. 105-12 (1993).

This Article examines *In Re Marriage of Iverson,* 11 Cal. App. 4th 1495, 15 Cal. Rptr.2d 70 (1992), a California case which overturned a decision on the basis of gender bias. The decision is an advancement toward the elimination of judicial gender bias by recognizing and addressing the problem. Despite the progress made by the *Iverson* decision, the author believes women are still less likely to receive fair trials and concludes that the most effective method of eliminating gender bias is mandatory judicial education.

Edith M. Hofmeister, *Women Need Not Apply: Discrimination and the Supreme Court's Intimate Association Test*, 28 U.S.F. L. REV. 1009-77 (1994).

The United States Supreme Court constructed the "intimate association" standard to fight gender discrimination in private organizations, such as male-only clubs. However, this standard has failed to solve the gender discrimination problem; moreover, in California this criterion has resulted in harmful discrimination against women. This Comment provides a history of the discrimination this standard has caused and proposes a better alternative to the Supreme Court standard. A purpose-intensive analysis should be performed to cover both the composition of private clubs and the business advantages derived from club membership.

Peter Jan Honigsberg et al., *When the Client Harasses the Attorney - Recognizing Third-party Sexual Harassment in the Legal Profession*, 28 U.S.F. L. REV. 715-37 (1994).

Recent studies demonstrate that inappropriate remarks and conduct are a problem for women attorneys harassed by their clients. According to the authors, a power imbalance exists between attorneys and clients because clients can complain that the attorney assigned to their case is "uncooperative." These complaints can affect an attorney's standing with their employers, thereby affecting the attorney's economic and social future. The authors conclude that law firms must issue clear sexual harassment policies and that the legal community should offer workshops on the issue of sexual harassment of attorneys.

Joanna L. Grossman, Note, *Women's Jury Service: Right of Citizenship or Privilege of Difference?*, 46 STAN. L. REV. 1115-60 (1994).

This Note analyzes the right of women to serve on juries. The author discusses two separate models of the right to serve on juries: the representative model and the citizenship model. The history of the inconsistent treatment of race and sex in the jury selection process is also examined. The author concludes that in *J.E.B. v. T.B.*, 114 S. Ct. 1419 (1994), the Supreme Court finally recognized that race- and sex-based peremptory challenges both infringe upon basic citizenship rights, and further, that the representativeness and citizenship models are equally important in cases of race- and sex-based exclusion from juries.

Toni P. Lester, *The Yankee Woman in King Arthur's Court - What the United States and the United Kingdom Can Learn From Each Other About Sexual Harassment Law*, 17 B.C. INT'L & COMP. L. REV. 233-74 (194).

This Article discusses the statutes, case law, and remedies of both the United States and the United Kingdom concerning sexual harassment and subsequent employer liability. The author proposes various alternatives to the existing laws in order to more effectively combat sexual harassment. At the very least, multinational companies should impose policies which adhere to the strictest common principles and ethics in the countries in which they are situated. The author proposes a plan for such companies and argues that to operate without such policies is to disservice both employees and employers.

Shari Engles, Comment, *Problems of Proof in Employment Discrimination: The Need for a Clearer Definition of Standards in the United States and the United Kingdom*, 15 COMP. LAB. L.J. 340-70 (1994).

This Comment discusses the development of employment discrimination law and its application to employers who discriminate on the basis of race or sex in the United States and the United Kingdom. It also discusses the adverse effect on a protected class when a neutral employment practice is applied equally to all employees. The focus of the Comment is on the shift of the burden of proof to the employer and the ramifications thereof. A future clarification and strengthening of the law is required if current standards are to be effective in these discrimination cases.

Rebecca H. White & Robert D. Brussack, *The Proper Role of After-Acquired Evidence in Employment Discrimination Litigation*, 35 B.C. L. REV. 49-95 (1993).

The authors discuss the after-acquired evidence defense used by employers accused of discrimination including its applications, limitations and judicial acceptance. It is argued that evidence of misconduct, unknown to the employer at the time of discrimination but later discovered, should not effect an employer's liability for discrimination on the job. It is further argued that regardless of such a defense, a plaintiff should still be entitled to declaratory relief, attorney's fees, partial backpay and perhaps even compensatory or punitive damages.

Emily Love, *Equality in Political Asylum Law: For a Legislative Recognition of Gender-Based Persecution*, 17 HARV. WOMEN'S L.J. 133-55 (1994).

A majority of the world's refugees are women who flee their countries due to gender-based persecution. Many of these women have trouble seeking asylum in the United States. According to the author, the 1980 Refugee Act needs to be amended to include a category for gender-based persecution because current law inadequately protects these women. The Act as it currently stands, provides asylum only for persecution based on "race, religion, nationality, membership in a particular social group or political opinion." By including gender-based persecution in the Act, Congress will be recognizing the concerns unique to certain female refugees and further affirming the legitimacy of the statute's humanitarian intent.

Mary Becker, *Strength in Diversity: Feminist Theoretical Approaches to Child Custody and Same-Sex Relationships*, 23 STETSON L. REV. 701-42 (1994).

This Article discusses formal equality amongst the sexes and the idea that men and women should be treated equally by government. Becker analyzes three different approaches as applied to child custody and the legal recognition of same sex relationships: Mackinnon's dominance approach which equalizes power between the sexes; West's hedonic approach, which aims at improving the quality of contemporary women's lives; and Radin's pragmatic approach, which has no single goal but attempts to see what will work in real life. Becker explores the strengths and weaknesses of each theory, and concludes that there are situations in which each strategy would be highly effective.

Susan Stefan, *Silencing the Different Voice: Competence, Feminist Theory and Law*, 47 U. MIAMI L. REV. 763-815 (1993).

This Article discusses gender discrimination and competency and argues that women are not treated as equally competent to men. Competence involves a relationship between two people: the powerful and the powerless. An incompetent person is characterized as powerless. In order to determine competence, it must be determined whether the person exercised agency by deciding if the person was a decision-maker. The author concludes that society places women in a powerless position because when powerless people are

treated as equals, they become even more powerless as the inequality is strengthened.

Rita Tuzon, *Women Lawyers - Rewriting the Rules*, 25 U. WEST L.A. L. REV. 489-90 (1994) (book review).

Women Lawyers can be divided into two parts. Part One examines the roadblocks women lawyers face in the legal profession by discussing interviews with female Harvard Law School graduates. Part Two explores how the advance of female lawyers has brought equality for women in all areas of the work world. One of the reviewer's criticisms is that the author interviews only female lawyers in large firms and fails to study how other female lawyers have fared. Also, the reviewer maintains that Part Two should have focused more on women lawyers' effect on the legal profession.

Jill Andrews, *National and International Sources of Women's Right to Equal Employment Opportunities: Equality in Law Versus Equality in Fact*, 14 NW. J. INT'L L. & BUS. 413-41 (1994).

Worldwide, women have the right to equal employment; however, implementation and enforcement remain formidable challenges. This Comment examines the sources of a woman's right to equal employment and the problems faced with enforcing equal employment opportunity laws. Litigation is the quickest and most effective means of enforcement; however, because of the burdens of litigation, only the "bravest or most severely discriminated against" will use this means. The author focuses her analysis on the policies and practices of the United States, Japan, and European Community Countries.

Karen M. Davis, *Reading, Writing, and Sexual Harassment: Finding a Constitutional Remedy When Schools Fail to Address Peer Abuse*, 69 IND. L.J. 1123-63 (1994).

Rape and molestation are merely two examples of the types of sexual harassment students inflict on their peers. Many more "innocent" forms exist as well. A 1993 study published by the American Association of University Women indicated that 81% of surveyed students said they had experienced some form of sexual harassment, ranging from sexual remarks to physical contact. The author discusses the serious impact such behavior may have on students, and concludes that schools may be held responsible under the Due Process Clause or the Equal Protection Clause, and

therefore, should be required by the state to establish sexual harassment policies.

David A. Robinson, *Discovery of the Plaintiff's Mental Health History in an Employment Discrimination Case*, 16 W. NEW ENG. L. REV. 55-79 (1994).

The author asserts that millions of American workers are effectively thwarted from exercising their civil rights because they have undergone psychotherapy. Employers demand discovery of therapy records of workers who sue for discrimination claiming emotional distress damages, and then attempt to prove that their mental anguish was caused by personal problems rather than the discriminatory acts. Although it is possible that plaintiffs exaggerate their employer's conduct, the courts should permit such discovery only when the discrimination is emotionally distressing to a person of normal sensitivity.

Judith Resnik, *Gender Bias: From Classes to Courts*, 45 STAN. L. REV. 2195-208 (1993).

The Ninth Circuit Gender Bias Task Force, comprised of judges, litigators and social scientists with expertise in the federal courts, published a report which alleged that "all areas of federal law are connected to and affect women [and] can provide occasions for gender bias." The report focused on gender bias in federal courts and how these courts have lagged behind state courts in addressing the effects of gender bias in the courtroom. The author proposes that remedies to gender-related legal wrongs be addressed collectively, at both a district-by-district level, and by future generations, conferences and task forces.

James G. Babb, *The Use of After-Acquired Evidence as a Defense in Title VII Employment Discrimination Cases*, 30 HOUS. L. REV. 1945-77 (1994).

In order to defend themselves against Title VII claims, employers are using evidence such as on-the-job misconduct, which they discover after the discrimination claim occurs. District Courts are divided into three groups in determining the effect this information will have on back pay settlements. The author argues that all three approaches are flawed because they do not promote the purpose of Title VII which is to end employment discrimination and to compensate the victims. Therefore, the author concludes that either Congress or the United States Supreme Court should re-

solve the dispute by choosing one remedy that will meet the goals of Title VII.

Lawrence Clore, *Labor And Employment Law*, 25 TEX. TECH. L. REV. 749-71 (1994).

This Article contains a survey of cases adjudicating claims under the various labor relations acts. Explored in this discussion are the Age Discrimination Employment Act, the Fair Labor Standards Act, the Federal Service Labor Management Relations Act, the Labor-Management Reporting and Disclosure Act, and assorted matters under the National Labor Relations Act. The author provides comprehensive and concise summations of these decisions, from both a legal and factual perspective.

Anita Bernstein, *Law, Culture, and Harassment*, 142 U. PA. L. REV. 1227-311 (1994).

This Article is a comparative study of American and European sexual harassment law. In discussing sexual harassment law as an American phenomenon the author describes the European Community's adoption and adaptation of American legal theories in this area. The author proposes a conjugation utilizing the best aspects of American and European responses to this problem in order to produce a clear and superior strategy.

David Schultz, *From Reasonable Man to Unreasonable Victim?" Assessing* Harris v. Forklift Systems *and Shifting Standards of Proof and Perspective in Title VII Sexual Harassment Law*, 27 SUFFOLK U. L. REV. 717-48 (1993).

The author examines problems that arise when trying to define the perspective from which to judge whether specific language or conduct violates Title VII. After reviewing Title VII sexual harassment law and discussing the arguments in favor of and against the reasonableness standards, the author questions when efforts to regulate speech in the workplace violate the First Amendment. In his conclusion, the author proposes using a balancing of interests test rather than a reasonableness standard.

Dorothy W. Nelson, *Introduction to the Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 731-38 (1994).

The Ninth Circuit, the first federal circuit to study gender bias, found that women attorneys face credibility problems which, the

author suggests, disadvantages a female attorney's client. Female lawyers and clients, the Task Force discovered, may be subjected to sexist remarks and physical sexual harassment. According to the Task Force, in order to reduce gender bias in the Ninth Circuit, there must be on-going education and all participants must affirmatively attempt to eliminate gender bias.

Judith M. Billings and Brenda Murray, *Introduction to the Ninth Circuit Gender Bias Task Force Report: The Effects of Gender*, 67 S. CAL. L. REV. 739-43 (1994).

Organized to eliminate gender bias within the court system, the National Association of Women Judges (NAWJ) helped to sponsor the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP), designed to present data on gender bias to members of the judiciary. At first, NJEP's success was limited because judges denied that gender bias existed in their courtrooms. Eventually, state courts began creating their own gender bias task forces which found that gender bias is indeed a significant problem, a finding substantiated by a Ninth Circuit Report which confirms that gender bias also exists at the federal level.

Michael A. Zubrensky, Note, *Despite the Smoke, There is No Gun: Direct Evidence Requirements in Mixed-Motives Employment Law After* Price Waterhouse v. Hopkins, 46 STAN. L. REV. 959-86 (1994).

The Supreme Court, in *Price Waterhouse v. Hopkins*, held that the mixed-motives theory of liability is a valid argument for victims of employment discrimination. Under this theory, a plaintiff could prove that an adverse employment decision was motivated by discrimination even though the defendant successfully proved that a legitimate motive also existed. According to the author, the Court's decision abrogates the lower courts' rulings that require plaintiffs who bring mixed-motives claims to establish direct "smoking gun" evidence of discrimination. Agreeing with the holding in *Price Waterhouse*, the author concludes that requiring direct "smoking gun" evidence is too restrictive, and that when plaintiffs are able to present a "thick cloud of smoke," a court must consider it.

Jeffrey Sarles, *The Case of the Missing Woman: Sexual Harassment and Judicial Review of Arbitration Awards*, 17 HARV. WOMEN'S L.J. 17-57 (1994).

This Article recommends that, in cases involving the reinstatement of sexual harassers, the public policy exception to the normally lim-

ited judicial review of arbitration awards apply broadly. Courts should examine arbitration awards which have not conformed with public policy goals. Arbitrators must make a serious effort to ensure that a harasser is not reinstated in the workplace. Since the sexual harasser poses an immediate threat to female co-workers, courts must protect the interests of the harassment discharge cases, which the author believes can be achieved without narrowing the rule which limits grounds for review.

Tami Sandberg, *Unraveling the "In Lieu of What" Test: Title VII Employment Discrimination Damages and the Personal Injury Exclusion*, 19 WM. MITCHELL L. REV. 1018-46 (1993).

Damages received for personal injuries are excluded from gross income under the Internal Revenue Code. In the past, Tax Courts applied one of two tests to determine what damages are excluded. The Supreme Court in *United States v. Burke*, 112 S.Ct. 1867 (1992), determined that the appropriate test to be applied is to examine the nature of the recovery and ask "in lieu of what were damages awarded?" Under this approach, back pay received by employees in a gender discrimination suit is not received as damages and therefore can be fully taxed. The author presents a detailed background of the Internal Revenue Code, Section 104 (a) (2), Title VII and Employment Discrimination as well as a full analysis of the *United States v. Burke* decision. The author concludes that the Court undermines public policy tax fairness, and should have focused on the claim, not the remedy.

Twila Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33-108 (1993).

The author provides an overview of transracial adoption in America. Perry explains the influences behind the various positions, discusses the sociological research that has been done and addresses questions of trust and the role of parenting in regard to transracial adoption. The "liberal colorblind individualists" believe that transracial adoption benefits not only the child, but society in general, moving toward a nonracist society. On the other hand, there are the "color and community consciousness" groups who believe this is detrimental to black children and black communities. Perry concludes that the methodology behind colorblind individualism can contribute to the subordination of black communities, families, women and children.

EMPLOYMENT

Peggy R. Mastroianni & David K. Fram, *The Family and Medical Leave Act and The Americans with Disabilities Act: Areas of Contrast and Overlap*, 9 LAB. L.J. 553-59 (1993).

This Article examines both the contrasts and areas of overlap between the Family and Medical Leave Act of 1993 ("FMLA") and the Americans with Disabilities Act of 1990 ("ADA"). The most significant areas in which the two laws differ and overlap are in the coverage provided to employers and employees and the protections provided in both medical leave and family leave. The authors conclude that employers cannot assume that compliance with one statute is tantamount to compliance with the other and each case must be reviewed as it occurs.

Philip R. Miller, Comment, *Division of Post-Divorce Pension Increases: A Reconsideration of* Shill v. Shill, 29 IDAHO L. REV. 999-1013 (1992-93).

In *Shill v. Shill*, 765 P.2d 140 (Idaho 1988), the Supreme Court ruled that a post-divorce increase in the value of one spouse's pension was separate property and therefore, the non-employee spouse could not share in this increase. This Comment argues that the *Shill* decision was incorrect and suggests that some increases should be construed as community property. Consequently, the author proposes that Idaho courts, like the Nevada and Louisiana courts, look at the nature of the increase in pension benefits to determine whether the increase is community or separate property.

Kenneth R. Swift, *Handbooks, Disclaimers, and Fairness in Minnesota Employment Law*, 17 HAMLINE L. REV. 379-411 (1993).

According to the author, an estimated 200,000 employees in the United States are dismissed each year without cause. This problem exists for mainly two reasons. First, many jurisdictions follow an employment-at-will rule which allows employers to fire employees for any reason. Second, many employers do not provide employees with clear work guidelines, therefore, even in jurisdictions that do not allow employers to dismiss an employee without good cause, it is difficult for an employee to prove that the dismissal was not in good faith. The author focuses on Minnesota law and suggests methods that will require employers to provide unambiguous guidelines to employees which the courts should enforce.

Cheryl L. Cooper, *Family Leave and Family Law*, 27 FAM. L.Q. 461-71 (1993).

In February 1993, President Clinton signed the Family and Medical Leave Act ("FMLA") which grants various employees a leave from their jobs for medical, family, parental or maternal reasons. Family lawyers are affected by this Act, and need to take it into consideration when drafting documents that outline the responsibilities and obligations of their clients. The author discusses various family scenarios such as marriage, alimony, custody and child support, and demonstrates how the FMLA affects each area. The author notes the government's desire for traditional family relations based on the regulations of the FMLA.

Susan S. Grover, *Zoe Baird, Betrayal and Fragmentation*, 2 REV. L. & WOMEN'S STUD. 428-35 (1993).

This Article discusses the problems that professionals face when trying to separate their professional and parental lives. In analyzing the Zoe Baird situation, as well as her own personal life, the author suggests that parents should neither feel the need to hide the fact that they are parents, nor feel vulnerable in their professions because of their parental responsibilities. The author concludes that society should accept the fragmentation of motherhood and lawyering through the integration of women's personal and professional lives in order to make the duality of motherhood and employment a comfortable situation.

Ron A. Vassel, Note, *The Americans With Disabilities Act: The Cost, Uncertainty And Inefficiency*, 13 J.L. & COM. 397-411 (1994).

The ADA prohibits an employer from discriminating against disabled individuals. However, it imposes burdensome regulations on employers and hinders productivity in business. Many employers will hire individuals out of fear of future litigation. This then creates market inefficiency which the employer either absorbs as a loss or passes on to the consumer. However, it is left to the courts to make the final determination as to what is and is not reasonable under the ADA.

FAMILY

Barrie Becker & Judge Peggy Hora, *The Legal Community's Response to Drug Use During Pregnancy in the Criminal Sentencing and Dependency Contexts: A Survey of Judges, Prosecuting Attorneys and Defense Attorneys in Ten California Counties*, 2 S. CAL. REV. L. & WOMEN'S STUD. 527-51 (1993).

This Article analyzes how California state courts factor drug use during pregnancy into women's sentences and discusses California's legal context for determining whether a drug-exposed child should be removed from an addicted woman's custody. The authors argue that drug addiction should not be an aggravating factor in sentencing. In concluding that judges' response to drug use during pregnancy should be limited by statute, the authors suggest that courts should follow federally legislated mandates in order to avoid unnecessary family breakups.

Chirstopher W. Nicholson & Murray O. Singerman, *Grandparent Visitation and Intact Marriages: An Unresolved Maryland Family Law Issue*, 21 U. BALT. L. REV. 311-40 (1992).

Maryland courts do not currently grant standing to grandparents who want to petition for visitation rights when the parents' marriage is intact. This Article argues that grandparents have a constitutional right to visitation which is grounded in the right to family definition. However, parents' rights to privacy in child-rearing deters courts from allowing grandparents to petition for visitation. The authors suggest that Maryland emulate states that have passed statutes giving grandparents standing to petition for visitation regardless of the parents' marital status. Their proposed statute seeks to protect children's interests in forming a relationship with their grandparents, while balancing grandparents' and parents' interests.

Martha J. Bailey, *Mediation of Divorce in China*, 8 CAN. J. L. & SOC. 45-72 (1993).

China has long been a model of divorce mediation for Western Scholars. However, these Western mediation experts have failed to appreciate the social, political and economic pressures which actually surround Chinese mediation and stand in opposition to the Chinese mediation's stated goal of harmony. The article compares mediation and divorce patterns in the Seventeenth and Twentieth-Centuries with an emphasis on continuity through the centuries

and the importance of hierarchy and social structuring. The author details the rights of parties under the 1980 Marriage Law and the social pressures which still discourage divorce in order to strengthen the authoritarian systems of family and state existing in China.

Arthur Serratelli, Note, *Surrogate Motherhood Contracts: Should the British Fill the U.S. Legislative Vacuum?*, 26 GEO. WASH. J. INT'L L. & ECON. 633-74 (1993).

In the wake of the controversial and highly publicized cases involving surrogate motherhood contracts, Congress introduced legislation prohibiting commercial surrogacy contracts. This Note compares recent federal proposals to ban commercial surrogacy with the British Surrogacy Arrangement Act of 1985. By examining the British surrogacy arrangements, the author discusses the potential social impact of such legislation in the United States. Lastly, the author describes the activities of the Royal Commission in Canada and, as an alternative to the prohibition of surrogacy, recommends the adoption of the regulatory approach taken by the Ontario Law Reform Commission.

Cody L. Blazer, Note, *Grandparent Visitation Rights-Constitutional Considerations and the Need to Define the "Best Interest of the Child" Standard*, 29 LAND & WATER L. REV. 593-613 (1994).

This Note discusses the Wyoming case of *Goff v. Goff* dealing with Wyoming's new grandparent visitation statute. In *Goff*, the grandparents had retained temporary custody of their granddaughter for the four years following their son's divorce, prior to his relocation to Wyoming. Once in Wyoming the grandparents were given limited access to their grandchild. The court held that the grandparent visitation statute had been violated because their grandchild had resided with them for more than six months. The court further reasoned that because of the important and symbolic role grandparents play in the lives of their grandchildren, visitation rights should not be denied.

Melinda A. Roberts, *Good Intentions and a Great Divide: Having Babies by Intending Them*, 12 L. & PHIL. 287-317 (1993).

A recent bill established that preconception agreements are now void as against public policy. The bill further prohibits any compensation relating to such an agreement. This Article supports legislation against commercial surrogacy, arguing on behalf of the

child's interests while criticizing opposing theories supporting commercial surrogacy. One such criticism states that commercial surrogacy induces birth without concern as to whether the child will be placed in a home conducive to the child's best interests. The Article also explores the child's Thirteenth Amendment rights barring slavery and involuntary servitude, which might be violated by exchanging a child, or parental rights in the child, for money.

Candace M. Zeirdt, *Make New Parents But Keep the Old*, 69 N.D. L. REV. 497-514 (1993).

This Essay proposes a new alternative to the foster care/adoption process: the "weak adoption." This process terminates birth parents' rights, permitting foster parents to adopt the child; however, the birth parents still retain visitation rights. This alternative employs the benefits of the biological lifeline and the child's ability to maintain a relationship with more than one adult. The author suggests that these two criteria are not taken into account in the current system.

C.M.A. McCauliff, *The Medieval English Marriage Portion From Cases Of* Mort D'Ancestor *and* Formedon, 38 VILL. L. REV. 933-1002 (1993).

In the thirteenth and early fourteenth centuries, remedies for the English marriage portion, which played a significant role in the development of the theory of estates in land, included writs of Mort D'ancestor and writs of Formedon. This Article defines these remedies and describes the circumstances that dictated the demandant's choice of a writ. Through a detailed analysis of the cases from this time period, the author depicts the development of the doctrine of estates in land by describing the emergence of substantive law which eventually recognized and provided protection to those holding marriage portions.

Peter C. Alexander, *Divorce and the Dischargebility of Debts: Focusing on Women as Creditors in Bankruptcy*, 43 CATH. U. L. REV. 351-98 (1994).

The bankruptcy court's treatment of ex-husbands discharging marital debts in bankruptcy adversely affects women. The author attributes the disparate treatment to the bankruptcy courts' ignorance of gender specific factors. To rectify this unfair treatment, the author proposes an amendment to § 523(a)(5) of the Bankruptcy Code. This amendment would minimize a bankruptcy

court's involvement in the dissolution of marriage by having a divorce court, not a bankruptcy court, address modifying or limiting the amount of alimony, maintenance or support.

Marcia Neave, *Resolving the Dilemma of Difference: A Critique of 'The Role of Private Ordering in Family Law'*, 44 U. TORONTO L.J. 97-131 (1994).

The author evaluates various proposals calling for reform in divorce negotiations. Mainly, she discusses the proposal of Michael J. Trebilcock and Roseman Kashvani: that couples will maximize their resources by using private agreements instead of court ordered settlements. The author disagrees and contends that this proposal exacerbates the problem of inequality in the bargaining "process." This inequality develops because women lose earning power after remaining home to care for children. Therefore, the author argues that our social structure must be changed so that family responsibilities do not adversely affect economic self-sufficiency.

Margaret F. Bring & Steven M. Crafton, *Marriage and Opportunism*, 23 J. LEGAL STUD. 869-94 (1994).

In order to protect domestic privacy, many states have adopted no-fault divorce statutes. However, the result is that neither party is held accountable for the actions that led to their break-up. Also, studies show that states with no-fault divorce tend to have increased rates of spousal abuse and adultery and less time spent investing in children and the marriage. Because there is no penalty for being a "bad spouse," there is less incentive for spouses to work on building the marriage. The authors conclude that grounds for divorce may be based on no-fault statutes, but accountability must be relevant for property division and alimony settlements.

Robert M. Kort, Johnson v. Calvert: *California Supreme Court Enforces Surrogacy Contract*, 26 ARIZ. ST. L.J. 243-51 (1994).

In *Johnson v. Calvert*, the California Supreme Court upheld a gestational surrogacy agreement and found that the surrogate in that case relinquished all rights to the child. Relying on contractual principles, the court used the intent of the parties as a test for establishing the appropriate mother-child relationship. In contrast, the dissent argued that the court should engage in a case by case analysis of the child's best interests. The author, supporting the majority's position, fears that a "best interests of the child" test will

result in uncertainty for all parties and will discourage people from entering surrogacy agreements.

Rosemary Tobin, *The Family Protection Act 1955: Expanding The Categories of Eligible Applicant*, 16 NZU L. REV. 1-22 (1994).

New Zealand law requires that a deceased provide for the members of his family left behind. This requirement is balanced with the testator's right to dispose of his or her property as he or she wants. If no provisions are made, or an eligible family member is purposefully not provided for, the eligible family member can sue for part of the estate. The author advocates that the meaning of family member must be updated to include homosexual partners and stepchildren. The author proposes consideration of the Inheritance Act of 1975 (UK) and the Family Provisions Act of 1982 (NSW) for the way in which they have extended the eligible class of family members.

Donald A. Rea, *Family Law - Adoption: Do Laws Prohibiting Reimbursement to a Natural Mother for Reasonable Expenses Incurred During Pregnancy Truly Serve the Best Interests of the Child?*, 2 U. BALT. L. REV. 133-46 (1992).

The author discusses a Maryland Family Law provision which prohibits adoptive parents from compensating the natural mother for expenses incurred during her pregnancy. The objective of this provision is to prevent a natural mother from accepting compensation for having a child. However, the author questions whether this provision is in the best interest of the child, citing to *In re Adoption No. 9979*, a decision which allows compensation for maternity clothing and which seems more consistent with the intent of the Maryland legislature. The author argues that this provision should be re-examined in order to maintain the best interests of the child.

Kurt F. Hausier, Note, *The Right to Appointment of Counsel for the Indigent Civil Contemnor Facing Incarceration for Failure to Pay Child Support* - McBride v. McBride, 16 CAMPBELL L. REV. 127-45 (1994).

In *McBride v. McBride*, 334 N.C. 124, 431 S.E.2d 14 (1993), the North Carolina Supreme Court held that the Due Process Clause of the Fourteenth Amendment requires that absent appointment of counsel, indigent civil contemnors may not be incarcerated for failure to pay child support arrears. In determining whether an indigent has the right to counsel, a court should focus on the possi-

bility of deprivation of liberty, not whether it is a civil or criminal proceeding. Upon the inevitable application of *McBride* to other areas of civil litigation, the future holds more representation by counsel and less unjust incarceration.

John M. Russell, Comment, *Family Law* — Nash v. Mulle: *Order to Establish Educational Trust to Pay Child's Future College Expenses is not an Impermissible Award of Postminority Support*, 24 MEM. ST. U. L. REV. 559-70 (1994).

In his analysis of the Tennessee Supreme Court decision in *Nash v. Mulle*, the author supports the Court's order requiring a wealthy non-custodial parent to establish an educational trust fund for a child. According to the author, creating this fund is not an unlawful award of postminority support even where the child will realize benefits past the age of minority. The author points to correlative decisions in other states and to policy objectives furthered by this decision.

Kimberly H. Harris, Note, *Interstate Child Custody Disputes: A Practical Guide for Tennessee Attorneys on the Law of Jurisdiction*, 28 MEM. ST. U. L. REV. 533-57 (1994).

This Note examines the complex statutory question of jurisdiction that often arises in child custody cases. Addressing the development of Tennessee law pertaining to child custody jurisdiction, the author describes the problems encountered by the courts because of Tennessee legislation and Tennessee case law. In the final part of her discussion, the author provides guidelines for Tennessee attorneys and courts to follow when presented with this issue.

Yvonne M. Warlen, Note, *The Renting of the Womb: An Analysis of Gestational Surrogacy Contracts Under Missouri Contract Law*, 62 UMKC L. REV. 583-617 (1994).

Gestational surrogacy poses a new question as to the legal definition of motherhood. The author discusses the new reproductive techniques involved in gestational surrogacy and how this issue is dealt with both internationally and domestically. Warlen specifically focuses on *Johnson v. Calvert*, 851 P.2d 776 (Cal. 1993), (en banc), *cert. denied*, 114 S.Ct. 206 (1993), the only appellate case to examine this issue. The *Johnson* court recognized parental rights of the genetic mother. Finally, the author analyzes Missouri statutes and concludes with a discussion of surrogacy contracts, examining why they should be found void as contrary to public policy.

Carol Weisbrod, *Family Governance: A Reading Of Kafka's Letter To His Father*, 24 U. TOL. L. REV. 689-723 (1993).

The State often plays an important role in relation to the family unit. This Article discusses family governance and authority by analyzing Kafka's *Letter to His Father*, a text dealing with the family unit in 20th century Prague, which recognizes various issues involving family governance and state regulation. In noting that society looks to the State to solve the problems of the family, the author suggests that the State should take positive actions for the benefit of both the individuals and the family unit as well.

Duncan A. Peete & William E. Coffee, *Tax Consequences of Divorce and Legal Separation*, 55 MONT. L. REV. 359-86 (1994).

This Article discusses the tax consequences of separation and divorce, and specifically addresses the tax considerations of child support payments, alimony payments and property transfers which often occur as a result. To determine tax consequences, it is necessary to analyze the spouses' filing status, dependency exemptions, as well as the possible deductibility of legal expenses resulting from the separation or divorce. The authors note that a thorough understanding of the spouses' tax status is imperative for any lawyer when counseling a client during the dissolution of a marriage.

Yael v. Levy, *The Agunah and the Missing Husband: An American Solution to a Jewish Problem*, 10 J.L. & RELIGION 49-71 (1993-94).

This Article proposes a solution to the Jewish problem of the Agunah, a Jewish woman who is not validly divorced under Jewish law because her husband does not consent or is not capable of giving his wife a divorce. The focus is on the problem of the missing husband. The history is traced, currently implemented modern American Jewish solutions are examined, and the United States law on absent persons is discussed. The author proposes that a modern day rabbinic directive be enacted, whereby Jewish lawmakers adopt the American presumption of the death of the missing husband.

Roger J.R. Levesque, Note, *Looking to Unwed Dads to Fill the Public Purse: A Disturbing Wave in Welfare Reform*, 32 U. LOUISVILLE J. FAM. L. 1-31 (1993-94).

This Note discusses the child support system for indigent children and the role of the unwed father. The author discusses the discrepancy in support obligations between unwed mothers and fa-

thers and the trend towards a new family support system whereby the unwed father would take on new financial responsibilities. The new trend views the absent father as the sole supporter for the child and mother. The author criticizes this view because it is the absent father and not society who should be responsible for supporting poor children and their mothers. He further believes that these unwed fathers are being targeted at the expense of the welfare system.

Katherine Kruse, Note, *Constitutionality of Recognizing Multiple Parental Rights in the Surrogacy Context*, 7 WIS. WOMEN'S L.J. 67-84 (1992-93).

This Article explores the constitutional ramifications of giving various parties parental rights in surrogacy cases. Case law is considered as it relates to the issue of a gestational mother's rights as compared to the rights of a genetic mother. The author examines the question of who is the sole mother, and then explores the possibility of the Constitution allowing states to recognize multiple parents who wish to have that status. According to the author, as the courts face more surrogacy cases, case law will begin to shed light on judicial interpretation of the Due Process Clause.

Carolyn L. Dessin, *Feed a Trust and Starve a Child: The Effectiveness of Trust Protective Technique Against Claims for Support and Alimony*, 10 GA. ST. U. L. REV. 691-723 (1994).

Property can be placed in a trust for the benefit of one or more beneficiaries. These trusts often include various protective devices to prevent the beneficiary's creditors from reaching the assets of the trust. When the creditor is a child or former spouse seeking unpaid support or alimony, public policy concerns should be considered when interpreting trusts with these protective devices. The commonly used devices and the responses by state legislatures and courts to such claims are evaluated in this Article. Also included is a suggested method for balancing the competing interests involved.

Thomas M. Fetherston, Jr., *Marital Property and the Estate Practice: Where Worlds Collide*, 29 IDAHO L. REV. 853-92 (1992-93).

Texas experienced dramatic changes in marital property law during the 1980's, merging family law and property law into one area of jurisprudence, "family property." Texas law presumes that all assets of a marriage are community property, unless specifically la-

beled separate property. Marital and premarital agreements are recognized as converting community property into a spouse's separate property; such agreements would exempt the property of one spouse from the creditors and claims of the other spouse. The author argues that lawyers representing married couples must recognize complex relationships between estate planning, property law and family law.

Nadine Taub, *Amicus Brief: In the Matter of Baby M,* 14 WOMEN'S RTS. L. REP. 243-61 (1992).

This Article reprints the amicus curiae brief to the court in the controversial Baby M case submitted by the Women's Rights Litigation Clinic at Rutgers Law School in Newark, New Jersey. After examining existing New Jersey statutory law, the Clinic presented three arguments to the New Jersey Supreme Court. First, that under New Jersey law the Court must be satisfied that the surrogate mother intentionally abandoned the child before she can terminate her parental rights. Second, since it is against public policy to terminate parental rights through contractual agreements, such agreements are unenforceable. Third, assuming that such contractual agreements are generally permissible, the Court must determine the validity of the contract in this case. The brief concludes that under New Jersey law, the contractual provision is unenforceable. If however, the Court finds it enforceable, it should inquire both into the terms of this contract and the surrounding circumstances to determine fairness and enforceability in equity.

Wendy J. Owen & J.M. Bunstead, *Canadian Divorce Before Reform: The Case of Prince Edward Island,* 1946-67, 8 CJLS/RCDS 1-4 (1993).

In examining the meaning and practice of divorce in Canada between the end of World War II and divorce reform in 1968, the authors analyze the divorce court case files from Prince Edward Island, and attempt to place the divorce law and practice in a national framework. Studies of the social divorce patterns during that time reveal that those patterns are consistent with available data for the preceding and following time periods. The authors conclude with an examination of divorce patterns within the Island's farming community, looking to explanations, other than traditional moral values, to define their distinctiveness.

Linda D. Elrod, *Summary of the Year in Family Law*, 27 FAM. L. Q. 485-514 (1994).

Family and childrens' issues have finally begun to receive the attention they deserve. In 1993, there were major developments in the national, international, and state arenas including: the Family and Medical Leave Act and the Hague Convention on the Civil Aspects of Child Abduction. A new administration, an increase in crime, and changing marriage patterns are all factors to which the author attributes this recent attention. According to the author, the recent advances are indicative of an increased focus on family issues that will continue to grow as society continues its rapid pace of change.

Peggy Cooper Davis, *Symposium, Changing Images of the State: Contested Images of Family Values: The Role of the State*, 107 HARV. L. REV. 1348-73 (1994).

There are two views toward family values — the moral standards view and the moral independence view. The former makes the state an active enforcer of shared values while the latter prevents the state from becoming an undue influence on the formation of individual values. Drawing on antislavery stories, the author makes a constitutional argument in favor of moral independence. Finally, the author derives an inherent autonomy argument from the Due Process Clause of the Fourteenth Amendment and connects this concept with the conflict over family values.

Debra L. Losnick, *Symposium: Domestic Violence and Child Abuse, Foreword: Juvenile Court - Making It for Children*, 20 W. ST. U. L. REV. 293-6 (1993).

This Article focuses on the proper procedure for dealing with children in the courtroom. The roles of both the child's attorney and the judge are briefly discussed. It is suggested that the child's attorney must be candid with the child and put forth the child's best interests while making sure that the child understands what is happening procedurally. The author concludes that the judge should minimize the child's stress by giving the child a teddy bear; using the child's name instead of the term "minor"; and empowering older children by making parental visits subject to the child's consent.

Steve Gassner, *Protecting Unwed Fathers' Constitutional Rights In Interstate Child Custody Cases: When Solomon's Dilemma Becomes A Clash Of The Titans*, 14 J. JUV. L. 63-80 (1993).

In several cases, the Supreme Court has recognized that the Constitution protects the rights of unwed fathers to raise their children. Statutes denying timely exercise of biological fathers' parental rights are unconstitutional because they violate the Due Process and Equal Protection clauses. Since the Supreme Court has denied certiorari, there is potential for "jurisdictional deadlock" between states which can only be resolved by either creating a federal jurisdictional remedy in child custody cases, having a federal appellate court determine the extent of protection for unwed fathers who exercise their guaranteed parental rights, or drafting uniform statutes adopted by every state which protect fathers' rights to their constitutional limit.

J. Nelson Thomas, *Prosecuting Religious Parents for Homicide: Compounding a Tragedy?*, 1 VA. J. SOC. POL'Y & L. 409-44 (1994).

When parents substitute spiritual treatment for medical care, and the child then dies, the parents may be charged and convicted of negligent homicide. This Note argues that religious parents should be held to a responsible standard of care, one that requires parents to provide responsible, though not necessarily conventional, care. While certain forms of spiritual treatment, such as abusive faith healers, are not legally acceptable, other forms of unorthodox treatment do meet the standard of responsible care. Applying the responsible care standard could make a difference in the homicide prosecutions of religious parents.

Joan C. Williams, *Married Women and Property*, 1 VA. J. SOC. POL'Y & L. 383-408 (1994).

Female-headed households are five times more likely to be impoverished than households with a male present. This Article contends that women are disproportionately impoverished because they have historically been deprived of property ownership. Upon divorce, the husband's salary, previously treated as family property, is now recharacterized as the personal property of the husband. The author argues that approaches such as alimony, child support, and marital property, which presumably protect divorced women, actually disadvantage them. As a result, the economic disenfranchisement of American women continues today.

Comments and Recommendations on the Lawyer's Duties in Representing Husband and Wife, 28 PROP. PROB. & TR. J. 765-802 (1994).

In response to the Report of the Special Study Committee on Professional Responsibility, a commentary was written to discuss the ethical issues that the estate planning lawyer may be faced with while counseling husbands and wives. It lists and analyzes the various rules set forth by the American Bar Association thereby providing a tool for the estate planning lawyer in representing spouses. The author discusses the many dilemmas faced by the estate planning lawyer including, most couples' desire to share legal representation. The author concludes that in all circumstances the lawyer should set his role in the proceedings, so that clients can have a better understanding of the information they are given, as well as the legal process.

GAY RIGHTS

Eric A. Roberts, Note, *Heightened Scrutiny Under the Equal Protection Clause: A Remedy to Discrimination Based on Sexual Orientation*, 42 DRAKE L. REV. 485-510 (1993).

This Note discusses judicial and legislative actions which eliminate public discrimination, traced from the origins of the Constitution of the United States. Legislative discrimination against gays and lesbians based solely on sexual orientation has prevailed despite constitutional guarantees of equality. The article focuses on the termination and legislative prevention of same sex foster and adoptive parents and same sex marriage and immigration statutes. Military and employment matters related solely to sexual preference without regard to work competence are also examined.

Jeffrey S. Byrne & Bruce R. Deming, *On the Prudence of Discussing Affirmative Action for Lesbians and Gay Men: Community, Strategy, and Equality*, 5 STAN. L. & POL'Y REV. 177-89 (1993).

This Article analyzes the prudence of discussing affirmative action for lesbians and gay men. After considering the case for and against enganging in active discussion, the authors conclude that actively discussing affirmative action in the political arena could damage immediate progress. In an academic context, however, the authors suggest that substantive discussion of sexual orientation-based affirmative action could help expand conceptions of gay and lesbian people's privacy rights, inform political strategy, and prepare advocates for future debates.

Suzanne B. Goldberg, *Give Me Liberty or Give Me Death: Political Asylum and the Global Persecution of Lesbians and Gay Men*, 26 CORNELL INT'L L.J. 605-23 (1993).

In many countries, women and men are persecuted because they are lesbian or gay. This Article discusses the extreme persecution of lesbians and gay men worldwide and explains how a large number of these people seek asylum in the United States. The author analyzes the eligibility standards of United States asylum law and argues the hypothetical case of a Romanian lesbian seeking asylum in the United States. The author concludes that lesbians and gay men constitute "a particular social group" and therefore, these people should be eligible for asylum under the United States Immigration and Nationality Act standards.

Jane S. Schacter, *Poised at the Threshold: Sexual Orientation, Law, and the Law School Curriculum in the Nineties*, 92 MICH. L. REV. 1910-28 (1994) (reviewing WILLIAM B. RUBENSTEIN, ED., LESBIANS, GAY MEN AND THE LAW (1993)).

This article reviews the new law school casebook on sexual orientation and the law by William B. Rubenstein. The review applauds Rubenstein's thematic organization and his contextual approach to the topic. According to the author, this book will assist law professors in their presentation of the legal dimensions of sexual orientation. The author concludes that *Lesbians, Gay Men and the Law* will influence the way future lawyers think about these issues, thereby helping to shape the evolving debate on lesbian and gay male civil rights.

Arthur A. Murphy, *Homosexuality and the Law: Tolerance and Containment II*, 97 DICK. L. REV. 693-717 (1993).

This Article proposes a statute that advocates a policy of tolerance and containment of homosexual behavior. The author believes that since there is more than one reasonable policy response to this issue, the federal government should not make this determination. At issue with public policy are competing values, conflicting opinions and political choices. Therefore, the author concludes, it is up to state governments to decide.

Jody Freeman, *Defining Family in* Mossop v. DSS*: The Challenge of Anti-Essentialism and Interactive Discrimination for Human Rights Litigation*, 44 U. TOL. L.J. 41-96 (1994).

Moss v. DSS is a case before the Supreme Court of Canada, in which a gay man claims he has been discriminated against on the basis of family status in violation of the Canadian Human rights Act, because he was excluded from an employment benefit plan. The problem stems from what constitutes a family in today's world. The Article is a legal argument construed by the author in response to this case before the court, and what problems confront the Supreme Court. Freeman discusses the facts of the case, both sides of the issue and the "social reality of families." Also included are critiques from various groups, who state their positions in regard to homosexuality and family status.

Brenda Cossman, *Family Inside/Outside*, 44 U. TORONTO L.J. 1-39 (1994).

Canada is struggling with the issue as to what a family is and who should be included in the definition. The Supreme Court of Canada is deciding for the first time a gay rights case, which has spurred a great debate concerning lesbian and gay relationships and family status. The plaintiff and "We are Family," a lesbian and gay campaign group in Canada, are fighting to be accepted into their country's definition of family. On the one side are those who believe that members of the homosexual community are not entitled to any rights because they are not a family in the "traditional" sense. On the other hand, many believe that the notion of a "traditional" family is obsolete and homosexuals are entitled to claim the benefits a family has, such as health insurance for partners. The other attempts to help people move beyond this debate, accepting both viewpoints thereby demonstrating that everyone is "inside" and "outside" of a family, regardless of their sexual preference.

Kenneth L. Schneyer, *Avoiding the Personal Pronoun: The Rhetoric of Display and Camouflage in the Law of Sexual Orientation*, 46 RUTGERS L. REV. 1313-94 (1994).

This Article analyzes the way in which homosexuals are unfavorably portrayed in the law concerning sexual orientation. The author focuses on four recent legal texts: *Shahar v. Bowers*, 836 F. Supp. 859 (N.D. Ga. 1993), CONN. GEN. STAT. ANN. Section 46a-81a to 81r, COLO. CONST. art. II, Section 30b, and *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993). Only in the biographical opening of the plain-

tiff's papers in *Shahar* do the writers of the text include homosexuals among their textual community. The author concludes that because of the subjectivity of sexual identity, only language that highlights this subjectivity can broaden the textual community to include homosexuals.

Joseph W. Hovermill, *A Conflict of Laws and Morals: The Choice of Law Implications of Hawaii's Recognition of Same-Sex Marriages*, 53 MD. L. REV. 450-93 (1994).

This Article discusses the controversial issue of the status and recognition of same-sex couples. There is currently a disagreement over what law a state should apply when it does not recognize same-sex marriages but is confronted with a same-sex marriage performed legally in a sister state. The author discusses the choices of law, public policy, and constitutional restrictions on rejecting the sister state's laws and the validity of such a marriage. The author advocates the position that unless a state has legislated a clearly defined public policy to the contrary, the state should recognize the validity of the same-sex marriage.

Jennifer Wriggins, *Kinship and Marriage in Massachusetts Public Employee Retirement Law: An Analysis of the Beneficiary Provisions and Proposals for Change*, 28 NEW ENG. L. REV. 991-1023 (1994).

The Massachusetts Public Employee Retirement Law is criticized as being rigid and inequitable in failing to extend employment benefits to "domestic partnerships." The author would prefer employment benefits to reach those emotionally involved in intimate, cohabitating non-marital relationships. The article discusses various provisions of the retirement statute which deny benefits to those falling beyond the law's traditionally accepted definition of family. Finally, proposals to the statute are offered which would ultimately recognize the "domestic partner."

R. Altra Charo, *And Baby Makes Three—or Four, or Five, or Six: Redefining the Family After the Reprotech Revolution*, 7 WIS. WOMEN'S L.J. 1-23 (1992-93).

Preference for heterosexual couples as parents is unwarranted, therefore, single parents, same-sex couples and larger groups of adults may serve equally well as parents. This new construct permits recognition of genetic, gestational and contractual parents under the law. The author focuses on the possibilities of non-traditional definitions of the model of the family and provides a discus-

sion of inconsistent findings in American court cases on issues of what constitutes a family. In the 1990s "real" families do not necessarily follow the traditional biological model.

Kenneth Williams, *Gays in the Military: The Legal Issues*, 28 U.S.F. L. REV. 919-56 (1994).

This Article discusses the legal problems that the United States Supreme Court faces concerning President Clinton's new policy guidelines on homosexuals in the military. The history of the ban includes Clinton's campaign and in-office promises later recanted due to political pressure. The Article analyzes the violation of the First and Fourteenth Amendments to the Constitution by the enforcement of the ban on sexual preference status only, notwithstanding conduct issues. The article further explores the status and conduct debate by noting that termination because of status only violates the Equal Protection Clause of the Fifth Amendment.

William N. Eskridge, Jr., *A History of Same Sex Marriage*, 79 VA. L. REV. 1419-513 (1993).

Opponents offer several arguments against the recognition of same-sex marriage. First, it is inconsistent with the definition of marriage; second, it is contrary to community values and traditional teachings; third, pragmatically, it would not be feasible. The author attempts to dispel these arguments by exploring how same-sex marriages have been a part of numerous cultures throughout history. The author concludes that the recognition of same-sex marriage is a goal the homosexual community should try to achieve by using methods similar to those helpful in ending the prohibition on interracial marriages.

David A. Landau, Note, *Employment Discrimination Against Lesbians and Gays: The Incomplete Legal Responses of the United States and the European Union*, 4 DUKE J. COMP. & INT'L L. 335-61 (1994).

This Note explores the issue of anti-homosexual employment discrimination in the United States and Europe. State and local remedies in the United States and Europe are examined, as is the existing legislation in employment discrimination and its judicial interpretation. The article focuses on the February 1994 homosexual limitation policy of the military, and discriminatory actions. The article concludes by reasserting a remedy and need for action by both the United States and the European Union. The remedy is

to enact legislation that ensures legal protection and eliminates all forms of anti-homosexual discrimination.

Brian J. McGoldrick, *United States Immigration Policy and Sexual Minorities: Is Asylum for Homosexuals a Possibility?* 8 GEO. IMMIGR. L.J. 201-26 (1994).

Until the passage of the Immigration Act of 1990, the U.S. was hostile towards homosexual immigrants. Originally, homosexuals were banned from entering the U.S. as persons falling under the category of psychopathic personalities. Presently, courts must decide how to interpret the 1990 Act and determine who is a refugee due to their sexual orientation. To successfully claim refugee status, it must be shown that homosexuals constitute the requisite social group, and that documentation of persecution exists.

Stuart Grider, *Sexual Orientation As Grounds For Asylum In The United States*, 35 HARV. INT'L L.J. 213-24 (1994).

The granting of asylum based on persecution due to one's sexual orientation was decided in *In Re Tenorio*, no. A72 093 558 (EOIR Immigration Court, July 26, 1993). The author discusses the judge's analysis and the possible outcomes of the decision's appeal to the reviewing court. The author suggests that the reviewing court should revise the analysis test employed by the lower court, into one which bases its finding of a particular social group on how the group is recognized externally. The opinion should also be published in order to assign it precedential value.

Daniel R. Ortiz, *Creating Controversy: Essentialism and Constructivism and the Politics of Gay Identity*, 79 VA. L. REV. 1832-57 (1993).

A debate currently exists as to whether gay sexuality has always existed or if it is a modern development. This conflict, known as the constructivist debate, affects the existence of gay history, gay community and gay identity. This Article examines this debate and suggests that there is no real conflict between the essentialism view and the constructivism view on gay identity unless a single description is necessary. The author proposes that this debate was created by society, and the need for a single general description of gay identity still exists due to gay political needs.

Janet E. Halley, *Reasoning About Sodomy: Act and Identity in and After* Bowers v. Hardwick, 79 VA. L. REV. 1721-80 (1993).

Sodomy statutes have an important effect on society's views towards homosexuals and heterosexuals. The author describes act and identity as two different meanings of sodomy, and describes their relationship to one another through an analysis of *Bowers v. Hardwick*, 478 U.S. 186 (1986). In *Bowers*, the Supreme Court held that constitutional privacy and substantive due process rights are not violated by the criminalization of "homosexual sodomy." The author critiques the history and present uses of sodomy and suggests that sodomy is an act, not an identity, attributed solely to homosexuals.

Nancy W. Ryan, *Conduct Unbecoming: Gays and Lesbians in the U.S. Military*, 25 U. WEST L.A. L. REV. 491-97 (1994) (book review).

In *Conduct Unbecoming*, the author addresses the contradictions and inconsistencies of the military's exclusionary policy and explores the personal accounts of some who fought to change this policy. According to the reviewer, it is shocking to what extent anti-homosexual discrimination exists in the military and to what end the military will go to investigate unsubstantiated reports and uncredible evidence. Those who question a homosexual's ability to serve in the military, and especially those with the power to change existing policy should, in the reviewer's eyes, be certain to read this book.

Randy M. Fogle, *Is Calling Someone Gay Defamatory?: The Meaning of Reputation, Community Mores, Gay Rights, and Free Speech*, 3 LAW & SEXUALITY 165-99 (1993).

This Article explores whether imputations of homosexuality are actionable under defamation law. The author examines defamation law, focusing on its basic function: protecting one's reputation. Because defamation is a relative phenomenon, there are differing definitions of defamation based on various regional attitudes towards homosexuality. The author proposes a mode of analysis to determine whether or not imputations of homosexuality should be considered defamatory.

Elvia R. Arriola, *Sexual Identity and the Constitution: Homosexual Persons as a Discrete and Insular Minority*, 14 WOMEN'S RTS. L. REP. 263-96 (1992).

Homosexuals, as a "discrete and insular minority" are in need of judicial protection from discrimination, which should not be lim-

ited to certain groups identified in certain ways such as skin color. The author argues that since sexual orientation is an irrelevant trait under the Constitution, a person's right to equal protection should not be abridged on that basis. Despite it becoming more politically and socially acceptable to treat homosexuals equally, it has not enjoyed similar legal acceptance. Therefore, the gay legal agenda must continue efforts to abolish laws against sodomy as well as any other laws which condemn the gay lifestyle.

Ruth Colker, *A Bisexual Jurisprudence*, 3 LAW & SEXUALITY 127-37 (1993).

This Article attempts to define bisexual jurisprudence as opposed to lesbian or gay jurisprudence. The author describes her feeling of alienation from the gay community after her heterosexual marriage. In the remainder of the article, the author discusses the lack of a bisexual jurisprudence in our system, describing the small body of law dealing with bisexuals as deceptive and lacking true value as law.

Particia A. Cain, *Litigating For Lesbian and Gay Rights: A Legal History*, 79 VA. L. REV. 1551-641 (1993).

Most scholars view the Stonewall riots as the dawn of the gay rights movement, and *Bowers v. Hardwick*, 478 U.S. 186 (1986), as the start of gay rights litigation. By exploring the history of the gay/lesbian movement, the author dispels these notions and contends that Stonewall is actually a turning point, and similarly, that *Hardwick* is merely the most pronounced court decision on the subject. As a long term strategy the author advocates using a substantive due process argument, focusing on areas of discrimination not covered by *Hardwick*.

Shelly A.M. Gavigan, *Paradise Lost, Paradox Revisited: The Implications of Familial Ideology for Feminist, Lesbian, and Gay Engagement to Law*, 31 OSGOODE HALL L.J. 589-624 (1993).

The article discusses various relationships and outlooks that feminists, gays and lesbians have towards family structure and family life. Criticizing some feminists' analysis of the definition of family, the author maintains that the implications of these views lead to a definition of family that is based on white heterosexual values. By quoting well known feminists and relying on their teachings, this Article attempts to expose its readers to other definitions of family, and give support for the author's own beliefs of what those defini-

tions should be. The author's final argument is that if a more liberal definition of family is adopted, there would be less litigation and debate on this issue.

HEALTH

Elizabeth J. Jameson & Elizabeth Wehr, *Drafting National Health Care Reform Legislation to Protect the Health Interests of Children*, 5 STAN. L. & POL'Y REV. 152-77 (1993).

This Article discusses the need for health reform to include provisions that ensure children's access to health care that is comparable to that of adults. The authors argue that the need for children to have access to health care is greater than that of adults, because children with serious illnesses suffer developmental setbacks, as well as physical consequences. The authors conclude that securing children's equal access to health care benefits requires a two-fold approach. First, a private right of action must be included in the health care reform act. Second, health care reform should unambiguously provide for a *de novo* standard of judicial review of benefit determination decisions.

Lillian Gonzalez-Pardo, M.D., *Women's Health Care: Limited Access Despite Majority Status*, 3 KAN. J.L. & PUB. POL'Y 57-63 (1993).

The author criticizes the disparity that exists between men and women with respect to access to health care. Research has shown that certain health concerns are more pervasive in women than in men, including: cardiovascular disease, cancer, and the spread of sexually transmitted diseases. The author points out that despite these special medical needs, women's access to quality health care is inadequate in both its availability and financial cost. The author hopes that the increasing number of women in the fields of law, legislation and medicine will help reform the national health care system to be more beneficial to women and their specialized medical needs.

Pamela H. Bucy, *Health Care Reform and Fraud by Health Care Providers*, 38 VILL. L. REV. 1003-49 (1993).

Health care fraud wastes billions of dollars each year and often decreases the quality of patient care. This Article analyzes various health care reform proposals, including President Clinton's health care reform package, and discusses what reforms will promote or discourage fraud by providers. According to the author, the opti-

mal health care package includes capitation reimbursement; managed competition; co-payments; and, uniform billing and payment procedures. But even in the optimal health care system, concludes the author, some fraud will still exist. Our goal is to adopt steps that make fraud easier to detect and prove.

Frank I. Clark, *Withdrawal of Life Support in the Newborn: Whose Baby Is It?*, 23 SW. U. L. REV. 1-46 (1993).

The 1984 Federal Child Abuse Amendments to the Child Abuse Prevention and Treatment Act established the legal guidelines which physicians must follow in administering medical care to seriously ill infants. This Article analyzes current medical practices used when deciding whether to treat seriously ill newborns. Physicians frequently make conservative decisions to treat even those children who are helpless, because of the fear of prosecution or lawsuits. Presently, many doctors are being educated in ethics and legal rules in order to properly use informed consent. The author concludes that only one uniform legal standard should exist for both doctors and lawyers to follow.

Henry Grabowski, *Health Reform and Pharmaceutical Innovation*, 24 SETON HALL L. REV. 1221-59 (1994).

This Article addresses the effects of the Clinton Administration's proposed Health Security Act upon the research and development of new drugs. After a discussion on the importance of pharmaceutical innovation, the author specifically examines those characteristics which would directly affect pharmaceutical companies and reviews the economic studies of drug innovation. According to the author, the most harmful provisions of the Act are the cost control measures, because these provisions would subject new drug candidates to public utility-type cost controls, thereby creating negative incentives for drug research.

Linda H. Aiken & William M. Sage, *Staffing National Health Care Reform: A Role For Advanced Practice Nurses*, 26 AKRON L. REV. 187-212 (1992).

This Article suggests that the only way to have successful national health care reform, is to improve the character and distribution of the health care workforce. The authors argue that non-physician health professionals, such as advanced practice nurses, may be utilized to provide primary care. After describing the training and abilities of advanced practice nurses, the authors discuss the im-

pediments which prevent advanced practice nurses from being utilized to their full potential. All interested groups must intervene to break down the various barriers which prevent advanced practice nurses from staffing the national health care reform.

Charity Scott, *Resisting the Temptation to Turn Medical Recommendations into Judicial Orders: A Reconsideration of Court-Ordered Surgery for Pregnant Women*, 10 GA. ST. U. L. REV. 615-89 (1994).

The intuitions that prompt doctors and judges to compel pregnant women to undergo cesarean surgery, against the women's desires, are motivated by genuine concerns for maternal and fetal health. In compelling such action though, the judiciary places unfounded reliance on the decision of *Roe v. Wade*, child neglect statutes and often mistaken medical determinations of necessity. Good communication between doctor and patient, the author argues, may lead to the most acceptable resolution of these crises. However, the relations and open communication between doctor and patient may be threatened by trends toward judicial intervention.

Mary Catherine McGurrin, Note, *Pregnant Inmates' Right To Health Care*, 20 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 163-94 (1993).

It is apparent that the correctional systems have failed to respond to the medical needs of pregnant prisioners. By reviewing the major cases pertaining to pregnant inmates' rights, the author addresses the issues surrounding health care and the medical needs of pregnant prisioners. The article evaluates the federal and state programs, and recommends changes. Concluding as too lenient the "more than physically barbarous punishment" standard set by *Estelle v. Gamble*, 429 U.S. 97 (1976), the author proposes that certain programs, such as the Neil J. Houston House and Project Catch the Hope, serve as models. These programs are praised because they treat pregnant inmates with dignity, as well as provide them with hope and a means for a future.

Bruce J. Winick, *Rethinking The Health Care Delivery Crisis: The Need For A Therapeutic Jurisprudence*, 7 J.L. & HEALTH 49-55 (1992-93).

Debates concerning national health policy seem to reflect a consensus that the health care system needs restructuring. This Article proposes several alternative systems to Medicare and Medicaid, including a voucher system, a wellness system which emphasizes pre-

ventive medicine, a reimbursement and incentive scheme, and a system which taxes products that may be considered unhealthy. When considering the various proposed systems, a consensus emerges which indicates that the economic, equitable, and health implications must be taken into account in redesigning the health care delivery system.

Dorothy E. Roberts, *The Future of Reproductive Choice for Poor Women and Women of Color*, 14 WOMEN'S RTS. L. REP. 305-14 (1992).

"Reproductive freedom is a right that belongs to all women; but its denial is felt the hardest by poor and minority women." Three legally significant events give the author cause to believe that the reproductive rights of poor women and women of color are in danger. The author briefly discusses the history of a woman's reproductive freedom, and then offers her broader definition for the words "reproductive" and "choice". These broader concepts, along with the understanding of their connection to women's status in society are the first steps to saving the future of reproductive freedom.

JUVENILE RIGHTS

Susan G. Mezey, *Constitutional Adjudication of Children's Rights Claims in the United States Supreme Court, 1953-92*, 27 FAM. L.Q. 307-25 (1993).

This Article examines Supreme Court rulings in children's rights cases to determine the effectiveness of constitutional litigation in securing declarations of rights for children. The author's analysis is that, despite inconsistency, if there is a receptive Court, then constitutional litigation can be fruitful. The author concludes, however, that the Court appears to have the child's interests at a low priority level; the Court's decisions appear to be motivated more by the jurisprudence of the constitutional claim rather than child welfare theory; and the Court has yet to arrive at a coherent theory to guide the outcome of cases brought by, or on behalf of, children.

Katherine H. Federle, *Constructing Rights for Children: An Introduction*, 27 FAM. L.Q. 301-5 (1993).

The author assesses that the challenge for child advocates lies in the construction of a rights theory for children that can accomodate notions of capacity. This Article is an introduction to a series

of articles that address topics discussed at a forum sponsored by the Family Law section. The purpose of the forum was to assist in the development of ethical guidelines for the representation of children in a variety of legal contexts. The author gives a summary of the articles which address different aspects of the challenges facing children in the legal system.

Mark A. Massey, Comment, *Taking Back the Children: A Call for an End to the Paternalistic State and Its Juvenile Justice System*, 12 GLENDALE L. REV. 127-57 (1993).

The basic premise behind the American juvenile justice system was that since society was responsible for a child's behavior, children should not be punished for their own acts. The State, acting as the child's parent, was to protect and rehabilitate the child with care and comforting. However, the system has served only to deprive children of fundamental procedural rights and has failed in its objective to reform rather than punish. After analyzing the flaws of the current system and the attempts thus far to correct the inefficiencies, the author suggests implementing neighborhood panels that punish by requiring restitution.

Elizabeth J. Maykut, Comment, *Who is Advising Our Children: Custodial Interrogation of Juveniles in Florida*, 21 FLA. ST. U. L. REV. 1345-75 (1994).

This Comment addresses the issue of protecting a juvenile's constitutional rights and reviews the framework of: the nation's juvenile system; the *Miranda* decision; Florida law; and the laws of other states in an attempt to evaluate Florida's current treatment of juveniles. The author strongly recommends the Massachusetts approach which applies a "knowing and intelligent" standard or waiver, to protect the juvenile's constitutional rights. This approach requires that the juvenile consult with an adult who was both present during the questioning and cognizant of the juvenile's *Miranda* rights.

Shannan L. Wilber, *Independent Counsel for Children*, 27 FAM. L. Q. 349-64 (1993).

This Article advocates the appointment of separate counsel for children in any legal proceeding that affects a child's "status or custody." The author argues that the independent counsel approach is superior to other methods because it facilitates both the child's wishes and the judicial process. This method requires the lawyer to

assess the ability of the child to make decisions, and if the child can articulate a "considered judgement" (as opposed to a correct one), his wishes should be advocated.

Gary B. Melton, *Children, Families, and the Courts in the Twenty-First Century*, 66 S. CAL. L. REV. 1993-2047 (1993).

This Article attempts to stimulate long-term planning and thoughtful debate for the reform of the family justice system in the year 2020. After describing changes in family life over the past thirty years which have impacted the present family justice system, the author estimates the significant trends that will precipitate further changes into the twenty-first century, including ethnic diversity, drug abuse, and AIDS. The author proposes that courts may foster positive solutions by establishing child- and family-friendly policies along with cementing partnerships with universities that could facilitate such changes.

William D. Horn, *Mandating the Appointment of an Attorney for Children in Divorce*, 27 LAW & SOC'Y REV. 473-80 (1993).

Section 310 of the Uniform Marriage and Divorce Act states that a court may appoint an attorney to represent a child's interests. The author proposes an amendment to the Uniform Divorce and Marriage Act in which parents are allowed twenty-eight days from the filing date to resolve all issues relating to their children. If those issues are not resolved, this amendment would mandate that the court assign attorneys to the children at the expense of both parents. The author concludes that parents will be less likely to use their children as weapons in divorce when they are given incentives to design their own agreement about child-related matters.

David Herring, *Legal Representation for the State Child Welfare Agency in Civil Protection Proceedings: A Comprehensive Study*, 24 U. TOL. L. REV. 603-77 (1993).

The Child Advocacy Law Clinic at the University of Michigan Law School made several disturbing observations regarding the state's child welfare agency, providing the impetus for an empirical research project funded by the U.S. Department of Health and Human Services. The project's goal was to determine whether timely permanent placement for children could be achieved through improved legal representation provided to the child welfare agency. The author describes the state's law and the project's hypotheses and design. He also summarizes the project attorneys'

approach to representing the child welfare agency and how they succeed in practice. The author further discusses the project methodology, analyzes the data collected and concludes with a cost/benefit analysis.

Stacy Robinson, *Remedying Our Foster Care System: Recognizing Children's Voices*, 27 FAM. L.Q. 395-415 (1993).

Under the current foster care program, the State often fails to provide protection to the child; in some cases, it adds to the harm suffered. The foster care system is plagued with problems: increased numbers of children in the system; overloaded caseworkers who are often under qualified; inadequate funding of social services and foster care; and ineffective representation of the children in the system. The author concludes that in order to remedy our foster care system we must give children a voice, adequate representation and the ability to sue under Section 1983 of Title 42.

George H. Russ, *Through the Eyes of a Child "Gregory K.": A Child's Right to be Heard*, 27 FAM. L.Q. 365-93 (1993).

The article discusses the case of *Gregory K.* 18 Fla. L. Weekly D1852 (5th Dist. Ct. App. 1992), where an eleven-year-old boy filed a petition, seeking to terminate his parent-child relationship with his biological parents, who had a history of substance abuse, abandonment and neglect. The appellate court, reversing the lower court, found that Gregory did not have the ability as a minor to bring suit, raising the question of whether children should have access to the courts, and the right of legal counsel to protect their constitutional rights. The author emphasizes the need for legislative reform so that the best interests of children may be preserved.

Jane P. Auld, *Racial Matching vs. Transracial Adoption: Proposing a Compromise in the Best Interests of Minority Children*, 27 FAM. L.Q. 447-60 (1993).

Children are frequently denied placement with adoptive families because of adoption centers' adherence to racial matching policies. These policies, designed to promote the best interests of the children, are actually harming them by delaying or denying placement because of racial differences. The author proposes that once the child is placed in a foster home, the child should not be taken back and all racial differences should be ignored. This Article concludes that the legislature must place limits on racial matching,

such as only attempting a racial match in the initial placement of the child, in order to serve the best interests of the child.

MISCELLANEOUS

Pinhas Shifman, *Artificial Techniques of Procreation: Legal and Moral Aspects*, 27 ISRAEL L. REV. 600-9 (1993).

This Article explores ethics, theology, faith and, according to the author, the generally weakening moral fiber of society in the context of procreation. In vitro fertilization is discussed in the context of the conceiving mother, birth mother and psychological mother. The article includes the author's view of a single woman's right to artificial insemination and the many questions this presents, including the beginning and ending of life and the duties parents have toward each other, including the validity of their joint or separate decisions.

Sharon E. Rush, *Feminist Judging: An Introductory Essay*, 2 S. CAL. REV. L. & WOMEN'S STUD. 609-32 (1993).

This essay addresses what it means to be a feminist judge and the impact of feminist jurisprudence. The author focuses on women, people of color, and gays and lesbians. She describes a variety of legal situations, primarily in the area of First Amendment law, to illustrate how feminist judging is critically important to these and other subordinated groups. The author concludes that feminist judging, like traditional judging, is biased; however, feminism seeks to promote the equality of subordinated groups through a methodical and definite process.

Amii L. Barnard, *The Application of Critical Race Feminism to the Anti-Lynching Movement: Black Women's Fight Against Race and Gender Ideology, 1892-1920*, 3 UCLA WOMEN'S L.J. 1-38 (1993).

This Article is a comprehensive examination of the ways in which Black women fought race and gender oppression during the Anti-Lynching Movement of 1892-1920. The author discusses the ideological justifications for lynching, the achievements of the Black women's movement, and the various successes and failures of the anti-lynching efforts. The author concludes that the Black women's experience with white sexual violence gave them a unique perspective which allowed them to deconstruct the foundations of White Supremacy, and bring about a transformative social struggle through the Anti-Lynching Movement.

Carol Sanger, Symposium, *Feminism and Disciplinarity: The Curl of the Petals*, 27 LOY. L.A. L. REV. 225-68 (1993).

The author examines whether the credentials of feminism satisfy the traditional criteria necessary to receive disciplinary status. The purpose is not to provide an absolute answer, but rather to analyze the definition of authority and the functions of disciplinarity in relation to feminism. The author concludes that feminism, as a subject, is an inevitable and inherent part of modern law school curricula, regardless of whether or not it achieves disciplinary status.

Gwen T. Handelman, *Sisters In Law: Gender and the Interpretation of Tax Statutes*, 3 UCLA WOMEN'S L.J. 39-76 (1993).

This Article is an introductory analysis of how gender may influence the work of lawyers, particularly how gender differences manifest themselves in the interpretation of tax statutes. The author examines the literature on gender differences and "difference" feminist jurisprudence, as explored by Carol Gilligan and Deborah Tannen. The Article is a description of the orientations that certain literature focusing on gender differences has associated with men and women, as well as an examination of the author's own work. The author proposes that the recognition of the gender difference in approaches to tax practice can inform the effort to define ethically responsible tax advice.

Tracy Tyson, *Downward Departures Under the Federal Sentencing Guidelines: Are Parenthood and Pregnancy Appropriate Sentencing Considerations?*, 2 S. CAL. REV. L. & WOMEN'S STUD. 577-607 (1993).

This Article discusses the circuit courts' disparate interpretation of the Federal Sentencing Guidelines in determining the effect of family responsibilities and pregnancy on sentencing. The author analyzes two relevant provisions and concludes that the United States Sentencing Commission must mandate specific judicial consideration of defendants' family responsibilities and pregnancies. Finally, the author suggests a detailed framework for the Commission to use in crafting amendments to the Guidelines to reduce the disparity in judicial treatment of these issues.

Harold G. Grasmick et al., *Changes in the Sex Patterning of Perceived Threats of Sanctions*, 27 LAW & SOC'Y REV. 679-705 (1993).

Research on crime and deviance suggests that gender-based differences in social control mechanisms explain why women commit

fewer crimes than men. In this Article, the authors explore whether gender differences in perceived sanctions for illegal behavior would decrease over time. The authors anticipate that, as women acquired positions of authority in the work-world and in the family, their perceptions of risk would change. The article concludes that changes in gender patterning of the occupational structure and changes in family composition have produced changes in the gender-crime relationship.

Jeffrey S. Calkins, *Sex and the Superstar Republican: A Review of and Commentary upon Sex and Reason*, 20 W. ST. U. L. REV. 611-19 (1993) (book review).

This Article reviews Richard Posner's book *Sex and Reason*, and contrasts Posner's utilitarian views on laws involving sex (i.e. abortion, pornography, etc.) with those of the Republican right. Posner proposes that sex should be analyzed in a "morally indifferent" manner in that public policy should reflect a genuine balancing of costs and benefits without resorting to presumptive moral prescriptions. This theory is in direct opposition to that of the Republican right. The author concludes that Posner is challenging the conservatives in his party to come up with more persuasive justifications for legislation than, "God says no!"

Nancy Kelly, *Gender-Related Persecution: Assessing The Asylum Claims of Women*, 26 CORNELL INT'L L.J. 625-74 (1993).

The author analyzes the problems faced by women seeking asylum in the United States for gender-specific persecution (i.e. sexual violence as punishment for race, religion, political opinion, nationality and membership in a particular social group) and gender-based persecution (i.e. persecution on account of a person's gender). These problems include inadequate methods of obtaining information from the applicants by officials and the failure of the United States to recognize "women as a particular social group." The author proposes a new method for obtaining more accurate information and provides a framework for evaluating these types of claims under United States law.

Richard L. Weiner, *Law and Psychology: Beyond Mental Health and Legal Procedure*, 37 ST. LOUIS U. L.J. 499-502 (1993).

In response to a lack of psycholegal scholarship, the Saint Louis University 1993 Health Law Symposium, introduced by this author, illustrates various areas of psychological jurisprudence. Articles for

the symposium span issues such as the role of the psycholegal scholar, the use of psycholegal autopsies in criminal and civil cases, and the impact of alternative forms of dispute resolution on the expanding area of law and psychology. The authors collectively display problem-focused views which are meant to challenge prevailing stereotypes of law and psychology.

Ninth Circuit Task Force on Gender Bias, *Executive Summary of the Preliminary Report of the Ninth Circuit on Gender Bias*, 45 STAN. L. REV. 2153-75 (1993).

The Ninth Circuit Task Force on Gender Bias, a special advisory committee to the executive committee of the Ninth Circuit, conducted a comprehensive review of gender bias issues in the Ninth Circuit. The article summarizes the preliminary results of the study, focusing on gender bias in courtroom interaction and in informal settings of chambers, judicial branch employment practices, issues of court administration, selection of court appointed counsel and jury instructions. When the results revealed that gender bias existed within the Ninth Circuit, the Task Force concluded that it was necessary to develop a program that would ensure gender equality.

Marie Ashe, *"Bad Mothers," "Good Lawyers," and "Legal Ethics,"* 81 GEO. L.J. 2533-65 (1993).

This Article discusses the ambivalence and moral tension that lawyers struggle with when representing mothers charged with child abuse and their justifications for defending them. One justification for representing "bad mothers" is the Friend model, which purports to defend the role of the lawyer as a client's friend, working for the client regardless of the moral results. Alternatively, Thomas Shaffer, a legal scholar, proposes that it is love and forgiveness that constitute the lawyer's justification for serving the guilty. The author concludes that there is no rational explanation for defending such women, except that it may fulfill a personal satisfaction and expose the truths of our common culture.

Marjorie E. Kornhauser, *Love, Money, and the IRS: Family, Income-Sharing, and the Joint Income Tax Return*, 45 HASTINGS L.J. 63-111 (1993).

In 1948, Congress created the joint tax return in order to eliminate the tax disparity that arose from differing state marital property systems. The premise behind the joint return is that marriage is an

economic unit in which the members share or pool resources. This Article describes how present-day family living arrangements contrast with the traditional family model upon which the joint return was based. After explaining how the joint return no longer furthers the goals of the tax system, the author concludes that since the individual return is superior to the joint tax return, our system should use separate returns.

Amy Lim, Comment, *In Defense of Washington's Equitable Treatment of Pseudomarital Property*, 29 IDAHO L. REV. 974-98 (1992-1993).

This Comment discusses Washington's approach to pseudomarital property division. The author distinguishes this state's approach, which allows courts to divide jointly acquired pseudomarital property based on community property principles, from the common-law marriage, contract, and Louisiana approaches taken by other jurisdictions. Arguing that Washington's "status" approach is superior because it gives the courts flexibility to look at the circumstances of the case, the author concludes that Washington courts should continue to utilize this approach since it effectuates an equitable division of jointly acquired property.

Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1-38 (1993).

This Article explores how racism and patriarchy interact in relation to the social construct of motherhood throughout American history. The author observes that society's construction of mother facilitates male control of all women because women who fail to meet the ideal standard (unwed mothers, unfit mothers, and women who do not become mothers) are stigmatized for violating the dominant norm by the ruling patriarchy. Black women are especially stigmatized because, traditionally, they have been considered inferior by virtue of their race as well as their gender. Because racism is part of the patriarchy, both anti-racism and feminism are critical to destroying it.

Margit Livingston, *When Libido Subverts Credo: Regulation of Attorney-Client Sexual Relations*, 62 FORDHAM L. REV. 5-64 (1993).

Professor Livingston advocates the position that proposed regulations should be imposed on attorney-client sexual relations. The primary fear of allowing sexual relations between counsel and client is the effect on the quality of representation. The proposed regulations purport to prevent the client from being emotionally

and/or financially injured by such a relationship, and to guarantee the continued quality representation for which counsel was obtained. Livingston proposes a complete ban on all attorney-client sexual relations where the client is an individual rather than a corporation or other entity. She then compares her proposal with existing regulation on psychiatrist-patient relationships.

Michael P. Seng, Note, *In a Conflict Between Equal Rights for Women and Customary Law, The Botswana Court of Appeal Chooses Equality*, 24 U. TOL. L. REV. 563-82 (1993).

The author focuses on *Attorney General v. Unity Dow*, a recent case from Botswana, to show the continuing evolution of sexual equality between men and women. The Botswana Court of Appeals held that the citizenship Act of 1984 was in violation of Chapter II of the Botswana Constitution and therefore unconstitutional. The Act stated that citizenship by birth and descent could only be attained if the child's father was a citizen at the time of birth, or in the case of birth out of wedlock, only if its mother was a citizen. The court further held that the Act was discriminatory because it compelled women who became involved with foreign men to live and have children outside of wedlock, so that their children could enjoy the rights and privileges of citizenship.

Alison D. Renteln, *A Justification of the Cultural Defense as Partial Excuse*, 2 S. CAL. REV. L. & WOMEN'S STUD. 437-526 (1993).

This Article argues in favor of establishing an official "cultural defense." The author advocates that the cultural defense could serve as a partial excuse, to partially exonerate the defendant. The author argues that a defendant's behavior is influenced to a large extent by his or her culture and evidence of cultural background should be admitted to lessen the individual's culpability. Since the legal system should focus on both the actor and the act, permitting cultural information would allow the defendant's actions to be judged against reasonable behavioral standards in the context of the defendant's particular culture.

Hattie Ruttenberg, *The Limited Promise of Public Health Methodologies to Prevent Youth Violence*, 103 YALE L.J. 1885-912 (1994).

The author addresses the problem of juvenile violence, and questions whether it can be diminished if it is treated as a health problem rather than as a criminal act. According to the author, there are seven factors which lead to youth violence: poverty; repeated

exposure to violence; drugs; easy access to firearms; unstable and violent family life; delinquent peer groups; and media violence, which if eradicated, will presumably curb juvenile crime. The author concludes that a health care model would not work because juvenile violence, unlike an illness, is an aggregation of social problems; on the other hand, a criminal approach does in fact combat youth violence most effectively.

Rosa Kim, Note, *The Legacy of Institutionalized Gender Inequality in South Korea: The Family Law*, 14 B.C. THIRD WORLD L.J. 145-62 (1994).

Although the Korean Constitution guarantees fundamental equality, its family law is based primarily on Confucian principles. Primary to Confucianism is the belief in a male-dominated hierarchal system which casts women in stereotypical female roles with few rights. In January 1991, changes in Korean family law granted women rights they never before held, yet male dominance continues. Women's advocacy groups have sought guidance and support from the United Nations' international efforts to improve women's rights. This Note reviews the history of Korean women's rights and offers suggestions for the future.

Judith S. Seddon, *Possible or Impossible?: A Tale of Two Worlds in One Country*, 5 YALE J.L. & FEMINISM 265-87 (1993).

This Article discusses British legislation outlawing female circumcision, its effectiveness, and relevant policy issues by focusing on the commonalities of gender-based oppression, not culturally-based differences. While emphasizing that Westerners should not impose their values on women of African origin, the author concludes that education, cultural sensitivity, and respect for individual autonomy are better means to end genital circumcision.

Suzanne H. Suarez, *Midwifery is not the Practice of Medicine*, 5 YALE J.L. & FEMINISM 315-64 (1993).

After defining different types of midwives in the United States, the author argues that midwifery better accomodates the needs of both mother and child than does organized medicine. Midwives treat mother and child as interlocking units whereas organized medicine conceives of the mother and infant as conflicting entities with opposing needs. The author concludes that the Legislature is the proper branch of government to initiate reform and a strong public policy to encourage the profession of midwifery to develop.

Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense"*, 17 HARV. WOMEN'S L.J. 57-101 (1994).

Defendants who recently became U.S. immigrants have tried to claim the "cultural defense"; that they followed cultural norms, and hence deserve leniency for their actions. The author argues that while one's state of mind is important, cultural factors should not be used to categorize a person's behavior into stereotypes. Analyzing *People v. Dong Lu Chen*, No. 87-7774 (N.Y. Sup. Ct. Dec. 2, 1988) and *People v. Helen Wu*, 286 Cal. Rptr. 868 (Cal. Ct. App. 1991), the author distinguishes between a "cultural defense" to justify one's behavior and cultural factors to explain a defendant's mental state. The author concludes that a formalized "cultural defense" is problematic and should not be encouraged.

Rebecca H. Heartz, *Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness*, 27 FAM. L.Q. 327-47 (1993).

This Article examines Guardians Ad Litem ("GALs"), who are appointed by courts to protect the rights of children involved in court proceedings. There is serious confusion associated with the GAL system and there is little guidance as to who should be a GAL or what the duties of GALs are. The author believes that lay volunteers, when trained properly, are equivalent to GALs and cites studies to support this contention. Finally, the author sets forth the duties delegated to GALs and proposes criteria for choosing and training lay volunteers to be GALs.

Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin, and Gender Differences*, 14 B.C. THIRD WORLD L.J. 231-57 (1994).

This Article analyzes the problem of violence against Latina women by their Latino husbands and male partners by focusing on the unique political, social, and economic status of Latinas. Discussing the most significant efforts within the legal and social service sectors to assist battered women, the article investigates the impact of culture and community, and the role of language in understanding the experiences of Latina women. The author concludes that extensive educational efforts must be linked with mandatory arrest policies to inform the community of the policy and of the duties imposed on the police, as well as to provide sufficient financial aid and technical support to community-based shelters and service providers.

Adrien K. Wing, *Custom, Religion, and Rights: The Future Legal Status of Palestinian Women*, 35 HARV. INT'L L.J. 149-200 (1994).

A significant challenge for Palestinian political and community leaders has been created by the current situation in the Middle East, i.e. to modify customary and Islamic norms to meet the declared national goal of improving the legal status of women. This Article analyzes the following three interrelated options for enacting progressive reform thereby advancing the legal status of Palestinian women: (a) reinterpretation of Islam; (b) adoption of a European-style civil or personal status code; and (c) a modification of custom and religion by building upon the social changes introduced by the Intifada.

Leonard P. Edwards, *A Comprehensive Approach to the Representation of Children: The Child Advocacy Coordinating Council*, 7 FAM. L.Q. 417-30 (1993).

A comprehensive and coordinated system of representation for children must be developed. Children's interests are regularly litigated in court. For example, children appear as parties or witnesses in numerous types of legal actions. A child advocacy coordinating council could act as a bridge between the legal system and children and their families. This Article analyzes how Santa Clara County, California, overcame many obstacles to develop a successful child advocacy coordinating council, which concentrated on implementing a full range of advocacy and support services.

Justine A. Dunlap & Kenneth Zimmerman, *Combatting Unnecessary Family Separation: How to Seek Court-Ordered Housing For Families in the District of Columbia Neglect System*, 93 D.C. L. REV. 25-45 (1993).

This Comment explores the legal and factual bases for the court-ordered provision of housing to families in the District of Columbia's child abuse and neglect system. The severe lack of housing exacerbates existing family problems. Local and federal laws provide valuable legal tools to permit these families to remain together and to be reunited whenever possible. The authors conclude that although it is sometimes necessary in child abuse and neglect cases to remove children from their families, these statutory mandates are an important step toward permanent housing.

Susanna M. Kim, Comment, *Section 1983 Liability in the Public Schools After* DeShaney: *The "Special Relationship" Between School and Student*, 41 UCLA L. REV. 1101-39 (1994).

This Article discusses states' duty to keep children safe in public schools. While the author believes the state has an affirmative duty to protect students under 42 U.S.C. 1983, recent decisions involving actions against public schools have denied recovery based on the standard set forth in *Deshaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989). That case held that the state does not have an affirmative duty to protect its citizens. The author concludes, however, that *Deshaney* does not foreclose students from recovering civil damages from the state when the state fails to provide a safe educational environment.

Katherine Franke, *Cunning Stunts: From Hegemony to Desire: A Review of Madonna's Sex*, 20 REV. L. & SOC. CHANGE 549-72 (1993-94).

While essentialist feminists believe that feminist inquiry should be concerned with the discovery and liberation of an essential woman underlying the construct of women created by men, post-structuralist feminsts argue that feminists must confront the power of language in creating social reality. In arguing for a deconstructionist approach to reshaping women's gender identity, the author suggests that women imitate Madonna and use language and performance to recreate social reality without its patriarchal qualities. The author concludes that feminist legal theory should try deconstructing sex itself since it is the source of gender identity.

Kelly A. McCaffery, Comment, *The Civil Commitment of Sexually Violent Predators in Kansas: A Modern Law for Modern Times*, 42 KAN. L. REV. 887-912 (1994).

In 1993, the Kansas Legislature passed a bill which provided for the civil commitment of sexually violent predators after their release from prison. This Comment analyzes the constitutionality of the civil commitment legislation by examining the relevant United States Supreme Court decisions regarding Double Jeopardy, Ex Post Facto law, Due Process, and Equal Protection. The author concludes that by providing viable constitutional arguments for the civil commitment of violent sexual offenders after their release from prison, the Kansas Legislature has taken a significant step in protecting communities from this extremely dangerous group of offenders.

Elizabeth A. Pendo, Note, *Recognizing Violence Against Women: Gender and The Hate Crime Statistics Act*, 17 HARV. WOMEN'S L.J. 157-83 (1994).

In 1990, Congress passed the Hate Crimes Statistics Act which requires the Attorney General to publish a list of the crimes committed that were motivated by prejudice based on race, religion, sexual orientation or ethnicity. According to the author, this Act is an important step toward developing a consensus that society will no longer tolerate such hate crimes. However, the primary drawback of the Act is its failure to include gender-based violence, such as rape. The author contends that gender based violence toward women is a hate crime and society must recognize it as such.

M. Isabel Medina, *In Search of Quality Childcare: Closing the Immigration Gate to Childcare Workers*, 8 GEO. IMMIGR. L.J. 161-99 (1994).

The greatest barrier to full equality between the sexes is a woman's responsibility as a mother. This barrier is maintained by an immigration system that places little importance on the need to facilitate childcare services. According to the author, the problem centers around the fact that childcare workers are considered unskilled labor, which makes it difficult for many of them to obtain visas. Ultimately, this devalues not only children and the function of childcare, but women as well, by reinforcing the barrier between the sexes. The author insists that immigration laws must be changed in order to ameliorate this problem.

Jill M. Dahlmann, Book Note, 92 MICH. L. REV. 1929-42 (1994) (reviewing SANDRA LIPSITZ BEM, THE LENSES OF GENDER: TRANSFORMING THE DEBATE ON SEXUAL INEQUALITY (1993)).

The reviewer describes in detail the author's comparison of her psychological work on gender schematicity and androgyny to the theories of other renowned feminists. The book reviewed is examined through three different angles: androcentrism, gender polarization and biological essentialism. While approving of many aspects of the book, the reviewer criticizes the author's failure to consider other important perspectives of the issues raised. Comparing and contrasting many ideas with those of the well-known feminist Catherine MacKinnon, the reviewer concludes that the author's concepts and suggestions are sound but outdated.

Joseph W. Moch & Arthur Borja, *Deadly Child Restraints: An Analysis of the Legislation and Defects Associated with Child Restraint Devices*, 20 W. ST. L. REV. 527-46 (1992).

While Federal Motor Vehicle Standard 213 was implemented to regulate the design of child restraint devices, the authors stress that greater protection is needed. The child restraint device is based on a 1960s model car and does not take into account the various sizes and models of modern vehicles. Furthermore, only head-on crash tests are performed and not side crashes or roll-over accidents. The authors propose several additions, including mandatory legislation, standardization, education at hospitals, better manuals and loaner programs to improve existing child restraint devices and to reduce injuries to children.

Marilyn J. Berger & Kari A. Robinson, *Woman's Ghetto Within The Legal Profession*, 8 WIS. WOMEN'S L.J. 71-141 (1992-93).

This Article analyzes the stereotypical image of women as shy, delicate caretakers and its effect on women's roles in the work force. The authors claim that women are not treated equally in the workplace and receive less pay due to the caretaker image. In the past, women have filled caretaker positions becoming nurses, not doctors; hygienists, not dentists; paralegals, not lawyers. After examining the legal profession, the authors propose that, in order to change the "woman's ghettoization," society must recognize this image as a stereotype and reject the notion that women are caretakers and thus, unequal to their male counterparts.

Sue Davis, *Do Women Judges Speak "In A Different Voice?": Carol Gilligan, Feminist Legal Theory, And The Ninth Circuit*, 8 WIS. WOMEN'S L.J. 143-73 (1992-93).

The legal system was historically constructed and interpreted by men. However, women have recently played an active role in deciding and interpreting law. The author explores whether female lawyers and judges will adapt to the male rules of legal tradition or establish their own methods and speak "in a different voice." After considering other feminists' studies, the author analyzes the judges of the Ninth Circuit and concludes that female judges, as well as female lawyers, have adapted to male standards and have assimilated rather than having established their own methods.

James P. Kelleher, Note, *The Child Labor Deterrence Act: American Unilateralism and the GATT*, 3 MINN. J. GLOBAL TRADE 161-94 (1994).

The proposed Child Labor Deterrence Act, which prohibits the import of articles produced by child workers into the United States, violates American obligations under the General Agreements on Tariffs and Trade (GATT). Discussing how the proposed bill extends the United States' jurisdiction beyond the limits intended by GATT, the author explores the current and proposed regulations on international child labor. In his conclusion, the author contends that multilateral agreements which use local information to effectively balance the various needs of child workers would deal with child labor problems more efficiently.

Elizabeth E. Gilles, *Abusive Head Injury in Children: A Review*, 20 W. ST. U. L. REV. 335-78 (1993).

This Article is a review of the current knowledge and understanding regarding childhood abusive and accidental head injury. After providing the historical context of abusive head trauma, the author discusses issues of timing and mechanisms of injury. She then explores the limitations of clinical analysis, and delves into opinion development. Recognizing that much remains to be learned about this complicated area, the author surmises that each case should be evaluated critically on its own merits in an attempt to identify its etiology.

Mitchell L. Beckloff, In Re Basilio T.: *In the Best Interest of the Minor*, 20 W. ST. U. L. REV. 379-92 (1993).

This Article examines *In re Basilio T.*, 4 Cal. App. 4th 155 (1992), a decision requiring the hearsay statements of a minor who fails to qualify to testify at trial to be removed from a social study report that is admitted into evidence. Questioning the California Court of Appeals' rationale, the author attempts to illustrate the decision's impact. Adoption of legislation similar to that of other states, which would make all hearsay statements of minors admissable regardless of testimonial capacity when indicia of reliability exist, is proposed. Such legislation would promote the goals of the dependency system and protect the rights of parents.

Catherine Harries, Note, *Daughter of Our Peoples: International Feminism Meets Ugandan Law and Custom*, 25 COLUM. HUM. RTS. L. REV. 493-539 (1994).

Women's rights have generally been analyzed within the context of development issues. Here, the impact of external interventions on the government of Uganda is examined—international bodies, donor governments and their impact on educated urban women of Uganda, women of the rural areas, and "Grassroots" women. This Note offers comments on Uganda's struggle to integrate parallel systems into an international whole. The author highlights the interdisciplinary nature of the issue by linking questions of sovereignty, politics and power.

Teemu Ruskola, Note, *Law, Sexual Morality, and Gender Equality in Qing and Communist China*, 103 YALE L. J. 2531-64 (1994).

This Note offers an explanation for underenforcement of laws in the People's Republic of China ("PRC"). Culturally, both PRC and the Qing region prefer rule by internalized morality to rule by law. Although Chinese laws governing sexual morality dictate equality, cultural aspirations and internalized morality dictate inequality. Because inequality between the sexes persists while legislation is only a secondary form of social control, there exists a risk of unpredictable and discriminatory justice.

Robert C. Mueller, Comment, Donahue v. Fair Employment and Housing Commission: *A Free Exercise Defense to Marital Status Discrimination*, 78 B.U. L. REV. 145-70 (1994).

This Comment on *Donahue v. Fair Employment and Housing Commission* examines whether a landlord's religious beliefs concerning renting to cohabitating unmarried couples falls under the free exercise of religion defense to the California Fair Employment and Housing Act (FEHA). The Comment critiques the court's reasoning by analyzing the interpretation of marital status and examines whether there should be a defense available to the free exercise of religion under either state or federal constitutional law. The Comment argues that the state interest is misdefined in the free exercise defense.

Bart Greenwald, Note, *Irreconcilable Differences: When Children Sue Their Parents for "Divorce"*, 32 U. OF LOUISVILLE J. FAM. L. 67-91 (1993-4).

This Note advocates increased access to the courts for children. The author argues that competency of children should be presumed unless proven otherwise and should be determined on a case by case basis because many children are mature and intelligent enough to present their stories in court. *Gregory K. v. Ralph K.*, No. 92-839-CA-01 (Lake County Ct. filed April 1992), is presented to outline the history of children in the court system and to discuss the current legal issues involved in children trying to attain the status of a legal "person" in the courtroom, thereby enabling them to present their own case.

Julia A. Houston, Note, *Sex Offender Registration Acts: An Added Dimension to the War on Crime*, 28 GA. L. REV. 729-70 (1994).

This Note analyzes the Sex Offender Registration Act. Specific statutory provisions of the Act, such as the requirement, to register, the duration of the registration requirement and access to the information are examined. The author explores possible constitutional challenges to these laws, including the arguments of cruel and unusual punishment, the Ex Post Facto effect and the right to privacy. The author recognizes the need for a national uniform registration program and proposes a model statute that incorporates the most effective provisions of various state statutes and complies with the federal mandate.

Marianne Wesson, *Girls Should Bring Lawsuits Everywhere. Nothing Will Be Corrupted: Pornography as Speech and Product*, 60 U. CHI. L. REV. 845-72 (1993).

Offering a practical proposal for anti-pornography activists, the author posits that women should bring as many personal injury lawsuits as possible. Addressing the objections to suits against pornography, the author highlights *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992) and explains that this case poses no constitutional threat to civil actions for damages. The author further argues that courts should be persuaded to treat speech like a product and that speech should be subject to the discipline of the market.

Linda J. Lacey, M.D., *Mimicking the Words, but Missing the Message: The Misuse of Cultural Feminist Themes in Religion and Family Law Jurisprudence*, 35 B.C. L. REV. 1-49 (1993).

Twentieth century attitudes toward women have changed and have been paralleled by a current dominance of liberal thought and an increased emphasis on pluralism and secularism in the law. Many commentators have criticized this liberal version of the law, and some of these criticisms mimic the themes of cultural feminism. The author, however, argues that despite the commonality that exists between these criticisms and cultural feminism, these criticisms are ultimately detrimental to women and antithetical to the goals of feminism. To support this contention, the author reviews the criticisms of three authors that she believes miss the message of cultural feminism.

Cass R. Sunstein, *Words, Conduct, Caste*, 60 U. CHI. L. REV. 795-844 (1993).

This Article examines the government's ability to regulate offensive speech and conduct, specifically pornography and "hate speech." The author argues that government can regulate certain speech not entitled to the highest form of protection, because harms caused by that speech are sufficient to merit regulation. Different categories of speech and the different types of restrictions placed on them are scrutinized, and the basis for the regulation of harmful speech which still preserves First Amendment rights is offered.

Judith K. Schafer, *Sexual Cruelty To Slaves: The Unreported Case of* Humphreys v. Utz, 68 CHI.-KENT L. REV. 1313-40 (1993).

The case of *Humphreys v. Utz* provides rare documentary evidence of the cruel sexual treatment which some slaves endured and exposes the willingness of a jury to award damages to the owner of a slave for such treatment. In *Humphreys*, the defendant was acquitted of all charges despite overwhelming evidence of his guilt, apparently because the jury was simply unwilling to convict a slave owner. Discussing the importance of this case, the author suggests that it demonstrates the apathy of the Supreme Court of Louisiana toward the sexual cruelty to slaves. The author concludes that *Humphreys* illustrates the failure of the criminal justice system to protect slaves from savage treatment and from the brutality that resulted when the law allowed some members of society to treat people as property.

Raymond Mello, *Are Parents Who Fail To Protect Their Children From Sexual Assault Criminals?: A Comment On* Commonwealth v. Raposo, 28 NEW ENG. L. REV. 1103-21 (1994).

This Comment analyzes *Commonwealth v. Raposo*, 413 Mass. 182, 595 N.E.2d 773 (1992), which involved the prosecution of the mother of a mildly retarded minor. Apparently, the mother knew in advance that her boyfriend intended to abuse her daughter, but failed to stop him or report the crime after the fact. The Massachusetts Supreme Court overturned her conviction based on the existing "accessory before the fact" statute. The author suggests that Massachusetts adopt a parental-omission statute which punishes omissions as well as affirmative inflictions of harm to a child.

Dawn C. Nunziato, *Gender Equality: States As Laboratories*, 80 VA. L. REV. 945-74 (1994).

After exploring different theories of equality, the author presents a disagreement between radical and liberal feminists over the Equal Rights Amendment ("ERA"). She begins by examining the effects of the ERA on women's rights through court decisions in the states where the statute has passed and applying it hypothetically in those states where it has not. The author concludes by proposing a gender-neutral technique to approach the problem and maintains that although radical feminists' views help identify disadvantages, a gender-neutral approach will better improve women's subordinate position in society.

Eugene F. Diamond, *Parental Notification and Public Policy*, 13 ST. LOUIS U. PUB. L. REV. 381-90 (1993).

This Article overviews the present crisis situation regarding the failure of public and private programs of contraceptive indoctrination and dissemination. The failure of these programs is evidenced by the increase in adolescent unwed pregnancy, veneral disease and sexual promiscuity. Explanations for these figures vary from "sexual revolution" to an exacerbation of the problem by the counterproductive nature of the programs themselves. The author proposes requirements of parental notification on a pending abortions and parental involvement in medical decisions. The author justifies such requirements by pointing to the current crisis and the failure of remedial programs.

Elizabeth Ann Loadholt, *Mental Disability: A Defense to Divorce Grounded on Adultery and To Alimony Bar*, 45 S.C. L. REV. 136-43 (1994).

The article reviews *Rutherford v. Rutherford*, 414 S.E.2d 157 (S.C. 1992), which examines mental disability as a defense in a divorce proceeding. In *Rutherford*, instead of questioning the validity of the defense, the court, focusing on the standard of proof, held that the criminal law standard should apply. Disagreeing with the *Rutherford* court's determination of the standard, the author maintains that a different one should be used in cases which involve a party with Multiple Personality Disorder. The difficulty lies in the unique character of the disorder; although one personality may have met the required burden it may be difficult to prove that this was the personality which committed the adultery.

Adrianne L. Turner, *Court Applies Definition of Marital Property*, 43 S.C. L. REV. 143-47 (1994).

The court in *Mclerin v. Mclerin*, 425 S.E.2d 476 (S.C. Ct. App. 1992), affirmed the proposition that property acquired by one spouse before marriage was part of the marital estate if its value increased during the marriage. In that case, the court departed from a long line of cases which held that wages received by the spouse are relevant to a judicial determination of whether non-marital property can be deemed marital. Wary that the broad discretion given to family courts in applying equitable distributions will result in a lack of uniformity, the author concludes that the court must reconsider this decision.

Bret C. Williams, *Social Approaches to Lowering Infant Mortality: Lessons from the European Experience*, J. PUB. HEALTH POL'Y 18-25 (1994).

Infant mortality is more prevalent in the United States than in Western Europe because the Western European prenatal system provides care for all women. The United States system, though it provides excellent care for those with easy access, offers less mandated social benefits and financial support. According to the author, European countries provide a great deal of financial support for pregnant women, which reduces the number of infant deaths, most of which occur in the first week of life due to low birthweight. The United States should focus on women's social and economic needs, thus effectively lower infant mortality rates by providing

more financial support for its pregnant women without having to provide additional medical care.

Maryellen Fullerton, *A Comparative Look at Refugee Status Based on Persecution Due to Membership in a Particular Social Group*, 26 CORNELL INT'L L.J. 505-63 (1993).

This Article analyzes the concept of the social group in refugee law from a comparative perspective. A comparison is made between the relevant jurisprudence in Germany, Canada and the United States, three countries with the most developed decisional law concerning refugee status. It is argued that the approaches taken in Germany and Canada should be used as a guide by judges and asylum officers in the United States. In analyzing these social group-based claims, the author notes that judges and asylum officers should pay particular attention to the societal perceptions of the social group to which the asylum seeker belongs.

Alexander C. Wagenaar and Mark Wolfson, *Enforcement of the Legal Minimum Drinking Age in the United States*, J. PUB. HEALTH POL'Y 37-51 (1994).

A recent study indicates that the majority of teenagers in America consume alcohol and, as they grow older, their consumption increases. This study finds that overall, the legal drinking age is rarely enforced and that the rates of enforcement vary from state to state. While further research needs to be done, the preliminary recommendations are: (1) deter alcohol sales to minors by targeting the places where adolescents purchase alcohol; (2) efficiently and expeditiously implement penalties; (3) suspend drivers' licenses to deter drinking and driving; and, (4) suspend liquor licenses of vendors who sell alcohol to minors. By following these recommendations, the authors suggest, the availability of alcohol to minors and the number of needless alcohol-related tragedies can potentially be reduced.

Nancy Irene Kellner, *Under The Knife: Female Genital Mutilation As Child Abuse*, 14 J. JUV. L. 118-31 (1993).

Parents who engage in the practice of female genital mutilation may be both physically and mentally harming their children. The author advocates prohibiting female genital mutilation by categorizing it as "child abuse." Though such action may seem to offend and perhaps even degrade the cultures of which such practice is ritualistic, it may be the only hope for these young victims. The

article proposes that in addition to making mutilation illegal by passing state laws, the federal government should also get involved by influencing African countries to educate their populations about the health risks of mutilation practices.

Michael Perlin, *Hospitalized Patients and the Right to Sexual Interaction: Beyond the Last Frontier?*, 20 N.Y.U. REV. L. & SOC. CHANGE 517-47 (1994).

Should institutionalized persons with mental disabilities have the right to engage in consensual sexual activity? The author maintains that the greatest obstacle to obtaining an answer stems from the irrational fears and stereotypes associated with mental illness. These fears prevent social policymakers from even considering the possibility that sexual contact between mentally disabled patients could have therapeutic or beneficial value.

PORNOGRAPHY

Andrew M. Jacobs, *Rhetoric and the Creation of Rights: MacKinnon and the Civil Right to Freedom from Pornography*, 42 KAN. L. REV. 785-825 (1994).

This Article examines the public rhetoric and strategy used by Andrea Dworkin and Catherine MacKinnon in their failed attempt to pass an ordinance which declared pornography to be discrimination against women. Dworken and MacKinnon made several rhetorical and strategic errors including: failing to produce persuasive empirical evidence of injury; using polarizing rhetoric rather than that designed to inspire meaningful dialogue; and failing to successfully counter First Amendment arguments. The author concludes that if Dworkin and MacKinnon had made their arguments more palatable to the mainstream, the ordinance could have passed.

Ronald K. L. Collins & Davis M. Skover, Symposium, *Changing Images of the State: The Pornographic State*, 107 HARV. L. REV. 1374-98 (1994).

America has an ambivalent "love affair" with pornography which the authors hypothesize will create a new form of the State: a republic of images. In this new state, termed "pornotopia," the forces of self-gratification, mass consumerism, and advanced technology synergize. After briefly commenting about the word "pornography," the authors explain how, if this interaction of forces

continues, constitutional attempts to constrain pornographic expression will eventually yield to the popular culture.

Elena Kagan, *Regulation of Hate Speech and Pornography After* R.A.V., 60 U. CHI. L. REV. 873-902 (1993).

The author explores the range of approaches to restricting speech which remain after *R.A.V. v. City of St. Paul*, 112 S.Ct. 2538 (1992), where the Supreme Court held that the First Amendment prohibits the regulation of speech based on viewpoint. The four new approaches which the author proposes as constitutionally permissible are: (1) bans on conduct; (2) viewpoint-neutral speech restrictions; (3) use of the category of obscenity; and (4) exceptions to viewpoint neutrality.

Book Note, *Stripping Pornography of Constitutional Protection*, 107 HARV. L. REV. 2111-16 (1994).

In this Book Note, the reviewer outlines Catherine MacKinnon's discussion in *Only Words* of what she believes are the three harms that occur as a result of pornography in American society. The reviewer criticizes each of MacKinnon's harm-based arguments and points out that she offers no statistical support for her claims. Concluding that *Only Words* is not one of MacKinnon's better works, the reviewer opines that MacKinnon has failed to justify denying First Amendment protection to pornography.

RAPE

Carla M. da Luz & Pamela C. Weckerly, *The Texas 'Condom-Rape' Case: Caution Construed As Consent*, 3 UCLA WOMEN'S L.J. 95-104 (1993).

This Article discusses the Texas "Condom-Rape" case in which the accused rapist relied upon the use of a condom to demonstrate consent. The author argues that the case illustrates the justice system's tendency to judge an act of self-protection as consent, and that the court's primary focus is on the woman's actions and intent rather than those of the accused rapist. The author concludes that the case is indicative of the unresponsiveness of the justice system to rape charges, that scrutiny of the victim, rather than the accused rapist, is misplaced, and finally, that the system inappropriately construes a woman's intelligent act of caution as consent.

Robin L. West, *Legitimating the Illegitimate: A Comment on* Beyond Rape, 93 COLUM. L. REV. 1142-59 (1993).

The "commodity theory" of sex defines rape as the theft of sexual services through violent means or the threat of violent means. This Article discusses the commodification of sex and its implications on rape law reform. Commodity theory legitimizes two morally illegitimate sexual transactions: those resulting from fraudulent representations and those resulting from a woman's fear of economic repercussions if she does not consent. While commodity theory may be useful in redefining rape so as to respect women's autonomy, the author criticizes the theory's failure to delegitimize sexual practices that while non-criminal, are immoral.

Carol Bohmer, *Victims Who Fight Back: Claiming in Cases of Professional Sexual Exploitation,* 16 JUST. SYS. J. 73-89 (1994).

This Article examines the victims of professional sexual exploitation and describes a three step transformation which helps the victims realize that they are not to blame, and offers them a more positive and effective way to overcome their trauma. The author's system is designed to help the victims evaluate themselves at every stage of the healing process. Assisting these victims and trying to prevent this harm should be a public policy goal addressed by the legislature. This, the author contends, can only begin with the understanding and implentation of her system.

Catherine A. MacKinnon, *Rape, Genocide, and Women's Human Rights,* 17 HARV. WOMEN'S L.J. 5-16 (1994).

In the war against Croatia and Bosnia-Herzegovina, no country acted against the Serbian aggressors until Bosnia-Herzegovina went to the International Court of Justice and sued Serbia for genocide and rape. By suing for the rape of Bosnian women, Bosnia-Herzegovina stood up for women in a way that no state ever has. The ethnically motivated genocides and rapes in this war present the world with an historic opportunity to acknowledge that violence against women constitutes a human rights violation, an action which the author recommends.

Ann Althouse, *The Lying Woman, the Devious Prostitute, and Other Stories from the Evidence Casebook,* 88 NW. U. L. REV. 914-94 (1994).

This Article analyzes the coverage of rape shield rules by Green and Nesson, *Problems, Cases, and Materials on Evidence,* as well as other evidence case books that rely upon the problem method.

The author is concerned with the use of violence against women in these texts. By concentrating on the rape shield rule, the author demonstrates that casebooks using the problem method are beneficial because they contain stories written by authors-editors, and not merely judicial cases. It is proposed that evidence professors should work to create a forum for the benefit of students by becoming listeners and moderators, particularly when it comes to issues of violence against women.

Donald A. Dripps, *More On Distinguishing Sex, Sexual Expropriation, and Sexual Assault: A Reply to Professor West*, 93 COLUM. L. REV. 1460-72 (1993).

This Essay is a reply to Professor West's critique to the author's prior essay, which was entitled *Beyond Rape.* In the author's previous essay, two distinctions were developed which the author defends again here: 1) between sexually motivated assault and sexual appropriation; and 2) between sexual expropriation and sexual bargains. After advocating for the legal commodification of sex, the author concludes that the meaningful reform of sexual assault legislation requires that the distinction between criminal and non-criminal sex be based on pragmatic, rather than normative grounds.

WOMEN

Joan R. Tarpley, *Grounded Feminist Theory: And I Sprang Full Grown From My Father's Head—Or Was it Really From My Mother's?*, 24 U. TOL. L. REV. 583-602 (1993).

The author's goal is to pave a path that will lead women towards equality. Tarpley has devised a way to change basic world views, thereby enabling women to become equal participants. The Article explores the reasons why feminist legal theory needs to have a grounding agenda. The main reason is to reach the "women in the street." The author suggests that the most effective way for women to gain power is through the political arena. Her position is that feminists need a pro-active grounding agenda to ensure that their positions are both heard by women and used in the voting booths to elect politicians that will pass legislation in accord with feminist ideals.

Wendy W. Williams, *The Equality Crisis: Some Reflections On Culture, Courts, and Feminism*, 14 WOMEN'S RTS. L. REP. 151-74 (1993).

Feminists are at a crucial point in their evaluation of equality. The question that confronts feminists today is whether they want equality of sexes or justice for two kinds of people fundamentally different. The author uses two sex discrimination Supreme Court cases, one upholding the male-only draft registration law and the other upholding the California statutory rape law, to illustrate that the Court has established cultural limits on sex-role behavior. The author concludes that upholding the single-sex laws as the Court did in the aforementioned cases, ultimately does damage to women.

Deborah L. Marcowitz, *In Pursuit of Equality: One Women's Work to Change the Law*, 14 WOMEN'S RTS. L. REP. 335-59 (1992).

This Article traces the development of equal protection challenges to sex discrimination from 1971 to 1977, through the efforts of Ruth Bader Ginsberg and the Women's Right's Project. The Article considers the weaknesses and strengths of Justice Ginsberg's overall approach and evaluates her theory of equal protection in light of recent critiques. As a litigator, Ginsberg's greatest asset was knowing how to pick cases and frame her argument so that they would appeal to individual members of the court on an intuitive level. Though some feminists have criticized Ginsberg's litigation strategy, the author concludes that she has achieved a great deal for the women's movement.

Sharon Carton, Note, *The Poet, the Biographer and the Shrink: Psychiatrist-Patient Confidentiality and the Anne Sexton Biography*, 10 U. MIAMI ENT. & SPORTS L. REV. 117-64 (1993).

The author believes that great harm was done to the trust inherent in the psychiatrist-patient relationship by the release of the Anne Sexton taped therapy sessions. Different causes of actions against Sexton's psychiatrist are explored including liability based on tort and contract law. Counter-arguments in defense of the release of the tapes are also discussed, the strongest, perhaps, being a First Amendment right to disclosure based on freedom of speech. These defenses are criticized. Furthermore, the author strongly advocates the position that the psychiatrist-patient relationship based on confidentiality was damaged in this instance.

Barbara B. Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 ST. MARY'S L.J. 289-301 (1993).

This Article briefly discusses the biographies of three prominent Texas women who were the first in their fields of law in an effort to educate the reader as to the history of women in the law. Hortense Ward was the first woman to become a lawyer, Sarah T. Hughes was the first woman judge, and Margaret Harris Amsler was the first woman to become a professor of law in Texas. The author believes that it is due to the efforts, struggles and accomplishments of these three women, and countless others like them, that women have achieved such heights in the law. She further believes that women such as these will guarantee the future of women in the law.

Lucinda J. Peach, *From Spiritual Descriptions to Legal Prescriptions: Religious Imagery of Woman as "Fetal Container" in the Law*, 10 J.L. & RELIGION 73-93 (1993-94).

Religious symbols of women help to reinforce prevailing gender ideologies and have functioned to shape legal views of women. These views essentialize the woman's role and status as "fetal containers." The religious roots of such imagery in judicial decision making may not be obvious, but they nonetheless serve to perpetuate the inferior status of women in society. The author concludes that if women's oppression is to be overturned, the legal use of religiously grounded stereotypes must be eliminated.

Claudia Center, *"Boys Keep Out!": Historical and Legal Perspectives on the Contributions of All-Female Organizations to Sex Equality*, 8 WIS. WOMEN'S L.J. 1-70 (1992-93).

This Article details the contributions of all-female organizations in passing the 19th Amendment and their positive role in the movement for gender equality. Recently however, these organizations have had to admit males due to anti-discrimination legislation. The author describes the positive affects of these organizations on their members and the female population, and suggests that the organization's single-sex status should be protected even if this restricts females from all-male organizations.

Owen M. Fiss, *What Is Feminism?*, 26 ARIZ. ST. L.J. 413-28 (1993).

This Article defines feminism broadly to include beliefs, ideas and political movements, and discusses constitutional law as it applies to segregation and discrimination of women. Since women have historically been in a subordinate position, the author considers

whether women should be given preferential treatment, particularly in employment and childrearing situations even though it would constitute discrimination. While he concludes that it is unclear whether justice has been realized thus far, the author acknowledges that justice is attainable and worth the struggle.

Mari J. Matsuda, *When The First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN'S RTS. L. REP. 297-300 (1992).

The author discusses her experience as a woman of color in today's society in a speech at Yale University's Law Conference. Her feelings of "multiple-consciousness" are eloquently described in vivid imagery and personal dreams. Her speech concludes with a reaffirmation of the necessity of affirmative action both in practice and principle, and a realization that more needs to be done to promote women.