WOMEN'S ANNOTATED LEGAL BIBLIOGRAPHY

ABORTION

Dan Fabricant, Note, *International Law Revisited: Davis v. Davis and the Need For Coherent Policy on the Status of the Embryo* 6 CONN. J. INT'L L. 173-207 (1990).

This Note considers the problems in determining what status and rights the law should afford an embryo in the wake of the Tennessee Circuit Court's decision in *Davis v. Davis*, 1989 WL 140495 (Tenn. Cir.). In *Davis*, the court ruled that embryos created through in vitro fertilization are children and awarded them to the former wife for implantation and pregnancy. The author examines the legal treatment of embryos fertilized in vitro and their status in the United States and other countries. He argues that this issue should not be left for the states to decide, and suggests that a committee of medical and legal experts recommend uniform federal legislation modeled on findings of major international bodies over the past decade.

T. Brettel Dawson, Comment, *Re Baby R: A Comment on Fetal Apprehension*, 4 CAN. J. WOMEN 265-75 (1990).

Re Baby R (1988), 15 R.F.L. (3d) 225 (B.C.S.C.), reaffirmed that a fetus is not a legal person and cannot be the subject of independent legal rights, obligations or orders. Although the author states that the decision is legally correct, she points out that the court did not resolve many significant questions about women, reproduction, and the law.

Elizabeth J. Appley, Note, *Two Decades of Reproductive Freedom Litigation and Activism in Georgia: From Doe v. Bolton to Atlanta v. Operation Rescue*, 28 GA. ST. B. J. 34-41 (1991).

Abortion has been a major focus of legal and political controversy since the decision of *Roe v. Wade*, 410 U.S. 113 (1973). The author traces the history of Supreme Court decisions on the issue of reproductive freedom, addressing the particular struggle of the weak and disenfranchised. She concludes by examining the effects of "Operation Rescue", an anti-abortion strike force on abortion rights.

Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419-82 (1991).

The author argues that punishing female drug addicts who carry their pregnancies to term violates their constitutional right to privacy regarding reproductive choices and violates the Equal Protection clause. Since most of the women who are prosecuted for giving birth to drug-addicted infants are poor and black, the author views the prosecution of these women as a punishment stemming from and perpetuating black subordination.

Michael Phillips, Note, *Maternal Rights v. Fetal Rights: Court-Ordered Caesareans,* 56 Mo. L. REV. 411-27 (1991).

In *In re A.C.*, 573 A.2d 1235 (App. D.C. 1990), an appellate court refused to affirm an order authorizing a caesarean section. This Article analyzes the three main arguments used to justify ordering a woman to have a "c-section." The state interests involved are the right to protect viable fetuses, to prevent fetal neglect (equating it with child neglect) and to protect the rights of third parties. The author then focuses on how Missouri courts might address these issues, and concludes that Missouri courts would compel a c-section to protect a viable fetus, even if it were contrary to the mother's wishes.

Leslie A. Rubin, Note, *Confronting a New Obstacle to Reproductive Choice: Encouraging the Development of RU-486 Through Reform of Products Liability Law*, 18 N.Y.U. REV. L. & SOC. CHANGE 131-59 (1991).

The author examines the impact of product liability law on the development of the "abortion pill", RU-486, and argues that it will be impossible for women to meaningfully control their lives or participate fully in society unless they are afforded the choice of whether and when to have children. A tort reform scheme is proposed to give manufacturers the confidence to develop RU-486 in this country without fear of bankruptcy, provided they act reasonably.

Rosa H. Kim, *Reconciling Fetal/Maternal Conflicts*, 27 IDAHO L. REV. 223-48 (1990-91).

Recent case law and technological developments have accelerated the conflicts between fetal and maternal rights. The author argues that state legislatures should determine the period during

a pregnancy that protection of the fetus warrants infringement of the mother's rights. While conceding that a fetus cannot have greater legal rights than its mother, the author concludes that when a fetus' life is in jeopardy and the mother's life is not, the state has a valid state interest in preserving the well-being of the fetus.

Susan Oliver Renfer, Randal Shaheen & Michael Hegarty, *The Woman's Right to Know: A Model Approach to the Informed Consent of Abortion*, 22 LOY. U. CHI. L.J. 409-43 (1991).

This Article notes the trend toward state efforts to regulate abortions and presents a Model Woman's Informed Choices Act for states to consult when enacting informed consent provisions. The Act is designed to ensure that a pregnant woman, in deciding whether to have an abortion, is fully informed of the potential risks and consequences. The authors argue that a state should ensure that this decision is carefully weighed, and that the Supreme Court has been unduly restrictive in evaluating the vital interest a woman has in the effective administration of informed consent statutes in the abortion context.

Warren Murray, *The Nature and the Rights of the Foetus*, 35 AM. J. JURIS. 149-70 (1990).

One of the most controversial ethical dilemmas today is the status of a fetus. The term "fetus" is used in this article to mean the "product of human conception, from beginning to birth". The author examines the question of fetal rights from both philosophical and biological points of view. The most common objections to the recognition of fetal rights are discussed, and the author concludes by detailing a few rights of the fetus which he considers to be absolute.

J. Shoshanna Ehrlich & Jamie Ann Sabino, *A Minor's Right to Abortion: The Unconstitutionality of Parental Participation in Bypass Hearings*, 25 NEW ENG. L. REV. 1185-209 (1991).

The authors discuss the effect that a parent's presence may have on a child at a judicial hearing for abortion. The authors analyze *Bellotti v. Baird*, 443 U.S. 622 (1979), in which the Supreme Court held that a pregnant minor has the same right of choice as an adult woman, and concluded that the states, by instituting parental notification requirements and burdensome procedural rules,

cause emotional trauma and produce a chilling effect on a minor's constitutional rights.

Randi S. Silverstein, Note, *Judicial Ineffectiveness: The Inability to Curtail Unlawful Right to Life Protest Activity*, 35 N.Y.L. SCH. L. REV. 447-77 (1990).

The author discusses the Right to Life movement's reasons for protest as well as past actions and law suits brought against the movement. The author concludes that judicial orders have been ineffective in restricting illegal protest activities.

Rhonda Copelon, *Losing the Negative Right of Privacy: Building Sexual and Reproductive Freedom*, 18 N.Y.U. REV. L. & SOC. CHANGE 15-50 (1990-91).

After a brief history of the Supreme Court's attacks on the right to privacy recognized in *Roe v. Wade*, 410 U.S. 113 (1973), this Article examines the hostility toward that right evidenced in recent Supreme Court decisions including *Bowers v. Hardwick*, 478 U.S. 186 (1986). *Webster v. Reproductive Health Services*, 109 S. Ct. 3040 (1989), which undermines the right to abortion is also included in this analysis. The Article examines the liberal concept of privacy and urges society to recognize an affirmative right of self-determination. The author contends that this can be achieved by acknowledging the inextricable relationship between reproductive and sexual decision making and equality, and by assuming responsibility for protecting choice and providing the conditions necessary to render choice a meaningful right.

Jeffrey P. Phelan, *The Maternal Abdominal Wall: A Fortress Against Fetal Health Care?*, 65 S. CAL. L. REV. 461-90 (1991).

This Article explores the issue of whether a mother's abdominal wall may be invaded to do what is medically necessary to protect the fetus. It examines the constitutionally protected rights of pregnant women and expanding legal rights of an unborn fetus. The author concludes that medical treatment that will prevent death or permanent injury provides the state with a compelling interest which allows it to invade the maternal abdominal wall and protect the fetus.

John Devlin, *Privacy and Abortion Rights Under the Louisiana State Constitution: Could Roe v. Wade be Alive and Well in the Bayou State?*, 51 LA. L. REV. 685-732 (1991).

The Article examines article I, section 5 of Louisiana's Constitution as a basis of legalized abortion in Louisiana, independent of *Roe v. Wade,* 410 U.S. 113 (1973). The express right to privacy under sec. 5 has been interpreted by the Louisiana Supreme Court to protect a broad range of rights. The author argues that the right to abortion should be incorporated under sec. 5. He stresses that Louisiana courts should interpret abortion issues that are not governed by *Roe* and *Doe v. Bolton,* 410 U.S. 179 (1973), independently, and not limit their interpretations based upon federal or state precedents since 1974.

Christyne L. Neff, *Woman, Womb, and Bodily Integrity*, 3 YALE J. L. & FEMINISM 327-53 (1991).

This Article explores the way in which privacy law has failed to protect a woman's right to terminate her pregnancy. The author argues that the fundamental right to bodily integrity is a better tool for protecting abortion rights because a woman is entitled to decide whether or not to endure the physical consequences associated with pregnancy. State action that requires a woman to continue her pregnancy is a serious bodily intrusion, she says. The state has seized control of her body and violated her fundamental right to bodily integrity, concludes the author.

Charles Capetanakis, *Abortion Rights Mobilization and Religious Tax Exemptions*, 34 CATH. LAW. 169-93 (1991).

This Article addresses issues concerning the tax-exempt status of religious organizations. The author discusses the history of Abortion Rights Mobilization's challenge against the Church. A background of tax exemptions for religious organizations and an outline of constitutional challenges to the tax exemptions is provided. The standard of review for these challenges is examined and the author concludes by recommending congressional action to avoid confusion regarding qualification for tax-exempt status.

Simon Heller, *Abortion Rights of Young Women: The Supreme Court Attacks The Most Vulnerable*, 30 WASHBURN L. J. 15-28 (1990).

This Article examines two Supreme Court decisions, *Hodgson v. Minnesota*, 110 S.Ct. 2926 (1990), and *Ohio v. Akron Center for Reproductive Health*, 110 S.Ct. 2972 (1990), and discusses how the

state statutes in question limit abortion rights of young women. The author questions the reasons for ignoring the general rule against involvement of third parties in the exercise of individual constitutional rights in the context of abortion. One argument is that parental involvement legislation is another way to curb abortions; the other is the "patriarchical doctrine" that men know what is best for women. The author concludes that limits placed on the abortion rights of young women could threaten the rights of adult women.

Richard G. Wilkins et al., *Mediating the Polar Extremes: A Guide to Post-Webster Abortion Policy*, 1991 B.Y.U. L. REV. 403-88 (1991).

After outlining the shortcomings of *Roe v. Wade*, 410 U.S. 113 (1973), the authors examine what three recent Supreme Court decisions portend for the future of abortion regulation. The authors propose abortion legislation designed to overcome the shortcomings of *Roe* while reflecting the moral conflict that is at the center of the abortion debate. The authors conclude that the protection of life must be balanced against the liberties of women and not be considered in a vacuum.

Karen L. Bell, *Toward a New Analysis of the Abortion Debate*, 33 ARIZ. L. REV. 907-35 (1991).

Most Americans believe that a fetus has some innate rights and therefore maintain a woman has a right to abort only under certain circumstances. With this understanding the focus of the abortion issue should vacillate from the question of "rights" to the question of "under what circumstances abortion should be permitted." The Justification and Excuse doctrine is incorporated into criminal law. The author proposes to examine the abortion issue under this doctrine, focusing on the application of duress, necessity and self-defense to abortion. These conceptualizations seem to lower a fetus' human worth. While taking no stand, the author contends that changing the focus of the abortion debate will bring the controversy closer to a resolution.

Michael W. McConnell, *How Not To Promote Serious Deliberation About Abortion*, 58 U. CHI. L. REV. 1181-202 (1991) (reviewing LAURENCE H. TRIBE, ABORTION: THE CLASH OF ABSOLUTES (1990)).

The reviewer critiques the book *Abortion: The Clash of Absolutes* by

Professor Laurence Tribe, and asserts that although the book begins as if it is going to produce both sides of the abortion debate in an unbiased and conceptually clear way, Professor Tribe's own pro-choice views are apparent throughout the book. The reviewer focuses on Professor Tribe's biases and attempts to clarify them in a non-controversial or argumentative fashion, and produces a cohesive and understandable outline of the abortion debate.

Alan I. Bigel, *The Rehnquist Court on Right to Life: Forecast for the 1990s,* 18 OHIO N.U. L. REV. 515-70 (1992).

This Article examines the Rehnquist Court's consideration of the right to life issue. It focuses on the Court's opinions in the areas of capital punishment, abortion and euthanasia. The author explores the Court's philosophical bent to determine whether it leans towards "judicial activism" or "judicial self-restraint" in regards to the right to life issue. The author concludes that although the Supreme Court will continue to refine the boundaries of *Roe v. Wade,* 410 U.S. 113, it does not seem likely for the Court to renounce the right to abortion in the 1990's.

Bradley P. Ryder, Comment, *Constitutional Law — Right of Privacy — Regulation Preventing Publicly Funded Facilities From Providing Preconceptual Abortion Counseling Comports With Fifth Amendment. Rust v. Sullivan, 111 S.Ct. 1759 (1991),* 22 CUMB. L. REV. 399-415 (1992).

In *Rust v. Sullivan,* 111 S. Ct. 1759 (1991), the Supreme Court upheld an appellate court decision forbidding publicly funded clinics from providing preconception counseling concerning the use of abortion as a method of family planning. This comment is an analysis of four prior Supreme Court cases dealing with abortion and the right to privacy, and how the *Rust* decision further defines these issues. The author characterizes the prior cases as establishing a woman's right to have an abortion while refusing to impose an obligation on the State to accommodate the act. The author concludes that the *Rust* decision further removes the Government from advising or assisting a woman in any way on the matter of abortion.

David Robert Baron, Book Note, 12 B.C. THIRD WORLD L.J. 507-18 (1992) (reviewing LAURENCE M. TRIBE, ABORTION: THE CLASH OF ABSOLUTES (1990)).

Professor Laurence M. Tribe's book seeks to locate a middle ground between the two sides of the abortion debate by exposing the unproductive and unsound assumptions of both pro-choice and pro-life advocates. The book reviewer maintains that Tribe fails in his effort because his pro-choice sentiments permeate throughout the book. The reviewer finds that the book may be useful as an introduction to the abortion issue and for its persuasive view on the pro-choice agenda and arguments supporting *Roe v. Wade*, 410 U.S. 113 (1973).

Nicholas C. York, Note, *Rust v. Sullivan: Paring Back the Protective Robe of the First and Fifth Amendments*, 21 CAP. U. L. REV., 347-73 (1992).

In *Rust v. Sullivan,* 111 S.Ct. 1759 (1991), the Court held that the government may condition the receipt of Title X funds upon not providing abortion counseling or engaging in activities that promote abortion to their patients. This Note contends that the decision creates serious conflicts between the regulations and a doctor's ethical duty to his patient. The author maintains that in upholding the new Title X regulations an obstacle is created which interferes with a woman's fundamental right to terminate her pregnancy.

M. Chris Floyd, Case Note, *Putting the Teeth Back Into the BFOQ Requirement of Title VII and the Pregnancy Discrimination Act: International Union v. Johnson Controls*, 26 U. Rich. L. Rev. 413-31 (1992).

This Case Note discusses the status of fetal protection policies, both before and after *International Union v. Johnson Controls*, 111 S.Ct. 1196 (1991), and the possible future impact of the Supreme Court's ruling that sex-specific fetal protection policies cannot be justified nor tolerated. The author also discusses the relevant statutes involved in the Court's ruling, namely Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act of 1978. The author concludes that the Court's decision expresses trust in the ability of the employee to make the right decision in the area of fetal protection and that is where the decision should lie.

Marti S. Toennies, Note, *Judicial Deference—Supreme Court Will Defer to "Reasonable" Abortion Restrictions, Rust v. Sullivan, 111 S. Ct. 1759 (1991)*, 14 U. ARK. LITTLE ROCK L.J. 557-78 (1992).

This Article traces the evolution of Supreme Court cases involving abortion regulation. The author analyzes the Court's decision in *Rust v. Sullivan*, 111 S. Ct. 1759 (1991), which permitted federal regulations prohibiting health care workers from counseling patients about abortion. The note describes the significant impact the *Rust* decision has on abortion rights, doctor-patient relationships and First Amendment rights.

Ann Brewster Weeks, Note, *The Pregnant Silence: Rust v. Sullivan, Abortion Rights, and Publicly Funded Speech*, 70 N.C. L. REV. 1623-68 (1992).

This Article addresses the impact of *Rust v. Sullivan*, 111 S. Ct. 1759 (1991). The Supreme Court declared regulations constitutional which forbid health care providers at federally funded family planning clinics from counseling patients about abortion. The author analyzes the importance of *Rust* in light of the Court's other abortion decisions. There is a discussion on the law surrounding the government's responsibility to preserve the First Amendment rights involving publicly funded speech.

Hope E. Matchan & Kathryn E. Sheffield, Comment, *Adding Constitutional Deprivation to Untimely Death: South Dakota's Living Will Pregnancy Provision*, 37 S.D. L. REV. 388-412 (1992).

The author argues against the constitutionality of the pregnancy clause, S.D. CODIFIED LAWS ANN. § 34-12D-10 (1990), South Dakota's living will statute. The statute is analogized to an abortion regulation and analyzed under Substantive Due Process, Equal Protection, and Establishment Clauses. The author contends that under those doctrines the statute is unconstitutional and recommends amendment of the statute to apply only to pregnant women carrying viable fetuses.

Charlotte Rutherford, *Reproductive Freedoms and African American Women*, 4 YALE J.L. & FEMINISM, 255-90 (1992).

In this Article, the author argues that there must be a greater effort on behalf of civil rights and women's groups to fight for reproductive freedoms for African American women. A disproportionate number of African American women are poor and health care choices are limited by poverty. Therefore "rights"

taken for granted by many are not considered "rights" by all. Reproductive rights should include not only abortion rights, but also the right to have adequate prenatal care and access to infertility services. Without these rights, the author concludes, many African American women will face limited choices regarding their reproductive freedom.

Judith F. Daar, *Selective Reduction of Multiple Pregnancy: Lifeboat Ethics in the Womb*, 25 U.C. DAVIS L. REV. 773-843 (1992).

This Article discusses the moral and ethical considerations involved in the selective reduction of multiple pregnancy, a surgical procedure used to reduce one or more fetuses during the first trimester of pregnancy, in order to give the remaining fetuses a better chance for survival. This Article traces the history of selective reduction and compares it to abortion, concluding that the debate as to the ethics of the procedure should not focus on its similarity to abortion. Selective reduction allows a woman carrying a potentially dangerous number of fetuses to avoid aborting all of them and enables her to continue a normal healthy pregnancy.

Karen Hilmoe, Note, *Rust v. Sullivan: Free Speech is "Significantly Impinged" by Title X Regulations*, 37 S.D. L. REV. 600-20 (1992).

This author argues that the Supreme Court in *Rust v. Sullivan*, 111 S. Ct. 1759 (1991), erred in its free speech analysis by concluding that regulation imposed on clinics receiving Title X funding may prohibit clinics from counseling women as to their choice of an abortion. Such a decision, the author concludes, would only succeed in advancing the former executive branch's anti-abortion policies by making it harder for challengers to prove that their free speech rights have been abridged when counseling patients as to their alternatives when faced with an unexpected pregnancy.

Luke T. Cadigan, Note, *Balancing the Interests: A Practical Approach to Restrictions on Expressive Conduct in the Anti-Abortion Protest Context*, 32 B.C. L. REV. 835-97 (1992).

A dichotomy exists between protecting the First Amendment rights of right to life and protecting the constitutional "penumbra" of privacy rights of those who administer abortions. This Note proposes that courts issue injunctions restricting the violent

expression of anti-abortion protesters against abortion clinics and enhance their ability to provide medical treatment. Previous governmental interests that courts have used to tailor injunctions, should be considered as well as the actual conflict between abortion rights and free speech. While abortion protesters are entitled to an opportunity to reach their intended audience, they cannot endanger the health or safety of those seeking abortions, the author asserts.

Lisa Hemphill, *American Abortion Law Applied to New Reproductive Technology*, 32 AM. ABORTION L. 361-86 (1992).

This Article explores several court decisions that deal with new reproductive technologies and decisions the courts will face as technology becomes even more sophisticated. The crux of the Article deals with the possibility of viability at the moment of conception and the role this plays in applying current abortion law to cases regarding the disposition of embryos. The author maintains that "if a parent has the right to decide against artificial implantation, that person should also have the right to decide that the embryo should be destroyed."

Loye M. Barton, Note, *The Policy Against Federal Funding for Abortions Extends Into the Realm of Free Speech After Rust v. Sullivan*, 19 PEPP. L. REV. 637-89 (1992).

This Note examines the regulations regarding abortion for receipt of Title X funds, including the "gag rule" enumerated in *Rust v. Sullivan*, 111 S. Ct. 1759 (1991). The author argues that the ambiguous language of Title X resulted in the Court deferring to the Secretary of Health and Human Service's interpretation of the abortion restrictions, as restrictions on free speech and privacy. The author concludes that the encroachment on First Amendment rights is not a proper weapon in an administration's war against abortion.

BATTERED WOMEN

Dianne Post, *Protecting Domestic Violence Shelters' Records (with forms)*, 37 PRAC. LAW. 71-9 (1991).

This Article gives an overview of the purposes and policies behind the Victims of Crime Act of 1984 and similar legislation which protects the privacy rights of victims of rape and battering and those suffering from drug and alcohol addiction. The author seeks to educate lawyers and shelter staff about the existence of

this legislation in order to prevent confidential shelter records from being released inadvertently and used against victims at trial. The author believes that turning over these records will not only harm the shelters' clients, but may also jeopardize the federal funding of the shelters.

Joy Hannel, Note, *Missouri Takes a Step Forward: The Status of "Battered Spouse Syndrome" in Missouri* 56 MO. L. REV. 465-78 (1991).

Missouri Revised Statute § 563.033 recognizes the "Battered Spouse Syndrome" and allows for battered women to use this defense in criminal proceedings. The recent decision of *State v. Williams*, 787 S.W.2d 308 (Mo. App. 1990), further extends the "Battered Spouse Syndrome" defense, and holds that "spouse" is a term of art, not dependent upon the defendant's marital status. The author points to the instances where a battered woman kills her partner at times other than immediately after a beating has occurred.

David S. Dupps, Note, *Battered Lesbians: Are They Entitled to a Battered Woman Defense?*, 29 J. FAM. L. 879-99 (1990-91).

The author discusses the battered woman syndrome and argues that the syndrome and its use as a defense should be broadened to include gay women trapped in violent relationships. The author also explores the limitations of the traditional self-defense and temporary insanity defenses when applied to situations involving battered women.

Dekeseredy & Maclean, *Exploring the Gender, Race, and Class Dimensions of Victimization: A Left Realist Critique of the Canadian Urban Victimization Survey*, 35 INT'L J. OF OFFENDER THERAPY & COMP. CRIMINOLOGY 143-61 (1991).

Victimization research obtained through the 1982 Canadian Urban Victimization Survey yields a narrow understanding of the relationship between crime and gender, ethnicity, and class. The authors of this Article argue that this data overlooks non-criminal sexual advances, female child abuse, and victimization among rural, homeless, and minority women. They propose applying a left realist methodology to victim's studies to encompass more aspects of victimization.

Christopher J. Klein, Note, *Will the § 1983 Equal Protection Claim Solve the Equal Protection Problem Faced by Victims of Domestic Violence? A review of Ballistreri, Watson, Hynson, and McKee*, 29 J. FAM. L. 635-58 (1990-1).

Battered women have begun to sue police departments and municipalities which treat domestic violence complaints differently than other complaints. The author of this Note traces the historical development of this equal protection claim, discussing early applications of the claim to battered women cases. The author then analyzes recent developments in equal protection cases in the federal Courts of Appeal, concluding that whether battered women may receive monetary, declaratory or injunctive relief under 42 USC § 1983 is still an open question.

Matthew Litsky, Note, *Explaining the Legal System's Inadequate Response to the Abuse of Women: A Lack of Coordination*, 8 N.Y.L. SCH. J. HUM. RTS. 149-81 (1990).

This Note addresses the legal system's historically inadequate response to the plight of battered women. The author examines the separate attempts of the legislature, police, prosecutors and judiciary to confront this problem. He concludes that until the individual arms of the legal system unite and coordinate their efforts, the problem of battering women will remain unresolved.

Jane Byeff Korn, *Changing Our Perspective on Arbitration: A Traditional and a Feminist View*, 1991 ILL. L. REV. 67-106 (1991).

Courts have historically mistrusted arbitration as a form of dispute resolution inferior to litigation. Case law and precedent suggest that these views are changing, but feminist analysis reveals its tenacity. The author argues that courts devalue arbitration precisely because it is different from the "norm", much as men have historically devalued women. The author concludes that only when the legal system removes its bias toward litigation will it be able to assess arbitration on the merits and accord it full respect.

DISCRIMINATION

Anne C. Levy, Book Note, 54 ALB. L. REV. 401-12 (1990) (reviewing DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW (1989)).

The reviewer examines Deborah Rhode's proposal for a new framework for combining complex women's issues such as sex

discrimination: that the law provide equal opportunity rather than attempt to achieve equal treatment, and comments that such approach, in which the law would recognize, accommodate, and reward gender difference, is useful to both women's rights advocates and legal scholars. The reviewer asserts that by first analyzing the history, progress, and failures of the women's movement, Rhode effectively illuminates the need for a new approach to unify women in their efforts to achieve equality and justice, and next assesses the disadvantage-based approach in gender law, using recent Supreme Court opinions to show the ramifications of this approach in sex discrimination cases. The reviewer concludes that although the book is a bit disjointed, the framework presented in *Justice and Gender* presents a refreshing and workable solution to complex women's issues.

Cynthia Fuchs Epstein, Book Review, 79 CAL. L. REV. 577-89 (1991)(reviewing DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW (1989)).

In feminist jurisprudence, the "rights" theory focuses on equal treatment or rights for women, and the "difference" theory focuses on the inherent differences between men and women. The reviewer applauds the clear and illuminating manner in which the author "probes women's history and examines women's present status to discern the interconnections and 'false dichotomies' between these two theories."

Beth Bilson, Book Note, 4 CAN. J. WOMEN & L. 335-8 (1990) (reviewing JENNIE FARLEY, WOMEN WORKERS IN 15 COUNTRIES: ESSAYS IN HONOUR OF ALICE HANSON COOK (1985)).

This collection of papers was given at a conference which celebrated the eightieth birthday of Alice Hanson Cook, long-time feminist and campaigner for women's rights. The essays, written by women from fifteen different countries, relate to their struggle to achieve dignity and respect in their working lives. The reviewer finds similar themes in the essays, showing that women throughout the world share the same problems of wage inequality, exploitation of part-time workers, and a lack of opportunity for promotion at work.

Hagan et al., *Cultural Capital, Gender, and the Structural Transformation of Legal Practice*, 25 LAW & SOC'Y REV. 239-62 (1991).

This Article addresses Marxian and post industrial predictions

about the structural transformation of the legal profession, specifically as they relate to gender differences in a law firm. The authors find that both men and women are losing shares of partnerships positions, with women losing more than men. The greatest representation of women was found in lower and mid-level positions of larger firms, with women's worst chances of partnership in smaller firms.

Thomas R. Haggard, *Mugwump, Mediator, Machiavellian, or Majority? The Role of Justice O'Connor in the Affirmative Action Cases,* 24 AKRON L. REV. 47-87 (1990).

This Article presents a critical analysis of Justice O'Connor's affirmative action opinions. The author criticizes O'Connor's early opinions on affirmative action for their failure to delineate a clear standard. Justice O'Connor is viewed as one who fails to take a clear ground, as a mediator, and as a devious opponent. Her more recent decisions suggest the emergence of a more coherent stance on the issue. The author suggests that Justice O'Connor's later opinions reflect analytical models and philosophical premises on which affirmative action policies may be based.

Alfred J. Field & Arthur H. Goldsmith, *The Impact of Gender and Working Life Cycle Position on the Likelihood and Accumulation of Formal on the Job Training,* 10 POPULATION RES. & POL'Y REV. 47-66 (1991).

The authors of this Article conducted a study to examine the influence of gender and the working life cycle on participation in formal on-the-job training programs. They concluded that workers in the earlier stages of their working life are more likely to participate in formal on-the-job training than workers at later stages. The results also indicate that gender fails to have a significant impact on participation in formal on-the-job training programs.

Elizabeth Evans, Comment, *Accounting for StitichCo: The Effects of Internal Control Techniques on the Lives of Working Women,* 4 CAN. J. WOMEN & L. 252-65 (1990).

Following a description of the internal control systems of accounting, the author illustrates how these principles are used as a system of management governing the work lives of women garment workers. This Comment examines the impact of such a system on aspects of women's work lives such as the tasks, status,

pace, work package and personal relations. The author concludes that the assumptions and structure of accounting practices prevent accountants from noticing women's value, and argues that the system must be changed for accounting to be responsive to women workers.

Laurie LeClair, Note, *Sexual Harassment Between Peers Under Title VII and Title IX: Why Girls Just Can't Wait to be Working Women,* 16 VT. L. REV. 303-39 (1991).

Female students are commonly subject to verbal abuse, harassment, molestation, and sexual assault in their coeducational experience. Title VII protects working women from similar abuse by holding an employer liable for constructive knowledge of harassment. The author of this Note advocates expanding the parameters of the legal protection under Title IX to protect students in the way that Title VII protects working women.

Judith A. Winston, *Mirror, Mirror on the Wall: Title VII, Section 1981, and the Intersection of Race and Gender in the Civil Rights Act of 1990,* 79 CAL. L. REV. 773-805 (1991).

The author argues that women of color who are subjected to both race and gender discrimination in the workplace are forced to choose between Title VII or Section 1981 protection, and that this choice denies adequate remedy. Title VII applies to employers who employ 15 or more employees and is restricted to equitable relief, and Section 1981 does not provide for gender discrimination. The author suggests that under a sex discrimination suit, a woman is precluded from compensatory or punitive damages, and concludes that women of color suffer a dual discrimination. A clear and effective legal construct is necessary to allow women of color to vindicate their rights.

Robert L. Norton, Comment, *The New Disparate Impact Analysis in Employment Discrimination: Emanuel v. Marsh in Light of Watson, Antonio, and the Failed Civil Rights Act of 1990,* 56 MO. L. REV. 333-52 (1991).

This Comment describes the evolution of the disparate treatment and impact analysis from the Supreme Court's original disposition to its present holdings. The author finds that the Court has merged the two separate analyses into one, making it more difficult for a plaintiff to succeed in either a race or sex discrimination suit against an employer. The author concludes with a discussion

of Congress' attempt to return to the separation of the two analyses in the Civil Rights Act of 1990.

Jere W. Morehead, *Exploring the Frontiers of Batson v. Kentucky: Should the Safeguards of Equal Protection Extend to Gender?*, 14 AM. J. TRIAL ADVOC. 289-304 (1990).

In *Batson v. Kentucky*, 476 U.S. 79 (1986), the Supreme Court held that under the Fourteenth Amendment's Equal Protection clause, peremptory challenges by the prosecution on the basis of a prospective juror's race were prohibited. This article examines the issue of extending *Batson* to the area of gender discrimination and explores three recent lower court decisions which have applied *Batson*. The article also discusses the importance of extending *Batson* and the impediments to its widespread adoption in the area of gender discrimination.

Michael L. Vasu & Ellen S. Vasu, *Gender Stereotypes and Discriminatory Behaviors Toward Female Attorneys: The North Carolina Case*, 13 CAMBELL L. REV. 183-207 (1991).

This Article analyzes the results of a survey of members of the North Carolina Bar. The survey profiled the attitudes and perceptions of male and female attorneys on a number of important professional concerns in order to obtain information about the role of gender in the practice of law. The findings suggest that while women have made significant progress in the practice of law, female attorneys continue to experience discriminatory behavior and attitudes in the practice of law more often than their male counterparts.

Judith Reed, Comment, *Limiting the Right to a Bias-Free Workplace: A Survey of the Employment Discrimination Decisions of the 1988-89 Term*, 18 N.Y.U. REV. L. & SOC. CHANGE 93-102 (1990-91).

The author discusses recent Supreme Court decisions involving employment discrimination. The practical effects of these decisions are explored, including the fact that they have made it more difficult for employment discrimination plaintiffs to bring a valid cause of action. The author suggests that Congressional action may be called for in the 1990's to protect the civil rights of women and minorities in the workplace.

Reuben E. Slesinger, *How Economists Can Help in Litigation Involving Personal Injury, Death, or Discrimination*, 1 J. LEGAL ECON. 67-79 (1991).

Economists are playing an increasing role as expert witnesses and consultants in discriminatory termination, disability and wrongful death cases in which damage awards involve lost potential income and fringe benefits. They estimate the earning power or potential of the injured party had the tort not occurred. The author advocates using trained experts in economics to provide guidance for the jury.

Solomon Oliver, Jr., *Litigating the Constitutionality of State and Local Affirmative Action Plans: Issues and Approaches*, 10 REV. LITIG. 55-101 (1990).

This Article identifies key issues that lawyers must address when litigating affirmative-action programs under the strict scrutiny standard, in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). The author discusses the types of compelling interests that will justify a state or local affirmative action plan and the evidence that is required. The author notes that since the composition of the Supreme Court recently changed it is unclear what approach the Court will use in the future.

Linda R. Hall, *Georgia Lawyers Report Gender and Racial Bias in Legal Practice: A Review of the Georgia Bar's Survey*, 28 GA. ST. B. J. 6-18 (1991).

The Georgia State Bar's Special Committee on the Involvement of Women and Minorities in the Profession (the "Committee") was created in 1988 to analyze the role that gender and race play within the practice of Georgia Law. The Committee conducted a survey in 1989 and found that, while most minority and women lawyers have not personally experienced discrimination, the majority of attorneys acknowledge that such discrimination exists. The author concludes that the perception of discrimination differs between white males and minorities and women, but these perceptions are based on the reality of each groups' experience.

Brenda T. Acken et al., *Limiting Sexual Harassment Liability*, 1991 J. ACCT. 42-44, 46-47 (June 1991).

Sexual harassment lawsuits and damage awards are on the rise. The authors provide an outline of the relevant law and issues. They stress the necessity for firms to have a concrete sexual har-

assment policy and to diligently enforce it, in order to avoid potential liability.

Cliona Mary Robb, Note, *Bad Samaritans Make Dangerous Precedent: The Perils of Holding an Employer Liable for an Employee's Sexual Misconduct* 8 ALT. L. REV. 181-202 (1991).

In *Doe v. Samaritan Counseling Center*, 791 P.2d 344 (Alaska 1990), the Alaska Supreme Court expanded the doctrine of employer's vicarious liability by holding an employer liable for the sexual misconduct of an employee. The author of this Article maintains that such an expansion may be detrimental to society when a victim is compensated at the cost of the social services system.

Richard Townsend-Smith, Note, *The Role of Affirmative Action Officers in North American Universities,* 19 ANGLO-AM. L. REV. 325-44 (1990).

Affirmative Action Officers (AAO's) may play an important role in the development of well rounded faculty and student bodies at North American universities. AAO's provide important information with regard to the hiring of new faculty. The author of this Article contends that a well rounded faculty with regard to gender and race will lead to overall growth in university faculties as minority students will begin to pursue such careers.

Judy Scales-Trent, *Women in the Lawyering Process: The Complications of Categories,* 35 N.Y.L. SCH. L. REV. 337-42 (1990).

The author suggests that when people are classified as members of a particular racial, ethnic, or gender category, the benefits or problems of categories which may apply are excluded. The author concludes that when more than one classification applies, a question arises as to which category applies.

Lucille M. Ponte, *Waldie Answered: Equal Protection and the Admissions of Women to Military Colleges and Academies,* 25 NEW ENG. L. REV. 1137-60 (1991).

The case of *Waldie v. Schlesinger*, 509 F.2d 508 (D.C. Cir. 1974), challenged the constitutionality of male-only admissions to military academies. The Court sustained the discriminatory admissions policies, citing standards of scrutiny and government aims. Statutory reforms and case law since *Waldie*, notably *United States v. Massachusetts Maritime Academy*, 762 F.2d 142 (1st Cir. 1985), show that gender-neutral combat restrictions no longer justify

the exclusion of women. The author believes that the remaining male-only academies discriminate at their peril, since their policies will not survive the heightened scrutiny of a constitutional challenge.

Kimberly A. Mango, Comment, *Students Versus Professors: Combatting Sexual Harassment Under Title IX Of the Education Amendments of 1972*, 23 CONN. L. REV. 355-412 (1991).

The author explores the substantive and procedural obstacles met by student plaintiffs in sexual harassment actions, focusing on the difficulty in establishing a cause of action and remedy in Title IX of the Educational Amendments of 1972 of the Civil Rights Act. The author argues that Title VII of the 1964 Civil Rights Act recognizes sexual harassment claims in the work place and provides a procedural scheme and substantive policy. This supports a student plaintiff's private cause of action and a proper remedy in damages.

Linda Marks, *Alternative Work Schedules in Law: It's About Time!*, 35 N.Y.L. SCH L. REV. 361-67 (1990).

The American Bar Association estimates that it costs $100,000 to replace an associate at a law firm. Thus, law firms have an incentive to retain valuable employees by offering alternative work schedules to those who might otherwise leave for firms with more flexible personnel policies. Since an attorney with a law firm however typically works 70 hour weeks compromised of both billable and non-billable hours, law firms face unique problems devising alternative work schedules. This Article discusses these problems, suggests possible solutions and concludes that it is in the best interest of law firms to implement these programs.

Laurence J. Baer et. al., Essay, *Discovering Sexual Relations: Balancing the Fundamental Right to Privacy Against the Need for Discovery in a Sexual Harassment Case*, 25 NEW ENG L. REV. 849-57 (1991).

The authors analyze a plaintiff's need for discovery and defendant's and third parties' rights to privacy in sexual harassment at the work place and explore the California Court of Appeals findings in *Boler v. Solano*, 201 Cal. App. 3d 467 (1987), which uses a compelling state interest test to guard against intrusive and harassing discovery procedures.

I. Bennett Capers, Note, *Sex(ual Orientation) and Title VII*, 91 COLUM. L. REV. 1158-87 (1991).

Title VII of the Civil Rights Act of 1964 was designed in part to end discrimination against women in the workplace. The Act, as applied, has maintained the bipolar definition of gender and excludes discrimination based on sexual orientation. The author argues that to accomplish its stated end, Title VII must be applied to lesbian, bisexual and gay plaintiffs; those who are discriminated against because of sexual orientation. While the courts have held that discrimination on the basis of sexual orientation is not violative of Title VII, the author demonstrates that such discrimination is essentially discrimination based on sex stereotyping and does violate Title VII.

G. Paige Wingert, Note, *State Constitutional Law-Peremptory Challenges by Defense-Racially Discriminatory Use of Peremptory Challenges by Defense Counsel Violates Both the Civil Rights Clause and the Equal Protection Clause of the New York State Constitution*: People v. Kern, 75 N.Y.2d 638, 554 N.E.2d 1235, 555 N.Y.S.2d 647 (1990), 95 DICK. L. REV. 439-47 (1991).

This Note provides an in depth analysis of *People v. Kern*, 554 N.E.2d 1235 (1990), which held that purposeful racial discrimination in the selection of jurors is prohibited by both the civil rights and equal protection clauses of the New York State Constitution. Although *Kern* relies on the *Batson v. Kentucky*, 476 U.S. 79 (1986), rationale to restrict the defendant's use of peremptory challenges, the author distinguishes *Kern* as a decision which safeguards the defendant's perception of an impartial jury while preserving two compelling state interests: the need for balance between the prosecution and defense and the continued confidence of the American people in the judicial process as embodied by the jury.

Katherine P. Young, *Carol Condo's and Karl Beveridge's First Contract: Women and the Fight to Unionize*, 4 CAN. J. WOMEN & L. 339-40 (1990) (book review).

This book dispels myths about unions by presenting the stories of specific women and their fight for unionization and better working conditions. The reviewer notes that the book shows the basics of unionization and the personal aspects of union involvement.

Randall J. Peach, Note, *Civil Rights—Law Against Discrimination—Princeton Eating Clubs Must Admit Women Because Symbiotic Relationship with Princeton University Subjects Them to Law against Discrimination as Public Accommodations—Frank v. Ivy Club, 120 N.J. 73, 576 A.2d 241 (1990), cert. denied, 111 S. Ct. 799 (1991)*, 22 SETON HALL L. REV. 235-55 (1991).

This Note examines the application of New Jersey's Law Against Discrimination in a recent state court decision. The Note examines the different standards used by courts in determining whether an institution is public, thereby subjecting it to the statute. In addition, the Note analyzes the freedom to associate protected by the Constitution in light of the *Frank* decision, which could be challenged on constitutional grounds.

Bruce Feldthusen, *The Gender Wars: "Where the Boys Are,"* 4 CAN. J. WOMEN & L. 66-95 (1990).

The author, a Canadian law professor, recounts personal observations of discrimination against women in law and explores reasons why men tend to reject a meaningful feminist presence in legal education. The author suggests that most male law professors refuse to even consider the issue and instead embark on conscious or unconscious campaigns to deny, trivialize, neuter or redefine gender issues. He illustrates his points with concrete, real life examples of these patterns.

Marion Crane, *Feminizing Unions: Challenging the Gendered Structure of Wage Labor*, 89 MICH. L. REV. 1155-1221 (1991).

Feminist scholars agree that economic empowerment is a critical step towards achieving economic, social and political equality between men and women. The author argues for the feminization of labor unions as a way to correct the genderized structure of wage labor. Feminized labor unions, through collective bargaining and political lobbying, can be an effective tool in transforming the structure of work and labor, and would afford working-class women and women of color a voice in this process.

Jewel L. Prestage, *In Quest of African American Political Woman*, 515 ANNALS 88-103 (1991).

African American women are members of the two groups that have historically suffered the greatest exclusion from political life. As a result, their activities in the political arena have been largely overlooked. This Article assesses the political involve-

ment and behavior of African American women, showing that they hold a higher percentage of their race's elective offices than do white women. The author predicts that African American women's future political efforts will probably be directed toward race issues rather than gender issues.

Susan E. Marshall, *Who Speaks for American Women? The Future of Antifeminism,* 515 ANNALS 50-62 (1991).

This Article explores the antifeminist movement in the wake of the defeat of the Equal Rights Amendment (ERA). Its defeat caused many proponents and opponents of the American feminist movement to doubt its future viability. After presenting a historical overview and examining the constituency and issues supported by the anti feminist movement's main organizations, the Eagle Forum and Concerned Women for America (CWA), the author concludes that forces inside and outside the movement will probably limit its success in the future.

Mark Kelman, *Concepts of Discrimination in "General Ability" Job Testing,* 104 HARV. L. REV. 1157-247 (1991).

The author frames the debate over "general ability" hiring tests as one between detractors concerned about injustice to individual minority group members and proponents interested in maximizing social product through allegedly meritocratic principles. The author contends that the tests have a disproportionate negative impact on minorities due to minimal statistical validity as productivity predictors, which measure ability to do well on tests rather than the capacity to do the work.

Joni Hersch, *Male-Female Differences in Hourly Wages: The Role of Human Capital, Working Conditions and Housework,* 44 INDUS. & LAB. REL. REV. 746-58 (1991).

This Article examines the wage gap differential between men and women. Through empirical formulas and tables the author analyzes different factors as bases for gender differences in earnings. The variables included in this study are human capital, household responsibilities, working conditions and on-the-job training. The author suggests that housework has the greatest negative effect on women's earnings.

Carol Mueller, *The Gender Gap and Women's Political Influence*, 515 ANNALS 23-37 (1991).

The eighties saw two significant changes in the way women and men vote in presidential elections. More women than men voted, and more women voted for the Democratic presidential candidate than men. The author of this Article explains how these differences have increased the influence of women on the political process in the candidates' choice of issues and the tone of their discussions. She concludes that in spite of these changes, neither party articulates the concerns of women exclusively, making women's influence on the politics of the nineties uncertain.

Kahn & Goldberg, *The Media: Obstacle or Ally of Feminists?*, 515 ANNALS 104-13 (1991).

This Article, written by two political science professors, focuses on how media coverage of the women's movement and women politicians reflects stereotypical male attitudes. While exposure to these attitudes can serve to promote women's issues by calling attention to them, women's issues and women politicians suffer as a result. The authors call for the elimination of gender based reporting.

Donald B. Ayer, *Civil Rights in the 1990's: Non-Discrimination or Quotas?*, 24 AKRON L. REV. 1-7 (1990).

The author, a former deputy attorney general under the Bush administration, examines the pros and cons of affirmative action quotas. He concludes that attempts to institutionalize "reverse discrimination" through legislative measures like the Kennedy-Hawkins bill would result in unreasonable burdens of proof for employers in employment discrimination cases. This would deny non-minority federal plaintiffs their constitutional right to challenge quota systems.

Adelaide H. Villmoare, *Women, Differences and Rights as Practices: An Interpretive Essay and a Proposal*, 25 LAW & SOC'Y REV. 385-410 (1991).

The author argues that feminist rights analysis should be broadened by including perspectives of a larger cross-section of women. She discusses the importance of including the day to day practices of everyday women in the development of aims of the women's rights movement. The author concludes that an inclu-

sive analysis of women's diverse needs and experiences will strengthen feminist legal scholarship.

Andrew Koppelman, Book Note, *Sex Equality and/or the Family: from Bloom vs. Okin to Rousseau vs. Hegel*, 4 YALE J. L. & HUMAN. 399-647 (1992) (reviewing SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY (1989)).

This book review focuses on Okin's response to a well known conservative objection to sexual equality: that sex equality tends to destroy family relations. The reviewer argues that Okin's response, based on the liberal political theory of John Rawls, does not sufficiently address the conservative objection. It relies solely on the value of justice above all other human aspirations.

Joan E. Van Tol, *Eros Gone Awry: Liability Under Title VII for Workplace Sexual Favoritism*, 13 INDUS. REL. L.J. 153-82 (1991).

This Article traces the development of sexual favoritism as a cause of action under Title VII. The author analyzes the major sexual favoritism cases and argues that the standards enumerated in *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), have been misinterpreted by the courts and the EEOC. The author concludes that current EEOC guidelines limiting sexual harassment to quid pro quo and hostile environment cases are wrong; sexual favoritism should be recognized under Title VII as a form of sexual harassment.

Pamela B. Fastiff, Note, *Gender Verification Testing: Balancing the Rights of Female Athletes with a Scandal-Free Olympic Games*, 19 HASTINGS CONST. L.Q. 937-61 (1992).

This Article discusses the test used by the International Olympic Committee to verify the gender of all female Olympic athletes. The author presents the constitutional concerns with the gender verification test, including the possible Fourth Amendment violation and equal protection problems. Finally, there is a proposal to institute an alternative method for the athletes who are subject to this test.

Cass R. Sunstein, *On Marshall's Conception of Equality*, 44 STAN. L. REV. 1267-75 (1992).

In this Article, the author examines Justice Thurgood Marshall's view on equality based on his opinion in *Brown v. Board of Education* 347 U.S. 483 (1954). The author suggests that Marshall's

constitutional vision of equality included a commitment to equality of opportunity, particularly in education. The author argues that Marshall was not, however, an egalitarian. Marshall's belief that no person should be deprived of access to the basic political, judicial, and educational institutions of a democratic society was only a basic minimum of protection against a person falling below a specified floor and not a governmental prohibition against disparate incomes and wealth.

Mary E. Becker, *The Politics of Women's Wrongs and the Bill of "Rights": A Bicentennial Perspective*, 59 U. CHI. L. REV. 453-517 (1992).

This author argues that the Bill of Rights serves the interests of white men better than that of women and minorities. The author discusses how portions of the Bill of Rights, perpetuate women's subordinate status in society, while impeding legislative reform and forestalling the political participation of women and minorities. The author maintains that the Bill of Rights can be improved and that an ideal Constitution would include a sex equality provision.

Book Note, *An Unlady-Like Response to Legal Conceptions of Women*, 105 HARV. L. REV. 2104-09 (1992) (reviewing SUSAN FALUDI, BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN (1991)).

A review of Susan Faludi's work illustrating recent manifestations of antifeminism in the United States provides a basis for realistic analysis of gender inequality. Faludi's analysis of print and broadcast media shows a pattern discouraging female independence and reinforcing subordinated stereotyping. This review concludes that legal redress should be sought for the mistreatment of women stemming from a limitation of their employment opportunities and reproductive rights.

Mary Thornberry, Book Review, 16 LEGAL STUD. F. 107-10 (1992) (reviewing J. HOFF, LAW, GENDER, & INJUSTICE: A LEGAL HISTORY OF U.S. WOMEN (1991)).

The author of this Article reviews a book dealing with the major legal issues women in the United States have faced. The author states that the book is "best read as a history of the debate over whether women should strive for equal treatment or special treatment in law." The article addresses many issues, including

passage of the ERA, the Pregnancy Discrimination Act, and due process. The author concludes by stating that the best insights of the book are in the analysis of the tactics people have used in working both for and against women's issues.

Mary Joe Frug, *Progressive Feminist Legal Scholarship: Can We Claim "A Different Voice"?* 15 HARV. WOMEN'S L.J. 37-64 (1992).

The author, the late Mary Frug, focuses on conflicting themes underlying feminist legal strategy. She discusses the relationship between Carol Gilligan's claims asserted in her book, *In A Different Voice*, regarding women's individual differences and Supreme Court Justice Sandra Day O'Connor's demand for formal equality between the sexes (equal protection under the Constitution) in *Mississippi University for Women v. Joe Hogan*, 458 U.S. 718 (1982). She assesses the use of Gilligan's book by feminist lawyers as increasingly they pursue a "strategy of difference," rather than formal equality, in their post-*Hogan* efforts to advance the position of women through law.

Martha I. Morgan, *Constitution-Making in a Time of Cholera: Women and the 1991 Colombian Constitution*, 4 YALE J.L. & FEMINISM 353-413 (1992).

The author discusses the role of women in Colombian society and considers the recent Colombian constitutional process to see how women can advance their interests through constitution-making. The author argues that women were not adequately represented in the constitution-making process because of the low number of women representatives; as a result they had little influence on the Colombian constitution. In conclusion, the author recognizes the process as an opening for women to exert pressure both inside and outside the state.

Mary Ann Mason, *Beyond Equal Opportunity: A New Vision for Women Workers*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 393-416 (1992).

This Article examines Title VII and the Equal Pay Act of 1963 and argues that the success of equal opportunity has promoted failure for women in the workplace. The author suggests that unless the conflict of work and parenting is recognized as a women's rights issue, there can be no real solutions to the exploitative nature of female dominated occupations and part-time work. The author concludes that women must collectively fight for con-

siderations of family needs that will allow them to work in male dominated fields and get paid accordingly.

Edward H. Mills, Jr., Book Review, 27 HARV. C.R.-C.L. L. REV. 281-6 (1992) (reviewing DRUCILLA CORNELL, BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW (1991)).

This book review examines the author's view that an upheaval of society's male dominated gender hierarchy and emergence of sexual difference is cause for celebration of feminine sexual difference. The author critiques the American legal system and the feminist jurisprudence of Robin West and Catharine MacKinnon. In conclusion, the reviewer describes the author's vision of a culture where systems of gender inequality are dismantled and where gender is no longer a determinant in people's lives as unique.

Lin Foxhall, Book Review, 13 J. LEGAL HIST. 78-9 (1991) (reviewing RAPHAEL SEALEY, WOMEN AND LAW IN CLASSICAL GREECE (1990)).

The reviewer attacks this work for attributing the disadvantaged position of women in classical Greek legal systems to the fact that women were barred from bearing arms where the law evolved from self-help. She believes that information in the book is presented better by other authors, and expresses the view that the author's disregard of women's involvement in Greek legal and social life resulted from limiting his assessment to statutes and not considering other historical evidence which provides a more complete picture of the role of women in Greek society.

Diane Heckman, *Women & Athletics: A Twenty Year Retrospective on Title IX*, 9 U. MIAMI ENT. & SPORTS L. REV. 1-64 (1992).

Title IX prohibits discrimination on the basis of sex in educational programs and activities, including certain athletic programs and activities. This Article traces the evolution of Title IX over the past twenty years. The author focuses on the history of the federal statute and discusses significant court decisions which interpret the scope of Title IX.

Susan G. Kupfer, *Autonomy and Community in Feminist Legal Thought*, 22 GOLDEN GATE U. L. REV. 583-609 (1992).

In examining the struggle women have faced in reaching the

proper definitions of autonomy and community within feminist legal thought, the author discusses several contrasting viewpoints. The author notes the tension between liberal feminist thought which espouses complete equality and autonomy for the individual woman and cultural liberal thought which identifies the woman with the needs of her community and family. She urges that in order to push back the barriers that exclude women, we should use our energy to redefine autonomy and community to include the concepts of ultimate social values and strong self identity.

M. Jane Kronenberger, Note, *Refugee Women: Establishing A Prima Facie Case Under the Refugee Convention*, 15 ILSA J. INT'L L. 61-83 (1992).

The Article discusses the difficulty many women have in obtaining refugee status when applying for political asylum due to the court's failure to include them within the definition of refugee. A refugee, as defined by the United Nations Convention Relating to the Status of Refugees, "is a person with a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion." The article advocates a more liberal construction of this definition to permit women to be entitled to refugee status as persecuted members of a "social group" regardless of their failure to meet the evidentiary burdens of showing their group is organized from within, and operates collectively in opposition to their government. As rationale for their deserved designation as members of a "social group," the author points to the experiences these women share as victims of persecution by their respective governments and the fact that it is the oppressive government that defines the group rather than the women themselves.

Donna Eansor, *To Bespeak the Obvious: A Substantive Equality Analysis of Reproduction and Equal Employment*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 417-47 (1992).

The author asserts that the right of women to participate equally in the paid workplace should not be thwarted by their unique ability to conceive. Substantive models of equality being developed and applied in Canada and the United States are important measures to ensure equality for women. Laws protecting against sex and pregnancy discrimination must be consistently adhered to in the actual workplace, she says.

Deborah L. Forman, *Gender and Jury Selection*, 2 UCLA WOMEN'S L.J. 35-83 (1992).

The author examines the expansion of *Batson v. Kentucky*, 476 U.S. 79 (1986), which prohibited the use of peremptory challenges to exclude jurors on the basis of race, to the use of peremptory challenges based solely on gender. She finds that it is doctrinally justifiable but theoretically contradicts the peremptory challenge and denies the possibility of differences. The author suggests a system of proportional representation that would allow for varied male/female perspectives while avoiding discrimination.

Robert E. McDade, Jr., Comment, *Fetal Protection Employment Policy Constitutes Sex Discrimination Under Title VII When Such Policy Excludes Female Employees Solely on Basis of Child-Bearing Capacity*, 61 MISS. L.J. 459-75 (1991).

The Supreme Court recently held that excluding females of child-bearing age from jobs potentially harmful to fetuses is discrimination. Expanded Title VII proscribes neutral employment practices that cause discrimination. Consequences of such policies are more important than employer intent. The Pregnancy Discrimination Act of 1978 provides a unified judicial framework for deciding these cases; business necessity has succeeded as a defense, but the bona fide occupational qualification will be harder to establish, based on recent case law.

Kathleen E. Mahoney, *The Constitutional Law of Equity in Canada*, 24 N.Y.U. J. INT'L L. & POL. 759-93 (1992).

The author discusses the dramatic changes that have occurred in Canadian law with respect to the principles of fundamental rights and equality. As early as the 1950's, the Canadian Legislature began enacting statutes prohibiting discrimination. Recently, a series of Canadian Supreme Court cases based on two sections of the Charter of Right and Freedoms in the Canadian Constitution has provided an opportunity for women to advance their constitutional interests via a results-oriented approach. With this continuing evolution, the author believes that the Canadian Supreme Court will be the first court in the world with the opportunity to challenge the inequities of social disadvantage.

Michael A. Rebell & Anne W. Murdaugh, *National Values and Community Values Part I: Gender Equity in the Schools,* 21 J.L. & EDUC. 155-202 (1992).

Many value conflicts over gender and stereotypes play out in our schools, and many legislative initiatives and legal decisions involve educational issues. These authors suggest a restructuring of these traditional roles would encourage integration rather than classification. Three options considered in this Article are: the legality of single sex schools in conjunction with Title IX of the Education Amendments of 1972 providing equal educational opportunities for male and female students—separate but equal education to benefit the disadvantaged; the opportunity for either same sex or mixed competitive teams extending beyond the Title IX requirement of separate but equal teams; and the enforcement of vocational options entitling equal access to all courses. Still, changed values, not just legal mandate, is needed to effectuate the ultimate solution.

Note, *Beyond Baston: Eliminating Gender-Based Peremptory Challenges,* 105 HARV. L. REV. 1920-39 (1992).

Recent Supreme Court cases have held that the use of peremptory challenge based on the race of the potential juror violates the constitutional Equal Protection rights of both the defendant and the excluded juror. Federal and state courts differ as to whether this violation extends to gender discrimination as well. Race and gender discrimination are significantly similar and are likewise entitled to similar protections. The author argues such protection falls under the Sixth Amendment guarantee of an unbiased and diverse jury, as well as the fact that the Framers intended the jury to be from a cross section of society of which women are a part and therefore are entitled not to be discriminated against in serving as jurors.

Stephen B. Reed, *The Demise of Ozzie and Harriet: Effective Punishment of Domestic Abusers,* 17 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 337-69 (1991).

This note discusses the issue of battered women. The author addresses the causes and effects of wife battering and also several different theories of criminal punishment. The author speaks at great length of the difference between civil punishment and criminal punishment, concluding that civil punishment is not enough and that the government must take action to deter the offenders.

The author concludes by stating that "deterrence, retribution, incapacitation and rehabilitation must be combined to develop a stringent, yet flexible system for combatting the problem of domestic violence in our society."

Michael Dowd, *Dispelling the Myths about the "Battered Woman's Defense:" Towards a New Understanding*, 19 FORDHAM URB. L.J. 567-83 (1992).

This Article discusses the use of the legal defense of self-defense by battered women in examining the prejudices they encounter. The author's historical analysis of violence against women and the attempts by the law to deal with battered women suggests that battered women's syndrome needs to be redefined. The author suggests that expert testimony at trial needs to be tailored to help the judge and jury in better understanding battered women, and that the law of self defense needs to be reassessed to accommodate the battered woman's experience.

Joyce E. McConnell, *Beyond Metaphor: Battered Women, Involuntary Servitude and the Thirteenth Amendment*, 4 YALE J.L. & FEMINISM 207-53 (1992).

The author argues that the Thirteenth Amendment protections against involuntary servitude should expand from the public sphere to private victims, such as battered women. Her analysis of several criminal-involuntary-servitude cases reveals physical violence and "sufficient" coercion as the essential elements which directly relate to battered-women's-cases. The author argues that the distinctions between economic crimes and private non-economic crimes are a false dichotomy and legally insignificant for constitutional purposes. In conclusion she calls for an end to marital rape exemption and suggests bringing both civil and criminal constitutional claims against the batterer.

Rene I. Augustine, Note, *Marriage: The Safe Haven For Rapists*, 29 J. FAM. L. 559-90 (1990-91).

The author begins the discussion with a history of the spousal rape exemption in the United States. Then, numerous defenses used by advocates who support this exemption are set forth while the inherent flaws underlying these arguments are expressed by the writer. Finally, several reforms are presented that would completely eliminate the spousal rape immunity in the criminal justice system.

Cynthia Grant Bowman, Comment, *The Arrest Experiments: A Feminist Critique*, 83 J. CRIM. L. & CRIMINOLOGY 201-8 (1992).

This Article discusses why quantitative studies regarding police responses to domestic violence are pervaded with distorted results and result in biased conclusions. Several factors which effect the neutrality of these statistics are mentioned. The author stresses the limits of these research results in formulating policy conclusions.

Steve Russell, *The Futility of Eloquence: Selected Texas Family Violence Legislation 1979-1991*, 53 S. TEX. L. REV. 353-75 (1992).

In this Article, the author examines the history of the Texas assault statute relating to spousal beating. The author examines the revisions in civil protective order legislation from 1983 to 1991. He also details the changes in the criminal law that add consequences for violation of protective orders in particular, and more generally, for family violence as a whole.

Conference Report, *Equality in the Administration of Criminal Justice: Gender, Race, and Class*, 2 CRIM. L.F. 239-380 (1991).

This report consists of three papers. The first discusses changes to the Canadian Criminal Code which encourage women to report domestic violence and rape. The Code recognizes rape as violence, not sex, does not require penetration, and recognizes marital rape. The Code also eases immediate reporting and corroboration requirements and limits the cross-examination of a victim's previous sexual conduct. The author asserts that progress is still needed, however, on domestic violence.

Daniel T. Barker, Note, *Interspousal Immunity and Domestic Torts: A New Twist on the "War of the Roses,"* 15 AM. J. TRIAL ADVOC. 625-40 (1992).

Citing domestic violence as women's leading health problem, the author calls for the Texas Supreme Court to uphold two lower court rulings which denied the defense of interspousal immunity for a divorce action based on the intentional infliction of emotional distress. Because Texas is the only state to allow jury trials for divorce proceedings, it has become the battleground for change in the law. After brief surveys of the origins and reasonings of interspousal immunity, and the current trend toward abandonment of this doctrine, the author traces the evolution of domestic torts in Texas and its rejection, on policy, in several

other states. By allowing such actions, the author feels that judicial economy, deterrence of domestic violence and fairness will be accomplished.

Lawrence W. Sherman, *Introduction: The Influence of Criminology on Criminal Law: Evaluating Arrests for Misdemeanor Domestic Violence*, 83 J. CRIM. L. & CRIMINOLOGY 1-45 (1992).

This Article introduces a symposium on domestic violence and discusses the development of criminology as a social science. The author illustrates criminology's effectiveness through a study on domestic violence conducted in seven large U.S. cities. The study showed that arresting a man, as opposed to issuing a warning, or mediation, who had committed an act of violence on his female domestic partner significantly reduced the likelihood of his committing another violent act.

EMPLOYMENT

Howard R. Flaxman, *Family vs. Profession? Responding to Childbirth and Parental Leave Requests*, 17 L. PRAC. MGMT. 30-3 (July/August 1991).

This Article discusses childbirth and parental leave policies in the legal field and the issues which must be considered in implementing such policies, including whether the policy is fair to both male and female employees. The court in *Schafer v. Board of Public Education School District of Pittsburgh*, 903 F.2d 243 (3rd Cir. 1990), held that while an employer may give favorable treatment to a pregnant employee while she is disabled, when the disability ends, the preference must also end. Parental leave given to female employees after childbirth must be consistent with the parental leave offered to male employees. The author concludes that the ultimate goal should be the successful accommodation of the professional and personal responsibilities of the attorney with needs of the firm and its clients.

Rita Mae Kelly, Michelle A. Saint-Germain & Jody D. Horn, *Female Public Officials: A Different Voice?*, 515 ANNALS 77-87 (1991).

This Article examines the extent to which female public officials differ in their views from their male counterparts. The authors explore the reasons why women express different views than men, and illustrate the various ways in which female public officials have manifested these differences. The authors conclude

that as the percentage of women in public office increases, differences between legislators of different genders will remain constant, while differences among women legislators will become more apparent.

Joni Hersch, Note, *The Impact of Nonmarket Work on Market Wages*, 81 HUM. RTS. 157-60 (1990).

This paper explores the effects of working at home on the wages of women in the marketplace through statistical analysis; the conclusion is that women who work at home receive lower wages and will continue to do so when they enter the marketplace. The author suggests that careers and family responsibilities are incompatible, and that this may be due to the fatigue of actually working longer combined hours than men. The author concludes by suggesting that women are not always victims of men when it comes to doing the housework but rather that they may actually enjoy it more than men.

Noxana Ng, *Immigrant Women: The Construction of a Labour Market Category*, 4 CAN. J. WOMEN & L. 96-112 (1990).

This Article explores some of the processes through which minority women are construed as "immigrant women" in Canada, the term "immigrant woman" representing a legal, social, and labor market category. A study was conducted of a community employment agency which provided job counselling and placement services for non-English-speaking and Black women. Through an in-depth examination of the counseling process, and the agency's relations with the state and employers, the author shows that job counseling and placement were mechanisms through which these women were organized into the lower echelons of the labor market. The Article concludes with a discussion of the theoretical and political implications for understanding sexism and racism in Canada.

L. Keith Larimore, *Evaluating Household Services and Other Nonmarket Production*, 1 J. LEGAL ECON. 63-5 (1991).

The author presents a framework for establishing value for nonmarket activity, such as homemaking, with regard to the types of losses which give rise to legal action. Such nonmarket values are difficult to measure. However, the author points out that in factoring the value, it is important to measure the time required

to complete a particular activity, and not the time spent on an activity.

Tina Kirstein-Ezell, Note, *Eradicating Title VII Sexual Harassment By Recognizing An Employer's Duty to Prohibit Sexual Harassment*, 33 ARIZ. L. REV. 383-99 (1991).

This Note discusses the problem of sexual harassment. It traces the development of hostile environment harassment claims through *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986), the only U.S. Supreme Court case on the issue, and describes employers' duties regarding sexual harassment. The author then reviews recent court decisions and concludes by discussing the scope and importance of the duty to maintain a safe work environment.

Heather Menzies, *Re-Thinking the Social Contract: Women, Work, and Technology in the Post-Industrial Era*, 4 CAN. J. WOMEN & L. 205-16 (1990).

This Article examines the impact of technology on women in the workplace. The author contends that women are losing what little control they once had in defining the tasks of the work place since computer systems now dictate the scope of work while monitoring performance. The author asserts that the impact of technological changes warrants a re-examination of work issues and a rethinking of the social contract including the insight of women.

Adam D. Seitchik, *When Married Men Lose Jobs: Income Replacement Within the Family*, 44 INDUS. & LAB. REL. REV. 692-706 (1991).

This economic analysis focuses on the effect wives have on household incomes when husbands' jobs are lost. The author creates a model of earning reduction and family income replacement for a sample group of married men who have lost their jobs. The trends of restructuring within the family economy are discussed.

Lea S. Vandervelde, *The Gendered Origins of the Lumley Doctrine: Binding Men's Consciences and Women's Fidelity*, 101 YALE L.J. 775-852 (1992).

The *Lumley* doctrine emerged when the English Court of Equity held that, although an opera singer could not be ordered to perform her contract, she could be enjoined from singing at any

competing music hall for the term of the contract. The author notes, however, that this doctrine violates the American tradition of free labor and the right to quit employment, and suggests that its acceptance in the United States during the nineteenth century was facilitated by the fact that most of the cases involved women. The author examines several nineteenth century cases and concludes that what began as an attitude of gender subordination paved the way for a more regressive legal rule affecting the entire labor market.

Stacy Caplow & Shira A. Scheindlin, *"Portrait of a Lady": The Woman Lawyer in the 1980's*, 35 N.Y.L. SCH. L. REV. 391-446 (1990).

This Article analyzes a questionnaire surveying the success and satisfaction of women attorneys who graduated from law school in 1975 and 1976. The authors first describe the methodology used for obtaining their data, and then present a comprehensive report written over 20 years ago by Professor James White in his article *Women in the Law*, 65 MICH. L. REV. 1051 (1967). The authors' data is then introduced and compared to the findings in White's study. The Article retells some of the experiences and opinions included by respondents in their questionnaire. The authors conclude that women's satisfaction with a career in law will depend on how seriously women's attitudes are allowed to cause change.

FAMILY

Martha Albert Fineman, *Intimacy Outside of the Natural Family: The Limits of Privacy*, 23 CONN. L. REV. 955-72 (1991).

This Article discusses changing current legal concepts of privacy in a manner compatible with dominant social norms in order to protect poor and/or single mothers from excessive state regulation and supervision. The author examines common law and constitutional foundations of the privacy concept, and concludes that this area of the law cannot be sufficiently adjusted to adequately protect single and/or poor mothers.

Julia R. Rutherford, Note, *Removing the Tactical Advantages of International Parental Child Abductions Under the 1980 Hague Convention on the Civil Aspects of International Child Abductions*, 8 ARIZ. J. INT'L & COMP. L. 149-67 (1991).

This Note compares and contrasts the language, purpose and

scope of the Uniform Child Custody Jurisdiction Act (UCCJA) with the 1980 Hague Convention on the Civil Aspects of International Child Abductions (Convention), and the International Child Abductions Remedies Act (ICARA). All three acts share the goal of protecting children from interstate or international kidnapping. The author examines the issues involved in the application of ICARA and describes how it effectuates the goals of the Convention as implemented in the United States. The author recommends that other nations implement similar acts to provide global protection.

Note, *Constitutional Barriers To Civil and Criminal Restrictions on Pre- and Extramarital Sex*, 104 HARV. L. REV. 1660-80 (1991).

Sexual intercourse between consenting adults of the opposite sex has been ruled a fundamental right by a line of cases beginning with *Griswold v. Connecticut*, 381 U.S. 986 (1965). Government regulation of any fundamental right requires a compelling state interest. The author of this Note argues that certain heterosexual activities fall within the purview of a compelling state interest and are subject to regulation by nondiscriminatory means. Most laws regulating pre-and extramarital sex violate constitutional guarantees.

Daniel K. Skoler, *A Constitutional Right to Safe Foster Care? - Time for the Supreme Court to Pay Its I.O.U.*, 18 PEPP. L. REV. 353-81 (1991).

The author interprets *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 201 (1989), as an indication that the Supreme Court will rule that under the Fourteenth Amendment a state acquires a duty to protect a child when it places that child in a foster home against the parent's wishes. The author focuses on the irrelevance of a distinction between voluntarily and involuntarily placed children.

Laura J. Schwartz, *Religious Matching For Adoption: Unraveling the Interests Behind the "Best Interests" Standard*, 25 FAM. L. Q. 171-92 (1991).

Adoption law in the United States is governed by a "best interests of the child" standard. The author questions whether adoption policies which match individuals based on religion satisfy this test. An examination of New York law, which has the strongest tradition of religion matching, reveals the discriminatory ef-

fect it has on nonreligious and mixed-religion couples. She concludes that the child placement system must reevaluate the interests involved in religious matching before favoring those interests above the interests of an individual child.

Tara Lea Muhlhauser, *From "Best" to "Better": The Interests of Children and the Role of a Guardian Ad Litem*, 66 N.D. L. REV. 633-47 (1990).

The Article explores the uses of the guardian ad litem as court-appointed child advocate in divorce, domestic violence and sexual exploitation proceedings. The author discusses the guardian ad litem's natural role as investigator, champion and monitor of a child's best interests, concluding that guardians ad litem can provide direction and focus for all participants in the presentation and protection of those interests.

Barry Cushman, *Intestate Succession in a Polygamous Society*, 23 CONN. L. REV. 281-332 (1991).

The author explores the conflict between the Morman dominated Utah Territorial legislature and the United States Congress regarding legislation of the practice of polygamy. The author concludes that with the Mormons retreat on issues of the right of dower and other legislative safeguards, monogamy lay victorious in both the Utah intestacy laws and the decisions of the federal courts.

Susan Goldberg, *Of Gametes and Guardians: The Impropriety of Appointing Guardians Ad Litem for Fetuses and Embryos*, 66 WASH. L. REV. 503-44 (1991).

This Article maintains that appointing a guardian ad litem for an embryo or fetus is inappropriate. The author contends that fetuses and embryos do not have the same constitutional status as existing persons, and that appointing a guardian ad litem will create an adversarial relationship between women and fetuses. Recent cases are reviewed, and the role of medical technology and a woman's right to privacy are discussed.

Shayne D. Smith, Comment, *The Domestic Abuse Act of 1989—An Impermissible Expansion of Chancery Jurisdiction, Bates v. Bates, 303 Ark. 89, 793 S.W.2d (1990)*, 13 U. ARK. LITTLE ROCK L.J. 537-557 (1991).

Arkansas' Domestic Abuse Act of 1989 was declared unconstitu-

tional because it improperly expanded the jurisdiction of the Chancery Courts. The Arkansas Supreme Court held that there was already an adequate remedy at law for spousal abuse. The author argues that the remedies at law are inadequate, and that the logical solution would be to amend the Arkansas Constitution to allow a merger of the law and equity court systems.

Maureen E. Lally-Green, *The Implications of Inadequate Maternity Leave Policies Under Title VII*, 16 VT. L. REV. 223-61 (1990).

The author discusses pregnancy disability leave, and legislative actions as they relate to both Title VII, and the regulations, guidelines and interpretations of the Supreme Court and the EEOC. The author argues that employers discriminate against women in their pregnancy leave policies.

Joan Morgridge, Comment, *When Does Parental Liability End?: Holding Parents Liable for the Acts of Their Adult Children*, 22 LOY. U. CHI. L.J. 335-59 (1990).

This Comment focuses on whether parents of an adult child can be held liable for that child's acts. It traces the history of parental liability by examining legislative and judicial measures used to hold parents liable for the acts of their minor children, specifically parental responsibility statutes and section 316 of the Restatement (Second) of Torts. The Comment also discusses how section 319 of the Restatement, which imposes liability on those taking charge of dangerous persons, may be expanded to apply to parents of a child beyond minority age. The author concludes that, while a parent does have a responsibility to protect society from a child's harmful conduct, courts should not impose liability when a parent has made a good faith effort to control the child.

Thomas J. Simeone, *Great Expectations: New York's Attempt to Eliminate Gender Preferences Between Parents in Child Custody Disputes*, 24 COLUM. J.L. & SOC. PROBS. 457-79 (1991).

The author discusses New York's legislative trend which attempts to make custody disputes gender-neutral, and focus on the best interests of the child. The author argues that leaving broad discretion to the trial court defeats the legislative intent of gender neutrality by allowing gender bias to creep into the decision process. He concludes that the way to truly eliminate gender favoritism is to enact specific statutory guidelines which decrease the discretion of the trial court in making custody determinations.

Paula A. Monopoli, *Allocating the Cost of Parental Free Exercise: Striking a New Balance Between Sincere Religious Belief and a Child's Right to Medical Treatment,* 18 PEPP. L. REV. 319-52 (1919).

This Article explores statutory exemptions to child abuse and neglect laws focusing on cases involving the use of spiritual healers by parents. The author argues that these exemptions are constitutionally defective and discusses the statutes' historical development. In conclusion, it is asserted that statutory exemptions should be repealed at both state and federal levels.

Note, *Pennsylvania Supreme Court Rejects Substantive Review of Prenuptial Agreements- Simeone v. Simeone, 581 A.2d 162 (Pa. 1990),* 104 HARV. L. REV. 1399-406 (1991).

The author suggests that a growing number of people are choosing to avoid the potential statutory uncertainties of the divorce process by drafting prenuptial agreements, and discusses the Pennsylvania Supreme Court's decision invalidating such agreements if procured through fraud, duress or misrepresentation. The author concludes that a better approach is to review the prenuptial contract for substantial fairness at the time of execution and at the time of the divorce.

Laurence M. Hyde, Jr., *Child Custody and Visitation,* 42 JUV. & FAM. CT. J. 1-13 (1991).

The Article begins with an overview of the advantages and disadvantages of the various forms of child custody. The author discusses the impact of sexual lifestyle on custodial and visitation rights of nonparents, grandparents, and stepparents in custody cases. Tort actions and issues raised by custodial parent relocation are also analyzed.

Charles D. Gill, *Essay on the Status of the American Child, 2000 A.D.: Chattel or Constitutionally Protected Child-Citizen?* 17 OHIO N.U. L. REV. 543-79 (1991).

This Essay describes the constitutionally unprotected status of children in twentieth century America. It examines the history of child-citizenship through present-day America and discovers that the American child essentially remains property. In an effort to avoid the disastrous consequences that threaten the viability of our democratic system, the author offers several reasons for changing the status of the child through an amendment to the United States Constitution.

John Eekelaar, *Parental Responsibility: State of Nature or Nature of the State?*, 1 J. Soc. Welfare & Fam. L. 37-50 (1991).

This Article examines the roles of both parents and the state under Great Britain's Children Act of 1989. The author traces the change in function of the expression "parental responsibility" over the past decade from its use in the early 1980's to its present definition under the Children Act. The term once referred to the duty of parents to provide for the material and moral well-being of their children. Now it refers to the continued role of the parent under the Children Act, even when care of the children is being administered by the state.

Carol Weisbrod, *Divorce Stories: Readings, Comments and Questions on Law and Narrative,* 1991 B.Y.U. L. Rev. 143-96 (1991).

Narratives provide insight into law reform by adding to our social definitions of relationships. The author of this article uses the text of *The Book of Esther*, and specifically the character of Vashti, to illustrate the role of divorce in history. The author concludes that narratives can be used to reveal which relationships demand state law protection.

Harvey Paul, *Household Services and the Division of Marital Property in Domestic Relations Litigation*, 1 J. Legal Econ. 35-42 (1991).

When a marriage is dissolved within an equitable distribution state, the courts consider the monetary and nonmonetary contributions made by the parties during the marriage. The author contends that the monetary value of non-market household services should be an important factor in determining the division of marital property, due to the significant value of such services.

Gary Crippen, *Stumbling Beyond Best Interests of the Child: Reexamining Child Custody Standard-Setting in the Wake of Minnesota's Four Year Experiment with the Primary Caretaker Preference*, 75 Minn. L. Rev. 427-503 (1990).

This Article discusses an experiment by the Minnesota courts in designating the primary caretaker as the custodial parent in divorce litigation. The intent was to minimize the effect of the divorce on the family and reduce litigation. The author concludes that the experiment failed and describes three developments which he believes led to the failure. While an appropriate child custody standard has not been found, the author suggests several alternatives.

Michael J. Sandmire & Michael S. Wald, *Licensing Parents—A Response to Claudia Mangel's Proposal*, 24 FAM. L. Q. 53-76 (1990).

Following a brief introduction to the concept of a parental license, the authors express reservations about the idea of using inaccurate predictive instruments to determine who is qualified to be a parent. The authors assert that there is no test that can predict with a high degree of accuracy who will abuse their children. As an alternative to licensing, they suggest making comprehensive services available to all new parents, with guaranteed provision of such services to those families most in need.

Rosemary Collins & Alison Macleod, *Denials of Paternity: The Impact of DNA Tests on Court Proceedings*, 1991 J. SOC. WELFARE & FAM. L. 209-30 (1991).

The authors examine the effect of DNA tests on the resolution of denials of paternity in proceedings between unmarried parents, trace the historical progress of scientific tests for paternity, and note the significant changes in family law reform giving courts power to use these tests. They then explain the current scientific procedures for DNA tests while discussing the controversy surrounding their reliability. The authors argue that, despite the test's validity and the removal of doubt about paternity, the test's existence alone fails to improve the economic resources available to the child, and that maintaining obligations to the child will take the combined effort of DNA testing together with the enforcement powers of a Child Support Agency to be set up in 1992.

Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching In Adoption*, 139 U. PA. L. REV. 1163-256 (1991).

The author of this Article describes her personal adoption quest, and her shock at the pervasive role that racial matching plays in the adoption world. She argues that a great emphasis on race in adoption procedures harms children and violates both anti-discrimination laws and the equal protection clause of the Constitution. After an extensive analysis of the system, the author concludes that eliminating race matching would serve the best interest of the children involved.

Comment, *State Has No Affirmative Duty to Provide Protective Services Absent Certain Custodial Relationships*, 24 SUFFOLK U. L. REV. 246-54 (1990).

In *DeShaney v. Winnebago County Department of Social Services*, 109 S.Ct. 998 (1989), the Court held that the due process clause imposes an affirmative duty to protect individuals only when states limit the freedom of individuals to act on their own behalf. According to the author, states are not required to protect a child from a parent's violence even after receiving reports of suspected child abuse. The author criticizes this narrow view of affirmative due process rights; by eliminating alternative sources of protection outside the D.S.S., states become the sole administrators of protection for children.

Joseph W. McKnight, *Family Law—Husband and Wife*, 45 SW. L.J. 415-39 (1991).

The author surveys and comments on the most recent Texas family law statutory enactments and case law decisions concerning marital relationships. The survey includes the status of presumed marriages, spousal immunity and emotional distress actions, marital property interests, including premarital partition agreements and community property, and the division of marital assets in divorce proceedings.

Carl E. Schneider, *Rethinking Alimony: Marital Decisions and Moral Discourse*, 1991 B.Y.U. L. REV. 197-257 (1991).

This Article analyzes and criticizes Professor Ira Ellman's *The Theory of Alimony*, which appeared in 77 CALIF. L. REV. 1 (1989). The author addresses some central problems in Ellman's theory which rests on the analogy of the wife as the supplier. This analogy exaggerates the necessity for the type of alimony it would permit, but paradoxically focuses on the equality of both partners after divorce.

R. Collin Mangrum, *Religious Constraints During Visitation: Under What Circumstances Are They Constitutional?* 24 CREIGHTON L. REV. 445-94 (1991).

The author examines how courts have balanced parental rights and the child's best interests where religious faiths of estranged parents clash. He concludes that courts may only impose restrictions on a non-custodial parent's right to incorporate religious training into visitation upon a clear and convincing showing of

serious threat to the child's physical or emotional welfare. The author stresses that the nature of the religion itself is not properly at issue in a best-interest analysis.

Camille Cook & Penny Davis, *The New Alabama Adoption Code: A Step Forward,* 42 ALA. L. REV. 63-100 (1990).

On January 1, 1991, Alabama's new Adoption Code took effect, creating various changes in Alabama adoption law. The author compares the new Adoption Code with the old version, highlighting important aspects such as post placement procedures, adoption hearings, stepparent relationships and confidentiality of records. The author suggests that the new Adoption Code has created processes protecting the bond between adoptive parent and child while balancing the natural parent's right to privacy and the child's right to know.

Kathryn J. Parsley, Note, *Constitutional Limitations on State Power to Hold Parents Criminally Liable for the Delinquent Acts of their Children,* 44 VAND. L. REV. 441-72 (1991).

The author examines the constitutional challenges to regulation of parental conduct by punishing parents who contribute to the delinquency of their children, including a void for vagueness claim and a right to privacy argument. She evaluates the strength of the privacy argument and uses a test that balances the states' interest in protecting society from the wrongful acts of minors with the parents' right to raise their children without governmental interference. The author concludes that rather than penalizing parents for their failures, states should focus on the multitude of problems facing parents in the 1990's.

Joan Ellsworth, *Prescribing* TUMS: *An Alternative to the Marital Deduction for Unmarried Cohabitants,* 11 VA. TAX REV. 137-91 (1991).

This Article proposes a Trust for an Unmarried Survivor (TUMS), which is designed to reduce the detrimental impact of estate taxes on nonmarital families. A brief overview is provided of changes in the structure of the American family, the system of federal transfer taxes, and the marital deduction. The author explores some alternatives to the marital deduction which are currently available to nontraditional families, and concludes by addressing potential objections to the TUMS proposal.

Rebecca Korzec, *A Tale of Two Religions: A Contractual Approach to Religion as a Factor in Child Custody and Visitation Disputes,* 121 NEW ENG. L. REV. 1121-36 (1991).

Religious differences between divorced parents are increasing and courts are left to determine what role religious beliefs and the needs of parents and children should play in child custody and visitation determinations. Such decisions raise constitutional, ethical and moral issues. The author advocates a contract approach, and suggests that courts should enforce family pre-divorce contracts in the post-divorce context.

Karl N. Hesse, Comment, *Family Law: An End to the Parental Preference Doctrine in Parent-Nonparent Custody Disputes?* [In re Marriage of Criqui, 798 P.2d 69 (Kan. 1990)], 30 WASHBURN L.J. 538-53 (1990).

While Kansas has rigidly followed the parental preference doctrine in custody disputes, recent cases have indicated that the doctrine can be rebutted by considering the best interests of the child. Any voluntary surrender of custody of a child may trigger this analysis. Although, in the case of *In re Marriage of Criqui,* 798 P.2d.69 (Kan. 1990), the court awarded custody to non-parents, the court of appeals failed to apply the best interest of the child doctrine. The author of this Comment contends that the doctrine should be given primary consideration in any custody dispute.

George Carey, *Tax Aspects of Divorce and Separation and the Innocent Spouse Rules,* 3 GA. ST. U. L. REV. 201-29 (1987).

This Article surveys the background of federal income tax rules for divorce and separation and examines the current state of the law following the extensive changes made in 1984 and 1986. The author describes how changes in alimony characterization from the modifications of the tax rules have affected other areas incident to divorce. Also discussed are the tax treatment of a single parent, child support, property settlement and an innocent spouse's liability for deficient joint tax returns.

James T. Farrell, Note, *Standing to Sue for Wrongful Death in Georgia When a Spouse and Children Survive the Tortious Death: Mack v. Moore,* 3 GA. ST. U. L. REV. 281-301 (1987).

Recently the Georgia courts and legislature have altered the rules governing standing to sue for the wrongful death of a parent or

spouse. In *Mack v. Moore*, 345 S.E. 2d 338 (Ga. 1986), the Georgia Supreme Court held that a surviving spouse is obligated to bring a wrongful death action when the decedent is also survived by children. This Comment reviews the history of spousal standing in Georgia, the effects of *Mack*, problems with the standing rules and suggestions for future legislative action.

Mikkelsen, Book Review, 19 BULL. AM. ACAD. PSYCHIATRY L. 218-19 (1991), (reviewing DUQUETTE, D.N. ADVOCATING FOR THE CHILD IN PROTECTION PROCEEDINGS).

The reviewer, a child psychiatrist, notes that the book's purpose is to familiarize law students and lawyers with the clinical issues raised in child custody and protection cases. As such, he finds it valuable, but emphasizes that books of this kind, perhaps unavoidably superficial, do not obviate the need for input from child mental-health experts.

Lynn D. Wardle, *No-Fault Divorce and the Divorce Conundrum*, 1991 B.Y.U. L. REV. 79-139 (1991).

The author criticizes the widespread adoption of no-fault grounds for divorce. No-fault divorce was initially enacted in order to alleviate traditional tensions and conflicts associated with divorce. However, the author points out that by facilitating the divorce process, no-fault divorce fails to take into account the children of divorced parents and economically stressed mothers. The author concludes that no-fault divorce fosters a casual view towards the commitment of marriage by providing easy access to divorce.

Judith Bond Jennison, Note, *The Search for Equality in a Woman's World: Fathers' Rights to Child Custody*, 43 RUTGERS L. REV. 1141-85 (1991).

Following a discussion of existing biases against fathers in child custody matters, the author reviews the history and present state of custody laws in the United States. Recent cases are examined from various states to determine if mothers and fathers receive equitable treatment in custody matters. The author maintains that states must adopt a presumption for joint legal custody to overcome the bias against fathers, and promote equality in child custody matters.

Ruth Sidel, Note, *Putting Women and Children First; Priorities for the Future of America*, 12 J. PUB. HEALTH POL'Y 37-49 (1991).

There is a rapidly growing number of women and children in the United States who are living in poverty. This is because women are paid less than men and child care is expensive and difficult for single mothers to obtain. The author proposes a three-pronged family policy which she believes could minimize the number of women and children living in poverty, protect their well-being and facilitate family cohesion. She calls for greater funding for programs benefitting mothers and children.

Darrel Patrick Wash & Liesel E. Brand, *Child Day Care Services: An Industry at a Crossroads*, 113 MONTHLY LAB. REV. 17-24 (1990).

The authors of this Article examine today's child care services in terms of market growth, industry standards and employment demand. The two categories of care arrangements include family day care and formalized day care centers. Employment in the child care services industry increased 117 percent between 1976 and 1988 and this trend is predicted to continue. While family day care growth stayed fairly constant, center-based care increased dramatically.

Katherine Hein, Comment, *Pennsylvania Acknowledges the Reality of the Professional Degree/Divorce Decree Couple- Bold v. Bold, 574 A.2d 552 (Pa. 1990)* 64 TEMP. L. REV. 281-91 (1991).

The Pennsylvania Supreme Court held that a spouse contributing to the enhancement of their spouse's career or professional development will be awarded equitable distribution of that amount contributed. (*Bold v. Bold*, 574 A.2d 552 (Pa. 1990)) The author comments on the national debate over the issue of equitable distribution of assets contributed by one spouse for the couple's mutual enjoyment of an enhanced livelihood. The author focuses on educational degrees as the asset in question and concludes that Pennsylvania's decision was a strong step in the direction of fair and equitable divorce standards in the state.

Allan Levy, Q.C., *Private Lives and Public Law: Childcare and the Intervention of the State*, 10 CIV. JUST. Q. 57-61 (1991).

The author examines the subject of childcare and state intervention, discussing the impact of the Children Act of 1989, effective October 1991, and also recent caselaw in England to determine how child abuse cases may best be resolved. The author notes

that the Act, meant to remedy the inadequacies in the law regarding children, decreases the importance of local wardship jurisdiction and recognizes the need to control local child welfare authorities agencies. The author concludes that under the Act, judicial review will continue to act to remedy unfair or oppressive state control in the area, and that the Act represents a fundamental shift away from state intervention and a shift toward respecting the fundamental human right of parents and children as set out in the European Convention on Human Rights.

Kathryn Calibey, *Connecticut's Parent-Child Immunity Doctrine*, 65 CONN. B.J. 210-22 (1991).

Only 10 states maintain complete parent-child immunity in negligence actions today. In this Article, the author traces the gradual contraction of Connecticut's immunity doctrine, predicting further liberalization from cases in which either the duty breached is one owed to the general public, or the parent's misconduct was intentional. Courts' reluctance to abrogate the immunity doctrine reflects their deference to parental autonomy in childrearing. The author believes that such deference is unwarranted where the challenged behavior is not a function of the family relationship itself.

Edward M. Burns, *Grandparent Visitation Rights: Is it Time for the Pendulum to Fall?*, 25 FAM. L.Q. 59-81 (1991).

Following the dissolution of a family, grandparents have often found it difficult to visit with their grandchildren. Each of the fifty states has passed a statute allowing grandparents visitation with their grandchildren over the objection of the parent in at least some circumstances. The author examines the history of grandparent visitation rights. He contends that there is a serious constitutional issue as to whether grandparent visitation rights infringe on the rights of parents, especially when the grandchild lives with his married parents. He concludes that visitation should be permitted only upon a showing by the grandparent that visitation promotes the best interests and welfare of the child.

Lauren L. McFarlane, Note, *Domestic Violence Victims v. Municipalities: Who Pays When the Police Will Not Respond?*, 41 CASE W. RES. L. REV. 929-67 (1991).

This Note examines the trend toward holding municipalities lia-

ble under 42 U.S.C. § 1983 for failing to provide police protection to victims of domestic violence, focusing on allegations of deprivation of equal protection or due process. The author analyzes the evidence needed to successfully bring an equal protection claim and reviews theories of recovery for a due process claim.

Bruce C. Hafen, *Individualism and Autonomy in Family Law: The Waning of Belonging,* 1991 B.Y.U. L. REV. 1-43 (1991).

This Article examines the transformation of family law from one which nurtured the family unit to one whose primary goal is protection of the autonomous self. The author examines the rise of the individual and the fall of the family and community in constitutional and contractual terms. He notes a general "waning of belonging" and a lack of community feeling that is prevalent today.

Raymond C. O'Brien & Michael T. Flannery, *The Pending Gauntlet to Free Exercise: Mandating That Clergy Report Child Abuse,* 25 LOY. L.A. L. REV. 1-56 (1990).

This Article details three cases which analyze the rights of clergy to keep information about child abuse confidential. After detailing the history of the free exercise doctrine and state child abuse reporting requirements, the author explains the constitutional conflict between mandatory reporting statutes and the clergy-communicant privilege. The author concludes that the clergy-communicant privilege and the mandatory reporting statute serve the same ends of eliminating child abuse, despite conflicting means.

Susan B. Boyd, *The Second Shift Workshop Parents and the Revolution at Home,* 4 CAN. J. WOMEN & L. 325-30 (1990) (book review).

The book studies female responsibility for the "second shift," the home chores and child care which are performed in addition to normal "first shift" jobs in the workplace. The reviewer focuses on the implications for women at home and on the job and also recommends changes in law and workplace equity which could create social "pro-family" policies.

Steven L. McConnell, Note, *Civil Rights—Marital Status Discrimination—Refusing to Rent to Unmarried Cohabitants is Not Unlawful Marital Status Discrimination Under the Minnesota Human Rights Act. State ex rel. Cooper v. French, 460 N.W.2d 2 (Minn. 1990),* 13 U. ARK. LITTLE ROCK. L. J. 653-70 (1991).

The case of *Cooper v. French,* 460 N.W.2d 2 (Minn. 1990), involved a landlord who refused to rent his home when he believed his tenant would engage in premarital sex with her fiance on the premises. The Minnesota Supreme Court held that French's conduct did not breach the Minnesota Human Rights Act (MHRA) enjoining marital status discrimination. Courts have struggled with the issue of whether marital status should apply to unmarried cohabitants who otherwise receive minimal protection by law. The *French* decision narrows the common law interpretation of marital status.

Lorraine M. Fox Harding, *The Children Act 1989 in Context: Four Perspectives in Child Care Law and Policy (I),* 1991 J. SOC. WELFARE & FAM. L. 179-93 (1991).

This Article is the first part of a paper outlining four different perspectives of child care law and policy, and how they apply to England's Children Act 1989. The four perspectives are laissez-faire and patriarchy, state paternalism and child protection, the defense of the birth family and parent's rights, and children's rights and child liberation. This Article discusses the first two perspectives.

Paul J. Buser, *Introduction: The First Generation of Stepchildren,* 25 FAM. L. Q. 1-18 (1991).

Twenty-percent of all children in current married-coupled families are composed of stepchildren. This special issue of this journal is devoted to the subject of the changing family unit in society. It examines the conflicting rights and responsibilities arising from this new family unit and the constitutional issues which arise when a grandparent or third-party requests visitation rights or custody of a child.

Joan R. Rodgers, *Poverty and Choice of Marital Status: A Self-Selection Model,* 10 POPULATION RES. & POL'Y REV., 67-87 (1991).

Female-headed families tend to have higher poverty rates than other families. The author of this Article suggests that both male-headed families and married-couple families are less poor than

female-headed families because of differences in the average level of control variables such as education of family members, age, race, disability, size and composition of the family. It was found that on average, female-headed families have less education, more dependents, and are more likely to be non-white than other family types.

Richard S. Victor et al., *Statutory Review of Third-Party Rights Regarding Custody, Visitation, and Support*, 25 FAM. L. Q. 19-57 (1991).

Third-party custody, visitation and support of another person's child comes into direct conflict with the constitutionally protected right of parents to associate with and raise their children. This Article reviews all fifty states' statutes regarding the issue of third-party custody, visitation and support. Most states recognize a rebuttable presumption that a parent should prevail in a child custody dispute over any third party.

Donna Bailey, Note, *Anti-Discrimination Law - Marital Status Discrimination: Public Scorn of Personal Choices - State v. French, 460 N.W.2d 2 (Minn. 1990)*, 17 WM. MITCHELL L. REV. 563-94 (1991).

This note examines *State v. French*, 460 N.W.2d 2 (Minn. 1990), a recent Minnesota Supreme Court case which legalizes discrimination against unmarried cohabitating couples in their access to housing. The case is analyzed in light of the Minnesota Human Rights Act, which outlines criteria for tenant selection in a state that seeks to secure its residents' freedom from discrimination. The meaning of the term "marital status" as intended by the Legislature and as embodied within the act is also discussed.

Leslie J. Harris, Book Note, 1991 B.Y.U. L. REV. 561-76 (1991) (reviewing STEPHEN D. SUGARMAN & HERMA HILL KAY, DIVORCE REFORM AT THE CROSSROADS (1990)).

The premise of this book is that the change from fault to no-fault divorce has left women and children destitute while the male's standard of living escalates. Present divorce law fails to address the prevalence of gender inequality in support agreements. Kay sets out a program for a non-punitive, nonsexist, and nonpaternalistic law to abolish the unfavorable economic effect of divorce on women. Sugarman maintains that women have perpetually been financially disadvantaged by divorce and no-fault

divorce has made that situation worse. With minimal money and property, custody becomes the only contested area in the divorce.

Judge Michael J. Voris, *Civil Orders of Protection: Do They Protect Children, the Tag-along Victims of Domestic Violence?*, 17 OHIO. N.U. L. REV. 599-609 (1991).

Following a brief description of the pervasive problem of domestic violence in the United States, the author examines the response by the Ohio legislature to this crisis. He analyzes the issue of visitation rights for parents during a domestic violence civil action, utilizing a "best interests of the child" standard in determining when to grant such rights. Finally, the author offers suggestions as to which factors a court should consider before granting visitation privileges.

Roger Bullock et al., *The Research Background to the Law on Prenatal Access to Children in Care*, 1991 J. SOC. WELFARE & FAM. L. 85-93 (1991).

The newly executed British Children Act 1989 revises parental access laws with respect to children in foster care. The authors note that encouraging bonds between parent and child is usually constructive for the child's well-being. This law attacks the inequitable distribution of control between the parent and the social worker by declaring limited access by parents to children in care illegal, unless consented to by all parties involved.

Ellen K. Solender, *Family Law: Parent and Child*, 45 SW. L.J. 441-60 (1991).

The author of this Article examines several United States Supreme Court decisions concerning the status of the laws regarding parent and child. The Court has addressed child support retroactivity and limits, conservatorship and termination and adoption. The article also examines the Court's approach on questions of jurisdiction and equitable relief.

Note, *Psychiatric Admission of Family Violent Versus Nonfamily Violent Patients*, 14 INT'L J.L. & PSYCHOL. 245-54 (1991).

This Note presents a quantitative study of the psychiatric admissions process in which the authors hypothesize that the admissions process for family violent cases in psychiatric hospitals is likely to differ from the process for nonfamily violent cases. This

Note details the method of data collection and analysis used in the study, and analyzes the statistical results. The authors conclude that their study confirms the subjective nature of the admissions process.

S. F. Appelton, *Surrogacy Arrangements and the Conflict of Laws*, 1990 WIS. L. REV. 399-482 (1990).

A serious problem which arises in states with restrictive surrogacy laws is that residents desiring to partake in the process are forced to do so in more lenient jurisdictions; thus, states are left with little local control. The author uses four variations of a "worst-case scenario" to demonstrate the impact of restrictive state legislation and the conflict-of-law issues which are consequently raised. She offers practical guidance to states seeking to regulate surrogacy, and considers the effects of adopting a national perspective on surrogacy legislation.

Kristin Blomquist-Shinn, *Family Law: A New Requirement for Paternity Determinations in Kansas- Determining if Blood Tests are in the Best Interest of the Child [In Re Marriage of Ross, 245 Kan. 591, 783 P. 2d 331 (1989)]*, 30 WASHBURN L.J. 112-26 (1990).

The Kansas Supreme Court in its recent decision *In re Marriage of Ross* now requires an evidentiary hearing to rule if blood tests determining paternity are in the best interest of the child. The author posits that the policy of requiring a hearing is less flexible than the Court of Appeals interpretation of the Kansas Parentage Act and will result in an increase in litigation.

Susan L. Brooks, *Rethinking Adoption: A Federal Solution to the Problem of Permanency Planning for Children with Special Needs*, 66 N.Y.U. L. REV. 1130-64 (1991).

Tens of thousands of American children with significant emotional and health problems are released for adoption each year. This article traces the evolution of the practice of adoption and discusses how current state adoption practice remains largely unchanged and ill suited to modern adoption problems of special needs children, such as finding permanent homes for such children. The pitfalls of the current federal system are examined; the problems of deinstitutionalization and permanency planning are analyzed and statutory roads to improvement of the adoptive system are explored.

Barbara Ann Atwood, *Child Custody Jurisdiction and Territoriality*, 52 OHIO ST. L.J. 369-403 (1991).

The author argues that the problem of jurisdictional uncertainty in the present child custody legislation needs to be addressed by changes in the system. The author proposes that the courts discontinue their formalist practice of dealing with child custody litigation only in terms of subject matter jurisdiction. She suggests that courts consider the application of personal jurisdiction in order to develop a framework for clear judicial lines in child custody matters.

S. Randall Humm, *Criminalizing Poor Parenting Skills as a Means to Contain Violence By and Against Children*, 139 U. PA. L. REV. 1123-61 (1991).

Parental responsibility legislation has increased due to the increase in juvenile crime. The author of this Article maintains that such laws should only pertain to those parental behaviors which can forseeably lead to the child's delinquency. It is also essential that these laws do not violate those constitutional provisions which protect the traditional sanctity of the family unit.

Dr. Susan Edwards & Ann Halpern, *Protection for the Victim of Domestic Violence: Time for Radical Revision?*, 1991 J. SOC. WELFARE & FAM. L. 94-109 (1991).

This Article examines the extent and nature of violence against women and children. The authors argue that domestic violence is perpetuated and tacitly condoned in a society where the legal system often appears unable to provide the protection that the victims need. They discuss some of the substantive points raised by the Law Commission's Working Paper on Domestic Violence and the occupation of the Matrimonial Home, No. 113 1989, particularly as it relates to the definition of protection and the question of property rights. The authors make suggestions for clear and specific legislative guidance and stress the importance of having an educational training program for those involved in the legal system, thus encouraging greater recognition of the risks to the victims of domestic violence.

Elizabeth A. Kenny, Note, *Birth of Family and Medical Leave Legislation-Is It Time For Uncle Sam To Mandate Adoption?*, 16 SETON HALL LEGIS. J. 209-43 (1992).

As women become more prevalent in the work place and as

America gradually ages, the need for family and medical leave is increasingly important. The focus of this Note is to outline Congress's current attempt at providing for medical and family leave without burdening the employer in The Family and Medical Leave Act of 1991. The author applauds the Act as helping to set national standards but finds that the Act needs additional fine tuning to accomplish the balance between the employee's family and job responsibilities.

Earl M. Maltz, *The State, The Family and The Constitution: A Case Study in Flawed Bipolar Analysis,* 1991 B.Y.U. L. REV. 489-518 (1991).

Beginning with the Court's approach to family law issues as a model, this Article criticizes the basic system of bipolar analysis. The author outlines several points of conflict between judicial interventionalists and noninterventionalists, claiming that bipolar analysis is inherently flawed. In conclusion, the author discusses the implications of judicial intervention in the family and the desirability of interventionalism generally.

David L. Sage, II, Note, *Post-Secondary Education: Why Can't Johnny Read Even Though His Parents Are Happily Married?*, 29 J. FAM. L. 923-35 (1990-91).

Many jurisdictions acknowledge a divorced, non-custodial parent's obligation to contribute to the cost of his or her child's post-secondary education. States, however, fail to provide similar rights to the children of harmonious marriages. This Note suggests that the arguments used to legitimize support obligations of non-custodial parents may someday enable a child of a stable marriage to bring suit against his or her parents if they unfairly deny post-secondary educational support. The author concludes that by creating such a cause of action, courts can effectively support the drive for an educated public.

M. Casey Jarman, Book Review, 13 U. HAW. L. REV. 347 (1991) (reviewing PETER J. HERMAN, HAWAII FAMILY LAW AND PRACTICE (1990)).

The reviewer finds the book to be a well organized, valuable reference tool for attorneys and a helpful guide to lay people interested in Hawaii family law. Weaknesses in the book are outlined. Overall the book is considered a disappointment to those who seek counsel on pressing domestic issues.

Mary Wagner Johnson, *The Regulation of Child Care*, 18 J. LEGIS. 45-67 (1991).

The Act for Better Child Care Services of 1989 is Congress's latest attempt to regulate child care services on the national level. This Article discusses the extent of federal government involvement in regulating child care. Finding that child care services are 'grossly inadequate' for the majority of American families, the author examines regulations of child care services in New York State, New York City, South Carolina, and Iowa and concludes that the heart of the debate over greater federal involvement in the regulation of child care is over the role of women and the conception of the American family.

Comment, *Noncompliance With India's Dowry Prohibition Act Of 1961: A Society's Reactions To Imposed Law*, 4 TEMP. INT'L & COMP. L.J. 101-31 (1990).

This Comment describes the evolution of the dowry system in India and explains the theory behind modern-day dowry practices. Particular emphasis is placed on the evils that are inherent in the modern-day dowry system which result in higher levels of abuse and exploitation. The author discusses the enactment of the Dowry Prohibition Act of 1961 and its unenforceability in detail and suggests reasons why legislative intervention has been ineffective in eradicating dowry.

Dennis E. Bires, *Reassessing the Marital Deduction*, 4 TAX L.J. 223-47 (1990).

This Essay examines the estate tax marital deduction under Section 2056 of the Internal Revenue Code. The author believes that with new rationales for deduction, and tax law revisions underway, the policies that motivated the enactment of this section have been lost. Following a brief account of the deduction's development, the author recommends more effective ways to simplify estate planning and administration.

Vada Berger, *Domestic Partnership Initiatives*, 40 DEPAUL L. REV. 417-58 (1991).

Domestic partnership initiatives grant legal status to nonmarital partnerships, allowing the contracting partners to enjoy municipal benefits similar to those that marriage bestows. The author maintains that domestic partnership initiatives benefit not only partners and communities, but the larger society as well. she

urges lawmakers to view the domestic partnership not as a mimic of traditional marriage, but as an alternative family style equally entitled to legal protection.

Sharon Byrd, *Till Death Do Us Part: A Comparative Law Approach To Justifying Lethal Self-Defense By Battered Women*, DUKE J. COMP. & INT'L L. 169-211 (1991).

The author of this Note criticizes the justification of self-defense by battered women who murder their husbands. Instead, she posits a practical and fair solution by drawing from German law the defense of necessity. The article discusses a broad range of criminal cases from both the United States and Germany, criticizing U.S. courts for applying excessive objectivity to interpret the reasonableness standard. As both defensive and aggressive necessity are derivable from the common law, new legislation is unnecessary for recognition of these defenses by U.S. courts.

Steven N. Gofman, Note, *"Honey, The Judge Says We're History": Abrogating the Marital Privileges via Modern Doctrines of Marital Worthiness*, 77 CORNELL L. REV. 843-72 (1992).

This Article examines the limitations courts have imposed on the adverse testimonial and confidential communications privileges. The author addresses the fact that privileges are contrary to truth-seeking, and have traditionally been denied to unmarried cohabitants, putative spouses, common law marriages, and sham marriages. Recently devised limitations, involving presumptions by the court of the validity or worthiness of an otherwise valid marriage, are examined. The author concludes that these presumptions are improper, and that the privileges should apply to persons legally married under the applicable state domestic relations law.

Richard J. Maiman et al., *Gender Specialization in the Practice of Divorce Law*, 44 ME. L. REV. 39-61 (1992).

This survey focuses on the disproportionate number of female lawyers practicing divorce law and the corresponding impact on divorce law ideology. The authors' statistical findings reaffirm the proposition that female divorce lawyers tend to mediate and negotiate more than their male counterparts. While feminist writers propose that women are routinely forced into the traditionally less prestigious areas of a given profession, this survey

concludes that female divorce lawyers have turned divorce law into a vital power base for female lawyers.

Daniel C. Zinman, Note, *Father Knows Best: The Unwed Father's Right to Raise His Infant Surrendered For Adoption*, 60 FORDHAM L. REV. 971-1001 (1992).

This article analyzes the conflict between granting adoptive parents *pendente lite* custody against an unwed father's constitutional rights to his biological child. In *In re Raquel Marie X*, 559 N.E.2d 418 (N.Y. 1990), the New York Court of Appeals deemed New York Domestic Law section 111(e) unconstitutional for focusing on a father living with the mother for six months to establish his parental rights rather than the father-child relationship. Pending legislative change of this section, the court enlarged an unwed father's rights in holding that an unwed father who manifests parental responsibility may veto a proposed adoption of his child. The article then demonstrates how states have used varied standards to resolve the conflict between an unwed father's rights and that of the adoptive parents. The author concludes that unless an unwed father is granted *pendente lite* custody of the child, his rights will not be sufficiently protected.

Mark Strasser, *Family, Definitions, and the Constitution: On the Antimiscegenation Analogy*, 25 SUFFOLK U. L. REV. 981-1034 (1991).

This article examines the issue of same-sex marriages, analogizing courts' past support of antimiscegenation (prohibiting interracial marriages) with their refusal to strike down laws precluding same-sex marriages. The author believes that courts should not rely on legislative definitions of marriage without first inquiring into their constitutionality. In examining the various benefits of marriage, the author demonstrates how the same interests of state, individuals and family are promoted by both heterosexual and homosexual marriages. Consequently, he concludes that in strictly scrutinizing legislation banning same-sex marriages, courts must determine that there is no compelling state interest to justify such legislation. The author outlines the various arguments offered to prohibit same-sex marriages and demonstrates how these arguments should be struck down as they were when applied to the antimiscegenation laws. Finally, the author concludes with a discussion of his arguments in light of *Bowers v. Hardwick*.

Dale Elizabeth Lawrence, Note, *Surrogacy in California: Genetic and Gestational Rights*, 21 GOLDEN GATE U. L. REV. 525-57 (1991).

Over the past decade, surrogacy, either by artificial insemination or gestational surrogacy, has been used by an increasing number of infertile couples. This Note contrasts the surrogacy issue in California with that of the responses of the few state legislatures that have addressed the issue. The Note further examines the judicial cases involving surrogacy in both artificial insemination and gestational surrogacy cases and concludes that surrogacy should be regulated but not prohibited.

Martha A. Field, *Surrogacy Contracts - Gestational and Traditional: The argument for Nonenforcement*, 31 WASHBURN L.J. 1-17 (1991).

The author in this Article argues that surrogacy should not be criminalized nor should surrogacy contracts be enforced. The author contends that even when a couple supplies the fertilized egg to be implanted, the birth mother should be allowed to change her mind and keep the baby regardless of any surrogacy agreements made. The author concludes that this is best for society because it refuses to encourage surrogacy while allowing surrogate births to remain legal.

Linda J. Lacey, *Mandatory Marriage "For the Sake of the Children": A Feminist Reply to Elizabeth Scott*, 66 TUL. L. REV. 1435-65 (1992).

In Scott's Article, *Rational Decisionmaking About Marriage and Divorce*, 76 VA. L. REV. 9 (1990), a proposal is made to impose burdens on divorce decisions by parents. In Lacey's critique of Scott's approach, several situations are described in which Scott's goal of divorce prevention is undesirable. Lacey further explains that Scott's proposals will negatively affect economic victims of divorce such as women and children.

Candace M. Zierdt, *Compensation for Birth Mothers: A Challenge to the Adoption Laws*, 23 LOY. U. CHI. L.J. 25-66 (1991).

Recently, the number of adults seeking to adopt children has increased while the number of children put up for adoption has decreased. Consequently, independent individuals have matched birth mothers with prospective parents through "black market" adoptions, charging a fee payable to the broker and the birth mother. States have discouraged such adoptions making any fee paid illegal unless it directly benefits the child. The author sug-

gests restructuring state law to permit compensation for the birth mother, under the supervision of state adoption agencies.

Grace Ganz Blumberg, Book Review, 2 UCLA WOMEN'S L.J. 309-24 (1992)(reviewing MARTHA A. FINEMAN, THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM (1991)).

This book review focuses on Fineman's objection to contribution as a rationale of property division rather than need based allocations of wealth upon divorce. It is the reviewer's contention that Fineman concentrates on the rhetoric of equality and avoids the crucial topic of resistance to wealth transfer implicit in society. In conclusion, the reviewer asserts that need and contribution taken together form a viable basis for alimony resolution.

Book Note, 105 HARVARD L. REV. 2110-5 (1992)(reviewing MARTHA A. FINEMAN, THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM (1991)).

According to the reviewer, Fineman's book attacks the notion of equality in the new divorce law. Fineman is most disturbed by the emphasis of rule equality at the expense of result equality. The reviewer praises Fineman's critique in the child custody context, where women often receive sole physical custody but only joint legal custody of the children. The argument is less compelling in the economic area, where the reviewer feels greater use of societal resources and government efforts must be channeled.

GAY RIGHTS

Markus D. Dubber, Note, *Homosexual Privacy Rights Before the United States Supreme Court and the European Court of Human Rights: A Comparison of Methodologies*, 27 STAN. J. INT'L L. 189-214 (1990).

The author compares the approaches of the United States Supreme Court and the European Court of Human Rights in considering recent privacy challenges to criminal sodomy statutes. He notes that while the U.S. Supreme Court in *Bowers v. Hardwick*, 478 U.S. 186 (1986), took a restrictive, retrospective approach to protecting homosexual privacy rights, the European Court of Human Rights (ECHR) in *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (ser. A) (1981), and in *Norris v. Ireland*, 142 Eur. Ct. H.R. (ser. A) (1988), took a dynamic, interpretative approach to protecting these rights using international human rights norms

as guideposts in its decisions. The author concludes that U.S. courts, in considering substantive due process rights in particular, may benefit from a look at the ECHR's dynamic use of historical analysis, the incorporation of international human rights norms into its decision-making, and the method and the focus of that Court's analysis.

Jon E. Grant, Note, *"Outing" and Freedom of the Press: Sexual Orientation's Challenge to the Supreme Court's Categorical Jurisprudence*, 77 CORNELL L. REV. 103-41 (1991).

This Note addresses the practice of 'outing,' or the "intentional exposure of the sexual orientation of public figures," and suggests that freedom of the press is balanced against an individual's right to privacy. The author describes the outed plaintiff's causes of action as defamation and invasion of privacy, and concludes that the rigid dichotomy of public and private figures is problematic when sexual orientation is at issue and proposes a return to the common-law malice standard to protect the internal mental sphere of an outed plaintiff.

Eileen Kaspar, Comment, *Braschi v. Stahl: Family Redefined*, 8 N.Y.L. SCH. J. HUM. RTS. 289-320 (1990).

In *Braschi v. Stahl Assocs. Co.*, 74 N.Y. 2d 201, 543 N.E.2d 49, 544 N.Y.S.2d 784 (1989) the New York Court of Appeals recently held that a homosexual couple is the legal equivalent of a family under § 2204.6(d) of the New York City Rent and Eviction Regulations. This opinion exemplifies the court's willingness to modernize the legal definition of "family." After reviewing rent regulation in New York, the author examines the varied arguments and opinions set forth in the *Braschi* case to identify the impact of this decision on the legal rights of non-traditional families.

Scott Turner, Comment, *Braschi v. Stahl Assocs. Co.: In Praise of Family*, 25 NEW ENG. L. REV. 1295-1324 (1991).

Braschi v. Stahl Assocs. Co., 74 N.Y.2d 201 (1989), held that a gay couple constitutes a family under New York's rent control laws. This Comment analyzes that decision, beginning with an overview of New York rent control law, and an examination of the majority and dissenting opinions of the case. A discussion of the court's differing meanings of "family" follows. The author con-

cludes by hoping for a better understanding of traditional concepts of family.

Adrienne K. Wilson, Note, *Same Sex Marriage: A Review,* 17 WM. MITCHELL L. REV. 539-62 (1991).

Marriage is a constitutionally protected fundamental right for heterosexual couples. Although some municipalities have granted domestic partnership status to same-sex couples, this does not give the partners the legal benefits of marriage such as inheritance and property rights. This Note discusses why the courts have failed to extend this fundamental right to homosexual couples and argues that homosexual couples may qualify for constitutional protection as a suspect class. This would require courts to apply the strict scrutiny standard, and states would have to demonstrate that the prohibition against same-sex marriage advances a compelling state interest.

Judith A. Lintz, *The Opportunities, or Lack Thereof, for Homosexual Adults to Adopt Children- In re Adoption of Charles B,* 50 Ohio St.3d 88, 552 N.E.2d 884 (1990), 16 U. DAYTON L. REV. 471-96 (1991).

Adoption in the United States is regulated by state statute. This Note analyzes the current attitude of the judiciary towards adoption by homosexual adults by reference to the decision in *In re Adoption of Charles B,* 50 Ohio St.3d 88, 552 N.E.2d 884 (1990). Until recently, homosexuals were considered unfit to adopt as a matter of law; however, judges have increasingly allowed homosexual adoption by applying the "best interest of the child" test and considering the same factors weighed in adoption by traditional couples.

Vickie Quade, *Gays in the Military: Finally Being All That You Can Be,* 18 HUM. RTS. 26-9 (1990).

The author interviewed William Rubenstein, director of the Lesbian and Gay Rights Project of the American Civil Liberties Union, about the effects of the Persian Gulf War and the Supreme Court's attitude toward homosexuals in the military and the gay community. She questions if these events will reduce the prejudice against homosexuals. Rubenstein believes in an eventual improvement of the attitudes toward gays and lesbians. They conclude by discussing future strategies of the American

Civil Liberties Union to advance gay rights and end the increased violence against homosexuals.

Elizabeth A. Delaney, Note, *Statutory Protection of the Other Mother: Legally Recognizing the Relationship Between the Nonbiological Lesbian Parent and Her Child*, 43 HASTINGS L.J. 177-216 (1991).

After discussing the failure of the California courts to grant status to lesbian partners of biological mothers, the author asserts that legal recognition of both parents must be effectuated by the California legislature. The author examines the strategies utilized by nonbiological parents in same-sex relationships and contends that they are inadequate for child custody and visitation rights. She concludes that legal recognition of both parents is necessary to ensure fair and consistent results in family planning.

Deborah Marik, Note, *In Re Adoption of Charles B. - A Tough Act to Follow*, 24 AKRON L. REV. 447-60 (1990).

The author discusses the historical and legal obstacles met by homosexuals in adoption proceedings and analyzes the adoption proceeding of *In Re Adoption Charles B.*, 50 Ohio St. 3d 88, 552 N.E.2d 884 (1990) as illustrative of the changing views of the Ohio Supreme Court. The author concludes that the Court's decision establishing the best interest of the child as the standard is dampened by the distinctiveness of the facts in *Charles B.* and the potential reaction of the Ohio Legislature to preclude homosexuals from adoption.

Out and About, 320 THE ECONOMIST 21-2 (1991).

This Article discusses the changing tactics, goals and agendas of some gay-rights groups in the United States. AIDS sparked a generation of activists to start groups such as ACT-UP to put pressure on the federal government for money for AIDS testing, treatment and education. Recently, however, a new generation of activists has organized groups which do not focus on the AIDS crisis, many of which use confrontational and controversial tactics (such as "outing" Hollywood stars and politicians). The majority of gay activists do not support these tactics, and this has resulted in deep divisions between mainstream and radical gay activists over the goals of the gay-rights movement as a whole.

Kristin Bullock, Comment, *Applying Marvin v. Marvin to Same-Sex Couples: A Proposal for a Sex-Preference Neutral Cohabitation Contract Statute*, 25 U.C. DAVIS L. REV. 1029-54 (1992).

This Note addresses the need for courts to apply Marvin principles to same-sex couples. The author discusses the social and legal aspects of marital status and generally considers contract theory as applied in Marvin and describes how the principles of Marvin have been inconsistently applied to same-sex couples. The author proposes that the California Legislature enact a sex-preference neutral cohabitation contract that would codify the reasoning of Marvin.

HEALTH

Margaret Phillips, Note, *Reproduction with Technology: The New Eugenics?*, 11 IN PUB. INTEREST 1-27 (1991).

This Note discusses the issue of eugenics, hereditary improvement through genetic control. The author examines how our stereotypes and prejudices unduly influence the decision of women in the search for the perfect baby. She maintains that the use of reproductive technology is denied to women of color, the poor, the disabled, and gays and lesbians because of economic and legal barriers, perpetuating eugenic bias in our society.

Karen H. Rothenberg, *Gestational Surrogacy and the Health Care Provider: Put Part of the "IVF Genie" Back Into the Bottle*, 18 LAW MED. & HEALTH CARE 345-52 (1990).

The author surveys the processes and the problems of in vitro fertilization, (IVF) and focuses on the pitfalls presented to the health care provider. Using *Johnson v. Calvert* No. 63-31-90 (Orange Cty, Super. Ct. Cal., Oct. 22 1990) as an example of the legal, social and ethical problems raised by IVF, the author argues against IVF as a cure for infertility, and concludes that there is an inherent conflict of interest between the genetic parents and surrogate mother for which there is no ethical solution.

Daniel Wikler & Norma J. Wikler, *Turkey-baster Babies: The Demedicalization of Artificial Insemination*, 69 MILBANK Q. 5-40 (1991).

The practice of artificial insemination has traditionally been considered a medical technique, but recently, an increasing number of women have been turning to self-insemination. This Article chronicles the historical development of artificial insemination, and explores the role of the fertility doctor as social gatekeeper.

The Article then discusses the self-insemination movement and argues for the de-medicalization of insemination procedures to increase reproductive freedom for women.

Jean N. Knouse, Note, *Cruzan: The Supreme Court and the Right to Die,* 36 LOY. L. REV. 1111-23 (1991).

A series of recent cases exemplifies the trend of most courts towards allowing the families of patients in persistent vegetative states to decide whether or not to refuse medical treatment for the patient. However, in the case of *Cruzan v. Director, Mo. Dep't of Health,* 110 S. Ct. 2841 (1990), despite the family's claim that Nancy Cruzan would prefer death, the court refused to permit the removal of her feeding tube. In Missouri, a guardian's belief that the patient would exercise her right to die is an insufficient basis for refusing treatment, absent explicit evidence of a patient's intent.

Neal Halfon & Linnea Klee, *Health and Development Services for Children with Multiple Needs: the Child in Foster Care,* 9 YALE L. & POL'Y REV. 71-95 (1991).

While many of the diseases that once threatened the lives of children have been eliminated among upper and middle class Americans, such diseases continue to affect the disadvantaged. In addition, social and behavioral factors continue to raise mortality levels. The authors argue that new and affordable health care services must be implemented to lower death rates. The authors use the health needs of foster care children as a model to illustrate how children with complex health needs are inadequately served. They conclude by urging a coordinated national effort to combat health care problems.

Louis W. Sullivan & Ronald W. Roskens, *Child Survival and AIDS in Sub-Saharan Africa: Findings and Recommendations of the Presidential Mission to Africa,* 11 B.C. THIRD WORLD L. J. 227-47 (1991).

Sub-Saharan Africa currently has a high incidence of infant mortality, infectious disease and malnutrition. Malaria has been cited as the leading cause of child mortality. AIDS is an increasing cause of death for children. Improved health care and nutrition for children will increase survival rates and prevent the spread of disease.

Monte M. Deere, Jr., Book Review, 1991 B.Y.U. L. REV. 655-83 (1991) (reviewing J. GUILLEMIN & L. HOLMSTROM, MIXED BLESSINGS: INTENSIVE CARE FOR NEWBORNS (1986)).

Mixed Blessings examines how a Level III neonatal intensive care unit (NICU) functions. This Review summarizes the book's major themes, including the policy conflict between the rights of newborns and the rights of parents when extraordinary measures must be taken to ensure an infant's survival. The reviewer concludes by discussing how the authors' observations might contribute to a reevaluation of the legal role of NICU physicians, and suggests that current law overlooks the problem of overtreatment in critically-ill newborns.

Catherine A. Kyres, Note, *A "Cracked" Image of my Mother/Myself? The Need for a Legislative Directive Proscribing Maternal Drug Abuse,* 25 NEW ENG. L. REV. 1325-61 (1991).

The author discusses the growing problem of newborns who are physically and psychologically impaired as a result of their mother's use of illicit drugs. She argues that criminalization of maternal substance abuse is a valid and constitutional exercise of a state's power to protect children from beginning life handicapped. The note includes a model maternal drug abuse statute.

Lisa M. Boyle, Comment, *Contagious Diseases are Handicaps Under Section 504 of the Rehabilitation Act,* 19 SETON HALL L. REV. 916-46 (1989).

With the passage of the Rehabilitation Act of 1973, Congress attempted to give handicapped individuals equal opportunities as those enjoyed by non-handicapped persons. Typically, administrative agencies have construed the statute broadly while the courts have narrowly defined "handicapped individual." This Comment evaluates the Rehabilitation Act and suggests further amendments which might increase its effectiveness, limiting the ability of the judiciary to circumvent judicial intent.

Sara Rosenbaum, Comment, *Why Women Bypass Rural Hospitals,* 16 J. HEALTH POL. POL'Y & L. 119-20 (1991).

The author explores whether evidence that rural women travel to urban centers for obstetric care should be used to support arguments for the closure of rural health facilities or, rather, for their expansion. The author disputes the notion that rural care should

not be vigorously upgraded, and argues for higher standards of health care delivery for all rural women.

Dorothy J. McNoble, Comment, *The Cruzan Decision - A Surgeon's Perspective*, 20 MEM. ST. U.L. REV. 569-610 (1990).

The issue of withdrawal of life support for terminally ill or comatose patients has been bombarded with a host of inconsistent court decisions. No legal standard has been adopted to guide doctors and families faced with this dilemma. After a brief review of the evolution of the withdrawal of support cases in the state courts, the author of this Comment examines and criticizes *Cruzan v. Director, Missouri Department of Health,* 110 S. Ct. 2841 (1990).

Judith Larson et al., *Medical Evidence in Cases of Intrauterine Drug and Alcohol Exposure*, 18 PEPP. L. REV. 279-317 (1991).

This Article identifies the kind of evidence accessible to hospitals and clinics which can reveal fetal drug and alcohol exposure. The authors examine prenatal indicators of drug problems and the legal differences between drug and alcohol tests and conclude by describing the characteristics which should alert attorneys that an infant has undergone substance-caused damage prior to birth.

Renee M. Popovits, *Criminalization of Pregnant Substance Abusers: A Health Care Perspective*, 24 J. HEALTH & HOSP. L. 169-81 (1991).

This Article examines recent court decisions involving criminal prosecutions against pregnant substance abusers. The author discusses the controversy surrounding the criminalization of pregnant women's addiction and concludes by reviewing issues for health care professionals to consider when treating pregnant addicts, including confidentiality, reporting child abuse, informed consent, and testing.

Christine A. Semanson, Comment, *The Continuing Care Community: Will it Meet Your Client's Changing Needs?*, 3 U. DET. L. REV. 771-95 (1990).

America's elderly population is growing as people are living to an older age, resulting in a great increase in health care needs. The author of this Comment discusses the concept of life care communities for the elderly, providing an environment where elderly

residents can maintain their highest level of independence while ensuring that their needs will be attended to as their ability to care for themselves declines. The success of a life care community in achieving its goals and promises to its residents lies primarily in strong management and the financial stability of the organization.

Mark A. Small, J.D., Ph.D., *Obstacles and Advocacy in Children's Mental Health Services: Managing the Medicaid Maze,* 9 BEHAV. SCI. & L. 179-88 (1991).

The Medicaid program is the largest source of federal funds which states use in establishing policies for children's mental health services. The Article focuses on the obstacles within the Medicaid program that prevent utilization of mental health services by children. The majority of the obstacles found in Medicaid plans are almost entirely the result of state policy. The author examines states' choices of eligibility criteria, services, and the procedural deterrents present within payment options and suggests various strategies for advocates and researchers to assure access to those in need of the Medicaid program.

Mary T. Gilberti & Carroll L. Lucht, *Restrictions on Nursing Care for Children: A Policy That Saves No Dollars and Makes No Sense,* 9 YALE L. & POL'Y REV. 13-45 (1991).

Yale Legal Services has been litigating against the Department of Health and Human Services' policy restricting Medicaid funded home health care providers to the home of severely disabled children. They may not accompany them to school, religious services or to physicians' offices. The authors, participants in this legal battle, discuss the perceived rationale for the policy and effectively rebut the agency's logic. They indicate that restricting health care providers is inconsistent with congressional intent, is not cost effective, and deprives children of innumerable rights and benefits.

Shona B. Glink, Note, *The Prosecution of Maternal Fetal Abuse: Is This the Answer?,* 1991 U. ILL. L. REV. 533-80 (1991).

This Note examines the current status of criminal liability of pregnant women whose illegal substance abuse causes injuries to the fetus. While states seek to protect the fetus from injuries caused by maternal drug use during pregnancy, pro-choice organizations fear that increased fetal rights will impede a woman's

right to choose abortion. The author proposes mandatory rehabilitation of pregnant drug users during pregnancy and postpartum as part of a solution to the problem of maternal drug abuse.

Joyce Lind Terres, Note, *Prenatal Cocaine Exposure: How Should the Government Intervene?*, 18 AM. J. CRIM. L. 61-86 (1990).

This Note examines the effect of cocaine use of pregnant women on the fetus and the appropriateness and effectiveness of government intervention. The author concludes that criminal sanctions and the threat of incarceration are ineffective because they discourage women from seeking medical care. Rather, the child protection system, which focuses on the protection of children rather than maternal punishment, is the more appropriate method of government intervention.

James Denison, *The Efficacy and Constitutionality of Criminal Punishment for Maternal Substance Abuse*, 64 S. CAL. L. REV. 1103-41 (1991).

This Article focuses on governmental attempts to curb fetal abuse, especially through criminalization of maternal substance abuse. The author discusses the constitutional inadequacies of existing laws and concludes that statutes criminalizing fetal abuse could be struck down under strict scrutiny analysis because they implicate fundamental rights such as the right to privacy.

Dawn Marie Korver, Note, *The Constitutionality of Punishing Substance Abusers Under Drug Trafficking Laws: The Criminalization of a Bodily Function*, 32 B.C.L. REV. 629-62 (1991).

The escalation of the number of drug exposed infants has prompted many states to criminalize pregnant substance abusers. The author argues that this criminalization will only encourage avoidance of prenatal care to avoid detection by authorities and concludes that development of educational and treatment programs are necessary to ensure that women and children will be addiction free.

Barbara E. Lingle, Comment, *Allowing Fetal Wrongful Death Actions in Arkansas: A Death Whose Time Has Come*, 44 ARK. L. REV. 465-91 (1991).

Fetal wrongful death actions are recognized by most states when the fetus was viable at the time of injury, regardless of whether or not the fetus was born alive or stillborn. After a general discus-

sion of the development of the law in this area, the author discusses three Arkansas cases dealing with the issue. She concludes by arguing that it is time for Arkansas to join the majority of States and recognize the validity of such tort actions.

Joseph J. Hasman et al., *Health Insurance and Life Insurance: Recent Case Law Developments*, 26 TORT & INS. L. J. 251-300 (1990).

The author surveys 1989 and 1990 federal and state law cases regarding benefits for deaths, antitrust, conditional receipt, coordination of benefits, disability insurance, ERISA, contractual damages, health, group and life insurance, substance abuse limitations, state regulation and other benefits.

James M. Wilton, *Compelled Hospitalization and Treatment During Pregnancy: Mental Health Statutes as Models for Legislation to Protect Children from Prenatal Drug and Alcohol Exposure*, 25 FAM. L. Q. 149-70 (1991).

This Article summarizes the known medical effects of maternal alcohol and drug use and examines the constitutional constraints that are likely to limit state intervention to protect fetuses. The author argues that the search for a balance between the state's interest in maternal and fetal health and a woman's interest in privacy must begin with a medical analysis of the problem of fetal addiction and fetal alcohol syndrome and the likely effectiveness of legal intervention.

Daniel Callahan, *Opening the Debate?: A Response to the Wiklers*, 69 MILBANK Q. 41-4 (1991).

This Article responds to an Article by Norma and Daniel Wilker which unmasked the medicalization of artificial insemination. The author agrees that the issue of artificial insemination ("AI") deserves public debate. He argues that AI has been legitimized under the protective wing of the American medical establishment; however, he feels there should be a more open and broad debate on the issue, including its societal consequences and aggregate impact.

Ran Yip et al., *Using Linked Program and Birth Records to Evaluate Coverage and Targeting in Tennessee's WIC Program*, 106 PUB. HEALTH REP. 176-81 (1991).

Public health programs are designed to accommodate low income families; however not all eligible families are equally in

need of benefits. The author of this Article compiled data from Tennessee Women, Infants, and Children Special Supplemental Food Program (WIC) to determine if a connection existed between low income and children nutritionally "at risk." The study found that WIC failed to serve many with nutritional needs.

Bryan W. Smith, Comment, *Tort Law: Recovery of Wrongful Birth Damages in Kansas [Arche v. United States, 247 Kan. 276, 798 P.2d 477 (1990)]*, 30 WASHBURN L.J. 566-77 (1991).

A wrongful birth cause of action was established by the Kansas Supreme Court in *Arche v. United States*, 247 Kan. 276, 798 P.2d 477 (1990). The Court limited damages to the life expectancy of the child or age of majority, whichever is shorter. Only extraordinary costs associated with the child's disabilities are recoverable and the court suggested the establishment of a reversionary trust for the damages. The author suggests that this reformation of tort damages in wrongful birth actions may presage further changes in tort law.

Note, *AIDS Testing of Rape Suspects: Have the Rights of the Accused Finally Met Their Match?*, 1990 U. ILL. L. REV. 347-74 (1990).

As the general public expresses fear of a serious health epidemic generated by the AIDS virus, several state legislatures have responded by compelling rape suspects to be tested for HIV infection. The author acknowledges the importance to rape victims of detecting infection early, in light of new technology and drugs which, if taken in the earliest stages of infection, may increase the life expectancy of infected persons. Noting that the rights of rape victims and accused rapists must be balanced, however, the author believes that a state's interest in protecting the health of its citizens has permitted legislation that unconstitutionally curtails the rights of accused rapists. The author provides an alternative model statute, designed to achieve a "proper" balance by requiring a search warrant to test an accused rapist for HIV infection and a strict limitation on the disclosure of test results.

Diane Tribe & Gill Korgaonkar, *Testing for AIDS Without Consent*, 135 SOLIC. J. REV. 566-82 (1991).

Doctors must confront the medical and ethical dilemma of whether or not to test their patients for AIDS without consent when they have been injured by needles or scalpels during surgery. This Article discusses the British approach which might

hold a doctor liable for battery. The authors suggest that doctors who develop AIDS following infection from patients should receive government compensation as do infected hemophiliacs.

Julie Hamblin & Margaret A. Somerville, *Surveillance and Reporting of HIV Infection and AIDS in Canada: Ethics and Law*, 41 U. TORONTO L.J. 224-46 (1991).

Canada's various approaches to HIV surveillance and reporting offer an opportunity for comparative analyses aimed at establishing a universal system of law. The authors evaluate the implications of compulsory case reporting and unlinked seroprevalence studies, ranking their effectiveness to protect individual privacy as well as public health. Compulsory testing is deemed least effective on both fronts, while anonymous unlinked studies are posited as a creative solution to a thorny ethical problem.

Lynn S. Branham, *Out of Sight, Out of Danger?: Procedural Due Process and the Segregation of HIV-Positive Inmates*, 17 HASTINGS CONST. L.Q. 293-351 (1990).

Among the many constitutional objections raised by prison inmates who are confined in prison HIV units, segregated from the rest of the prison community, is the question of the constitutionality of the procedures used to implement such a policy. This Article examines the procedures used to determine which inmates are placed in these segregated units, focusing on due process requirements.

Michael T. Flannery, *Court-Ordered Prenatal Intervention: A Final Means to the End of Gestational Substance Abuse*, 30 J. FAM. L. 519-604 (1991-92).

This Article reviews the issue of fetal rights in comparison to maternal rights, and the state's interest in setting standards for intervention between those rights. The author advocates that the state must be permitted to protect the unborn child from the ill-effects of gestational drug abuse. It is proposed that the courts apply a strict standard of care to insure that the mother takes responsibility not to abuse the unborn.

Natalie K. Young, Note, *Frozen Embryos: New Technology Meets Family Law*, 21 GOLDEN GATE U. L. REV. 559-90 (1991).

This Article presents a legal analysis for classifying frozen embryos as human life or as property. Emphasis is placed on the

urgent need for state legislation to decide this issue. The policy considerations to determine the legal status of the embryo are set forth, including the major positions regarding the moral status of the embryo. The author concludes in favor of treating the embryos as property rather than human life.

Stephanie M. Caffera, Note, *Exercising the Right to Die: A Proposal for New York*, 42 SYRACUSE L. REV. 1189-240 (1991).

In this Note the author examines the approaches taken by Missouri and New York on the issue of life-support for incompetent patients. Based on *Cruzan v. Missouri*, 110 S. Ct. 2841 (1990), the author examines Missouri's approach to incompetent patients by analyzing the state's efforts to continue life-support over the objection of family members. The author compares this with New York's approach of ensuring that individuals are able to control their medical treatment if they become incompetent. The author concludes that there is a need to establish standards for a surrogate to make decisions on behalf of patients who have left no formal instructions for their medical care.

David S. Lockemeyer, Note, *At What Cost Will the Court Impose a Duty to Preserve the Life of a Child?*, 39 CLEV. ST. L. REV. 577-604 (1991).

This Note discusses various issues surrounding the right of parents to make medical decisions for their children. These issues include consent for a surgical invasion of one child to save the life of a sibling, and the court's role in permitting organ transplantation. *Shimp v. McPhall*, 101 Pa. D. & C.3d 90 (Pa.1978), dealt with the issue of whether a person could be compelled to donate organs or transfer tissue to another. The court in *Shimp* held that a person could not be compelled to donate if he/she chose not to because that would be an invasion of privacy. After discussing several other cases, the author concludes by stating that although presently courts will not compel another to have an invasive procedure, only "time will reveal whether the cost to save a life will be organ donation."

Gerald Coleman, *Genetic Engineering: Should Parents Be Allowed to Design Their Children?*, 34 HOWARD L.J. 153-67 (1991).

This Article analyzes the question of whether a parent's constitutional right to have and raise a child may be expanded to include the right to genetically design such children. The latter right

may be construed by interpreting two Supreme Court cases with regard to the Fourteenth Amendment. However, the State has an interest in preventing this right if the parents' actions interfere with the "health and safety of the child." Finally, ethical considerations raise questions of "playing God" and the difference between altering genes for purposes of correcting an abnormal trait versus changing a gene that is found to be undesirable.

Charles J. Dougherty et al., *Confidentiality and Its Limits: Ethical Guidelines For Maternal/Pediatric HIV Infection*, 25 CREIGHTON L. REV. 1439-59 (1992).

This essay proposes a set of ethical guidelines for the disclosure of HIV information based on a study performed by the authors on confidentiality in maternal and pediatrics HIV. The guidelines are divided into five categories: a mother's disclosure about her own infection, parents' disclosure about their newborn's infection, disclosure by health care professionals of a mother's infection, disclosure by health care professionals of a child's infection, and disclosure by institutions that obtain and store information about maternal and pediatric HIV infection. The guidelines used are an attempt by the authors to prioritize the rights of the parties at stake, the ethical responsibilities involved, and the consideration of interests that must be made.

Chrysso Barbara Sarkos, *The Fetal Tissue Transplant Debate in the United States: Where is King Solomon When You Need Him?*, 7 J. L. & POL. 379-416 (1991).

There is currently in the United States a fierce debate regarding the use of tissue from an aborted fetus to research and treat diseases such as Parkinson's disease and diabetes. The author discusses the origins of fetal tissue research, the political treatment of fetal tissue research and transplantation, and the ethical considerations involved in the debate. The author concludes that a resolution of this debate will depend on political machinations rather than on careful analysis of the appropriateness of such research.

Christina Von Cannon Burdette, Note, *Fetal Protection - An Overview of Recent State Legislative Response to Crack Cocaine Abuse by Pregnant Women*, 22 MEM. ST. U. L. REV. 119-34 (1991).

Crack cocaine abuse by pregnant women causes devastating problems in society. States' attempts to fight this problem using

various methods include: reliance upon existing statutes to impose both criminal and civil sanctions, the creation of specific legislation addressing this problem directly, and the creation and expansion of substance abuse programs. The author explores these tools and concludes that they do not strike at the root of the problem: the availability of the drug itself.

Dauyne A. Ryals, Comment, *Procreation - Its Rights and Responsibilities: Where Do We Draw the Line?*, 2 GEORGE MASON U. CIV. RTS. L.J. 323-40 (1992).

This Comment focuses on the state's interest in potential life: third party suits for injury to the fetus, suits against parents for drug abuse, and the balance between the state's interest and the woman's right of self-determination and privacy. According to the author, the line should be drawn so that the mother may not subject the fetus to illegal or controlled substance abuse. The author proposes solutions to the problems associated with the enforcement of such a policy.

David F. Chavkin, *"For Their Own Good": Civil Commitment of Alcohol and Drug-Dependent Pregnant Women*, 37 S.D. L. REV. 224-88 (1992).

The author discusses the legal and ethical considerations underlying a program of civil commitment for alcohol and drug-dependent pregnant women. Under civil commitment programs, women are required to participate in treatment. The author begins by reviewing the problem of substance abuse and pregnant women. He turns then to the policy considerations underlying civil commitment, the elements of civil commitment systems, and the impact of civil commitment on targeted populations. Finally, he concludes that implementation of civil commitment programs is premature in light of the unavailability of appropriate voluntary treatment programs for pregnant women.

Lisa C. Ikemoto, *Furthering the Inquiry: Race, Class, and Culture in the Forced Medical Treatment of Pregnant Women*, 59 TENN. L. REV. 487-517 (1992).

Court orders forcing medical treatment of pregnant women without consent perpetuate paternalism by doctors and the state and ignore the impact of race, class, and culture on the woman's decisions. Justifications such as greater social good and risks to the woman and fetus regard women foremost as childbearers and

give little weight to their autonomy and interests. By the state's compelling a woman to protect the fetus, it replaces choice with paternalism; coerces "Good Samaritan" behavior not normally mandated; and mainly affects minority women.

Margaret Schiefen, Note, *International Union v. Johnson Controls, Inc.: A Look at the Viability of Sex-Specific Fetal Protection Policies*, 37 S.D. L. REV. 413-28 (1992).

The Pregnancy Discrimination Act of 1978 (PDA) requires an employer to prove a bona-fide occupational qualification (BFOQ) in order to exclude pregnant women from jobs that might injure a current or potential fetus. With very strong scientific evidence, the increasingly conservative court is likely to find a BFOQ exception. The legislature prevented this exception with the PDA, forcing the court to recognize the realities of women in the workplace. The PDA would preempt any state legislation that attempted to impose restrictions on women because of their ability to become pregnant.

JUVENILE RIGHTS

Jennifer F. Skeels, *In re E.G.: The Right of Mature Minors in Illinois to Refuse Lifesaving Medical Treatment*, 21 LOY. U. CHI. L.J. 1199-1230 (1990).

The author analyzes *In Re E.G.*, 133 Ill. 2d 98, 549 N.E. 2d 322 (1989), the 1989 Illinois decision which gave mature minors the capacity to exercise a common-law right to bodily self-determination. This Article examines the state interests of preserving life, protecting third-party interests, preventing suicide, and upholding medical integrity and considers how the trial court must balance these interests with the minor's right to refuse lifesaving treatment. The author concludes that the minor's maturity, not the consequences of her decision, will determine the outcome of future cases.

Howard A. Davidson, *The Child's Right to be Heard and Represented in Judicial Proceedings*, 18 PEPP. L. REV. 255-77 (1991).

The author compares current state and federal law in light of United Nations standards for judicial representations of children and argues that the practice of appointing guardians 'ad litem' for children does not adequately protect a child's right to be heard. The author concludes that children lack substantive due

process rights when faced with psychiatric commitment and juvenile delinquency.

Donna M. Bishop & Charles E. Frazier, *Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Waiver*, 5 NOTRE DAME J. L. ETH. PUB. POL'Y 281-302 (1991).

The authors discuss controversial methods of transferring juvenile offenders from family to criminal court. They focus on prosecutorial waiver, which seldom targets the serious and chronic offenders for whom transfer is arguably justified. The authors argue for the abolition of prosecutorial waiver in favor of carefully drafted specific statutory standards of legislative exclusion and judicial waiver.

Robert J. Murphy, *Protecting Children: The Lifeblood of Permissible Intrusion- Balancing State Interests and Individual Religious Rights*, 25 NEW ENG. L. REV. 1211-20 (1991).

This Article provides an update of the current law in various jurisdictions with respect to the conflict between an individual's right to freely exercise religious beliefs and the state's ability to intrude on those rights, particularly when they involve children. After balancing these competing claims, the Courts have concluded that a state can order medical treatment for children who are seriously ill or injured, regardless of parental wishes. While it is not as clear under what circumstances competent adults can be compelled to obtain medical treatment, the existence of innocent third-parties, especially children, is often a deciding factor.

Martin L. Forst & Martha-Elin Blomquist, *Cracking Down on Juveniles: The Changing Ideology of Youth Corrections*, 5 NOTRE DAME J. L. ETHICS & PUB. POL'Y. 323-75 (1991).

Over the last 15 years, juvenile justice policy-makers have altered the system's philosophy, structure and procedure. Informality, paternalism, and the pretense of benevolence have been replaced by punitive measures. Serious offenders are transferred from the juvenile justice system to criminal court, where they are sentenced as adults. This Article provides a comprehensive discussion of the history of the juvenile justice system and the implications of a more punitive approach. The authors believe that most of the reforms have been beneficial but conclude that juveniles should not be sentenced as adults and argue that a sys-

tem of graduated sanctions is more consistent with current conceptions of adolescent psychology and criminal law doctrine.

Charles E. Springer, *Rehabilitating the Juvenile Court*, 5 NOTRE DAME J.L. ETHICS & POL'Y 397-420 (1991).

The author asserts that the juvenile court system is in urgent need of rehabilitation. He maintains that the court must be remodelled and re-moralized in order to define its character and reputation. This Comment examines the flaws of the present treatment-based system, and argues for the institution of a new moral model based on justice. The author concludes by proposing a model for reforming the juvenile court.

Ira M. Schwartz et al., *Business as Usual: Juvenile Justice During the 1980's*, 5 NOTRE DAME J. L. ETHICS & PUB. POL'Y. 377-96 (1991).

The Juvenile Justice and Delinquency Prevention Act of 1974 called for comprehensive reform of the juvenile justice system and recommended that juveniles be placed under community-based supervision and not incarcerated unless they represent a substantial threat to the community; the passage of this Act, however, has had little impact on the nation's youth detention and correctional policies. This Article provides a comprehensive discussion of both past and present policies toward juvenile offenders and concludes that the increasingly punitive juvenile justice system currently in place in most states is wasteful at best and destructive at worst. The few states that have started a community-based supervision of juvenile offenders have had good results and the author believes that community-based prevention should be a national priority.

Honorable Charles D. Gill, Essay, *Essay on the Status of the American Child, 2000 A.D.: Chattel or Constitutionally Protected Child-Citizen?*, 17 OHIO N.U. L. REV. 543-79 (1991).

The author of this Essay advocates granting children constitutional rights so that they are not dependent upon the adults who control the legal system. While seventy-nine nations currently mention children in their constitutions, the U.S. Constitution does not. Using the U.N. Convention on the Rights of the Child as a model for legislation, the United States could adopt measures to constitutionally protect children from abuse and neglect and ensure their right to health care and education.

Franklin E. Zimring, *The Treatment of Hard Cases in American Juvenile Justice: In Defense of Discretionary Waiver*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 267-80 (1991).

The author advocates discretionary waiver to criminal court as the least harmful response to juvenile court offenders. He believes that proposed measures such as increasing juvenile-court sanctions, lowering jurisdictional age and defining waiver standards through legislation sweep too broadly. To ensure fairness, all waiver decisions must be discretionary and subject to appellate review.

Lee E. Teitelbaum, *Youth Crime and the Choice Between Rules and Standards*, 1991 B.Y.U.L. REV. 351-402 (1991).

Juvenile criminal proceedings are increasingly being transferred to adult criminal courts. This trend seems to be due to the apparent lack of standards in trying youthful offenders in juvenile court. The author of this Article notes the risks in establishing a criminal code for minor offenders but concludes that the risks can be reduced by setting clear standards for judges and juries.

Albert R. Roberts & Michael J. Camasso, Note, *The Effect of Juvenile Offender Treatment Programs on Recidivism: A Meta-Analysis of 46 Studies,* 5 NOTRE DAME J. L. ETHICS & PUB. POL'Y 421-39 (1991).

Recidivism among chronic and habitual juvenile offenders is one of the most troublesome problems confronting juvenile justice administrators. This Note provides policy makers with a meta-analysis of the effectiveness and quality of various treatment programs aimed at breaking the cycle of recidivism among juvenile offenders. The study concludes that family counseling is the most effective mode of treatment for reduction of recidivism.

Jennifer D. Tinkler, Note, *The Juvenile Justice System in the United States and the United Nations Convention on the Rights of the Child,* 12 B.C. THIRD WORLD L.J. 469-505 (1992).

This Note focuses on Articles 37 and 40 of the Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (1989), and examines state and federal laws and practices that do not conform to the requirements of the Convention. A three tier analysis is proposed to determine whether the statute facially conflicts with a specific provision of the Convention; whether the law's execution is consistent with its statutory language and pur-

pose; or whether the law or procedure actually represents the "best interests" of the child. The author concludes by recommending that the United States ratify the Convention and amend laws found contrary to its provisions.

Honorable J. Peter Ault, *Out of the Mouths of Babes: Determination of Child Custodial Preference in Illinois,* 23 LOY. U. CHI. L.J. 383-96 (1992).

This Article focuses on the factors and guidelines a judge must consider when ruling on a custodial trial. The "best interest of the child standard" is most commonly used as the principal guideline. The author discusses three primary means by which evidence is introduced in order to determine what is in the best interest of the child: 1) through direct testimony by the child in open court 2) through the testimony of third persons, and 3) through an in camera interview of the child. The author concludes by expressing his preference for the in-camera interview because it is the most flexible, reliable, and appropriate method of making the difficult factual determination.

Maureen Ann Delaney, Comment, *What About the Children? Toward an Expansion of Loss of Consortium Recovery in the District of Columbia,* 41 AM. U.L. REV. 107-40 (1991).

In the District of Columbia, where the United States Court of Appeals was the first court to recognize a wife's cause of action for loss of consortium, the author argues for judicial recognition of a child's right to recover for loss of parental consortium. A child's loss of consortium because of a negligent or intentional injury to a parent has become a cause of action in several jurisdictions over the last ten years, the author notes, following wrongful death statutes that permit children to recover for loss of society and companionship. The author concludes that a child's loss of care and affection by an injured parent is similar to the loss felt by an adult deprived of spousal consortium; thus courts should treat these cases similarly and allow a cause of action for loss of parental consortium.

Douglas M. Foley, *Infants, Lost Earning Capacity, and Statistics: Sound Methodology or Smoke and Mirrors?,* 13 GEO. MASON U.L. REV. 827-49 (1991).

This Article examines the basis for awarding damages to infant plaintiffs for lost earning capacity as a result of permanent, se-

vere injuries. Because of their youth, infant plaintiffs have few individual traits which can be used to calculate their lost earning capacity. However, economists can calculate the average learning potential for persons in the same situation as the infant plaintiff, which can provide a reasonable estimate of loss to guide jury deliberations. The author argues that such projections, however speculative, should be allowed to support awards for lost earnings. The author feels that it is appropriate to place the evidentiary burden on the tortfeasor to prove that such estimates of lost earning capacity are disputable, rather than barring recovery altogether.

Mark D. Wolf, *Constitutional Law-Confrontational Clause-Arkansas Child Hearsay Exception Regarding Sexual Offenses, Abuse, Or Incest is Unconstitutional. George v. State, 306 Ark. 360, 813 S.W.2d. 792 (1991),* 14 U. ARK. LITTLE ROCK L.J. 579-94 (1992).

The Arkansas General Assembly adopted the Arkansas child hearsay exception in 1985, noting strong policy arguments for its adoption. The court in *George v. State* partially struck down the evidentiary exception permitting a child's statement of sexual abuse, due to the law's conflict with a defendant's Sixth Amendment right to confrontation. The author examines this struggle between the court and legislature and the ramifications of the conflict.

Barbara L. Atwell, *"A Lost Generation": The Battle for Private Enforcement of the Adoption Assistance and Child Welfare Act of 1980,* U. CIN. L. REV. 593-647 (1992).

The Adoption Assistance and Child Welfare Act of 1980 is a federal law for the protection of children in foster care. The Act provides federal funding for state programs but fails to provide remedies for states that do not comply. It is the author's contention that courts must take a greater role in private enforcement of the Act and for section 1983 claims to protect children and their families.

Elinor F. Parker, Note, *Birth Control as a Probation Condition for Child Abusers - Creative Alternative or Unconstitutional Condition?,* 19 W. ST. L. REV. 289-307 (1991).

This Note explores the permissibility of a probation condition which limits a probationer's reproductive rights in light of the Supreme Court's diminishing view of the right of privacy as a

fundamental right. The author notes that while a probation condition would be upheld if it is reasonably related to the crime, the condition would not stand if it was in violation of a fundamental right. The author argues that unless privacy rights are maintained as fundamental rights, there will be no constitutional mandate remaining to prevent states from imposing such probation conditions.

Akhil R. Amar & Daniel Widawsky, *Child Abuse as Slavery: A Thirteenth Amendment Response to DeShaney*, 105 HARV. L. REV. 1359-85 (1992).

This Article compares child abuse to slavery, thereby giving children the protection of the Thirteenth Amendment. In *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed.2d 249 (1989), the Court held that the state had no duty under the Due Process Clause of the Fourteenth Amendment to protect a child from the physical abuse of a parent. The authors argue that abused children are, in many respects, slaves as defined under the Thirteenth Amendment — treated as chattel and subject to being controlled and demoralized by another. In conclusion, this Article states that the Thirteenth Amendment's prohibition on slavery imposes an affirmative duty on the state to provide an adequate apparatus to enforce the emancipation of all persons, including children, within its jurisdiction.

MISCELLANEOUS

Book Review, 9 ISLAMIC L. REV. 84-88 (1989) (reviewing S. IQBAL, WOMAN AND ISLAMIC LAW (1988)).

This Review delivers a scathing criticism of Iqbal's book, *Woman and Islamic Law*. The book is regarded as an unsuccessful attempt to present an overview of women's rights and related law in Islam. The reviewer finds only traces of actual law and identifies many factual errors.

Belinda Bennett, Book Review, 19 INT'L J. SOC. L. 243-46 (1991) (reviewing R. GRAYCAR, & J. MORGAN, THE HIDDEN GENDER OF LAW (1990)).

The reviewer praises *The Hidden Gender of Law*, "a wide-reaching introduction to feminist legal theory," for the scope of its research and for its innovative structure. The authors favor a focus on innovative issues over traditional doctrinal categories in ex-

amining how the law affects "Women and Economic (In)dependence," "Women and Connection," and "Injuries to Women." The reviewer finds the book to be of equal value as a student text and a general source for law teachers because it exposes the barriers which gender bias imposes on the law.

Pat Carlen, *Women, Crime, Feminism, and Realism,* 17 SOC. JUST. 106-23 (WINTER 1990).

This Article discusses the academic, social, and political responses to female criminal behavior. The author first details the contributions and limits of feminism in relation to women, crime, and criminology, and then explains the potential limits of left realist criminology in relation to women, crime, and social policy. A plan is then outlined to reach certain ideals regarding "women and crime" and to develop policies aimed at correcting wrongs suffered by women lawbreakers in the justice and penal systems.

Ann J. Gellis, *Great Expectations: Women in the Legal Profession, A Commentary on State Studies,* 66 IND. L. J. 941-76 (1991).

In 1988 the Indiana State Bar Association formed a commission on women in the legal profession in response to concerns that a glass ceiling exists for female attorneys. A survey of lawyers of both sexes conducted by the commission showed that disparate treatment of men and women exists in the courtroom but not with respect to salary levels and opportunities for advancement. This Article provides an in-depth analysis of the problems facing female lawyers and concludes that because of the pervasiveness of gender bias there is no single solution.

Jeanne L. Schroeder, *Feminism Historicized: Medieval Misogynist Stereotypes in Contemporary Feminist Jurisprudence,* 75 IOWA L. REV. 1135-217 (1990).

Following a lengthy comparison of medieval feminist theories and contemporary feminist theories, the author argues that a sophisticated theory of jurisprudence and gender requires not only an analysis of contemporary society and its stereotypes of the self, but also a recognition that contemporary stereotypes are culturally contingent. The author urges women to construct their own definition of themselves and not merely accept men's definitions of women as the opposite or complement of men. Women will then be able to develop a true feminist jurispru-

dence, the essential element for furthering freedom and the development of a truly just jurisprudence for both sexes.

Carl Tobias, *The Gender Gap on the Federal Bench,* 19 HOFSTRA L. REV. 171-84 (1990).

There is a noticeable disparity between the number of well-qualified female attorneys and the number of women serving as federal judges. This Article analyzes why President Bush has appointed so few women to the federal bench. The author notes that President Bush selects judges with conservative views which female attorneys, as a group, are less likely to hold. In addition, female lawyers often chose career paths that are deemed less worthy by the American Bar Association. The author believes the appointment of more female judges would improve the justice system and suggests several ways of increasing the number of women appointed to the federal bench.

Anna N. Costain, *After Reagan: New Party Attitudes Toward Gender,* 515 ANNALS 114-125 (1991).

The author, a professor of political science, discusses how women's issues have assumed center stage in elections and within the political parties for the first since the suffrage era. She claims that the Republican party has backed away from legal equality for women, leaving the Democratic party as the Women's Rights party. She concludes that women's issues can be voted up or down in each partisan electoral contest.

Frances E. Scanlon, *Vulnerable Women,* 77 WOMEN'S L. J. 8-9 (1991).

This Article reports on an address given by Ambassador Juliette McLennan, U.S. Representative to the U.N. Commission on the Status of Women, on January 24, 1991. Ambassador McLennan addressed the focal points of the 35th Session of the Commission, which took place Feb. 27-Mar. 8, 1991. The issues addressed include the equality of vulnerable women, the integration of women into the development process, refugees, and displaced women and children.

Nan L. Maxwell, *Individual Aggregate and Influences on the Age at First Birth,* 10 POPULATION RES. & POL'Y REV. 27-46 (1991).

Within the United States, black women consistently bear children earlier than white women. The author of this Article maintains

that early childbirth among blacks is a result of negative expectations regarding future economic success. Policies that lead to an increased black employment rate and higher income will result in a lower rate of black teenage child bearing.

Jean Bethke Elshtain, *Ethics in the Women's Movement,* 515 ANNALS 126-39 (1990).

This Article discusses the various forms of contemporary American feminism and the ethical implications of their positions. Specifically, the author describes how radical feminism, Marxist feminism, liberal feminism and ecofeminism approach the problems of war and reproductive technology. The author criticizes feminist theory because it does not allow for the possibility of the transformation of men as well as women and concludes that women should not look to theorists for moral leadership but to living people.

Daryl McGowan Tress, *Feminist Theory and Its Discontents,* 18 INTERPRETATION 293-311 (1990-1991).

This Article examines the history of feminist thought over the past three centuries and describes how modern feminist theory has rejected reason and rationality as masculine and oppressive to women. The author contends that the denial of reason has led to contradictions and the undermining of modern feminism. In conclusion, the author suggests that a complete theory of human nature based on classical philosophy would reduce the antagonism between the sexes while acknowledging their differences.

Deborah Schwenk, Book Note, 12 WOMEN'S RTS. L. REP. 205-8 (1990) (reviewing CATHARINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989)).

Catharine MacKinnon's latest book, *Toward a Feminist Theory of the State,* is a compelling attempt to create a feminist theory of male dominance and sexual hierarchy. The author of this review examines the chapters on rape, abortion and pornography. She concludes by identifying the greatest value of MacKinnon's book to be its focus on the root of women's powerlessness.

Sybil Schwarzenbach, *Contractarians and Feminists Debate Prostitution,* 18 REV. L. & SOC. CHANGE 103-30 (1990).

Contractarians believe that a person's right to sell his or her sexual services is equal to, and as important as, that person's right to

sell any other labor power. While contractarians argue for the decriminalization of prostitution, feminists do not have such a clear stance. While many feminists are not opposed to prostitution per se, they find it difficult to reconcile this with their view that prostitution is usually exploitive of and violent towards women. The author analyzes both positions and concludes that society must reconstruct fundamental views concerning both male and female sexuality.

Susan L. Miller & Sally S. Simpson, *Courtship Violence and Social Control: Does Gender Matter?*, 25 LAW & SOC. REV. 335-65 (1991).

This Article describes a study of courtship violence in which the authors used feminist research and theory to explore gender differences in perceptions of sanction risk and attitudes toward resolution of violence. They found that females are more likely than males to seek relationship termination, informal controls, or formal justice outcomes if assaulted by their partner. These research findings are discussed along with implications for further research.

Gayle Binion, *On Women, Marriage, Family, and the Traditions of Political Thought,* Book Review, 19 LAW & SOC'Y REV. 445-61 (1991) (reviewing S. OKIN, JUSTICE, GENDER, AND THE FAMILY (1989) and C. PATEMAN, THE SEXUAL CONTRACT (1988)).

This review compares Pateman and Okin's assessment of social organization theories of modern and historical political philosophers with respect to the role of women. After analyzing aspects of women's roles in marriage, family, and society, the reviewer notes that Pateman and Okin agree that political theorists have neglected to treat women and women's issues in their works. Pateman and Okin differ on how to construct a political theory which would incorporate marriage and family issues into a theory of social organization.

Sheila Nielsen, *The Balancing Act: Practical Suggestions for Part-Time Attorneys*, 35 N.Y.L. SCH. L. REV. 369-83 (1990).

This Article examines the workplace and the reasons why lifestyle issues have become important for practicing attorneys. The author focuses on the plight of "lawyer-moms" and other attorneys with compelling outside interests by examining the economic factors affecting alternative work-time options. The author con-

tends that soon attorneys will be able to slow or increase their work pace without jeopardizing their careers and makes practical suggestions for negotiating these alternate work schedules.

Edna Erez & Kathy Laster, Book Review, 82 J. CRIM. L. & CRIMINOLOGY 1190-4 (1992) (reviewing JOCELYN M. POLLOCK-BYRNE, WOMEN, PRISON, AND CRIME (1990)).

This book discusses women's prisons today and emphasizes the importance of understanding women's own experiences of imprisonment. The book suggests that punishment should help women become strong, productive and healthy. The author also discusses the need for obstetrical/gynecological services and parenting skill programs to accommodate the prisoners' needs. Finally, the book addresses how women adapt to prison life.

John M. O'Connell, Note, *Keeping Sex Out of the Attorney-Client Relationship: A Proposed Rule*, 92 COLUM. L. REV. 887-922 (1992).

This Note examines the problems involved with sexual relations between an attorney and a client within the context of an attorney-client relationship. The author argues that it is unethical for attorneys to commence a sexual relationship with a client during the course of legal representation and proposes that the legal profession adopt a rule prohibiting such behavior. He concludes that such a rule is not an unconstitutional invasion of an attorney's right to privacy and would be consistent with similar rules in other professions.

Linda Mabus Jorgenson & Pamela K. Sutherland, *Fiduciary Theory Applied to Personal Dealings: Attorney-Client Sexual Contact*, 45 ARK. L. REV. 459-503 (1992).

The authors begin by asking the question, "should an ethical rule be promulgated restricting or prohibiting sexual relations between an attorney and the attorney's client?" The authors believe that the fiduciary duties of attorneys should apply not only to financial concerns but to personal matters as well, regardless of the impact the personal relationship may have on the particular client's case. The authors conclude by stating that, although several states have ethical standards regarding sexual conduct, there is no national standard, and one is desperately needed because "attorneys must be alerted as to what conduct is permissible."

Bari R. Burke, *Afterword: Pulling for the Shore of Independence*, 59 TENN. L. REV. 479-86 (1992).

This essay is part of a project researching the lives of women who were admitted to the Montana Bar between 1889 and 1969. The author discusses the life of Emily Eva Mullenger Sloan, her constant strive for selfhood, and the various constraints placed on women in their search for autonomy. The author identifies gender roles, sexual violence, and men's aversion to working in the home as some of the more prominent constraints that thwart a woman's search. The author concludes by stating that Emily Sloan "exemplifies the 'coming American woman," and that she eagerly anticipates the day that more women follow Emily's lead.

Edward S. Adams, *Battles In the Hallow Halls*, 55 ALB. L. REV. 849-70 (1992) (reviewing Dinesh D'Souza, ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS (1991)).

According to the reviewer, this book explores the academic and cultural revolution emerging on college campuses. Multiculturalism and political correctness are the impetus for the adoption of speech codes at many universities that may interfere with First Amendment rights. The reviewer commends D'Souza for his noteworthy exposition of the current restrictions and expands upon his own suggestions for the amelioration of the problems created.

Candace M. Zierdt, *Compensation for Birth Mothers: A Challenge to the Adoption Laws*, 23 LOY. U. CHI. L.J. 25-66 (1991).

Recently, the number of adults seeking to adopt children has increased while the number of children put up for adoption has decreased. Consequently, independent individuals have matched birth mothers with prospective parents through "black market" adoptions, charging a fee payable to the broker and the birth mother. States have discouraged such adoption, making any fee paid illegal unless it directly benefits the child. The author suggests restructuring state law to permit compensation for the birth mother under the supervision of state adoption agencies.

Karen Hilmoe, Note, *Rust v. Sullivan: Free Speech Is "Significantly Impinged" by Title X Regulations*, 37 S.D. L. REV. 600-20 (1992).

This Note asserts that, because the statute at issue in *Rust v. Sullivan*, 111 S. Ct. 1759 (1991) was content-based and there was no

precedent of a "no alternatives" threshold, the Court should have applied the traditional free speech strict scrutiny standard of review. Rather, by suggesting that there is no abridgement or coercion if "alternatives" exist, the Court has set a new threshold that, the author contends, will result in the dismissal of many free speech cases which would have previously recognized by the Court and possibly been decided in favor of the plaintiff.

Gregory Bassham, *Feminist Legal Theory: A Liberal Response*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 293-319 (1992).

Feminist legal theory is a new contemporary challenge to liberal jurisprudence. The author focuses upon and argues against three prominent themes in feminist legal theory: (a) that the current sex discrimination laws reflect a "difference" approach which provides insufficient protection and should be replaced by a gender-sensitive "dominance" approach; (b) that women employ a different moral reasoning which has been ignored, or given insufficient weight in the "male stream" of legal theory and doctrine; and (c) that pornography should not be protected speech because it is a form of sex discrimination. Although the author concludes that these theories are radical and indefensible, they challenge liberals to re-examine the implications of traditional principles held on gender.

Anne E. Simon, *Whose Move? Breaking the Stalemate in Feminist and Environmental Activism*, 2 UCLA WOMEN'S L.J. 145-64 (1992).

The author discusses the relationship between feminism and ecological activism. Suggesting the benefits to each of championing the other, the author draws her arguments on three issues: subways, lead, and trees. In discussing culture's domination over nature, the author asserts that feminists ignore environmental issues because of a desire to be, at minimum, on the winning side. The author calls for a re-evaluation of the misguided view that caring about nature will contribute to women's oppression.

Valentine Petev, *Social Morality as Expressed in Law*, 5 RATIO JURIS. 104-8 (1992).

By rejecting the philosophy that every positive law has some minimum of natural law within it, the author argues that the criteria to judge our laws is derived from society's actual morality. Countering the accepted methods of analysis shows that valid conclusions are not produced under these "ideal condition" discourses,

and that an "institutional-realistic" concept that recognizes our social experiences does not necessarily lead to an acceptance of all principles of the law we now practice. Rather, today's "pluralistic" societal values reflect this lack of a common and complete agreement. The intertwining of law and morality requires that law be justified from a perspective of history and by our contemporary values.

Keith S. Furer, *"Warning: Explicit Language Contained" Obscenity and Music*, 9 N.Y.L. SCH. J. HM. RTS. 461-94 (1991).

In *Skywalker Records Inc. v. Nicholas Navarro*, 739, F. Supp. 578 (S.D. Fla. 1990), the court held that the album *As Nasty As They Wanna Be* by 2 Live Crew was obscene, and therefore not protected by the First Amendment of the Constitution granting the right to free speech. The Article focuses on the history of the Supreme Court and some of its major rulings on the obscenity issue. In *Roth v. United States*, 354 U.S. 476 (1957), the court held that "obscenity is not within the area of constitutionally protected speech or press." In *Miller v. California*, 413 U.S. 15 (1973), the court established a three pronged test to determine whether material was obscene. The *Skywalker* court used the *Miller* test and found the music obscene. The author concluded by stating that the material should not have been deemed obscene because it had artistic value, and members of the community should determine whether or not they want to listen to the music.

Kathleen Mahoney, *The Canadian Constitutional Approach to Freedom of Expression in Hate Propaganda and Pornography*, 55 LAW & CONTEMP. PROBS. 77-105 (1992).

The author argues that Canadian freedom of expression laws do not protect pornography or hate propaganda. The article analyzes the Canadian Supreme Court's decision in *Regina v. Keegstra*, 3 S.C.R. 607 (1990), and argues that, since pornography is a violent form of communication, it is not a protected form of speech. The author argues that the Court's equality, harm-based rationale for regulation of hate propaganda supports regulation of pornography as a practice of inequality.

John L. Huffman & Denise M. Trauth, Article, *Obscenity, Indecency, and the Rehnquist Court*, 13 COMM. & L. 3-23 (1991).

The authors consider the decision by the United States Supreme

Court in *Sable Communications v. FCC*, 492 U.S. 115 (1989), where the Court upheld a company's right to provide "indecent" messages to its customers provided those messages are not "obscene". The Article discusses how the philosophy of judicial restraint prevails in the federal court system and influenced the decision in this case. Finally, there is a review of the legal history of these two terms, "indecent" and "obscene" and how the history has been interpreted by case law.

Victoria Mikesell Mather, *No Harm, No Foul: Pornography (Violent and Otherwise)*, 14 U. ARK. LITTLE ROCK L. J. 455-89 (1992).

The author presents an analysis and criticism of the current constitutional standard on obscenity and a review of proposed liberal modifications. The radical feminists' view of pornography with an emphasis on the "pornography as a violation of civil rights" ordinance is examined. The author contends that a feminist viewpoint with regard to explicit speech and violent pornography should be seriously considered in the analysis of constitutional rights.

Raymond Landry, Note, *Barnes v. Glen Theater - How Can We Know the Dancer from the Dance?*, 38 LOY. L. REV. 227-54 (1992).

In *Barnes v. Glen Theater, Inc.*, 111 S. Ct. 2456 (1991), the Court upheld an Indiana statute regulating nude dancing, allowing the suppression of expressive conduct protected by the First Amendment. The Note analyzes the Court's prior rulings upholding erotic dancing as protected expression and non-obscene nudity as permissible when part of protected expression. The author merges these rulings into the premise that erotic dancing involving non-obscene nudity is protected expression. The dichotomy of *Barnes* is that while erotic nude dancing remains protected expression, the dancer is forbidden from dancing nude.

Rodney A. Grunes, *Justice Brennan and the Problem of Obscenity*, 22 SETON HALL L. REV. 789-813 (1992).

In this Article the author examines Justice Brennan's approach to obscenity law and critiques the argument that the Burger Court's anti-libertarian approach to obscenity can be attributed in part to Justice Brennan's failure as a coalition builder during the Warren Court period. The Article argues that Brennan's dissenting position during the Burger and Rehnquist Court periods was essentially correct. While the Court subscribed to a definitional

approach to obscenity, Brennan argued that it is not possible to provide a definition or test that enables a judge to clearly distinguish between material entitled to First Amendment protection and material that is not.

PORNOGRAPHY

Ian Jarvie, *Pornography and/as Degradation,* 14 INT'L J.L. & PSYCHIATRY 13-27 (1991).

This Article discusses pornography and the constitutional issues involving its publication. The author claims that, although pornography may be degrading to women, any effort to legislate against it is a violation of free speech and will only perpetuate the oppression of and discrimination against women.

Berl Kutchinsky, *Pornography and Rape: Theory and Practice?,* 14 INT'L J.L. & PSYCHIATRY 47-64 (1991).

The author rebuts the theory that there is a substantial causality between pornography and rape and criticizes the methodology of the proponents of this theory. She provides a statistical analysis which compares rape and the availability of pornography in three European countries and the United States and concludes that there is no increase in the instances of rape as divorced from other forms of violent assaults. The author emphasizes that the notion that pornography is rife with brutalizing and violent depictions of women is unsupported by empirical evidence.

Steven Alan Childress, Review Essay, *Reel "Rape Speech": Violent Pornography and the Politics of Harm,* 25 LAW & SOC'Y 177-214 (1991).

The author reviews three works on pornography: Donnerstein, Linz, Penrod, *The Question of Pornography* (1987), Hawkin, Zmimring, *Pornography in a Free Society* (1988), and Downs, *The New Politics of Pornography* (1989). He finds a common thread throughout the empirical research of Donnerstein, in the political studies conducted by Hawkins, and in critical analysis of radical feminism in Downs: the harm or violence committed against women is not related to explicit sexual material but is related to explicit violent material. The author argues that the focus should be on limiting explicit violence rather than on explicit sex.

Judith Becker & Robert M. Stein, *Is Sexual Erotica Associated with Sexual Deviance in Adolescent Males,* 14 INT'L J. L. PSYCHIATRY 85-95 (1991).

This Article begins with a brief discussion of the various types of research conducted on the effects of pornography. The authors acknowledge the difficulties inherent in conducting such research, and then present their study of the possible roles played by sexually explicit material, substance abuse, and sexual or physical victimization in the commission of a sexual offense by an adolescent male.

Leo Groarke, *Pornography, Censorship, and Obscenity Law in Canada,* 2 WINDSOR REV. LEGAL & SOC. ISSUES 25-38 (1990).

The Canadian government's proposal for censorship of violent pornography is consistent with traditional liberal ideas of freedom of expression, because the promotion of harm to others will not be allowed. The author reviews competing viewpoints as well as the community standards test of obscenity and recent legislative attempts to reform obscenity law in Canada.

Jorn Axel Holl, Comment, *Judges, Congress, and the Sixteen-Year-Old Star: Questions on the Proper Role of the First Amendment,* 75 IOWA L. REV. 1355-72 (1990).

The author of this Comment posits that Congress clearly indicated that child pornography should not receive First Amendment protection when it enacted 18 U.S.C. § 2251. In *United States v. United States District Court for the Central District of California (Kantor),* 858 F.2d 534 (9th Cir. 1988), the Ninth Circuit Court of Appeals contravened legislative intent by requiring that a mistake of age defense be added to anti-pornography statutes. The author concludes that courts and judges should defer to the legislatures and not re-write law.

Ronald M. Stern, Note, *Sex, Lies, and Prior Restraints: "Sexually Oriented Business"-The New Obscenity,* 68 U. DET. L. REV. 253-85 (1990).

The author examines the governmental regulation of sexually oriented businesses by zoning and licensing requirements. Municipalities use such requirements to control the location and number of sexually oriented businesses in order to protect the welfare of the general public. The author suggests that, un-

checked, these regulations serve to control the content of these businesses and violate their First Amendment rights.

Peter Rush, Book Review, 19 INT'L J. SOC. L. 264-72 (1991) (reviewing DONALD ALEXANDER DOWNS, THE NEW POLITICS OF PORNOGRAPHY (1989)).

The review finds the *New Politics of Pornography* both a defense of liberal free speech and an attack on MacKinnon's and Dworkin's efforts to ban pornography in Minneapolis and Indianapolis. The book is criticized for preaching rational public discourse, condemning censorship, yet using the tools of the dogmatist — invective, innuendo, and hyperbole — to attack the feminist positions. The reviewer concludes that it is not the feminists but the liberals who are overreacting.

Toby Terrar, *A Justification Based on Woman's Press Freedom And The New World Information Order For Defending The National Endowment For The Arts But Not Pornography*, 47 GUILD PRAC. 88-94 (1990).

In the context of the Helms' Amendment to the re-authorization of the National Endowment of the Arts, the author revisits the traditional Marxist/Leninist paradox of whether or not to ally with the liberal commercial press against conservative right wing attacks upon the freedom of the press. In attempting to formulate a policy, the author condemns the commercial press as being pornographic by portraying women as sexual commodities and not representing the interests of the laboring classes. Though the author finds the "enemy" in both the liberal commercial press and the right wing attacks on it, he ultimately urges cooperating with the commercial press in defeating the Helms' Amendment.

Comment, *Ban On Dial-A-Porn Services: A Broad Regulation Requiring Constitutional Scrutiny*, 24 SUFFOLK U. L. REV. 213-20 (1990).

In analyzing the Supreme Court's decision in *Sable Communications of California, Inc. v. Federal Communications Commission*, 109 S. Ct. 2829 (1989), the author discusses the history of FCC regulations on commercial telephone messages and concludes that the Court erred in finding that the FCC's ban on indecent communications did not apply to the obscene speech of phone messages.

Rowena Young, Book Note, 91 COLUM. L. REV. 1269-75 (1991) (reviewing DONALD ALEXANDER DOWNS, THE NEW POLITICS OF PORNOGRAPHY (1989)).

The reviewer asserts that the author examines the encounter between feminists and the legal system in the context of the passage of pornography ordinances of Minneapolis and Indianapolis, and that the book fails to achieve its goal of a compromise between the feminist position and the liberal free speech position because the author does not respond to the central concerns of the feminists. The reviewer suggests that the author's proposals, a rule on pornography such as that embodied in *Miller v. California*, 413 U.S. 15 (1973) and absolute First Amendment protection for written pornographic words but not images, are problematic, and that new ideas, such as those behind the feminist anti-pornography position, can benefit society only when all viewpoints are accommodated and an effort to achieve a true compromise is made.

SEX CRIMES

David Guy Hanson, Note, *Judicial Discretion in Sexual Assault Cases After State v. Pulizzano: The Wisconsin Supreme Court Giveth, Can the Wisconsin Legislature Taketh Away?*, 1992 WIS. L. REV. 785-807 (1992).

In *State v. Pulizzano*, 465 N.W.2d 325 (Wis. 1990), the Wisconsin Supreme Court ruled that a defense attorney could bring into evidence the sexual history of an alleged sexual assault victim for purposes other than permitted by state law. The court found Wisconsin's rape shield statute to be unconstitutional as applied to a defendant who sought to establish that the complainant's sexual knowledge was not gained as a result of the defendant's alleged assault, but from an alternate source. The author analyzes the court's reasoning and concludes that, while the ruling provides Wisconsin trial court judges more discretion than the legislature intended, the decision is compatible with the constitutional requirement that a judge must have discretion to allow evidence to be admitted when necessary to prevent prejudicing the defendant's rights.

Gary F. Giampetruzzi, Note, *Raped Once, But Violated Twice: Constitutional Protection of a Rape Victim's Privacy*, 66 ST. JOHN'S L. REV. 151-77 (1992).

The author analyzes the constitutional conflict that arises be-

tween the First Amendment right to free speech and the right to privacy when states enact legislation that attempts to prevent the publishing of rape victims' identities. The author discusses the constitutional scrutiny any statute would have to bear. Specifically, he cites a recent Florida statute, under which a publication was prosecuted for publishing an identity, and its inevitability of being declared unconstitutional. Although it is unlikely for the Supreme Court to uphold prohibitions on publishing victims' identities, the author predicts that the Court could permit other measures that protect rape victims, so long as certain First Amendment concerns are safeguarded in light of the media's significant role of informing the public of courtroom occurrences.

Pamela Fisher, Comment, *State v Alvey: Iowa's Victimization of Defendants Through the Overextension of Iowa's Rape Shield Law*, 76 IOWA L. REV. 835-70 (1991).

In *State v. Alvey*, 458 N.W.2d 850 (Iowa 1990), the court excluded from evidence a prior false rape accusation on the basis of Iowa's rape shield law. This comment details the inconsistencies which have resulted from this law's application and argues that the Iowa Supreme Court has misrepresented the rape shield law in that evidence of a prior false rape accusation does not fall within the confines of the rape shield law. The author argues that such evidence is admissible under Iowa rules of evidence and proposes an amendment to the rules of evidence to solve interpretation problems regarding the rape shield law's control over exclusion of past false allegations of rape.

David J. Kaloyanides, Comment, *The Depraved Sexual Instinct Theory: An Example of the Propensity for Aberrant Application of Federal Rule of Evidence 404(b)*, 25 LOY. L.A. L. REV. 1297-341 (1992).

Rule 404(b) prohibits the introduction of character evidence to prove conduct in a specific occasion. This Comment discusses Rule 404(b) in the context of criminal cases involving sexual offenses on both the federal and state level. The author concludes that the current application of Rule 404(b) in the area of sex crimes is unmanageable and opens the rules governing character evidence to limitless exceptions. The author recommends that the Rule be used for the limited purpose of admitting 'specific acts evidence' clearly offered for a non-character propensity purpose.

Tina Snelling & Wayne Fisher, *Adult Survivors of Childhood Sexual Abuse: Should Texas Courts Apply the Discovery Rule?*, 33 S. TEX. L. REV. 377-415 (1992).

This article discusses childhood sexual abuse (CSA) and the problems encountered in applying statute of limitations to claims brought by CSA survivors. The authors argue that cases which should receive judicial recognition are those in which the CSA victim has no knowledge of the abuse until shortly before the claim is filed. In conclusion, the authors predict that Texas courts will recognize child sexual abuse claims as unknown injuries and accordingly toll the statute of limitations until the injury is known.

SEXUAL HARASSMENT

Nell J. Medlin, Note, *Expanding the Laws of Sexual Harassment to Include Workplace Pornography: Robinson v. Jacksonville Shipyards, Inc.*, 21 STETSON L. REV. 655-80 (1992).

Robinson v. Jacksonville Shipyards, Inc., 760 F.Supp. 1486 (M.D. Fla. 1991), held that workplace pornography contributed to a hostile work environment in violation of Title VII of the Civil Rights Act of 1964. This article traces the case law on sexual harassment, and focuses on decisions that deal with pornography's effect in the workplace. The author explores the gradual expansion of the concept of sexual harassment. The article concludes with a critical analysis of the *Robinson* decision, and emphasizes its contribution to the field of sexual harassment law.

Debra A. Profio, Note, *Ellison v. Brady: Finally, a Women's Perspective*, 2 UCLA WOMEN'S L.J. 249-63 (1992).

This note discusses *Ellison v. Brady*, 924 F. 2d 872 (9th Cir. 1991), a recent case dealing with Title VII sexual harassment. The Ninth Circuit Court of Appeals, in making its decision, stated that rather than use the reasonable person standard, the court would use a reasonable woman standard. The author discusses the decision and poses some questions about whether the new standard will accomplish the goal of the *Ellison* court, namely, "to bridge the gap between male and female perceptions of what, constitutes workplace sexual harassment." The author concludes by expressing her satisfaction with the court's decision. However, she maintains that if people are not educated as to the "plights and perceptions of women in the workplace and society as a

whole", the reasonable woman standard will prove to be an inadequate remedy.

Jollee Faber, *Expanding Title IX of The Education Amendments of 1972 To Prohibit Student To Student Sexual Harassment*, 2 UCLA WOMEN'S L. J. 85-143 (1992).

Title IX explicitly prohibits sexual harassment that is quid pro quo in nature; a professor cannot bribe or threaten a student with a grade in exchange for the student's acceptance of sexual advances. The author advances the argument that student to student sexual harassment runs unchecked because Title IX fails to address situations in which an harasser is not in a position of authority. This article proposes three methods to remedy this problem: broad judicial interpretation of Title IX, a Congressional amendment to Title IX, and/or DOE promulgation of definitions and regulations clarifying a Title IX prohibition of student to student sexual harassment.

Sheryl Hahn, *Evolution of the Hostile Workplace Under Title VII: Only Sensitive Men Need Apply*, 22 GOLDEN GATE U. L. REV. 69-92 (1992).

The author discusses the importance of *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991), in extending the circumstances in which workplace sexual harassment violates Title VII. The author cites the significance of *Ellison* in determining the level of conduct which defines a hostile workplace claim; the claim must be viewed from the perspective of a "reasonable woman." The onus for assuring a workplace free from sexual harassment falls upon the employer and may even extend to firing employees whose mere presence creates a hostile work environment.

Emma Coleman Jordan, *Race, Gender, and Social Class in the Thomas Sexual Harassment Hearings: The Hidden Fault Lines in Political Discourse*, 15 HARV. WOMEN'S L. J. 1-24 (1992).

This Article discusses the role of race, gender, and social class in the sexual harassment hearings of Supreme Court nominee Clarence Thomas. The author argues that the hearings were constructed to the advantage of Judge Thomas in that the law on sexual harassment was unstated, while senatorial control of the testimony furthered a clear, political agenda. The author concludes that Anita Hill was necessarily embroiled in a fight against stereotypical images of race, gender, and social class.

Jordana Berkowitz Glasgow, Note, *Sexual Misconduct by Psychotherapists: Legal Options Available to Victims and a Proposal for a Change in Criminal Legislation*, 35 B.C. L. REV. 645-88 (1992).

This Article examines the problem of sexual misconduct by psychotherapists arising from the therapist-patient relationship and the remedies available to the victim. The author asserts that administrative procedures, civil suits, and criminal sanctions are beneficial but problematic remedies. The author concludes that criminal statutes along with education and professional training are the best methods to combat psychotherapist misconduct.

Robert Rosenthal, Note, *Landlord Harassment: A Federal Remedy*, 65 TEMP. L. REV. 589-613 (1992).

This Article discusses the problem of landlord-tenant sexual harassment. The author proposes that a claim of landlord sexual harassment should be actionable under federal law using the Fair Housing Act. A procedural and evidentiary outline for establishing a cause of action against a landlord is presented.

Bonnie B. Westman, Note, *The Reasonable Woman Standard: Preventing Sexual Harassment in the Workplace*, 18 WM. MITCHELL L. REV. 795-828 (1992).

The author cites the historical development of sexual harassment as a cause of action. The concept of the reasonable woman standard and cases that have adapted this standard in determining behavior in sexual harassment cases are explored. The author calls for the Eighth Circuit to adopt the reasonable woman standard to create greater equality in the work environment.

William Litt et al., Note, *Recent Developments: Sexual Harassment Hits Home*, 2 UCLA WOMEN'S L. J. 227-47 (1992).

The authors examine the problem of sexual harassment of rental housing tenants. Although potentially more devastating and possibly more rampant than workplace sexual harassment, it is reported far less frequently. After examining some of the reasons for this underreporting, the authors focus on legal strategies, principally Title VIII of the Fair Housing Act and its categorization of sexual harassments as either quid pro quo or hostile environment. Asserting that the court's "sex-blind" standards actually are male-biased, the authors call for the implementation of the Ninth Circuit's Title VII "reasonable woman" standard. The authors also briefly discuss other causes of action possible

under certain state statutes, as well as under contract and tort common law.

Barbara A. Gutek, *Understanding Sexual Harassment at Work*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 335-58 (1992).

The author discusses the frequency of sexual behavior, harassing and non-harassing, and how it is defined. Four factors are considered: behavior involved, relationship between actors, characteristics of observer, and context factors that affect how the behavior is viewed. The prevalence of non-harassing sexual behavior in the workplace leads to a perceived blurring between harassing and non-harassing behavior and a presumed invalidity of the complaint. The author emphasizes gender-based expectations, the "Sex-Role Spillover," which are useful in understanding sexual harassment's historical invisibility. However, she notes that a "power" framework is better in accounting for the reasons for actual sexually harassing behavior.