WOMEN'S ANNOTATED LEGAL BIBLIOGRAPHY

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ABORTION

David B. Cruz, "*The Sexual Freedom Cases*"*? Contraception, Abortion, Abstinence, and The Constitution,* 35 HARV. C.-R.-C.L. L. REV. 299-323 (2000).

This Article explores whether, and to what extent, the Constitution protects sexual autonomy, such as the right to engage in sexual activities for purposes other than procreation. The author analyzes the scholarly interpretations of the Supreme Court's sexual freedom cases, seeking to assess their coherence and persuasiveness. A hypothetical situation, in which a state law forbids a heterosexual couple from engaging in oral or anal sex, serves as a reference point, highlighting the practical consequences of different constitutional analyses for such a law. The author believes that many constitutional scholars erroneously believe that sexual freedom cases result from poorly drafted statutes, moribund laws, governmental snooping, traditional family values, or coerced production of motherhood. The author stresses that this view of sexual freedom decisions should be separated from the contraception and abortion decisions, and concludes that sexual freedom cases should be viewed as protecting the equal citizenship status of men and women, an individual's bodily integrity, and procreative autonomy.

Karen E. Walther, Comment, *Partial-Birth Abortion: Should Moral Judgment Prevail Over Medical Judgment?*, 31 LOY. U. CHI. L.J. 693-736 (2000).

One of the most controversial issues in the abortion debate is whether or not partial-birth abortion should be legal. Partial–birth abortions are performed late in a woman's pregnancy when the fetus may be viable. In a partial-birth abortion, the fetus may be born alive and then killed shortly thereafter. The author argues that the constitutionality of abortion law, not the moral beliefs of the legislators, should be determinative in deciding abortion legislation. The Article maintains that pre-viability partial-birth abortions should be legal, and that post-viability partial-birth abortions should be permitted if the life or health of the mother is at stake.

BATTERED WOMEN & DOMESTIC VIOLENCE

Neal A. Hudders, *The Problem of Using Hearsay in Domestic Violence Cases: Is a New Exception the Answer?*, 49 DUKE L.J. 1041-1075 (2000).

This Article focuses on domestic violence and posits that it is a societal problem which is difficult to prosecute because plaintiffs are forced to rely mainly on hearsay evidence. The author suggests that this problem arises from two factors: the private nature of the attacks and the reluctance of abused women to testify against their abusers. The author proposes that exceptions to the hearsay rules, such as the state of mind exception, the prior inconsistent statement exclusion, and the recorded recollection exception, should be extended to domestic violence cases. The author concludes that, despite arguments that such an expansion of the hearsay rule would have an adverse effect on traditional evidence rules and that problems would arise in regarding accuracy and truthfulness, an expanded hearsay rule would help solve society's problem of domestic violence. However, the author cautions that limitations, such as providing facts along with statements, restricting comments to a current spouse or partner, and the recording of statements on video, must be placed on domestic violence hearsay rules to insure fair trials.

Martin A. Geer, Note, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections Under Domestic Civil Rights Law – A Case Study of Women in the United States Prisons*, 13 HARV. HUM. RTS. J. 71 (2000).

An increasing number of women's lives are being harmed by the tortuous effects of the sexual abuse inflicted by correction officials in U.S. prisons. In this Article, the Author addresses the lack of protection and civil rights that exist for women in the United States prisons. The Note criticizes U.S. efforts in prohibiting human rights violations abroad, while failing to adopt similar human rights laws in U.S. prisons. The author further addresses the failure of jurisprudence to abide by either U.S. domestic laws or the emerging international norms regarding human rights violations, and discusses the possible incorporation of international human rights laws into domestic civil rights laws.

Delisa Springfield, Note, *Sisters in Misery: Utilizing International Law to Protect United States Female Prisoners from Sexual Abuse*, 10 IND. INT'L & COMP. L. REV. 457-486 (2000).

This Note addresses the problem of sexual abuse, rape, and assault of female prisoners in United States prisons by male prison staff. The author suggests that women who report such abuse are retaliated against, and that the law does not provide adequate remedies for such abuse. However, the Note demonstrates that international laws do protect women from sexual violations in prison. The author concludes that the United States, which has already ratified several of these international declarations, should recognize assaults on female prisoners as human rights violations and should draw upon these declarations to prosecute offenders. For instance, the author proposes that the United States Congress should pass legislation that requires states to criminalize sexual contact between prison staff and prisoners as a precondition to the receipt of federal funds for the construction and maintenance of state prisons.

CHILD ABUSE

Amy Beth Abbot, *Child Soldiers – The Use of Children as Instruments of War*, 23 SUFFOLK TRANSNAT'L L. REV. 499-537 (2000).

This Article addresses the victimization of children throughout the world during times of conflict. The Article specifically focuses on attempts to reduce the use of children as soldiers and as targets of

terrorism. International laws have been created to establish independent rights for children, but the laws' objectives are undermined by modern methods of warfare and inherent limitations in the laws themselves. The author asserts that the instruments created for protection can only be successful if they are properly applied. In order to ensure their proper application, the international community must work collectively to properly and uniformly observe the laws and standards created for the protection of children.

Brian Verbon Cash, *Images of Innocence or Guilt?: The Status of Laws Regulating Child Pornography on the Federal Level and in Alabama and an Evaluation of the Case Against Barnes & Noble*, 51 ALA. L. REV. 793-819 (2000).

The Article examines the disparity between constitutional protection under the First Amendment and the Alabama obscenity laws governing the dissemination of child pornography. The author analyses the Alabama laws, and assesses the criminal case against the booksellers Barnes & Noble, which is charged with selling two books allegedly containing child pornography. The two books sold contain photographic works depicting nude children. The Article analyzes the Supreme Court's decision regarding child pornography, and then analyzes the Alabama obscenity law. The author concludes that the outcome of the case will be determined by a jury, which is an effective way to balance competing First Amendment interests under the modified *Miller* test for obscenity which requires a jury to determine a community standard of obscenity.

Tamara M. Haegerich & Bette L. Bottoms, *Empathy and Jurors' Decisions in Patricide Trials Involving Child Sexual Assault Allegations*, 24 LAW & HUM. BEHAV. 421-445 (2000).

The Article addresses the fact that hundreds of parents are killed each year by their children. The authors hypothesize that in patricide cases involving claims of parental abuse, whether a juror believes that the child should be held responsible for his parent's murder depends on whether the jury believes that the child defendant was abused and endangered. The authors asked mock jurors to consider the case of a fifteen year-old sexual abuse victim who killed her father, claiming this was a self-defensive reaction to years of sexual abuse. The conclusion asserts that jurors' case-related judgments are affected when an attorney asks them to identify ef-

fectively and cognitively with a defendant during opening and closing statements.

CHILDREN'S RIGHTS

Amber R. Anderson, Note, *Disabled Without Benefits: The Impacts of Recent Social Security Reforms on Disabled Children*, 41 B.C. L. REV. 125-152 (1999).

The Personal Responsibility and Work Opportunity Conciliation Act, passed by Congress in 1996 in an effort to reform the welfare system, created a new definition of "childhood disability" that excluded a significant population of disabled children from receiving benefits. In order to receive benefits under the new regulations, a child would have to claim a medically determinable physical or mental impairment that can be found in a prescribed medical listing. The child could also receive benefits by demonstrating that he has two marked functional impairments, or one severe functional impairment. The Note supports the proposition that multiple moderate ailments, which individually would not qualify for benefits, could, when combined, impact a child's ability to function in the same manner as a single extreme impairment. Therefore, multiple moderate ailments should not prevent such a child from receiving benefits. The author believes that the regulations should be amended so that the totality of a child's condition receives consideration and that to do so would further the statute's legislative intent to help disabled children.

Susan L. Brooks, *Therapeutic and Preventive Approaches To School Safety: Applications of A Family Systems Model*, 34 NEW ENG. L. REV. 615-622 (2000).

The issue presented in this Article is whether government policies which focus solely on eliminating school violence are applicable to all situations that require school assistance for children. The author indicates that many schools currently use punitive measures, such as expulsions, police officers in halls, and random locker searches, to tackle problems with students. The Article suggests an alternative to such measures, which include using therapeutic and preventive approaches with the use of the family systems theory. The author discusses the Family Systems Model, which stresses that rather than blaming and punishing children, professionals who want to ensure the safety of our schools and communities should identify children's and families' strengths, and try to build on those

strengths. Therefore, the author argues, working with children and families using supportive, strengths-based approaches will enhance the psychological and physical well being of the families involved.

Mary A. Hermann & Theodore P. Remley Jr., *Guns, Violence, and Schools: The Results of School Violence – Litigation Against Educators and Students Shedding More Constitutional Rights at the School House Gate,* 46 LOY. L. REV. 389-439 (2000).

This Article presents an analysis of state and federal cases involving educators' responsibility for students' safety and the constitutional consequences of decisions made by educators that attempt to ensure a safe environment for students. The author indicates that incidents of school violence are bound to increase litigation where parties seek to hold educators liable for the attacks. In conclusion, the author asserts that educators often find themselves possibly liable for either negligence in failing to prevent violence or for civil rights torts where implemented procedures and policies that are meant to bring order to school environments are challenged.

Linda Kelly, *Republican Mothers, Bastards' Fathers and Good Victims: Discarding Citizens and Equal Protection Through the Failures of Legal Images,* 51 HASTINGS L.J. 557-591 (2000).

In *Miller v. Albright,* the Supreme Court is presented with the United States Immigration and Nationality Act ("INA"), which denies U.S. citizenship to a child who is born abroad, out of wedlock, but to a father who is a U.S. citizen. Citizenship will be denied under the Act unless paternity is proven during the child's youth. The author argues that gender stereotypes in immigration law impinge upon the rights of men, women and children. It is asserted that fathers maintain less rights than mothers in immigration law, and that many mothers must prove they have been severely beaten in their home countries to qualify for political asylum. The author concludes that because gender stereotypes are prevalent in U.S. immigration laws, there is a pattern of blameless and vulnerable victims seeking an unfortunately gender-biased refuge.

Gregory A. Kelson, *In the Best Interest of the Child: What Have We Learned from Baby Jessica and Baby Richard,* 33 J. MARSHALL L. REV. 353-381 (2000).

This Article reexamines the cases of "Baby Jessica" and "Baby Richard"—children who were transferred from their adoptive parents

to their biological parents in part because their biological fathers had not been consulted prior to finalizing their adoptions. The author then examines the "best interest of the child" standard, the *parens patriae* doctrine, and adoption proceedings in light of these doctrines. The author suggests that courts should use the "best interest of the child" standard in order to prevent the reoccurrence of cases like these. The Article concludes that courts should, among other things, consider the age of the child when organizing dockets, require comments from both of the biological parents before finalizing adoptions, and not award adoptive parents final custody until the biological parents' rights have been terminated.

Shannon F. McLatchey, Note, *Media Access to Juvenile Records: In Search Of A Solution*, 16 GA. ST. U. L. REV. 337 (1999).

This Note discusses whether the records of juvenile offenders should or should not be kept confidential. The author suggests that media coverage of such records, which are currently concealed from the public, could reveal valuable information about the juvenile justice system. The author argues that increased media coverage could inform the public of specific violent crimes and the media be used as a vehicle to compel change and effective sentences within the juvenile system. However, due to confidentiality issues and a state's interest in protecting the identity of its citizens, the solutions required would permit a redaction of names in juvenile records.

Michelle Miller, Note, *Revisiting Poor Joshua: State-Created Danger Theory in Foster Care*, 11 HASTINGS WOMEN'S L.J. 243 (2000).

This Article analyzes the U.S. Supreme Court's landmark decision, *DeShaney v. Winnebago*, under which state liability for violations of a child's substantive due process rights while in the foster care seemed to hinge on whether the child is in physical custody of the state. The Article focuses on the confusion among courts, legal scholars and the parties in certain cases regarding the availability of a private right of action for children alleging substantive due process violations while they are in foster care that would not frustrate the goals of a state. Under a state-created "danger theory", a state might be held liable for inadequately assessing the situation and failure to prevent incidents of severe child abuse. The author concludes that private rights of action alleging substantive due process violations should be allowed barring certain restrictions.

Dr. G. Steven Neeley, *The Psychological and Emotional Abuse of Children: Suing Parents in Tort for the Infliction of Emotional Distress*, 27 N. KY. U. L. REV. 689-720 (2000).

The author discusses the overlooked issue of psychological and emotional child abuse. Child development experts and other professionals contend that these types of abuse have more expansive adverse affects than incidences of physical or even sexual abuse. This article exploits the inadequate legislative response to the issue, and ultimately generates a remedy requiring the legal community to recognize such conduct as an isolated actionable tort. However, in light of the strong public policy against expanding the reach of emotional distress actions and the difficulty in evidencing the damage inflicted, the author concludes that courts are not likely to accept these actions as independent torts.

Jennifer Kathleen Swartz, Note, *Beyond the Schoolhouse Gates: Do Students Shed Their Constitutional Rights When Communicating to a Cyber-Audience?*, 48 DRAKE L. REV. 587-604 (2000).

As our schools become part of the global community through Internet-access, the platform for student expression is exponentially expanded. This Note discusses the conflict that has developed between a student's constitutional freedom of speech and expression on the Internet while at school, and the amount of school control over student expression that is offensive or harmful to the worldwide audience. The Note stresses that the current U.S. Supreme Court standard, which allows schools to exercise editorial control over student expression, should be revised to take the Internet into account. The application of the current standard of editorial control on a new and more powerful means of communication could infringe on a student's right to freedom of expression. The Note proposes a new standard of intellectual freedom, whereby a student's expression on the Internet would be free of substantial school editorial control, so long as such views abide by established school policies.

Brandon Taylor, *Stogner v. Stogner: Judicial Discretion Means Mandatory Consideration in Child Support Stipulations*, 46 LOY. L. REV. 483-499 (2000).

Louisiana has set forth statutory guidelines for child support cases that must be considered when the court is asked to establish or modify a child support award. In *Stogner v. Stogner*, the court ruled that even in cases where the parties originally agreed to a child

support stipulation, the court must consider the state guidelines when asked to review the award. The author demonstrates how courts have come to recognize that the guidelines must be considered even at the expense of limiting the discretionary power of the judiciary in reviewing decisions. The author argues that *Stogner* mandates that the courts determine child support stipulations in a new way, creating greater fairness and continuity in awards. However, the author indicates the downside that the decision decreases judicial efficiency by giving more weight to the legislature.

Jason Vail, Comment, *School Vouchers and the Establishment Clause: Is the First Amendment a Barrier to Improving Education for Low-Income Children*, 35 GONZ. L. REV. 187-235 (1999-2000).

This Article explores the history and underlying economic rationale of school voucher programs, clarifies the anticipated impact of such programs, and attempts to discern the path that the Supreme Court should take when it rules on the constitutionality of school vouchers. As a long-term solution to poverty, the author suggests that school voucher programs which enable low-income school children in poorly performing large urban school districts to attend private schools on taxpayer dollars, is an equitable and effective means of improving the student's academic experience. The author examines the specific elements of voucher programs that may withstand an Establishment Clause challenge. The author concludes that if the voucher program is developed to allow for equality of access to both public and private schools with minimal governmental regulation of the participating private institutions, the program will likely withstand an Establishment Clause challenge.

Rachel Venier, *Parental Rights and the Best Interest of the Child: Implications of the Adoption and Safe Families Act of 1997 on Domestic Violence Victims' Rights*, 8 AM. U. J. GENDER, SOC. POL'Y & L. 517-552 (2000).

In this Article, the author argues that the Adoption and Safe Families Act of 1997, § 103 ("ASFA") has certain shortcomings, particularly regarding the best interest of the child and the child's family. Specifically, the statute does not consider situations of domestic violence within the family unit. The Article examines various problems relating to § 103 of ASFA mandating termination of parental rights in specific circumstances. The author suggests that a

revision of ASFA is necessary to form a unified domestic violence, abuse and neglect law.

DISCRIMINATION

David M. Bigge & Amelie von Briesen, Note, *Conflict in the Zimbabwean Courts: Women's Rights and Indigenous Self-Determination in* Magaya v. Magaya, 119 HARV. HUM. RTS. J. 456-494 (2000).

The Zimbabwean justice system, which is divided into two distinct civil and customary ideologies creates a situation were women's rights conflict with the right to indigenous self-determination, as emphasized in *Magaya v. Magaya.* Exacerbating the problem for women's right proponents is the fact the civil court system, originally controlled and still highly influenced by European settlers, has never codified customary law. This allows judges to research and develop their own opinions on what they believe customary law to be, thus structuring a system which is both discretionary and unpredictable. The author asserts that women's rights advocates must accomplish one of two things in order to promote their goal of equality in the face of such an obstacle. They must either provide prima facie evidence which establishes that customary law is not as discriminatory towards women as the courts believe, or advocates must focus their attention within the community itself in order to challenge discrimination against women.

Leonard E. Birdsong, *In Quest Of Gender-Bias In Death Penalty Cases: Analyzing The English Speaking Caribbean Experience,* 10 IND. INT'L & COMP. L. REV. 317-337 (2000).

Female executions are extremely rare in the English-speaking Caribbean and the United States. Comparing the rate of female executions in the United States to a case study of several women sentenced to death for murder convictions in Trinidad and Tobago, the author suggests that gender-bias exists with respect to the use of the death penalty upon convicted murderers. The author provides several rationales to explain this bias: courts do not generally impose the death penalty on women because they hold that women pose no threat to the general community, there often is a lack of premeditation before the killing, or there is a finding that she suffered physical abuse, resulting in a mitigation of her sentence. Applying these rationales, the author implores the Trinidad and Tobago government to commute the death sentences of the

subjects of his case study, some of whom presented evidence akin to Battered Spouse Syndrome.

Mary Anne Case, *Two Cheers For Cheerleading: The Noisy Integration Of VMI And The Quiet Success Of Virginia Women In Leadership*, 1999 U. CHI. LEGAL F. 347-380 (1999).

This Article explores the integration of women at the Virginia Military Institute ("VMI") with the formation of the Virginia Women in Leadership Program ("VWIL") at the all-female Mary Baldwin College. VMI, until the Supreme Court's decision in *United States v. Virginia* ("VMI Case"), excluded females from enrolling into the school. VWIL was established prior to the Court's ruling to protect VMI's all-male status from litigation by women's groups. The author argues that the VMI Case is yet another example of sex discrimination based on qualities regarded as masculine versus those deemed feminine. The author compares the masculinity of VMI's program with its emphasis on discipline, toughness, and rigidity, with the more feminine program at Mary Baldwin College where understanding and cohesiveness is emphasized. The author maintains that even though VMI may not be an all-male institution anymore, it still fosters a discriminatory hyper-masculine environment.

Jamie Lynn Cook, Comment, *Bitch v. Whore: The Current Trend to Define the Requirements of an Actionable Hostile Environment Claim in Verbal Sexual Harassment Cases*, 33 J. MARSHALL L. REV. 465-495 (2000).

This Comment explores the federal courts' inability to establish a bright-line test determining when verbal sexual harassment creates a hostile environment claim. The Comment notes that to place limits on such claims, courts currently use the gender relation test, the sexual nature test, and the personal animosity test. The author contends that these tests allow lower federal courts to narrowly interpret verbal sexual harassment cases, and as a result, to dismiss many meritorious claims. The author proposes that the Supreme Court should instead adopt a disparate treatment analysis; an analysis of whether members of one sex are subjected to disadvantageous terms or conditions of employment to which members of the other sex are not exposed. The author concludes that this test would be consistent with the purposes of Title VII.

Elizabeth F. Defeis, *The Treaty of Amsterdam: The Next Step Towards Gender Equality?*, 23 B.C. INT'L & COMP. L. REV. 1-32 (1999).

This Article analyzes the European Union ("EU") and the Amsterdam Treaty efforts to promote gender equality in employment and the workplace. The Article analyzes the developments of the EU, by focusing on Article 171 of the Treaty of Rome, the Equal Pay Directive, and the decisions of the European Court of Justice in furthering the policy of gender equality. The author further compares the EU's approach with the approach taken by the United States towards affirmative action policies. The author proposes that success in eradicating gender discrimination, and obtaining equal treatment between men and women, will be determined by effective implementation of the Amsterdam Treaty.

J. Benjamin Earthman, *Employment – Tetro v. Elliot Pontiac, Oldsmobile, Buick & GMC Trucks, Inc.: The Sixth Circuit Interprets Title VII and the Tennessee Human Rights Act to Include Discrimination Based Upon an Employee's Biracial Child*, 30 U. MEM. L. REV. 971-996 (2000).

In *Tetro v. Elliot Popham Pontiac, Oldsmobile, Buick & GMC Trucks, Inc.*, the plaintiff left his job due to continuous insults he received by his employer regarding his biracial daughter. The Court of Appeals of the Sixth Circuit held that the employer's conduct gave rise to a Title VII action, even though the main complaint of discrimination is a prejudice against the biracial child. The author suggests that the reasoning employed by the court makes it possible for a plaintiff to bring an action under Title VII based upon employment discrimination for interracial associations. The author concludes that this decision should be applied to those of all races, creeds and religions to comport fully with the Civil Rights Act.

William C. Kidder, *Portia Denied: Unmasking Gender Bias on the LSAT and Its Relationship to Racial Diversity in Legal Education*, 12 YALE J.L. & FEMINISM 1-42 (2000).

This Article analyzes the causes, consequences and fairness of gender and racial or ethnic differences within the administration of the Law School Admission Test ("LSAT"). The article notes that admission practices combining college grades with other traditional considerations, including letters of recommendation and personal statements, admit more women compared to practices only using the alleged gender-biased LSAT. The author cautions

that the danger of LSAT-related gender/ethnic discrimination is greatest in situations where competition is most severe because there is a strong temptation to over-rely on small score differences to narrow the pool. The author concludes that the strong possibility of bias in forms such as stereotypes, subject matter selection and item bias undermine claims by test producers that the LSAT is fair, or even meaningfully "standardized" in its treatment of women and racial or ethnic minorities.

Elaine Marin & Barry Pyle, *Gender, Race, and Partisanship on the Michigan Supreme Court*, 63 ALB. L. REV. 1205-1236 (2000).

It has been suggested that a more liberal view has emerged in civil liberty cases due to the decline in number of white Protestant male judges. The Article delves into the issue of whether diversity on court benches has an impact on these new perspectives by conducting a thirteen year case study of the justices of the Michigan Supreme Court. Each judge's voting behavior was examined in the areas of discrimination, divorce and feminist issues, and in relation to the independent factors of gender, race and partisanship. The authors conclude that party affiliation was more indicative to voting behavior concerning discrimination and feminist issues, but that gender played a surprising role in divorce cases. The Article suggests that further research regarding judicial gender may be fruitful, the underlying theme being that race, gender and partisanship are all influential on judicial decisions.

Teresa A. Miller, *Sex & Surveillance: Gender, Privacy & the Sexualization of Power in Prison*, 10 GEO. MASON U. CIV. RTS. L.J. 291-356 (2000).

This Article criticizes the failure of federal courts to consider the strong and complex relationship between sex and surveillance when analyzing the constitutionality of prison searches of cross-gender inmates. The Article demonstrates that cross-gender searches raise many complex issues beyond the constitutional scope of prison privacy. The author suggests that the way in which judges use and apply notions of sex, gender, and sexual orientation are outdated in the context of prison. The analysis proceeds in four parts: part one introduces the issues posed by sex and surveillance; part two describes how the current doctrine participates in the allocation of power within prison without admitting it; part three presents the doctrinal background for cross-gender searches; and part four examines *Johnson v. Phelan*, one of the few judicial

opinions to draw attention to the realities of prison life. The author concludes that cross-gender searches highlight the power of sexualization in prison, the violent and sexually predacious environment in which prisoners are incarcerated, and the complicity guards face in their decisions to exercise or refrain from exercising their search authority.

Elizabeth M. Schneider, *Gender Bias, Cognition, and Power in the Legal Academy*, 58 BROOK. L. REV. 1125-1143 (1999).

Many individuals incorrectly assume that women have achieved equal treatment in the academic world. This Article argues that in actuality, direct discrimination has declined but has been replaced by a more difficult foe: unconscious discrimination. The reasons for the success of unconscious discrimination in legal academia is generally due to junior female members being subjected to only minor disadvantages that their male counterparts are spared from. Thus, they may fail to realize the significant impact these disadvantages will have later on in their careers. Furthermore, the author argues, effected women view their obstacles to be individualistic rather than systematic and remain silent, thus permitting the growth of discrimination to extend unchallenged. Women colleagues must continually take part in cognitive discussions about this issue in order to foster awareness and eventually change.

Kimberly M. Schuld, *Rethinking Educational Equity: Sometimes, Different Can Be An Acceptable Substitute For Equal*, 78 U. CHI. LEGAL F. 461-492 (1999).

This Article examines certain concerns which women's groups have raised regarding the exclusion of women at all-male educational institutions. In particular, the Article focuses on the recent litigation involving the Virginia Military Institute. The Article states that the problem of exclusion of women at educational institutions is viewed within the context of a cultural battle between a macroscopic view of society and the microscopic view of individuals in that society. A macroscopic view looks at the aggregate and presumes that if vast majorities of people can achieve a certain benefit, then small differences are allowable. The microscopic view looks at each and every choice for a proper representation or reflection of society at large. The author suggests that through the macroscopic view, women have made great strides in access to a broad range of academic disciplines. The author concludes that in a country as diverse as ours, some unique educational settings

which will address specific needs of students, such as gender issues, should be allowed.

Andrea Shapiro, *Unequal Before The Law: Men, Women and the Death Penalty*, 8 AM. U. J. GENDER, SOC. POL'Y & L. 427-470 (2000).

This Article addresses the question of whether the sentencing of capital punishment violates the Equal Protection Clause on the basis of sex discrimination. The author explains that men are put to death at a substantially higher rate than are women who commit similar crimes. The author argues that the implementation of the death penalty is always arbitrary and capacious. Therefore, the Article concludes, since the death penalty cannot be administered uniformly, the death penalty is best left unadministered.

Bret Thiele, *Persecution on Account of Gender: A Need for Refugee Reform*, 2 HASTINGS WOMEN'S L.J. 221-254 (2000).

The Refugee Act of 1980 defines a refugee as a person who has left his or her country due to persecution or fear of persecution because of race, religion, nationality, membership in a particular social group, or political opinion. Although we now recognize and acknowledge that women worldwide are subject to forms of persecution unique to their gender, U.S. refugee laws do not reflect that fact. The author argues that the lack of a gender category in refugee laws has resulted in persecuted women experiencing difficulty in obtaining asylum. The author asserts that reform of refugee laws, to include gender persecution as a category, is an urgent human rights need.

EDUCATION

Patricia Kathryn Carlton, *All Bets are Off: An Examination of Alabama's Proposed Lottery and the Educational Inadequacies It was Intended to Remedy*, 51 ALA. L. REV. 753-791 (2000).

The Article addresses Alabama's failed attempt to raise additional educational funding by implementing a state lottery, which would encompass passive drawings, instant scratch-off games, numbers and lotto. However, because the Alabama constitution strictly prohibits its legislature to authorize lotteries for any purpose, it would have to be amended. The author suggests an alternative solution to educational funding by modifying the existing Education Trust Fund, which would not require the obstacle of amending the Alabama constitution.

McKay Cunningham, Note, *Playing Doctor: Discerning What Medical Services School Districts Must Provide to Disabled Children* Under Cedar Rapid Community School District v. Garret F., 52 BAYLOR L. REV. 171-189 (2000).

This Article addresses how the Individuals with Disabilities Education Act of 1975 ("IDEA") requirement to fund health related services to students with disabilities, will impact the outcome of a case involving three disabled students. In order to receive federal funding, a participating state must comply by providing disabled children with "free appropriate public education." Compliance includes providing disabled children with medical related services, such as clean intermittent cathertization. However, the financial burden of these services is often substantial. The author concludes that the disabled students will prevail in their suit, regardless of the cost to the school district because the Supreme Court, in a similar case, rejected the consideration of cost-based distinctions, favoring the express language of the IDEA and the policy behind it. In order to alleviate the costs, the author suggests that Congress should implement new legislation to provide additional federal funding.

Steven K. Green, *Private School Vouchers and the Confusion Over "Direct" Aid,* 10 GEO. MASON U. CIV. RTS. L.J. 47-80 (1999).

In deciding whether vouchers constitute neutral aid to parents or unconstitutional public subsidies to religious schools, recent court decisions have presented conflicted decisions and reasoning. The Article states that cases which merely examined the direct or indirect path of voucher funds in order to determine the permissibility of such aid, were incorrectly decided because direct aid to a religious school, which is incidental and does not result in a substantial advancement of its sectarian enterprise, may be constitutional. The author believes courts should focus on the substantive effect of voucher aid, instead of the path or the form of support, when ruling whether financial aid is direct and substantial and therefore impermissible under the Establishment Clause, or indirect and incidental and therefore permissible.

Kara Lynn Grice, Note, *Striking an Unequal Balance: The Fourth Circuit Holds That Public School Teachers Do Not Have First Amendment Rights To Set Curricula in* Boring v. Buncombe County Board of Education, 77 N.C. L. REV. 1960-2006 (1999).

The author discusses the United States Court of Appeals opinion of *Boring v. Buncombe County Board of Education,* which held that

teachers have no First Amendment rights to control curricular decisions. Moreover, the Court determined that a school board has a legitimate pedagogical interest in a teacher's choice of curricula. The author argues that holding a school's interests paramount to the interests of the teacher constitutes a failure to consider the unique characteristics of the school environment and the teacher's role within that setting. Instead, the author suggests that courts apply a two-part test to determine whether the teacher has taught allegedly prohibited material, in which courts consider whether the teacher has violated a legitimate pedagogical concern of the school, and whether the teacher had adequate notice that the lesson material was prohibited.

Paula J. Lundberg, Note, *State Courts and School Funding: A Fifty-state Analysis,* 63 ALB. L. REV. 1101-1146 (2000).

This Note examines potential factors that have played a determinative role in the high courts of forty-one states that have decided whether or not to enter a decision in favor of plaintiffs in a school funding challenge. The author constructs interactive models that analyze the potential factors of these rulings, enabling a prediction on how other states would view the constitutionality of state school funding. Research suggests that per capita income, and more specifically language within a state's constitution protecting education, were indicative of the case outcome. Thus, the author concludes that future decisions in other courts will turn in part on that state's constitutional guarantee for education.

Aaron Saiger, *Disestablishing Local School Districts as a Remedy for Educational Inadequacy,* 99 COLUM. L. REV. 1830-1870 (1999).

The author argues that many public schools in America are in a state of disaster because teachers are not properly educating their students. Furthermore, it is difficult for courts to remedy the situation. Courts have tried two types of remedies without much success including increasing state spending on failing schools and requiring that schools establish certain educational services. The author argues that courts should also use a third type of remedy, which would provide incentives to school officials for improving their ailing school although courts may be reluctant to follow such a remedy. Therefore, the article concludes, when sanctioned by the state legislature, courts should disestablish school districts and reorganize them. The reorganization will then include incentives for school officials of an improved school.

Karen Swenson, Note, *School Finance Reform Litigation: Why are Some State Supreme Courts Activist and Others Restrained?*, 63 ALB. L. REV. 1147-1182 (2000).

State high courts have reached distinct holdings when evaluating whether the property tax-based funding for school education is constitutional under their state constitution. The author suggests that by analyzing the principles that underlie the decisions state courts have made in school financing, an insight into judicial policy-making can be made. Using decisions from forty states' high courts, hypotheses were tested using the SPSS Logistic Regression program. Based upon the results of the SPSS program, the author concludes that judicial activism on school financing is closely tied to the sentiments of the community, thus validating the idea of scholars that the public's views and influences play an important role in state policy control.

HARASSMENT

Timothy S. Bland & David P. Knox, *EEOC's Guidance on Vicarious Liability for Supervisory Harassment: Are the Courts Following the EEOC's Lead?*, 30 U. MEM. L. REV. 793-815 (2000).

In the recent Supreme Court cases of *Burlington Industries Inc. v. Ellerth* and *Faragher v. City of Boca Raton*, the Court redefined the elements necessary to hold an employer vicariously liable for sexual harassment by an employee towards a supervisor. However, the authors note that the Court failed to address questions such as who is a supervisor, what constitutes a tangible employment action, what reasonable steps employers must take to prevent harassment, and when employees would be excused from making reasonable efforts to complain about harassment. The Equal Employment Opportunity Commission ("EEOC") has set guidelines intended to answer those questions. Based on the EEOC guidelines, the authors encourage employers to take proactive management measures to help prevent harassment, including establishing a written anti-harassment policy, posting the policy, investigating incidents of sexual harassment promptly, promptly remedying any harassment, establishing a procedure for upper level review of proposed adverse employment actions, and modifying the employment application to include a sexual harassment statement.

Charlotte Chiu & Kevin T. Leicht, *When Does Domestic Feminization Increase Equality? The Case of Lawyers,* 33 L. & SOC'Y REV. 557-593 (1999).

The authors contend that the rapid growth in the proportional representation of women as lawyers and law students is representative of a trend and pattern of feminized professions. The Article notes that salaries and earnings of women grew steadily through the 1980s without a decrease in male earnings. Furthermore, there is no evidence of male flight from the legal profession, which would explain the opening of the job market to women. The economic boom of the last twenty years helped women gain access to the legal world. The authors conclude that the legal profession possesses the three key factors that lead to feminization: 1) the growth of job opportunities; 2) the requirement of higher education; and 3) the increase of wages in both genders due to a lack of supply.

E. Christi Cunningham, *Preserving Normal Heterosexual Male Fantasy: The "Severe or Pervasive" Missed-Interpretation of Sexual Harassment,* 76 U. CHI. LEGAL F. 199-275 (1999).

This Article examines the United States Supreme Court's 1998 case decisions, and the required standard for a successful sexual harassment claim to prevail under Title VII of the Civil Rights Act and the 1991 Amendment to the Act. The 1991 Amendment invalidated the requirement which existed under pre-1999 Title VII, that sexual harassment be "severe and persuasive" in order to be actionable. The Amendment stated that it is sufficient for a plaintiff to present direct evidence that the terms and conditions of her workplace have changed to sustain a sexual harassment claim. The author argues that the Court's 1998 decisions, which held that in the absence of tangible job consequence, sexual harassment must be severe or persuasive to be actionable, are inconsistent with the Amendment. The author concludes that the Court should abandon the "severe and persuasive" standard because it helps preserve the idea that some form of sexual discrimination is acceptable.

Monica D. Hutchinson, *What You Know About and Don't Deal With Can Cost You: A School District's Potential Liability for Student-on-Student Sexual Harassment,* 65 MO. L. REV. 493-513 (2000).

The author states that a large number of students have encountered sexual harassment at school and questions what should be done when a school official does not attempt to remedy the situa-

tion. The author further states that while many students and their parents turn to the courts for a remedy, federal district and circuit courts have had trouble setting standards for determining liability. In *Davis v. Monroe County Board of Education,* the Supreme Court established a four-prong standard for determining liability. The author believes that a school is on constructive notice to protect their students and employees and that school officials must know what takes place in their school. The author also believes that the Court in Davis was too stringent in requiring actual knowledge of sexual harassment in a school.

Fiona M. Kay & John Hagan, *Cultivating Clients in the Competition for Partnership: Gender and the Organizational Restructuring of Law Firms in the 1990's,* 33 L. & SOC'Y REV. 517-555 (1999).

The authors suggest that although there has been a great increase in the number of female lawyers being hired by firms, a glass ceiling has formed that has prevented these women from advancing to partner. This Article examines two approaches, economic efficiency and structural discrimination, to determine why this gender inequity exists, and finds these approaches inadequate in addressing the problem. The authors introduce a new social capital theory and apply it to a six-year study of male and female lawyers. The authors conclude that, although female lawyers participate in the accumulation of social capital in law firms, women are being passed over for partnership due to societal factors, including their need maternity leave. Thus women have less opportunity to attract new business and consequently continue to work in a system that is still male-orientated.

Ernest F. Lidge III, *The Male Employee Disciplined For Sexual Harassment as Sex Discrimination Plaintiff,* 30 U. MEM. L. REV. 717-761 (2000).

Although employers are obligated to take action against a sexual harasser to prevent any such harassment from occurring again, if the male harasser is fired, he may have a Title VII claim against the employer. The author notes that courts have not been sympathetic towards men bringing forth such claims. The author suggests that courts should look at whether the employer made a reasonable, good faith, non-discriminatory investigation of the sexual harassment claim; if not, the employee should be able to maintain a claim against the employer. The author concludes that courts should interpret the wording "because of sex" in statutes consist-

ently for all plaintiffs, regardless of gender, to ensure fair treatment under employment discrimination law.

Jarret Raab, *Sexual Discrimination: Peer Sexual Harassment and its Effect Under Title IX*, 11 U. FLA. L. REV. 225-234 (2000).

The petitioner in *Davis v. Monroe County Board of Education* sued Monroe County Board of Education under Title IX claiming that the Board of Education was liable for student-on-student sexual harassment. The complaint alleged that the Board of Education was deliberately indifferent to persistent sexual advances that created a hostile learning environment. The Supreme Court held that a violation of Title IX exists when the harassment is "severe, pervasive, and objectively offensive, where it effectively bars the victim access to an educational opportunity or benefit, and where the school board has shown both actual knowledge and deliberate indifference to the harassment." The author suggests that there is a distinct legal trend of Courts interpreting congressional intent behind Title VII and Title IX in an effort to prohibit those in authority from engaging in sexual harassment. The author draws the conclusion that as a result of these decisions, school boards are not automatically liable for a student's harassment of others students, but they are under a duty to act in a reasonable manner to remedy student-on–student sexual harassment.

MATRIMONIAL

Deborah Ahrens, *Not in Front of the Children: Prohibition on Child Custody as Civil Branding for Criminal Activity*, 75 N.Y.U. L. REV. 737-774 (2000).

This Article examines a recent trend in the law where parental custody is determined in light of a parent's past criminal conduct instead of the traditional qualification of a parent's conduct towards the child. The author argues that it is often unfair to deny custody to a parent who has already paid her debt to society and who does not pose a danger to her child. This Article takes a historical approach in which the author first demonstrates that a parent convicted of a crime is forever branded as a criminal. The author then focuses on the difficulty a former criminal, or even a person suspected of committing a crime, has in obtaining child custody. The author concludes that a parent is often denied custody because he or she *might* mistreat the child, not because he or she has.

Ariela A. Dubler, *Wifely Behavior: A Legal History of Acting Married*, 100 COLUM. L. REV. 957-1021 (2000).

This Article examines the history of common law marriage, from its wide acceptance by states in the nineteenth and early twentieth centuries, to its demise and abolition in the mid-twentieth century. The downfall of this doctrine is illustrated in the New York case of *In re Estate of Erlanger*, in which the court focused on how a wife should behave and whether the woman in the instant case acted accordingly. The author, using New York as an example, postulates the theory that legislative fears of recognizing false marriage, based upon the testimony of untruthful women, motivated the eradication of the common law marriage doctrine. The author then addresses the modern treatment of common law marriage through examination of *Braschi v. Stahl Assoc. Co.*, where the New York Court of Appeals held that a non-married couple constituted a family within traditional definitions, without going so far as declaring them married. The author concludes that this decision created another variation of a legal rule that reinforces the social norms of traditional, marital behavior.

Heather Flory, *"I Promise to Love, Honor, Obey. . .and not Divorce You": Covenant Marriage and the Backlash Against No-Fault Divorce*, 34 FAM. L.Q. 133-147 (2000).

Many blame the steadily increasing divorce rate on the shift away from fault-based divorce to no-fault divorce. The Article examines how covenant marriage legislation is advocated as a way to strengthen and preserve marriages because it would bring back fault grounds for divorce, provide for longer waiting periods before a divorce would be granted, and mandate counseling for couples considering divorce. The author believes that the change to no-fault divorce is only one reason for the increasing divorce rate and that, in addition to covenant marriage, premarital counseling and a longer waiting period before marriage are needed to prevent bad marriages from happening in the first place, thereby lowering the divorce rate.

Alan Newman, *Incorporating the Partnership Theory of Marriage into Elective-Share Law: The Approximation System of the Uniform Probate Code and the Deferred-Community-Property Alternative*, 49 EMORY L.J. 487-563 (2000).

This Article addresses the Uniform Probate Code revisions of 1990, which attempted to integrate the elective-share aspect of probate

law with the partnership theory of spousal property. However, in non-community-property jurisdictions, this system has created inequitable results for the surviving spouse and the decedent's estate because the survivor takes half of the deceased's value, not just the marital property. In order to address this inequity, the author suggests a value deferred-community-property/elective-share system, which would give a surviving spouse a 50% take on the total value of joint marital property. Although this system requires complicated and complex administrative methods of allocating and administering property, it is not more complicated than the systems currently in place today and it is important to protect the estates of decedents from elective-share claim. Thus, the author concludes that the value deferred-community-property/elective-share system should be widely adopted as the system to divide property upon the death of a spouse.

Richard A. Warshak, Ph.D., *Social Science and Children's Best Interest in Relocation Cases:* Burgess *Revisited*, 34 FAM. L.Q. 83-113 (2000).

The Article gives an in-depth look at Judith Wallerstein's opinions, articulated in her *amica curiae* brief filed in the case of *In re Marriage of Burgess*. The brief deals with the issue of divorce, and the consequences of one parent relocating with the children away from the other parent. Wallerstein advocates a presumption in favor of allowing relocation. The author's conclusion regarding Wallerstein's opinions is that there is no optimal relocation rule that can be applied across the board, given that there might be different advantages and disadvantages of a particular relocation arrangement for a particular family.

Carol Weisbrod, *Gender-Based Analyses of World Religions and the Law: Universals and Particulars: A Comment on Women's Human Rights and Religious Marriage Contracts*, 9 S. CAL. REV. L. & WOMEN'S STUD. 77-97 (1999).

This Article discusses various definitions of marriage, and divorce, in different cultural and legal contexts and how those definitions affect human rights and gender equality. The author demonstrates that using gender equality as the basis of the human rights argument, exemplified in Article XVI of the 1979 convention forbidding discrimination against women, often comes into direct conflict with the role of women in some major religious traditions around the world. The author focuses primarily on the existence

of the conflict between law and religion, but the author does not attempt to articulate any solutions.

MISCELLANEOUS

Linda D. Elrod and Robert G. Spector, Note, *A Review of the Year in Family Law: Century Ends with Unresolved Issues*, 33 FAM. L.Q. 865-894 (2000).

The U.S. Supreme Court is currently hearing appeals in two very significant cases in family law. The Note explains that a controversy exists as to whether family and child abuse issues fall under state or federal jurisdiction. Some state statutes invade family privacy and autonomy while other states respect privacy to the extreme of denying third party relatives visitation rights to a child. Federal courts, however, have yet to decide on this issue. The Note discusses various aspects of family life, such as child custody, visitation rights and termination, alimony, and divorce. The Note further articulates that federal courts should decide these family issues by weighing the child's best interest and any history of the child abuse in the family.

Kathleen E. Hull, Note, *The Paradox of the Contented Female Lawyer*, 33 LAW & SOC'Y REV. 687-702 (1999).

This Article reveals that despite being unsatisfied with various aspects of work, including salary, advancement opportunities and recognition, female lawyers reported overall job satisfaction equivalent to that of their male counterparts. The author surveyed a random sample of female attorneys in Chicago in an effort to understand this apparent paradox. Although the survey supported some of the author's theories, it failed to support others that were posited. For example, the Article notes that surveys evaluated did not support the notion that women value the context aspects of their job less than men do. However, the survey did find support for the author's theory that children have a positive effect on women's, but not men's, context satisfaction. The author concludes that more research is required to understand these gender differences.

Shonah P. Jefferson, Note, *The Statutory Development of the Parent-Child Privilege: Congress Responds to Kenneth Starr's Tactics*, 16 GA. ST. U.L. REV. 429-454 (1999).

This Note discusses Congress' role in recognizing and enforcing a parent-child privilege, with the introduction of federal legislation in1998 and 1999. Prior to Kenneth Starr's court tactic during the Monica Lewinsky trial, no statute or rule of evidence existed to protect the confidentiality of communications between a parent and child. The Note discusses the judicial response to instituting this privilege, and its reluctance to apply it, because with the omission of certain information, the privilege might hinder accurate and fair trials. Congress and the judicial system were outraged at Starr's methods in court and therefore, urged the executive branch to determine whether such a privilege could exist.

Mary F. Radford, *The Inheritance Rights of Women Under Jewish and Islamic Law*, 23 B.C. INT'L & COMP. L. REV. 135-173 (2000).

Until the end of the sixteenth century, the inheritance rights of women living in Western countries were limited. In contrast, the inheritance rights of Islamic and Jewish Law have been progressive, providing notable equality. Western countries that have historically lagged in granting women inheritance rights have now come close to reaching sexual equality, while the resurgent fundamentalist movement of both Judaism and Islam has threatened the historically equal treatment of women in their inheritance laws. The author compares and contrasts the inheritance rights of women under the two religions, and concludes that women from these regions challenge the fundamentalist movement by pointing out the historic role that religion played in protecting women's property rights.

Esther Lois Roberts, Case Note, *Tort Law—Wrongful Death—Loss of Consortium Damages for Spouse and Children:* Jordan v. Baptist Three Rivers Hospital, *984 S.W.2d 583 (Tenn. 1999)*, 67 U. TENN. L. REV. 475-492 (2000).

This Case Note addresses the progression of Tennessee legislative interpretation of the State's wrongful death statute. The author illustrates the evolution of the notion that pecuniary damages awarded in wrongful death actions should include consortium losses within Tennessee law. In *Davidson Benedict Co. v. Severeson*, the Tennessee Supreme Court denied inclusion of loss of consortium damages in a wrongful death action. However, the issue has

recently been revisited in *Jordan v. Baptist Three Rivers Hospital*, where the court held that pecuniary damages include both spousal and parental loss of consortium. The author suggests that the holding, which addresses spousal loss, appears to effectuate the intentions of the Tennessee legislature. Conversely, by including the element of parental consortium within pecuniary damages, the article concludes that the Tennessee Supreme Court created a host of complex issues concerning extended families, the quantification of the parent-child relationship, and the distribution of wrongful death damages.

Martha Rundell, Comment, *Decisions Between Consenting Adults Made in Private – No Place For The Government to Tread*, 60 LA. L. REV. 877-908 (2000).

The Louisiana Supreme Court has never considered the constitutionality of the state's sodomy law. However, a lower state court recently held the statute to be an unconstitutional invasion of privacy under Louisiana law. The lower court concluded that the state failed to offer a justification for the criminalization of non-commercial sexual conduct that occurred absent force between two consenting adults. The author applies the reasoning utilized by other state courts that have overturned their sodomy statutes, together with prior interpretations of privacy protections in the Louisiana Constitution, to conclude that the Louisiana Supreme Court must affirm the lower court's ruling that the statute is unconstitutional. The Comment indicates that Louisiana should follow Georgia, Kentucky and Tennessee courts, which have held sodomy laws to be an unconstitutional invasion of privacy on the basis that the government did not present a compelling rationale for regulating sexual choices between consenting adults.

Ronald Susswein, *The New Jersey School Search Policy Manual: Striking the Balance of Students' Rights of Privacy and Security After the Columbine Tragedy*, 34 NEW ENG. L. REV. 527-564 (2000).

The Article examines the precautionary behavior of schools after the Columbine tragedy and calls for school officials to strike a balance between preserving a safe educational environment and a student's right to be free from unreasonable searches. The author states that school officials' instinctively fearful reaction to the trend of violence could result in invasive search methods more appropriate for correctional institutions, thereby disrupting the educational process for the children in the name of safety. The author asserts

that it is unreasonable to expect school officials to understand the nuances of search and seizure laws and proposes that educators and law enforcement agencies combine forces and follow the lead of New Jersey, where the Attorney General generated a comprehensive manual with generally applicable rules for New Jersey school officials. Such efforts would therefor allow for preventative safety measures that would not compromise a student's welfare or privacy.

RAPE

Fionnuala Ni Aolain, *Sex-Based Violence and the Holocaust—A Reevaluation of Harms and Rights in International Law*, 12 YALE J.L. & FEMINISM 43-84 (2000).

This Article examines the common assertion that women's experiences during wartime, including the Holocaust, were remarkably different from those of men. Although women were subject to greater victimization than men during the Holocaust, the author suggests that the differences between the two genders were not as drastic as people may imagine. Moreover, at times these gender differences functioned to help protect women. In articulating new and more detailed existing norms, the author proposes that the international community must be prepared to acknowledge that its understanding of sexual violation may not have been deep enough, or alternatively, was premised on notions of the female self that have little to do with how women actually experience and understand harms done to them. The author concludes that individuals should be receptive to what is being said by women regarding their experiences during the Holocaust and should internalize and understand the harms they went through.

John David Collins, *Character Evidence and Sex Crimes in Alabama: Moving Toward The Adoption of New Federal Rules 413, 414 & 415*, 51 ALA. L. REV. 1651-1681 (2000).

Over the past twenty years there has been an increase of legislation dealing with sex offenders, which the Article suggests reflects a heightened awareness of sexual abuse. Recently, Congress adopted the Federal Rules of Evidence 413, 414, and 415, providing an exception to the exclusion of propensity evidence in sexual offense prosecutions. The author compares the federal legislation to Alabama's recent evidence legislation, and concludes that the straightforward exception adopted into federal law is preferable to

the "motive" exception rationale adopted by Alabama. The author argues that the "motive" exception, which is an ancient common law exception to the admissibility of character evidence, is unfair to defendants for two reasons: it renders the his or her right to a limiting instruction meaningless and, in cases of child molestation, it confuses the exclusionary doctrine.

Arthur H. Garrison, *Rape Trauma Syndrome: A Review of a Behavioral Science Theory and its Admissibility in Criminal Trials*, 23 AM. J. TRIAL ADVOC. 591-643 (2000).

Legal literature on Rape Trauma Syndrome ("RTS") and its use in criminal trials rarely includes a review of the history of RTS, or behavioral sciences research on rape victim reactions. The author tries to bridge the gap between the legal literature and the behavioral science literature by reviewing the work of two pioneers in the study of RTS. The author suggests that their research may be useful in helping the judiciary better understand RTS and how to effectively use it in a criminal trial. The author further notes that RTS is an explanation of rape victim behavior, and that it should not be used in cases of claimed consent or seemingly inappropriate behavior on the part of the alleged victim. In conclusion, the author asserts that using RTS in this manner will prevent its use as a tool of diagnosis to prove that an alleged victim was in fact raped.

Haviva A. Graber, *Striking the Right Balance in New Mexico's Rape Shield Law* – State v. Johnson, 67 N.M. L. REV. 611-623 (1998).

Through its decision in *State v. Johnson,* the New Mexico Supreme Court provided guidelines for courts to follow in rape cases when determining the admissibility of evidence regarding the alleged victim's prior sexual lifestyle. This determination is to be predicated upon whether the probative value of the evidence outweighs its possible prejudicial effects on the judicial process. While the balancing test promulgated by *Johnson* is not as practical in application as its predecessor Federal Rule 403, the Article suggests that its implications are of substantial significance. The author concludes that when it is administered, the *Johnson* test will help determine the admissibility of evidence, reduce arbitrary decisions, and ultimately ensure that the New Mexico Rape Shield Statute serves its designated purpose.

Owen D. Jones, *Law and the Biology of Rape: Reflections on Transitions*, 2 HASTINGS WOMEN'S L.J. 151-182 (2000).

Rape has traditionally been viewed from several different disciplinary perspectives. The divergent perspectives have made it difficult for those whose job it is to prevent rape to actually understand rape. The author suggests that the information on rape, gleaned from the various disciplines, should be integrated into one model which both defines rape and explores the causes of rape. The Article argues that the views of social scientists and life scientists on the cause and meaning of rape, although conflicting, can and must be blended. Once that is accomplished, the author asserts that effective laws against rape may be formulated and enforced.

REPRODUCTIVE RIGHTS

Elliot Dorff, *Eighteenth Annual Health Law Symposium: A Jewish Approach to Assisted Reproductive Technologies*, 21 WHITTIER L. REV. 391-400 (1999).

This Article discusses, from a Jewish perspective, the different moral issues that surface with various contemporary techniques of assisted reproduction. The author speculates that many infertile couples turn to reproductive technology because they view themselves as broken machines resulting from American medicine's "fix-it" mentality. Since infertility rates increase sharply with age, the author argues that society needs to help couples to meet and marry earlier. In addition, couples who still require assisted reproductive technology should not be viewed as flawed.

Michael Feinman, M.D., *Eighteenth Annual Health Law Symposium: Economics Versus Ethics in Reproductive Medicine*, 21 WHITTIER L. REV. 409-413 (1999).

This Article addresses the economic and ethical problems that confront in-vitro fertilization ("IVF") patients and society. Due to lack of funds, IVF patients tend to be inseminated with a large quantity of embryos, which increase the chance of multiple births. Multiple births will then result in higher than desired long-term costs. To curb such results, the Article suggests that the government refund money to patients so they remain financially able to pursue other alternatives. The author argues that through government funding, couples may undergo a reasonable number of IVF attempts and still be able to support a family if an adoptive alternative comes to fruition.

Rishona Fleishman, Comment, *The Battle Against Reproductive Rights: The Impact of the Catholic Church on Abortion Law in Both International and Domestic Arenas*, 12 EMORY INT'L L. REV. 277-314 (2000).

This Comment addresses the international effort to include a woman's reproductive rights into general human rights policies, and the great challenge it faces from the Catholic Church. The author asserts that the Church opposes abortion and uses its influence internationally and domestically to thwart efforts for women's reproductive rights. As a permanent observer at the United Nations, the Church attended and successfully lobbied to limit the language of both the 1994 U.N. International Conference on Population and Development in Cairo and the 1995 U.N. World Conference on Women in Beijing from proclaiming a woman's right to an abortion. The author suggests that on a domestic level, the abortion debate in the United States in impacted by religion. The author concludes that in order to include women's rights in human rights, a cross-cultural discussion between the Church and abortion rights activists that focuses on mutual understanding and respect, not on hopes of converting the other side, is necessary.

Melanie C. Hagan, Note, *The Freedom of Access to Clinic Entrances Act and the Nuremberg Files Web Site: Is the Site Properly Prohibited or Protected Speech?* 51 HASTINGS L.J. 411-440 (2000).

A web site called "The Nuremberg Files" published personal information about abortion doctors on its web site and printed "wanted-style" posters called "The Deadly Dozen." A federal jury in Portland, Oregon determined that these threats were prohibited by the 1994 Freedom of Access to Clinic Entrances Act ("FACE"), which monitors Internet threats. The Note examines FACE in the context of other speech restriction doctrines, such as incitement and fighting words. FACE provides that a criminal penalty shall be imposed upon any person who "by force or threat of force [. . .] intimidates [. . .] or attempts to [. . .] intimidate [. . .] any person because that person is. . . providing reproductive health services." The author argues that the incitement doctrine can offer a compelling legal solution for Internet regulation of web sites that threaten the safety of reproductive health workers.

SEXUAL ORIENTATION ISSUES

Beth Barrett, *Defining Queer: Lesbian and Gay Visibility in the Courtroom*, 12 YALE J.L. & FEMINISM 143-176 (2000).

The Article explores the prejudice against gays in gay rights litigation, including homophobic reactions and the possibility of educating the courts of the United States. The author contends that gays have not been treated fairly throughout their history because of a strong tendency on the parts of the courts to ignore gays' and lesbians' practical life experiences. The Article suggests that judicial understanding, which addresses homophobia and recognizes differences between gay and straight communities, is necessary in order to eliminate the unfairness that gays currently face in litigation. The author concludes that educating courts on the context of homophobia and gay and lesbian experiences through storytelling and appeals to empathy may play an integral part in achieving legal victories for gay rights.

Elizabeth Erin Bosquet, Note, *Contextualizing and Analyzing Alabama's Approach to Gay and Lesbian Custody Rights*, 51 ALA. L. REV. 1625-1649 (2000).

In child-custody cases involving a gay or lesbian parent, the majority of state courts apply a nexus approach when determining the best interests of a child including consideration of a parent's sexual orientation only when it is deemed to have a negative impact on that child. Alabama is one of the few states that considers sodomy to be a crime, and employs that law against a gay or lesbian parent who is attempting to gain custody of their child by viewing them as continually engaging in illegal conduct. The author examines two recent custody cases and suggests that when determining custody rights, although the Alabama Supreme Court employs language that seems to fall under a middle ground approach, the basis for the court's decision is closer to a per se rule, in which gay or lesbian parents are found inherently unfit. The author concludes that the Alabama court should remodel its views and adopt the nexus approach that other states utilize.

Philip Britton, *Gays and Lesbian Rights in the United Kingdom: the Story Continued*, 10 IND. INT'L & COMP. L. REV. 207-243 (2000).

The English Government and Parliament have consistently refused to recognize the need for new legislation affording homosexuals the same rights as heterosexuals. In an effort to discern whether

equality under the law is within reach, the author amplifies recent developments in England which have affected the position of gay men and lesbians. The author states that the only way to realize this goal is to follow the progressive legislation of the European Union and to apply these evolving principles, such as the right to family life and equal protection against discrimination, to English law. The author notes that currently the English legislature is moving in the right direction. The author concludes that although certain discriminatory laws will soon be repealed, such as the age of consent for gay and lesbian sex, uncertainty remains as to whether a general policy of non-discrimination will ever be available to gay men and lesbians.

Jennifer Wriggins, *Marriage Law and Family Law: Autonomy, Interdependence and Couples of the Same Gender*, 41 B.C. L. REV. 265-319 (2000).

This Article suggests that in recent years, family law has turned away from analyzing the duties and responsibilities of couples, and has focused primarily on individuals. Furthermore, there has been a backlash against this trend of individualism by many scholars, suggesting that if legislatures heed the advice of these scholars, the laws on same-sex marriages will be changed. The author argues that current laws on same-sex marriages run counter to ideal family law values because they prevent gay and lesbian couples from enjoying mainstream society, and discourage meaningful, long-term relationships. The author concludes that were same-sex marriages legally recognized, the notion that marriage laws based on connection, duty and responsibility as opposed to individualism would be supported.