WOMEN'S ANNOTATED LEGAL BIBLIOGRAPHY

ABORTION

Elizabeth Reilly, Essay, *The "Jurisprudence of Doubt": How the Premises of the Supreme Court's Abortion Jurisprudence Undermine Procreative Liberty,* 14 J.L. & POL. 757-791 (1998).

This essay addresses the ongoing public debate over abortion and the lack of resolution provided by political and legal processes. The role of the individual in human procreation is also discussed. Supreme Court decisions regarding abortion are cited and examined to expose what the author believes are flawed premises that have been incorporated into current abortion analysis. The author discusses how the current premises are insufficient to foster communication and produce meaningful solutions to procreative decision making issues. New premises are proposed that include the addition of respect, mutual responsibility/relationship and context to facilitate future procreative decision making processes.

BATTERED WOMEN & DOMESTIC VIOLENCE

Daniel G. Atkins et al., *Striving For Justice With The Violence Against Women Act And Civil Tort Actions,* 14 WIS. WOMEN'S L.J. 69-104 (1999).

This article discusses how violence committed against women by their intimate partners has risen immensely. The article illustrates

an abused woman's story and her legal struggles against her abusive husband. Moreover, the article discusses how the Violence Against Women Act (VAWA) was enacted in 1994 to give civil rights causes of action to women victims involved in violent crimes. It analyzes VAWA and describes it as an important milestone in America, and also offers suggestions on how the act might be improved. One suggestion is to give the VAWA more publicity in order to attract women who have been abused and advocates who are in the position to enforce it.

Janice A. Drye, *The Silent Victim of Domestic Violence Children Forgotten by the Judicial System*, 34 GONZ. L. REV. 229-266 (1998-1999).

This article addresses the dilemma of family violence, which according to the author, has reached epidemic proportions. Domestic violence is a crime that destroys the home that was once a safe haven, a place of peace and freedom, and a place of caring between family members. The education of society, including the victims and batterers, attorneys and guardians, as well as the bench, must be ongoing so that society becomes more aware of domestic violence and less tolerant of such behaviors. As a recommendation, the author proposes implementing a model code for domestic violence, in which the safety and well being of the child and the abused parent will be the court's primary concern.

Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3-50 (1999).

Due to the actions of prosecutors, judges and the court system itself, the justice system's response to domestic violence has been an utter failure. The legislature has done its part to combat the detrimental impact of domestic abuse; however, the time has come for a fundamental restructuring in the executive and judiciary branches that will bring about reform. One solution to the pending problem is the establishment of specialized domestic violence courts, where an effective and comprehensive response to family violence, which is the key to intervention, can occur. This article deals with the disincentives battered women face by coming forward—exposing themselves to governmental charges of "'failing to protect' their children,"—and explores the various resources available to those women and children who have suffered at the hands of a batterer. Finally, the author states the need for judicial education and extensive experience with domestic violence cases as a way to

address the long-standing hostility of court personnel and judges towards domestic violence complaints and to bring about the necessary reform.

Lee J. Teran, *Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act*, 17 B.U. INT'L L.J. 1-77 (1999).

The author argues that the Violence Against Women Act ("VAWA") was intended to provide protection for battered immigrant women and to remove deportation as a tool of the abuser. The decision of Congress to include "extreme hardship" as an eligibility requirement for suspension of deportation threatens to undermine advances made by VAWA to aid immigrant victims of domestic violence. The author examines the application of the term "extreme hardship" and suggests that "extreme hardship" should be removed as a standard for eligibility or, in the alternative, grant a rebuttable presumption that immigrant victims of domestic violence meet the "extreme hardship" criteria.

CHILD ABUSE

Jessica R. Givelber, Note, *Imposing Duties on Witnesses to Child Sexual Abuse: A Futile Response to Bystander Indifference*, 67 FORDHAM L. REV. 3169-3204 (1999).

This Note considers the impact and the effectiveness of good samaritan laws as a method of addressing inactive bystanders in child abuse cases. The Note argues that the Sherrice Iverson Act, which requires states to pass legislation imposing a criminal penalty on witnesses to child sexual abuse who failed to report the abuse, was passed in reaction to a single event, and as such is not likely to produce meaningful results. The author concludes that the Sherrice Iverson Act should not be signed into law because laws that attempt to pass a duty to rescue or duty to report on witnesses to crimes, including child sexual abuse cases, do not actually affect a bystander's behavior or make it easier for prosecutors to charge indifferent bystanders with a crime.

Cristine H. Kim, Note, *Putting Reason Back into the Reasonable Efforts Requirement in Child Abuse and Neglect Cases*, 1999 U. ILL. L. REV. 287-325 (1999).

The purpose of the 1980 Adoption Assistance and Child Welfare Act ("AACWA") was to prevent states from unnecessarily placing

children in foster care. AACWA was supposed to accomplish this by preventing the removal of children from their homes and state effort to reunify them, if removed. The author argues that the AACWA had the opposite effect as Congress failed to define "reasonable efforts" for the states to enforce. Congress passed the 1997 Adoption and Safe Families Act ("ASFA") to clarify the reasonable efforts standard. The Note discusses AACWA, efforts made under federal and state laws and ASFA's changes on child welfare laws. The author concludes that ASFA will ultimately clarify the reasonable efforts standard.

Bryan A. Long, Wendy L. MacFarlane, *Murder By Omission: Child Abuse And The Passive Parent,* 36 HARV. J. ON LEGIS. 397-450 (Summer 1999).

The authors argue that parents who allow their children to be abused should face criminal charges. The article discusses child abuse as a growing problem in America, and how our laws do not sufficiently protect children. Therefore, as a result of weak child abuse laws, a model statute should be implemented to allow for the prosecution of those who directly or indirectly harm and/or kill a child. This statute will outline the responsibilities of the passive parent and at the same time account for the weakness in the legal system regarding child abuse. Furthermore, the authors believe that battered women should not be afforded the opportunity to use the Battered Woman Syndrome ("BWS") as a defense to exculpate themselves for failing to legally protect their children. Proponents of BWS believe battered women should be excused from their omission due to their weak state of mind. The authors conclude that passive parents who knowingly allow their children to be abused and eventually killed should be charged with first degree murder due to failing to take preventive measures to stop the abuse.

Lonnie Brian Richardson, Note, *Missing Pieces of Memory: A Rejection of "Type" Classifications and a Demand for a More Subjective Approach Regarding Adult Survivors of Childhood Sexual Abuse,* 11 ST. THOMAS L. REV. 515-543 (1999).

The author details the evolution of childhood sexual abuse, beginning with Freud's discovery and later retraction of the concept of repression of feelings and memories associated with the abuse. The author advocates that courts should allow plaintiffs a cause of action for latent harm not claimed during the normal statutory pe-

riods due to the repression. The Note concludes hurdles in getting past the statute of limitations, in addition to the new standard for scientific evidence announced in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* The Note concludes with a discussion about the treatment of childhood sexual abuse claims by the courts and argues that the inadequate classification of abuse shows that courts need to handle the issues with a more subjective approach.

Peter T. Wendel, *The Case Against Plea Bargaining Child Sexual Abuse Charges: "Déjà Vu All Over Again,"* 64 MO. L. REV. 317-381 (Spring 1999).

An attorney recounts his experience defending an alleged child abuser who had previously been the beloved and well-respected coach of a local children's soccer team. After agreeing to a plea bargain agreement for his client, where the coach pled guilty to sexual misconduct that stemmed from one boy's allegations, the prosecution used the agreement as ammunition for bringing charges against the coach for alleged molestations occurring prior to the incident covered by the plea agreement. The author-defense attorney suggests that a plea agreement should not be made for alleged child molesters because the prosecution, if it is intent on "getting the guy," will use the plea agreement coupled with social hysteria to convict in a future case.

CHILD CUSTODY

Sarah Abramowicz, Note, *English Child Custody Law, 1660-1839: The Origins of Judicial Intervention in Paternal Custody,* 99 COLUM. L. REV. 1344-1391 (1999).

This Note argues that the origins of judicial intervention in child custody began, not in 1839 with the passing of the Custody of Infants Act as most scholars believe, but in 1660 with the Tenures Abolition Act. Though the 1660 act was intended to strengthen a father's "empire" over child custody, in reality the Act subjugated a father's power in child custody to the courts. The Tenures Abolition Act gave fathers the right to appoint guardians for their children, yet if a dispute arose in connection with the guardianship, the Court of Chancery could interfere. The Court involved itself in issues such as marriage, education, disputes over religion, and relocation of a child out of England. The Court of Chancery coated its reasoning by claiming to base it on the "best interest of the child." This usually meant that preference was given to custodians wanting

to raise the child in the "proper manner" which translated into raising the child according to the Church of England, and maximizing the child's wealth.

Tim Graves, *Child Support Guidelines Encourage Forum Shopping*, 37 DUQ. L. REV. 287-310 (1999).

This article addresses the problems that result from using differing guidelines in awarding child support. Such guidelines are problematic because persons in similar financial circumstances in different states will get varying support awards, forum shopping is encouraged for those seeking higher support amounts, different judicial standards are applied in modification and enforcement actions, and different amounts of support will be found adequate in different jurisdictions. A national uniformed guideline is proposed to eliminate these discrepancies and the financial incentives to forum shop. This would increase administrative efficiency and improve collection proceedings by using standard terminology and support methodology.

Jessica Cherry, Note, *The Child As Apprentice: Enhancing the Child's Ability to Participate in Custody Decision Making By Providing Scaffolded Instruction*, 1999 S. CAL. L. REV. 811-850 (1999).

Traditionally the courts have shunned children's input in custody battles. This Note maintains that children are not only capable but well suited to give input on who should have custody over them. The author encourages individual representation for children as well as an apprenticeship model to assist them in accessing and developing their input. This model consists of fostering a dialogue between the child and the attorney. The goal is to bring out the child's true feelings and desires while recognizing how difficult it is for the child to do so. The author further maintains that the courts should not ignore but rather embrace all of the child development literature that explores their ability to comprehend these issues.

CHILD RIGHTS

Malgosia Fitzmarice, Note, *The Right of the Child to a Clean Environment*, 23 S. ILL. U. L.J. 611-656 (Spring 1999).

The child's right to a clean environment does not stand alone, rather it is part of the problem of the right to a clean environment in general. The right to a clean environment is derived from

human rights and has been recognized by national and international conventions. This Note advocates that non-governmental organizations ("NGOs"), because they are a source of securing and promoting environmental rights, should have access to justice in environmental issues. There is a direct link between the procedural rights of the child to a clean environment and the *locus standi* of NGOs in protecting that right. Because most of those suffering are poor and impoverished and can not afford to have their cases litigated themselves it is necessary for capable third parties to take up the cause of the child.

Stanley S. Herr, *Special Education Law and Children With Reading and Other Disabilities*, 28 J.L. & EDUC. 337-389 (1999).

The author analyzes the impact of special education laws on children with disabilities. He also discusses the history and the reason why strong federal intervention was needed to protect disabled children. Moreover, the author examines how case law and advocacy strategies have developed over the years to assist and to preserve the Individuals with Disabilities Education Act ("IDEA"). The author continues by analyzing the IDEA and its state and federal statutory requirements. He concludes that children with disabilities will require advocacy on their behalf to ensure that IDEA lives up to its promise.

Mistee R. Pitman, Comment, *The Becca Bill: A Step Toward Helping Washington Families*, 34 GONZ. L. REV. 385-416 (1998-1999).

This Comment presents an overview of the 1995 Becca bill and its amendments, focusing on its drastic effects on Washington families, schools, and the juvenile system, while at the same time presenting the need for increased funding. The bill has succeeded in implementing new laws in the area of truancy and at-risk youth, while empowering parents with services to provide their children with much needed help. The author concludes, however, that while the Becca bill has successfully worked to help Washington families through access and use of new laws, ultimately, it will be the legislature who will determine the success or failure of the bill, depending on the amount of funding it will provide for its implementation.

M.A. Robert, *Cloning and Harming: Children, Future Persons, and the "Best Interest" Test*, 13 NOTRE DAME J.L. ETHICS & PUB. POL'Y 37-61 (1999).

The author argues that the harm of cloning is avoidable and thus an across-the-board ban on cloning is not necessary. In order to determine the legality of the cloning procedure, the "best interest" test should be used to determine the harm in all cases, when consent can be given (in the case of an adult) or when it cannot be effectively given—as in the case of children and "future persons." According to the author, if the result would not be in the "best interest" of either the clone source or the clone multiple, the procedure should not be done.

Candace Zierdt, Note, *The Little Engine That Arrived At the Wrong Station: How to Get Juvenile Justice Back on the Right Track*, 33 U.S.F. L. REV. 401-434 (Spring 1999).

The recent increase of juvenile crimes, including the recently publicized school shootings, have led to a public outcry for an amendment of the juvenile court laws or a complete abolishment of the juvenile court system. This Note addresses the need to return to a system of community-based treatment programs, established one hundred years ago by the framers of the juvenile court system. These programs offer rehabilitation measures rather than mere incarceration. The author believes that abolishing the juvenile court system, or even amending it so that more juveniles would be charged as adults, would not get to the root of the problem, but instead would burden the court system and lead to an increase in recidivism. According to the author, success in treating juvenile crime can be found in intervention programs that focus on the child and the community, and that treat the individual rather than the crime.

DISCRIMINATION

Roy Whitehead et al., *Gender Equity in Athletics: Should We Adopt a Non-Discriminatory Model?*, 30 U. TOL. L. REV. 223-249 (Winter 1999).

In this age of political correctness and government intrusion into previously considered private affairs, the authors disagree with governmental mandates "forcing" gender equality in college athletic programs. Congress enacted Title IX of the Educational Amendments of 1972 because there was no assurance of equal opportu-

nity, based on sex, in the components of education. The authors argue that the driving principles behind the gender equality movement, in general, are philosophically, legally and economically misguided. More specifically however, they argue that the interpretations of the statute by the federal courts and various agencies have gone far beyond the spirit and the letter of the law.

GAY RIGHTS

Mary Bonauto et al., *The Freedom to Marry for Same-Sex Couples: The Reply Brief of Plaintiffs Stan Baker et al. in Baker et al. v. State of Vermont*, 6 MICH. J. GENDER & L. 1-47 (1999).

This article focuses on three same-sex couples in Vermont and covers the arguments submitted to the Vermont Supreme Court advocating for the right of gay and lesbian citizens to marry. All three couples were denied marriage licenses in 1997 and sued the State of Vermont arguing that the marrying statutes permitted their union. Their claim was dismissed then appealed. The body of this article is the reply brief submitted to the Vermont Supreme Court supporting their position to permit same-sex marriage. They argue for heightened scrutiny review of the statute and respond to issues of the relationship between procreation and marriage, appellants' constitutional rights, impact of recognizing the marriages, and the court's role in the debate.

Maye Kuykendall, *Resistance to Same Sex Marriage As A Story About Language Linguistic Failure and the Priority Of A Living Language*, 34 HARV. C.R.–C.L. L. REV. 385-435 (Summer 1999).

This article considers whether a lack of gay marriage linguistics signifies a public policy failure to accept change. To ignore gay marriage insults the gay culture, compromises their constitutional rights and attempts to sever their language which is rich and full of meaning. The author proposes to inject this speech into the life and language of society and to recognize how the character of language is constantly changing. The author concludes that a lack of gay marriage speech is bad policy which collectively harms the gay community.

Bryan H. Wildenthal, *To Say "I Do": Shahar v. Bowers, Same-Sex Marriage, and Public Employee Free Speech Rights*, 15 GA. ST. U. L. REV. 381-458 (1998).

This article looks at the *Shahar* case, which involved the marriage of a lesbian staff attorney in the Georgia Department of Law. Same sex marriage should be acknowledged as an expression of free speech. The author addresses gay marriages as social, cultural, and religious events and whether this should have "private" or "public" significance. This discussion occurs in the backdrop of the current state of constitutional protection for off-the-job, non-job related speech by public employees. In a troubling decision, the Supreme Court restricted the speech rights of public employees by requiring that their speech is of public concern. The author concludes that freedom of speech should empower gay individuals to claim an equal stake in traditional social institutions and the language signifying them.

Alan G. Bennett, Note, *The "Cure" that Harms: Sexual Orientation-Based Asylum and the Changing Definition of Persecution*, 29 GOLDEN GATE U.L. REV. 279-309 (1999).

This Note discusses what the proper legal standard should be in the United States with respect to sexual-orientation based asylum claims. The Note addresses this problem through a case study of a Russian lesbian seeking asylum in the United States and by analyzing the different standards the United States Courts of Appeals uses. The Russian woman's claim for asylum reached the Court of Appeals for the Ninth Circuit which decided that the district court had erred when it decided the woman needed to prove that her persecutors had "punitive intent." The Ninth Circuit defined "punitive intent" as a "subjective intent to harm or punish when persecuting the victim." This is the standard the author believes all the Circuits should follow, instead of the Fifth Circuit's requirement of punitive intent by the persecutor.

HARASSMENT

Paul Buchanan and Courtney W. Wiswall, *The Evolving Understanding of Workplace Harassment and Employer Liability: Implications of Recent Supreme Court Decisions Under Title VII*, 34 WAKE FOREST L. REV. 55-69 (1999).

The authors discuss the impact of two recent Supreme Court Decisions, addressing employer liability for sexual harassment on future

sexual harassment cases. The Court held that when a supervisor's discriminatory conduct results in an adverse employment action, the employer is 1) automatically liable and 2) entitled to a two-part affirmative defense that requires the employer to show that it took reasonable care to prevent harassment and that the employee failed to take advantage of corrective remedies. The authors suggest that summary judgment decisions in favor of employers may decrease and that most summary judgment litigation will focus on the employer's ability to satisfy the two-pronged test.

Laura Foster, Comment, *A Modified Approach to Claims of Sexual Harassment Under Title IX: Finding Protection Against Peer Sexual Harassment*, 67 U. CIN. L. REV. 1229-1267 (1999).

A major study by the American Association of University Women shows that sexual harassment in schools is overwhelmingly prevalent for both males and females in grades eight through eleven. Though the percentage of peer sexual harassment is hardly distinguishable between the genders, females experience a far greater disparate impact. Title IX of the Education Amendments of 1972 prohibits discrimination in schools by threatening to withhold federal funding if sexual harassment occurs. The Supreme Court's decisions on this provision, however, has limited its effectiveness. This Comment outlines the history of sexual harassment, while proposing a modified school liability test for sexual harassment claims arising under Title IX that will balance the interests of the students while safeguarding federal funding.

Gerturud M. Flemling & Richard A. Posner, Essay, *Status, Signaling and the Law, with Particular Application to Sexual Harassment*, 147 U. PA. L. REV. 1069-1109 (May 1999).

This essay outlines the traditional guidelines that establish both men and women's status in society, and how these lines are being altered with women joining the work force. A man's social position has typically been determined using his wealth, power and prestige, while a woman's status was based on her family and whether she had the qualities that made her a superior daughter, wife and mother. Today, a woman's status may be harmed by pornography, nudity, and sexual solicitations of male employees, because each of these offenses shows the offender does not respect the woman, thereby reducing her self-esteem. Thus, the authors speak of the need for sexual harassment laws, nudity laws and pornography laws in order to protect the status of the woman.

Amy K. Graham, Note, *Gebser v. Lago Vista Independent School District: The Supreme Court's Determination that Children Deserve Less Protection than Adults from Sexual Harassment,* 30 LOY. U. CHI. L.J. 551-599 (1999).

School children have rights, under Title IX of the Education Amendments of 1972, to attend school free from all sexual discrimination, including harassment. However, the *Gebser* Court held a teacher's sexual harassment cannot be imputed to the school district for liability if the school district lacks knowledge. The Supreme Court held that a school district is only liable when an official knew of the harassment and deliberately failed to try to end it. The author feels this standard encourages school districts to remain purposefully ignorant of any sexual harassment in their schools. The author prefers to see a vicarious liability standard imposed, as she feels that this standard would ensure greater protection under Title IX for sexually harassed students.

Anne Lawton, *The Emperor's New Clothes: How the Academy Deals with Sexual Harassment,* 11 YALE J.L. & FEMINISM 75-153 (1999).

On college campuses sexual harassment creates a unique problem. Although colleges and universities have responded to the problem, few women invoke the internal grievance procedures that have been established because the procedures are ineffective. This article gives a summary of the research of sexual harassment in both the work place and inside academic institutions. It explores the discrepancy between the actual incidence of harassment and the reporting of harassment within institutions and reasons for under reporting. It then proposes several steps that colleges and universities should undertake in order to increase the likelihood that women will report harassment.

Ronald Turner, *Employer Liability for Supervisory Hostile Environment Sexual Harassment: Comparing Title VII's and Section 1983's Regulatory Regimes,* 31 URB. LAW. 503-525 (1999).

This article examines the issue of employer liability for supervisory hostile environment sexual harassment in the work place under Section 1983 and Title VII. The article discusses the Supreme Court's practice of finding employers liable under a theory of respondeat superior in cases brought under Title VII and rejecting such liability in cases brought under Section 1983, an example of the judiciary's lawmaking and policymaking powers on matters not expressly addressed in or answered by statutory text. The author

suggests that the courts intentionalist interpretive reading of Section 1983 and its textualist approach in interpreting Title VII is the basis for this division, concluding that these statutes provide an incentive for an employer to assume a proactive stance on workplace sexual harassment.

HEALTH, HIV, AND AIDS

Anthony Osterlund, *The Unequal Balancing Act Between HIV-Positive Patients and Physicians*, 25 OHIO N.U. L. REV. 149-167 (1999).

The ADA was passed to protect the civil rights of disabled people, including people with HIV. Recently however, the growing concern over HIV infection has prompted the enactment of laws that protect the public from HIV. There exists a tension between the civil rights of infected persons and the public's right to know. The tension is most obvious when a physician carries the contagious virus. As the laws of informed consent currently stand, physicians owe a fiduciary duty to their patients to inform them that they, the physicians, carry HIV. However, patients at present owe their physicians no duty to do the same. The article suggests that it seems completely erroneous to require a disclosure of HIV status on a one way basis.

MATRIMONIAL

Angela M. Biamonte, Note, *The Progressive's View of the Defense of Marriage Act and Its Conflict with Conservative Society*, 4 WIDENER L. SYMP. J. 325-355 (1999).

This Note analyzes both sides of the heated debate over the passage of the Defense of Marriage Act ("DOMA"). On the one hand, conservatives argue that marriage is an ancient tradition that should be preserved for heterosexual relationships only. Conservatives support their position through conservative constitutionalism, which is a theory stating that we should respect and preserve the good promoted by preexisting social structures and entitlements. Since 67% of the population believe DOMA should only protect heterosexual marriages, conservatives maintain that adding homosexual marriages to the legislation would upset the preexisting social structure. On the other hand progressives seek to include homosexual marriages in DOMA and contend that the state should be more concerned with adopting laws that take into account experiences, ideals, and aspirations of the relatively disempowered.

Ultimately, the author suggests that a good middle ground could be achieved by adding a "life partner" amendment to DOMA. This amendment would give devoted homosexual couples the same legal benefits as married ones without tarnishing the tradition of marriage.

Kristian D. Whitten, Note, *Section Three of the Defense of Marriage Act: Is Marriage Reserved to the States?*, 26 HASTINGS CONST. L.Q. 419-467 (1999).

In 1996, the Defense of Marriage Act was enacted to prevent residents of one state from exporting their same-sex marriage to another. In addition it defines the terms "marriage" and "spouse" for all federal laws, programs and actions. The author concludes that Section 3 of The Defense of Marriage Act impairs a state's power to define "marriage" for its people by imposing its own definitions on these states. The author asserts that Congress' definition violates the 10th Amendment and makes the Defense of Marriage Act unconstitutional. The author finds authority for this supposition by reading the 10th, 16th and 17th Amendments and analyzes these amendments through United States Supreme Court decisions of the last twenty years.

MISCELLANEOUS

Genevieve Louise Adamo, Note, *Grandparent Visitation Rights in Ohio After Grandchild Adoption: Is It Time to Move in a New Direction?*, 46 CLEV. ST. L. REV. 385-408 (1998).

This Note addresses the dilemma of whether grandparents should be granted visitation rights following step-parent adoption under Ohio law. The author explores the way Ohio looked at the issue of grandparent visitation prior to two landmark Ohio Supreme Court decisions which disallowed such visitation rights when children were adopted by strangers or relatives. After discussing the two cases, examining other states' laws allowing grandparent visitation following a stepparent adoption, and providing support for her reasoning through studies and commentaries, the author suggests that the Ohio Legislature amend its adoption statutes in order to allow such visitation under certain circumstances. The author concludes that this measure will protect the child's best interests, the goal of all visitation law.

Richard L. Aynes, *Bradwell v. Illinois: Chief Justice Chase's Dissent and the "Sphere of Women's Work"*, 59 LA. L. REV. 521-541 (Winter 1999).

The author discusses the lone dissent, without opinion, of Chief Justice Salmon P. Chase in the 1873 Supreme Court opinion of *Bradwell v. Illinois* where the Court voted eight to one to affirm the decision of the Supreme Court of Illinois to deny Myra Bradwell admission to the Bar because of her gender. The article suggests some possible reasons for Chase's dissent in light of his somewhat conflicting views of women's rights, including his stance on past decisions, his continuous support of African-American rights, and his extraordinarily close relationship with his daughter, Catherine (Kate) Chase. The author concludes the article with his own hypothetical version of what Chase might have written had his health permitted.

Judith Olans Brown et al., *The Rugged Feminism of Sandra Day O'Connor*, 32 IND. L. REV. 1219-1246 (1999).

This article addresses the many facets of Justice O'Connor's Supreme Court career with regard to her opinions on what are rendered to be historically women's issues. Specifically, the authors evaluate Justice O'Connor's approaches to sex discrimination, reproductive rights, sexual harassment, affirmative action and domestic violence. These approaches are compared with the facts that Justice O'Connor herself is a woman and mother who has suffered from gender biases. The authors conclude that O'Connor's presence on the Supreme Court has not only political and symbolic effects, but that O'Connor's personal lifetime experience with regard to women's issues have a legal, sometimes inconsistent effect on her opinions.

M. Neil Browne and Michael D. Meuti, *Individualism and the Market Determination of Women's Wages in the United States, Canada, and Hong Kong*, 21 LOY. L.A. INT'L & COMP. L.J. 355-398 (1999).

The author questions whether existing market forces should establish the wages of men and women or whether legislatures and courts should reorient those extant market institutions so they yield greater equity. To answer this question, the author analyzes the role individualism plays in Canada and Hong Kong, particularly in terms of their respective pay equity. The author concludes that the degree of individualism in a culture is not necessarily a dependable predictor of attitudes toward pay equity.

Mary L. Clark, *The First Women Members of the Supreme Court Bar*, 36 SAN DIEGO L. REV. 87-136 (Winter 1999).

This article celebrates the achievements of the first women members of the Supreme Court bar as pioneers in American law and in the early women's movement. The author focuses on the lives of 13 of the first 20 women members of the prestigious organization. First, the article traces the steps taken by the first admitted female member to gain entry into the previously male-only Supreme Court bar. The article later reveals the substantial similarities these women shared in their personal lives including their previous occupations, their marital status and their roles in the women's suffrage movement. The article concludes with some of the author's insights on what motivated these pioneers to apply for admission in the first place.

Kiyoko Kamio Knapp, *Don't Awaken the Sleeping Child: Japan's Gender Equality Law and the Rhetoric of Gradualism*, 8 COL. J. GENDER & L. 143-195 (1999).

The article addresses the current state of gender equality in the workplace in Japan in the context of Japan's gender equality law. The article argues that the Japanese women's long struggle for gender equality has been frustrated by rhetoric of gradualism. This rhetoric of gradualism is reflected, the author argues, in Japan's gender law, specifically Equal Employment Opportunity Law (EEOL), which makes gender equality a mere suggestion rather than a mandate. The author concludes that EEOL has achieved little towards promoting gender equality, and that the gender law in Japan must be strengthened to better assist women workers.

Jeroo S. Kotval, *Market-Driven Managed Care and the Confidentiality of Genetic Tests: The Institution as Double Agent*, 9 ALB. L.J. SCI. & TECH. 1-25 (1998).

This article argues that patient confidentiality is threatened by the confluence of three elements: (1) the rise of for-profit, market driven health care; (2) the availability of computerized medical records on networked computers; and (3) the availability of genetic tests. The author discusses these elements and explores medical confidentiality in the new health care system. Concluding that patient confidentiality needs to be strengthened in order for people to benefit from DNA-based tests, the author argues that cost-saving imperatives from managed care organizations ("MCOs") and the increasing availability of DNA-based tests poses threats to

the confidentiality and thus the acceptance of the appropriate uses of such tests.

Martin H. Malin, *Fathers and Parental Leave Revisited,* 19 N. ILL. U. L. REV. 25-56 (1998).

In this article, the author discusses barriers, specifically economics and workplace hostility, to use of parental leave and to increased paternal involvement in childcare. The evolving law under collective bargaining agreements and unemployment compensation statutes recognizes the reality of today's families and the need for employers to accommodate their employees' parental responsibilities. However, the author asserts, early court decisions interpreting the Family Medical Leave Act reflect a disturbing trend that threatens to defeat the purposes behind the statute and impede its use as a tool for breaking down barriers to the use of parental leave.

Andrew E. Taslitz, *What Feminism has to Offer Evidence Law,* 28 SW. U.L. REV. 171-219 (1999).

This article seeks to include feminist theories into evidence law. The author claims that feminist literature is vital to juries, judges, and attorneys. With the benefit of feminist influences, juries would develop a real understanding of women rather than have to rely on stereotypes. Furthermore, despite emotions being traditionally considered a source of "unfair prejudice" with respect to juries, this author argues that "rational emotions" are necessary to prudent decision making. The view of litigation as war goes against feminist logic. This attitude is in dire need of adjustment with particular attention to how female witnesses are treated. In the end, the evidentiary system has been largely controlled by paternalistic ideology and would stand to benefit from various new feminist thoughts.

Debora L. Threedy, *Feminists & Contract Doctrine,* 32 IND. L. REV. 1247-1265 (1999).

This article addresses the impression of male bias in contract law and the consequence of it by exploring the influence of feminism. Historically, revolutionary changes have taken place in the lives of women; however, full and equal participation in public economic and political life is still incomparable. The depth and length of inequality runs rampant throughout legal and judicial doctrine. The author suggests that realization of a problem serves as an impetus for fundamental change that will be the challenge of the next millennium.

Joan Williams, *Towards a Reconstructive Feminism: Reconstructing the Relationship of Market Work and Family Work*, 19 N. ILL. U. L. REV. 89-171 (1998).

This article addresses the new paradigm called "reconstructive feminism," which calls for the elimination of the ideal-worker norm in market work in family entitlements. Domesticity is a gender system comprised of market work organization and family work that arose around 1780. It is these gender norms that justify, sustain, and reproduce that organization. By acknowledging the existence of the norm of parental care, the economy of mothers, where fathers work overtime and mothers do not work, comes to light. The author suggests full-commodification strategy addresses the issue and transforms domesticity's norm of mother care into a template for reconstructing the relationship of market work and family work.

Manfred Zuleeg, *Gender Equality and Affirmative Action Under the Law of the European Union*, 5 COLUM. J. OF EUR. L. 319-328 (1999).

The decisions in Kalanke and in Marshall are landmark in the development of gender equality in the European community. This article evaluates the decisions and examines the effects the judgements have had on affirmative action in Germany.

RAPE

Katherine K. Baker, *Sex, Rape and Shame*, 79 B.U. L. REV. 663-716 (1999).

This article focuses on non-violent rape between acquaintances. Those men committing acquaintance rape believe it is a substitute for consensual sex and not, as suggested by feminists, a display of male hostility. Society does not yet distinguish between consensual and non-consensual sex enough for people to see them as truly different. Many people still feel it is still just another form of sex. The goal of this article is to explore ways in which it would be easier to condemn the date rapist. Legal sanctions have proved insufficient. It is time to use shame-inducing sanctions in small communities, like college campuses, to alter the social meaning of non-consensual sex. Universities are a good starting point because of their position as norm-creating centers for society.

Lundy Langston, Note, *No Penetration—and It's Still Rape*, 1998 PEPP. L. REV. 1-36 (1998).

This Note focuses on the definition of rape and how it has been traditionally defined from the male perspective. The author determines that rape is a violation of a woman's body. As a violation, rape should not be limited to mere penetration because a woman's body is made up of multiple sex organs which could conceivably be violated. Therefore, it is necessary for women to be part of determining what rape is and how it should be punished.

REPRODUCTIVE RIGHTS

Michelle L. Brenwald, Kay Redeker, Note, *A Primer on Posthumous Conception and Related Issues of Assisted Reproduction*, 38 WASHBURN L.J. 599-654 (Spring 1999).

This Note addresses the emerging area of law regarding children who are conceived posthumously and its implications. It discusses the present scope of artificial reproduction, the medical background such as insemination and in vitro fertilization including the controversial cryogenic preservation of embryos, bioethics and case law. The author concludes that assisted reproduction, especially new areas of reproduction such as posthumous conception, necessitates that attorneys have practical guidelines within which to function until state legislation is enacted. Guidelines suggested include areas of estate planning, trusts for children, durable power of attorney and limiting attorney legal liability while also considering the child's best interest.

Fay Clayton and Sara N. Love, *NOW v. Sheidler: Protecting Women's Access to Reproductive Health Services*, 62 ALB. L. REV. 967-997 (1999).

While Roe v. Wade gave women a constitutionally-guaranteed right to abortion, it was not self-effectuating. This article details the history and trial of *NOW v. Scheidler*, in which members of the Pro-Life Action Network ("PLAN") were held liable for 121 criminal acts under the Racketeer Influenced and Corrupt Organizations Act ("RICO") for violent acts directed towards abortion clinics and their patients. The article shows how RICO applies to the activities of PLAN and how the defendants' claims of protection under the First Amendment were hollow because the First Amendment does not protect those who use speech to plot and organize criminal acts or to incite the commission of criminal acts by others.

Ruth Halperin-Kaddari, *Redefining Parenthood*, 29 CAL. W. INT'L L.J. 313-337 (1999).

This article addresses the effect of new reproductive technologies on traditional concepts of parenthood. Upon parallel examination of legal developments in the United States and Israel, the author submits that the case law reflects similar dilemmas. However, due to religious considerations, the author suggests that substantial differences exist between the societies on how best to confront those dilemmas. The author concludes that Israel's legal system, which confers formal recognition and status on religious considerations, intensifies pre-existing problems and adds an even stronger patriarchal dimension to the issue.