ANNOTATED LEGAL BIBLIOGRAPHY ON GENDER

ADOPTION

Sally K. Christie, Note, *Foster Care Reform in New York City: Justice for All*, 36 COLUM. J.L. & SOC. PROBS. 1 (2002)

This article addresses New York City's foster care reform and its effects on African-American families. After looking at relevant federal statutes, the author outlines how historically, religion-based foster care placement indirectly discriminates against African-Americans. The next section reveals the disproportionate number of African-American children placed in foster care, especially those in poor economic situations, and the negative psychological effects of such placements. The author then outlines a scheme to overcome foster care deficiencies, including: a comprehensive data collection and analysis, cultural sensitivity training, and family preservation services. The article concludes with a list of possible barriers to such a scheme, including federal and state laws, lack of money, and political support.

CHILD ABUSE

Carlos Clark, Comment, *An Argument for Considering Parental Smoking in Child Abuse and Neglect Proceedings*, 19 J. CONTEMP. HEALTH L. & POL'Y 225 (2002)

Smoking habits of child caretakers should be considered a factor in awarding custody of a child. Similar to the way that drug and alcohol use by a caretaker puts a child in imminent danger of physical and emotional harm, second hand smoke also poses an immediate threat to the safety of a child. There is scientific evidence that children face an increased risk of respiratory ailments if they are exposed to second hand smoke. Courts have correctly considered this evidence when awarding custody to a non-smoking parent, or enjoining the smoking parent from smoking in close proximity to the child. Public awareness of the danger of second hand smoke has also increased, making it even more reasonable for courts and legislatures to take tobacco smoking into account when considering the fitness of a caretaker to have custody of a child.

Khristopher M. Gregoire, Comment, *A Survey of International Hearsay Exceptions in Child Sex Abuse Cases: Balancing the Equities in Search of a More Pragmatic Rule*, 17 CONN. J. INT'L L. 361 (2002)

After beginning with the recognition of child sexual abuse in the United States, this article examines the challenges of prosecuting child sexual abusers while adhering to hearsay rules. Specifically, the author outlines the three major bodies of hearsay admission exceptions across American and international jurisdictions. Finally, the author offers a uniform residual hearsay rule in an attempt to standardize the rules and minimize trial court discretion, therefore producing consistent results that are fair to both victims and alleged offenders.

Colleen Kelly, *The Legacy of Too Little, Too Late: The Inconsistent Treatment of Postpartum Psychosis as a Defense to Infanticide*, 19 J. CONTEMP. HEALTH L. & POL'Y 247 (2002)

A large number of women experience some level of postpartum depressive disorder after giving birth. Some of these experiences are so severe that they rise to the level of insanity, no different from schizophrenia or other forms of mental illness. However, the phenomenon of postpartum depressive disorder has been under-explored in the medical community and its treatment is inconsistent and insufficient in the legal community. A mother who might kill her infant children because of acute postpartum depression needs to be identified and treated before the tragedy occurs. If the system fails and does not prevent this type of injury the mother should be allowed to plead not guilty by reason of insanity and subsequently receive treatment for the disorder rather than be jailed.

Subha Lembach, *Representing Children in New York State: An Ethical Exploration of the Role of the Child's Lawyer in Abuse and Neglect Proceedings*, 24 WHITTIER L. REV. 619 (2003)

This article provides an overview of child abuse and neglect proceedings in New York State. The author describes many difficult situations an attorney might face in a child abuse or neglect proceeding and provides examples of roles and approaches the attorney can use to make a decision on behalf of his or her child client. The article focuses on the challenges and lack of guidance attorneys face in these situations. The author concludes that the most effective way an attorney can approach a child neglect or abuse case is to be mindful of its impact on the child and the family affected by the case.

Michelle Oberman, *Understanding Infanticide in Context: Mothers Who Kill, 1870-1930 and Today*, 92 J. CRIM. L. & CRIMINOLOGY 707 (2002)

This article compares contemporary and historical cases of infanticide, identifying the key factors contributing to these murders. The author identifies two distinct types of homicides: neonaticide, the killing of an infant within the first twenty-four hours of life, and infanticide, the killing of an infant after the first twenty-four hours of life. Comparing contemporary cases with historical cases found in a Chicago crime database, the author finds striking similarities between the groups of mothers. Both contemporary and historical women who commit neonaticide tend to be relatively young, unmarried, poor and isolated. Both groups of women

consistently receive lenient treatment from judges and juries. In contrast, while women who commit infanticide in both periods are also young, unmarried or involved in unstable relationships, poor and isolated, contemporary women who commit infanticide receive much harsher treatment from the criminal justice system than their historic counterparts did.

Deana Pollard, *Banning Child Corporal Punishment*, 77 TUL. L. REV. 575 (2003)

Corporal punishment is still a widespread disciplinary technique utilized by American parents. The author argues that corporal punishment leads to a variety of mental and physical harms to the child and increases the overall incidence of violence in our society. She contrasts this data with that of other western nations, many of which have, or are considering, total bans on child corporal punishment. The United Nations Convention on the Rights of the Child adds to the body of international law prohibiting corporal punishment; however, the United States has not ratified the Convention. The United States still has a variety of exemptions in criminal and tort law for corporal punishment, which is explored in detail throughout the article. Based on the weight of international authority, the stance of many American professional associations dealing with children's health issues, and the harmful effects on the child and society, the author urges a total ban on corporal punishment in America.

Brittany Reid, Comment, *"If Gold Rust": The Clergy Child Abuse Scandal Demonstrates the Need for Limits to the Church Autonomy Doctrine*, 72 MISS. L.J. 865 (2002)

The Church Autonomy doctrine makes it impermissible for civil courts to decide purely ecclesiastical disputes. Title VII of the Civil Rights Act exempts churches from employment discrimination suits. Employment discrimination and ecclesiastical disputes have been merged in some state and federal courts, resulting in a split of authority over whether to allow negligent supervision actions against the Catholic Church in the ongoing clergy abuse scandal. The author argues that both the Church Autonomy doctrine and the ministerial exception are inapplicable to this class of cases. These doctrines have been limited by the rule of *Employment Division v. Smith*, which provides that generally applicable, neutral laws are valid against free exercise claims. The government, through the civil courts, has a compelling interest in protecting children from sexual abuse. Therefore, clergy abuse cases must be allowed to proceed in state and federal courts.

Carolina D. Watts, Note, *"Indifferent [Towards] Indifference:" Post-*DeShaney *Accountability for Social Services Agencies When a Child is Injured or Killed Under Their Protective Watch*, 30 PEPP. L. REV. 125 (2002)

The author argues that the Supreme Court should extend liability to a state's child protection agency even when the child is not in the custody of such an agency, if the agency fails to protect the child's safety. The Court could create such liability either on the theory that the agency's failure to act contributed to the potential harm of the child or that there is a special relationship between the state and the child. The second theory would require that the Supreme Court overrule its decision in *DeSheney v. Winnebego County Department of Social Services.* Either way, the Court must extend liability to cover cases where a child's right to safety was violated through a child protective agency's deliberate indifference in the face of evidence that established prior abuse of the child.

CIVIL RIGHTS

Michael E. Brewer, *Sodomy Laws and Privacy: The Cost of Keeping Gays in the Closet*, 79 DENV. U. L. REV. 546 (2002)

The application of American sodomy laws to homosexuals has led to an attack on the private, consensual and sexual behavior of the gay, lesbian, bisexual and transgendered populations. The author provides snapshots of homosexual legal history, including the 1969 police raid of the Stonewall Inn in Greenwich Village, which gave rise to the "Gay Liberation" movement. He briefly addresses some of Richard Posner's viewpoints and theories on the existence of sodomy laws. In conclusion, the author calls for first an understanding of American sodomy laws, and then an elimination of them.

Haneefah A. Jackson, Note, *When Love Is a Crime: Why the Drug Prosecutions and Punishments of Female Non-Conspirators Cannot Be Justified By Retributive Principles*, 46 HOW L.J. 517 (2003)

The retributive theory of criminal punishment mandates that the punishment inflicted on an offender be proportionate to the crime committed. The author argues that the opposite occurs in the prosecuting of female non-offenders in drug conspiracy cases. These women receive disproportionate sentences because conspiracy is a separate crime, meaning that for a peripheral act, a woman could be prosecuted as part of a larger conspiracy. This categorization combined with mandatory minimum

sentencing results in harsh and lengthy prison terms. As an improvement, the author suggests increased judicial discretion, reexamination of conspiracy law and sentencing offenders to community corrections programs instead of prison.

CUSTODY, VISITATION & DIVORCE

James W. Bozzomo, Note, *Joint Legal Custody: A Parent's Constitutional Right in a Reorganized Family*, 31 HOFSTRA L. REV. 547 (2002)

With over one million children involved in parental divorce disputes each year, the issue of custody is important. Traditionally, common law had a maternal preference for custody until the 1970s, when most courts recognized a presumption toward the mother was a violation of the father's Fourteenth Amendment rights. Some states still have a presumption against joint custody, fearing that it may not be in the best interest of the child, due to the often-poor relationship between the parents. In contrast, some courts have recognized a fundamental right of the parent to custody of their child, which can only be overridden by the quality of the parenting. While the Supreme Court has not specifically ruled on a parent's right to custody, they have recognized a parent's right in other areas, and should extend this right to include joint custody.

Angela F. Epps, *To Pay Or Not To Pay, That Is The Question: Should SSI Recipients Be Exempt From Child Support Obligations?* 34 RUTGERS L.J. 63 (2002)

This article discusses issues surrounding child support payments and whether a parent must pay regardless of income or situation. The author looks at Supplemental Security Income (SSI), a federally funded need-based public assistance program administered through the Social Security Administration, which provides monthly benefits to those who have limited resources and are disabled. Case law suggests that a parent has a moral obligation to provide financial support in some way or another no matter what the parent's situation is. The article proposes that the federal government create a program to assist children just as the federal government created SSI to help the disabled. The program would give children a monthly benefit payment until they reach the age of 18 or their parent is no longer disabled or whichever comes first.

Laurie Madziar, Comment, State v. Oakley*: How Much Further Will the Courts Go in Trying to Enforce Child Support?*, 24 WOMEN'S RTS. L. REP. 65 (2002)

This comment examines the Wisconsin Supreme Court decision of *State v. Oakley*, which upheld an order barring a man with nine children by four different women from having any more children until he could show financial ability to support all of his children. The court also set a penalty of eight years in prison if he violates the order. The court found that the order did not violate the petitioner's right to procreate because supporting his children could lift the restriction. Private child support requirements arose in the nineteenth century and states have struggled to find effective methods of enforcement. The author suggests that the Wisconsin ruling may infringe too much on procreation rights and have dire consequences for women. This comment argues that *State v. Oakley* went too far and sets a dangerous precedent.

Christina Donato Saler, Note, *Pennsylvania Law Should No Longer Allow a Parent's Right to Testamentary Freedom to Outweigh the Dependent Child's "Absolute Right to Child Support,"* 34 RUTGERS L.J. 235 (2002)

Currently, Pennsylvania courts are bound by case law and statutes to protect a parent's estate from child support orders. Many jurisdictions have changed the common law rule holding testamentary freedom as superior to protecting dependant children through statutes and judicial interpretation. Pennsylvania has resisted this change. However, there has been much federal and state recognition of interests that outweigh testamentary freedom, such as creditor rights, taxation and spousal rights. Arguing that even children lacking child support should be protected, this note suggests that the Pennsylvania legislature should adopt a dependent child elective share system similar to a spousal elective share.

DOMESTIC VIOLENCE

Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct,* 26 HARV. WOMEN'S L.J. 217 (2003)

This article focuses on the substantial impact that poverty has on a battered woman's options in obtaining competent legal assistance when leaving an abusive relationship. While much progress has been made in this area, quite often, incompetent counsel representing battered women

defendants unwilling fail to learn the details of the woman's case causing preventable incarceration. The author concludes that the solution to such injustice is a prescriptive reform framework for lawyers and judges involved in these cases. In order to effectuate this plan, lawyers and scholars should work together to bridge the gap between theory and practice in order to ensure that the right to competent counsel is available to all female defendants.

Michelle DeCasas, Comment, *Protecting Hispanic Women: The Inadequacy of Domestic Violence Policy,* 24 CHICANO-LATINO L. REV. 56 (2003)

The article looks at how women have been affected by intimate homicide and how they have lost their lives at the hands of those with whom they have shared intimate relationships. Little attention has been given to the issue of violence against Hispanic women who have been victimized at a greater rate than other women. Women at greater risk from injury include those with male partners who abuse alcohol, are unemployed, have not completed high school and have a low socio-economic stature. Surveys show that Hispanic women are more exposed to all these factors as a whole than are black and white women. Policies have been implemented to help including the Federal Domestic Violence Policy (VAWA) in 1994, but it has placed too many barriers on Hispanic women and thereby dissuaded them from seeking relief.

Shannon M. Garrett, *Battered by Equality: Could Minnesota's Domestic Violence Statutes Survive a "Father's Rights" Assault,* 21 LAW & INEQ. 341 (2003)

In a recent Minnesota federal court case, several men challenged certain Minnesota domestic violence laws claiming that such laws, which focused on battered women as opposed to men, violated their equal protection guarantees. Because the case was dismissed for lack of standing, the equal protection guarantee claim was never addressed. In light of the possibility that the same issue might arise where the plaintiff does have standing, this article examines the expanding fathers' rights movement as a formidable threat to domestic violence laws and also considers the specific claim that certain domestic violence laws violate equal protection guarantees. The author concludes that these equal protection challenges will ultimately fail and that Minnesota's challenged domestic violence laws will withstand such scrutiny.

John W. Roberts, Note, *Between the Heat of Passion and Cold Blood: Battered Woman's Syndrome as an Excuse for Self-Defense in Non-Confrontational Homicides,* 27 LAW & PSYCHOL. REV. 135 (2003)

Many factors make it difficult for a woman to leave an abusive relationship and often when a woman does attempt to leave, the violence and abuse can escalate. When a woman in this situation commits a crime, such as murder, against her batterer and asserts self-defense, a fair trial necessitates a jury instruction on self-defense and expert testimony on battered woman's syndrome. However, the author admonishes against permitting a murderer to individualize the reasonable man standard insofar as it excuses her conduct. Effectively, this justifies killing in self-defense and opens the door for any women suffering from battered woman's syndrome to kill her batterer without imminent provocation. Being forced to reconcile the objective reasonable man standard with the subjective reasonable battered woman standard often results in confusion for the jury.

Lauren Zykorie, Note, *Can a Domestic Violence Advocate Testify as an Expert Witness? Follow the ABC's of Expert Testimony Standards in Texas Courts: Assist the Trier of Fact, Be Relevant and Reliable, Credentials Must be Established,* 11 TEX. J. WOMEN & L. 275 (2003)

This note explores the rules of evidence relating to admissibility of victim expert testimony on domestic violence. The author argues that this type of testimony can provide prosecutors and defense attorneys with a valuable tool in their cases and that victim expert testimony is not inferior to traditional expert testimony. Rule 702 of the Federal Rules of Evidence must be satisfied and as a result, practitioners must provide the precedent and standard as support when using the testimony. The testimony must assist the trier of fact and must be qualified on the basis of knowledge, training, skill or education. The testimony must be connected to the pertinent inquiry of the case and must be properly applied to the facts at issue.

EDUCATION

Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351 (2003)

Several studies show that teen violence is becoming a serious problem. The author argues that school districts must address the rising teen violence rate by educating the students, staff and parents on the particulars of teen dating violence and by developing a system for detecting probable victims of abuse as well as developing a system to deal with batterers and their victims. The educational system must also take an active role in persuading their respective communities to participate in this process and provide assistance when necessary. Also, educating today's teens about the social, legal and personal consequences of violence might reduce the rates of domestic violence cases among adults. Failure to address this problem is a breach of the school's duty to educate and protect the best interests of their students.

Karen Lim, Note, *Freedom to Exclude After* Boy Scouts of America v. Dale*: Do Private Schools Have a Right to Discriminate Against Homosexual Teachers?*, 71 FORDHAM L. REV. 2599 (2003)

Should parental or state interests prevail with regard to the education of children? Years after the *Boy Scouts of America v. Dale* decision, the debate over private school's right to refuse to employ homosexual teachers without state intervention is still going strong. There are conflicting views on the interests of parents, the state and the child with regard to the impact on the education of children. The author argues that the state's compelling interests in employment and education should prevail over the private school's freedom to exclude teachers based upon their sexuality.

Sara Osborne, Comment, *These Are Not Our Rules: A Public Interest and Women Oriented Law School to Improve the Lives of Women Both Within and Outside the Legal Profession*, 46 HOW. L.J. 549 (2003)

Florida opened two new public law schools in 2002 for the purpose of advancing the needs of Florida's black and Hispanic populations. This note argues that this approach can serve as a model to create a law school devoted to women's issues that will produce lawyers who will serve as advocates for women. However, the author rejects the idea that an all female law school would best accomplish this goal. The author notes that women need zealous advocates of both sexes who are willing to pursue public interest careers.

ELDERCARE & END OF LIFE

Paige Ingram Castaneda, Comment, *O Brother (or Sister), Where Art Thou: Sibling Standing in Texas,* 55 BAYLOR L. REV. 749 (2003)

The author argues that minor and adult half siblings who want to remain together should have legal standing to petition the court for visitation if the parents divorce or if the biological parent dies. The article analyzes the significance and scope of the Texas Family Code Section 153.433 and advocates that the Code include an amendment allowing siblings legal standing to sue for visitation rights. The author also compares the Texas Grandparent's Access Statute with the Washington statute analyzed in *Troxel v. Granville.* The author also explains that although the proposed amendment will grant a sibling the right to sue for visitation, it does not guarantee that right. The court must keep the child's best interests in mind and apply the presumption that a fit parent acts in the best interest of their children. Ultimately, the determination to grant visitation is left to the courts.

Jennifer R. Granchi, Comment, *The Wrongful Birth Tort: A Policy Analysis and the Right to Sue for an Inconvenient Child,* 43 S. TEX. L. REV. 1261 (2002)

This comment evaluates the constitutionality and legal efficacy of the wrongful birth tort cause of action in relation to the Americans with Disabilities Act ("ADA"). The author argues that the wrongful birth tort is based on a faulty legal analysis that is incompatible with the present congressional policy of removing barriers from the disabled, which is stated in the ADA. The author argues that although the courts use *Roe v. Wade* to support their decisions in favor of the parent petitioners, the reasoning does not provide a sufficient legal theory to support a parent's cause of action for the birth of a planned pregnancy that produces a defective child. The author also examines the moral problems that arise when a parent is given the right to choose to terminate a pregnancy on the basis of genetic defect or physical characteristics.

HISTORY & CULTURE

Jeffery S. Adler, *"I Loved Joe, But I Had To Shoot Him": Homicide By Women In Turn-Of-The-Century Chicago,* 92 J. CRIM. L. & CRIMINOLOGY 867 (2002)

Between 1875 and 1920, the City of Chicago experienced an unprecedented phenomenon- the largest rise of homicidal women in its history. The author opines that this was due to two important shifts in gender roles. The first was that white women were increasingly resisting abusive husbands or lovers and thus resorted to lethal force as a defensive mechanism. The second reason for the record rise was due to African-American wives, tired of racial discrimination, living in poverty, and struggling to preserve the family unit, killing husbands out of their general frustration caused by their environment. The author concludes by noting that the violence did not signal a shift in social or gender equality for females.

Kate E. Andrias, *Gender, Work, and the NAFTA Labor Side Agreement,* 37 U.S.F. L. REV. 521 (2003)

NAFTA has had an impact on women, even though this impact has not been greatly examined. In 1994, the United States Canada, and Mexico signed a side agreement to NAFTA called the North American Agreement on Labor Cooperation (NAALC), which included specific directives aimed at women workers. The author argues that while theoretically, NAALC offers women a way to demand effective enforcement of gender discrimination and labor laws, the truth is that even when violations have been discovered, severe structural flaws in NAALC have prevented any serious change. This article also states that women's groups have not taken advantage of the NAALC provision on unequal pay and gender discrimination. Although women's rights groups have taken up the labor issue in the past few years, there is still great progress to be made. The author argues that women need to effectuate their right to organize and bargain collectively, gain economic and social benefits in the workplace and, more philosophically, to preserve the democratic process.

Ruth Bader Ginsburg, *Speech: The Supreme Court: A Place for Women,* 32 SW. U. L. REV. 189 (2003)

This speech by United States Supreme Court Justice Ruth Bader Ginsburg, describes the history of women who have significantly influenced the development of the United States Supreme Court. Justice Ginsburg discusses not only the justices themselves, but also the wives of some of the early justices. The speech also details the long struggle for women to become law clerks and the first justices who took a chance in hiring these women. She goes on to discuss how the hiring of the first women law clerks not only paved the way for women to sit on the federal bench, but to also have a profound impact on jurisprudence.

Sen. Joseph R. Biden, Jr., *What About the Girls? The Role of the Federal Government in Addressing the Rise in Female Juvenile Offenders,* 14 STAN. L. & POL'Y REV. 29 (2003)

Although juvenile crime has seen a dramatic drop in the last ten years, the number of female offenders is increasing. This article describes what is known about girls in the juvenile justice system today, such as the ethnicity of the offenders, the crimes committed, and what is being done to help them. The author highlights several federal laws and programs that target female juvenile delinquents to determine their particular needs. These programs include the Juvenile Justice and Delinquency Prevention Act, the Runaway and Homeless Youth Act, and the Violence Against Women Act. The goal is to help female juvenile offenders once they have entered the juvenile system and to reduce the overall frequency of female juvenile offenders.

Amy Leigh Campbell, *Raising the Bar: Ruth Bader Ginsburg and the ACLU Women's Rights Project,* 11 TEX. J. WOMEN & L. 157 (2002)

This article explores the impact that Justice Ruth Bader Ginsburg had on American constitutional law between 1971-1980. During this time, Ginsburg founded and was general counsel to the American Civil Liberties Union's Women's Rights Project. The author explores Ginsburg's contributions to the legal fabric of the Supreme Court, from how she convinced the Court to adopt the "heightened scrutiny" test for gender-based classifications to her efforts to get the Supreme Court to change its views on gender equity. The author also follows Ginsburg's perfect case of "strict scrutiny" in *Reed v. Reed,* where the divorced mother, first to file to be administrator to her son's estate, was nevertheless barred from doing so by the Idaho Code, which blatantly favored men over women. The article gives

the reader a comprehensive insight into Justice Ginsburg's efforts to overcome gender inequality.

Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L.J. 259 (2003)

This article examines the state's role in the protection of children. More specifically, by focusing on the government's historical intentions, the author posits that Congress erred by relaxing requirements of reasonable efforts for the preservation of families. As a result of not providing states with sufficient funds or standardizing reasonable efforts, the author argues that states are left to develop their own statutes. The article evaluates the array of state statutes and case law that demonstrates the federal government's failure to follow up on its original methods of child protection. The author concludes with recommendations to improve the preservation of families such as formally enacting guidelines, model statutes and definitions, and requiring states to prove they have made reasonable efforts before terminating parental rights.

Dominiek Delporte, *Precedents and the Dissolution of Marriage Agreements in Ming China (1368-1644)*, 21 LAW & HIST. REV. 271 (2003)

After a period of Mongolian rule in China, the first emperor of the Ming Dynasty, T'ai-tsu, declared an imperial decree establishing the Ming Code, a series of laws that was intended to remain unchanged for the duration of the dynasty beginning in 1368. This article examines how the Ming dynasty incorporated changes or "precedents" into the Ming Code that provided guidelines for the dissolution of marriage and engagement and for the distribution of marital assets and dowries. Further, the article explores the problems the government encountered with the enforcement of these precedents. The author concludes that the precedents that evolved during the Ming dynasty came about as a result of judicial practice reacting to the constraints of the existing Ming Code.

Ariela R. Dubler, *In the Shadow of Marriage: Single Women and the Legal Construction of the Family and the State*, 112 YALE L.J. 1641 (2003)

The author explores the mistaken belief that healthier marriages would alleviate the current rates of poverty suffered by women. Supporters of this view believe that if men would provide for the financial needs of their wives, it would abate the strain on the states that these women currently represent.

The article focuses on the relationship between marriage and dower, its influences on early law and how the idea that marriages reduce poverty is misplaced. The author details how ideological functions of marriage have been extended to define and regulate the rights of unmarried women and their relationship to the state. The article also describes how some women live in "marriage's shadow" (widows, unmarried women) in order to demonstrate legal regulation for women living outside of marriage, and describes the decline of dower. The author argues that as long as marriage plays a mediating role in the minds of lawmakers, it will remain incompatible with the notion of sexual equality.

Karen Henry, Comment, *Everyone Knows Men and Women are Different, So What?*, 32 SW. U. L. REV. 335 (2003)

While the Supreme Court has supported a general right to procreate, it has yet to rule on whether this right applies to prisoners who wish to have children while incarcerated. This comment examines two cases in the eight and ninth circuits where prisoners were denied the ability to collect semen to impregnate their wives. There is a question as to what policies support the denial of procreation for these prisoners and what rights the prisoners have with respect to artificial insemination. The author concludes that the right to procreate cannot actually be extended to a right to artificial insemination, so the constitutional analysis is not necessary in these cases.

Carolyn M. Janiak, Note, *The "Links" Among Golf, Networking, and Women's Professional Advancement*, 8 STAN. J.L. BUS. & FIN. 317 (2003)

This note addresses the gender gap in high-level positions in the business and legal fields. In particular, the author examines how golf has become a powerful tool for business networking among professionals. Until recently, golf related networking was primarily done by men, however, the increase in professional women taking on the sport has brought to the forefront how women are discriminated against in the sport of golf. The Augusta National Golf Club's reluctance to invite women as members is just one example of how golf is a male-dominated culture in which women are treated as second-class citizens. The author believes this inequality has contributed to the professional gender gap and she calls for social pressure and corporate responsibility to put an end to the discrimination women face on the golf course and in the workplace.

Margaret Montoya, *Speech: Un/Braiding Stories About Law, Sexuality and Morality*, 24 CHICANO-LATINO L. REV. 1 (2003)

This is an essay based on an earlier speech that the author gave before the National Association of Chicana/Chicano Studies. The author discussed military recruitment at law schools and the conflict that arises with the military's "Don't ask, don't tell policy?" and the Solomon Amendments which require law schools to allow military recruiters on campus or risk losing federal funding. The author argues that this policy discriminates against gay, lesbian, bisexual and transgendered students. The author also argues that energetic activism on a personal level is needed to overcome prejudice and the author discusses the changes that a transgendered student brought to the author's law school. Finally, the author discusses a controversial painting by artist Alma Lopez and pledging her support for the artist, because of her courage.

Jennifer Ward, *Snapshots: Holistic Images of Female Offenders in the Criminal Justice System*, 30 FORDHAM URB. L.J. 723 (2003)

This article examines the increasing number of female criminal offenders and the role that gender, race and economic status play when these offenders are incarcerated. The author argues that women are treated more harshly than men for the same crime because they have not only broken a law, but a code of gender behavior. Additionally, the author notes that being poor and African-American, Hispanic or Native American puts a female offender at a significant disadvantage when going through the criminal justice system. Finally, the author discusses the need for more programs to reduce female offending and the need for more studies on female offenders focusing on sources such as whether physical, sexual or drug abuse are factors.

INTERNATIONAL LAW & HUMAN RIGHTS

Rachel J. Avery, Comment, *" Killing Kids Who Kill": An International Perspective on the Juvenile Death Penalty in the United States,* 7 UCLA J. INT'L L. & FOR. AFF. 303 (2003)

This comment examines the controversial stance the United States has taken through its continued support of the imposition of the death penalty on juvenile offenders. Though international custom dictates that the execution of juvenile offenders is a human rights violation, the United States is one of the few countries that continue to support the practice. The author explains that the United States has particularly come under fire because of the perceived conflict between the role of the United States as a defender of human rights internationally, and the concurrent failure of the United States to comply with the terms of international treaties such as the International Covenant on Civil and Political Rights and the United Nations Convention on the Rights of the Child, which provide that capital punishment shall not be imposed on those whom committed the crime when they were less than eighteen years of age.

Jacqueline Barrett, Comment, Nguyen v. INS*: Are Sex-Based Classifications in Citizenship Laws Really Constitutional?,* 16 TEMP. INT'L & COMP. L.J. 391 (2002)

In 2001, the United States Supreme Court upheld the constitutionality of 8 U.S.C. § 1409, which allows for different standards in the establishment of citizenship for children born to unwed parents based on the gender of the parent that was an American citizen. This gender-based distinction violates Equal Protection under the Fifth Amendment Due Process Clause of the Constitution. The Court improperly refused to evaluate gender-neutral alternatives, which should have been done under the standard previously established by the court for potential equal protection encroachments known as "heightened scrutiny analysis." Properly following this analysis would have led the court to decide differently.

Curtis A. Bradley, *The Juvenile Death Penalty and International Law,* 52 DUKE L.J. 485 (2002)

The United States is one of seven nations that have executed juvenile offenders since 1990. The other nations, the Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia and Yemen, have weak human rights

stances. According to the author's analysis, international pressure for the United States to cease imposing the death penalty on juveniles will unlikely have an effect on the U.S. legal system. The author points out weaknesses in the reasoning of the international law arguments against the United States' use of the death penalty on juveniles. For instance, the United States expressly reserved the right to impose capital punishment upon juveniles in treaties such as the International Covenant on Civil and Political Rights. The author does not take a personal stand on juvenile executions, but he clearly articulates that the United States must deal with the issues surrounding the juvenile death penalty by constitutional processes and not international law.

Norman T. Deutsch, Nguyen v. INS *and the Application of Intermediate Scrutiny to Gender Classifications: Theory, Practice, and Reality*, 30 PEPP. L. REV. 185 (2003)

The article discusses the application of intermediate scrutiny to gender classification. The author argues that the line seems to be blurred between intermediate scrutiny and rational basis review and strict scrutiny. *Nguyen v. INS* is the only gender case where all nine Supreme Court justices applied intermediate scrutiny yet the court could not agree on its proper application. The author argues that intermediate scrutiny is the equivalent of rational basis review because in gender cases, the basic holding is that it is rational to make classifications based on realistic differences between men and women but irrational to base classifications on stereotypes. This determination is influenced by each judge's personal view that renders useless the verbalization of the standard of review.

Jung Kim, Comment, Nguyen v. INS*: The Weakening of Equal Protection in the Face of Plenary Power*, 24 WOMEN'S RTS. L. REP. 43 (2002)

In a recent decision by the Supreme Court, *Nguyen v. INS*, the Court failed to follow a long line of Fifth Amendment equal protection precedent. In failing to adhere to the established procedure, the court upheld a citizenship law that erroneously supports an archaic view of the roles of men and women and shows a willingness to allow for improper discrimination toward children born out of wedlock. If Congress is going to enact laws that encroach on equal protection, it is the Court's job to keep sex-based discrimination within the proper confines of the Constitution, a job that they failed to do in this case.

Robbi Louise Miller, *The Quiet Revolution: Japanese Women Working Around the Law*, 26 HARV. WOMEN'S L.J. 163 (2003)

Though Japanese women are not traditionally known for their feminist efforts, there have been subtle but significant strides among Japanese women in recent years in the employment arena due in part to the 1985 Equal Employment Opportunity Law and subsequent revisions. This article postulates that the decline of the marriage minded attitude of young women is a major factor leading to the advancement of Japanese women in the employment arena, and that as the viable workforce of Japan ages, the demographics of the nation will shift to create a greater demand for Japanese women to join the workforce in more substantial roles. The author suggests that as a result of this need for a younger, more educated workforce, Japanese employers and the government will need to respond to Japanese women by offering greater incentives and concessions to satisfy female employees.

Karen Musalo, *Revisiting Social Group and Nexus in Gender Asylum Claims: A Unifying Rationale for Evolving Jurisprudence*, 52 DEPAUL L. REV. 777 (2003)

United States' jurisprudence is ambiguous on the refugee status of people who claim persecution because of gender. Two cases before the U.S. Board of Immigration Appeals reached contrary conclusions and Attorney General Janet Reno vacated the later case. The author suggests that the United States should follow other nations, such as the United Kingdom, New Zealand and Australia, who grant refugee status to those who suffer from persecution because of their gender. The author advocates that the United States also adopt a bifurcated approach to determining refugee status, which takes into account the motivations of the persecutor and the societal and state implications. The author also discusses the decisions of tribunals of the United Kingdom, New Zealand and Australia and recommends that America follow their lead to adopt a more liberal and humanitarian standard for review of refugee standing.

Mary Romero, *Nanny Diaries and Other Stories: Imagining Immigrant Women's Labor in the Social Reproduction of American Families*, 52 DEPAUL L. REV. 809 (2003)

The author argues that immigrant women remain an important part of many American families despite constantly being blamed for many of the problems in the United States. The article criticizes books such *as The Nanny Diaries* for portraying an inaccurate image of the childcare worker and the

choices she faces, thus reducing the significance of immigrant women who fulfill childcare needs in the United States. The author suggests that labor regulation be extended to include the homes where these immigrant women work and that protection laws cover all resident workers, regardless of their immigration or citizen status.

David L. Tubbs, *Conflicting Images of Children in First Amendment Jurisprudence*, 30 PEPP. L. REV. 1 (2002)

The United States Supreme Court's views on the First Amendment have changed significantly over the years. These changes are especially evident in matters pertaining to children. In many ways, the Court's contemporary views on children are in discord with each other. In matters dealing with separation of church and state, the Court has been adamant that there can be no variation from this separation because of the undue influence that religion may have on children. In matters relating to pornography, the Court has supports the view that children can simply assert the will of an adult and refuse to view potentially scandalous materials.

MARRIAGE

Peter C. Alexander, *Building "A Doll's House": A Feminist Analysis of Marital Debt Dischargeability In Bankruptcy*, 48 VILL. L. REV. 381 (2003)

This article points to a latent bias within the bankruptcy system. Often, bankruptcy judges will discharge an ex-husband's support obligations though gender-based assumptions of the ex-husband and ex-wife. Unless the ex-wife has extraordinarily competent legal counsel she will often lose her alimony, even if it is her primary means of support. The author proposes that the Bankruptcy Code be amended to make marital debt undischargeable. In conclusion, the author states that the Bankruptcy Code is a work in progress and hopes for reform.

Cynthia DeSimone, Comment, *Covenant Marriage Legislation: How the Absence of Interfaith Religious Discourse Has Stifled the Effort to Strengthen Marriage*, 52 CATH. U. L. REV. 391 (2003)

This comment discusses the failure of "covenant marriage, " an elective form of marriage available in some states that makes divorce more difficult to obtain, to attract the expected numbers of applicants, even among religious communities. The author blames two factors for this failure. The first is

state legislatures' failure to attract the support of clergy to the covenant marriage laws. The second is the reluctance of the devout to add a civil burden onto what they feel is a sufficient moral impetus to remain married. In conclusion, the author suggests a greater religious dialogue among clergy and politicians to provide a secular legal framework for the shared goal of strong, stable marriages.

Stephanie Forbes, Comment, *"Why Just Have One?" An Evaluation of the Anti-Polygamy Laws Under the Establishment Clause,* 39 HOUS. L. REV. 1517 (2003)

Laws against polygamy were first passed during Abraham Lincoln's presidency. The author contends that one such law, the Morrill Act, upheld by the Supreme Court in 1878 by the decision *Reynolds v. United States,* targets the Church of Jesus Christ of Latter-Day Saints' and Mormon religious conduct. According to the author, these laws are antithetical to the purpose of the Establishment Clause, which prevents the government from supporting a preference for one religion over another. In addition, because of growing tolerance of alternative lifestyles and a hands-off approach to prosecution of polygamy it is arguable that there is no secular purpose to the law. As a result of this the author says, the Act would not survive the facial neutrality and general applicability standards used to decide Establishment Clause cases by today's Supreme Court.

Bruce V. Nguyen, Note, *Hey, That's My Wife!—The Tort of Alienation of Affection in Missouri,* 68 MO. L. REV. 241 (2003)

This note discusses the decline in use of the tort of alienation of affection. Alienation of affection was originally a medieval Germanic innovation. The tort was used to preserve an unbroken line of parentage without requiring the killing of one's spouse's lover. Today, it is arguably only a way for a jilted spouse to get revenge. This theme is noted in the author's examples, which show husbands suing their wives' workplaces for interoffice affairs. The author concludes by noting that the tort of alienation of affection no longer even promotes marriage, and encourages its abolition.

Joanna L. Radbord, *Marriage for Same Sex Couples: A Wedding Story,* 15 W.R.L.S.I. 15 (2003)

The author writes the article from the unique position of having helped same-sex couples get equal benefits under the law and now serving as

co-counsel for eight same-sex couples seeking equality in the form of a legal declaration that they can marry. She is also a married lesbian. The author explains that under Canadian law, the test for whether a law is discriminatory is whether it would have a negative impact on the psychological integrity of a reasonable person in the same situation. The author argues how denying same-sex marriage would have such a negative effect. She goes on to illustrate the meaning and effect marriage has on society through her own familial experience. The author's wife's parents were initially opposed to their daughter's plans to marry, but after witnessing the ceremony, her parents' minds were changed about the reality and worth of their daughter's relationship. Thrilled with the positive reaction of family and friends to her marriage, the author hopes the government will offer same-sex couples equal dignity, respect and recognition.

Maurizio Romano, *"Do You Take This Man to Be Your Lawfully Wedded Husband?" A Case of Form Following Substance*, 15 W.R.L.S.I. 3 (2003)

After the legislature gave same-sex couples substantially the same legal benefits and obligations as married couples, a recent decision in the Canadian courts unanimously rejected that country's common law definition of marriage. The definition was limited to a man and a woman, and the author asserts that it is discriminatory and reinforces negative stereotypes about the worth of gay relationships. However, the court could not agree on a remedy. The author argues that the "form" of marriage should be redefined to include same sex couples, strengthening the position of marriage in society and aligning the definition with a modern idea of marriage, which rejects the idea that marriage is solely for procreation. The author adds that same-sex marriage would result in administrative convenience for the state. Finally, the author says that extending the definition is the only solution that will be found constitutionally valid.

PORNOGRAPHY

Mitchell P. Goldstein, *Congress and the Courts Battle Over the First Amendment: Can the Law Really Protect Children from Pornography on the Internet?*, 21 J. MARSHALL J. COMPUTER & INFO. L. 141 (2003)

The author of this article traces the development of pornography laws and the issue of obscenity from the *Roth* case in 1957 to the present, as the Supreme Court and Congress' struggle to define the constitutional parameters of an increasingly complex area of the law. The article draws attention to the difficulty in applying the traditional Supreme Court tests and

remedies to pornography on the Internet, where community standards of obscenity are not readily identifiable and the technology is readily adaptable to overcome judicially imposed barriers. The author proposes that the Supreme Court draw up a new test that is not geographically determinative to address Internet pornography. The author also calls on Congress and society as a whole to emphasize educating children in order to combat this type of criminal activity.

Dina I. Oddis, Note, *Combating Child Pornography on the Internet: The Council of Europe's Convention on Cybercrime*, 16 TEMP. INT'L & COMP. L.J. 477 (2002)

The author examines the Council of Europe's Draft Convention on Cybercrime, published and adopted in 2001, as a set of standards for regulating the child pornography industry on the Internet. The author suggests that the containment remedies proposed in the Convention are strict, but universally applicable and well suited to an area of the law where rapid technological advances make it difficult for the law to keep pace. The article uncovers a widespread phenomenon of child pornography clubs on the Internet whose messages and images vanish quickly and are difficult to trace. Despite the many legal challenges the Internet poses, the author concludes that the Convention on Cybercrime succeeds in maintaining the delicate balance between individual freedom of expression and the public health and morals of a democratic society.

Robin Schmidt-Sandwick, Comment, *Supreme Court Strikes Down Two Provisions of the Child Pornography Prevention Act (CPPA), Leaving Virtual Child Pornography Virtually Unregulated*, 79 N.D. L. REV. 175 (2003)

This is a comment on the case, *Ashcroft v. Free Speech Coalition*, where the Supreme Court struck down two provisions of the Child Pornography Prevention Act (CPPA) as unconstitutional under the First Amendment. The CPPA is a federal statute enacted in 1996 intended to curb the production of computer-generated images of child pornography. In adjudicating the legality of the Act, the Supreme Court held that the language in two of the provisions in the CPPA was overly broad and could arguably have censored many lawful acts of free speech, such as mainstream movies and Renaissance paintings. The author analyzes the legal framework and historical background of the CPPA, the Supreme Court's reasoning in each of its opinions, and the potential effect this decision could have on the future enforceability of both state and federal child pornography laws.

REPRODUCTIVE RIGHTS & TECHNOLOGIES

Allison C. Ayer, Comment, *Stem Cell Research: The Laws of Nations and a Proposal for International Guidelines*, 17 CONN. J. INT'L L. 393 (2002)

This comment examines stem cell research and recent legal models developed to govern that research. The author discusses the ethical concerns of stem cell research, which in large part revolve around the question of when an embryo achieves independent moral status and should have the same rights as all living people. Legal guidelines that were developed in the United States, the United Kingdom and Australia to ensure that stem cell research would be conducted in an ethical manner are surveyed and compared. While the United Kingdom and Australia issue licenses for stem cell research, the United States, in keeping with its policy of prohibiting federal funding for stem cell research, does not issue such licenses. This policy means that private research laboratories go essentially unregulated. The author concludes with a detailed proposal for international guidelines for stem cell research.

Jeffrey R. Botkin, *Prenatal Diagnosis and the Selection of Children*, 30 FLA. ST. U. L. REV. 265 (2002)

The author examines the medical profession's responsibility to provide prenatal diagnostic information. As diagnostic technology becomes increasingly sophisticated, comprehensive biological information can be obtained which gives parents the power to select their children. The author questions which standard should govern prenatal diagnostic tests. He determines that the most all-inclusive standard empowers each individual woman to decide which tests to pursue, but that this liberal approach has pragmatic limitations and raises the possibility that parents will misuse the information for selection of sex or other socially desirable traits. He questions where and how to draw the line between tests that should be offered for prenatal diagnosis and those that are not necessary. The author concludes that the "line" should be drawn as a matter of professional standard, not as a matter of law or regulation.

Jason R. Braswell, Note, *Federal Funding of Human Embryo Stem Cell Research: Advocating A Broader Approach*, 78 CHI. -KENT L. REV. 423 (2003)

This note discusses the importance of federal funding to human embryo stem cell research and concludes that the government should take a broader approach to the issue. President Bush's plan grants federal funding for research on certain human embryo stem cell lines that existed prior to August 9, 2001, along with other criteria. Only seventy-eight human cell lines meet President Bush's criteria for funding creating obstacles to the furtherance of research. The author suggests that the limited number of embryo stem cell lines inflates the value of the property rights of those lines. Further, the limitation creates an obstacle to the development and production of diverse transplantation products. The author urges that while Bush's plan is a step in the right direction more must be done.

J. Frederick Miller, Jr., Comment, *Promoting Life?: Embryonic Stem Cell Research Legislation*, 52 CATH. U. L. REV. 437 (2003)

According to the Catholic Church life begins at conception and research that destroys embryos is not a legitimate pursuit of federal law. However, the author concludes that the Responsible Stem Cell Research Act of 2001 is acceptable since it would allow research in specific stem cells not derived from the destruction of embryos. Since research on such stem cells has already proven effective in treating disease, the Act would increase the budget for the research and establish a donor bank to further this positive research.

John Miller, Comment, *A Call To Legal Arms: Binging Embryonic Stem Cell Therapies To Market*, 13 ALB. L.J. SCI. & TECH. 555 (2003)

This comment discusses the importance of embryonic stem cell research and the negative effect the patent has on promotion of research. The author points out that the difficulty in obtaining licensing agreements will deter research and competition in this field. Extensive research and competition is desirable to encourage the marketing of life-saving products; however, the patent doctrine discourages others from researching, developing and marketing certain stem cell therapies. The patent acts as a threat to the commercial development of certain stem cell products that would potentially be life-saving. The author concludes that courts should narrow the scope of the patent.

Kelly M. Plummer, Comment, *Ending Parents' Unlimited Right To Choose: Legislation Is Necessary To Prohibit Parent's Selection of Their Children's Sex and Characteristics*, 47 ST. LOUIS U. L.J. 517 (2003)

Advances in medical technology currently allow parents to choose the sex of their child prior to conception. Further, medical technology may soon allow parents to choose which traits to instill in children prior to conception. The author of this comment argues that legislation is needed to block parents from using reproductive technology in these ways. The author also asserts that previous Supreme Court jurisprudence related to family and conception does not apply to preconception decisions. According to the author these sorts of preconception decisions raise different concerns, issues, rights and harms that the Court has not yet addressed.

Teresa Stanton Collett, *Fetal Pain Legislation: Is It Viable?*, 30 PEPP. L. REV. 161 (2002)

The author reviews the constitutionality of two types of statutes that regulate abortions and resulting fetal pain. The first type of statute is prohibitive, it restricts or prohibits particular methods of abortion in an attempt to minimize fetal pain. The second type of statute, an informed consent statute, requires women be informed of the possibility of fetal pain. The author argues that the state's interest in limiting fetal pain is substantial and that informed consent statutes are more likely to be found constitutional. These statutes must be carefully drafted however, to avoid vagueness challenges.

Denise Stevens, Comment, *Embryonic Stem Cell Research: Will President Bush's Limitation on Federal Funding Put the United States at a Disadvantage? A Comparison Between U.S. and International Law*, 25 HOUS. J. INT'L L. 623 (2003)

Embryonic stem cell research is an area of immense growth where the law may either shape the direction in which the research goes or follow it. This comment compares U.S. law to international law to distinguish how several countries are handling this emerging and contentious topic and how different laws have impacted their respective country's progress in stem cell research. The author explores the controversy in the United States of when life begins with regard to embryonic development and issues regarding cloning and how that has impacted legislation. The comment then describes what legal restrictions other countries, including Great Britain, Australia and Germany, have put on stem cell research. The author concludes that laws limiting the use of embryos in research (such as no federal funding for stem

cell research) will put the United States at a technological and economic disadvantage. These limitations will also increase the disparity between national and international laws governing embryo usage in research and will lead to a loss of ethical oversight of stem cell research.

SEX CRIMES

Nicole Yell, Comment, *The California Sexually Violent Predator Act and The Failure to Mentally Evaluate Sexually Violent Child Molesters,* 33 GOLDEN GATE U.L. REV. 295 (2003)

This comment addresses the growing public indignation that has resulted in the passage of both federal and state laws to combat child molestation. While some laws mandate the notification of community members when convicted child molesters relocate, others provide for civil commitment of child molesters following prison. This comment focuses on the California Sexually Violent Predator Act ("SVPA"). Specifically, the author states that though the SVPA allows for an assessment of the future danger convicted child molesters pose to surrounding communities, it fails to civilly commit the sexually violent predators that threaten the safety of children.

Jennifer Bruno, Note, *Pitfalls For The Unwary: How Sexual Assault Counselor- Victim Privileges May Fall Short Of Their Intended Protections,* 2002 U. ILL. L. REV. 1373 (2002)

This note addresses the privilege of confidentiality between sexual assault victims and their counselors and questions the efficacy of the privilege in light of ambiguous judicial interpretations of confidentiality. Counselors are frequently made available to assist people in sexual assault crises by posing as a victims advocate when speaking to intimidating third parties, such as police officers, forensic examiners and prosecuting attorneys. The statutes conferring a privilege extend to this relationship, the author argues, are too ambiguous thus leaving crucial interpretations of it to the court's discretion. The author suggests that the statutes be amended to limit the types of third party interactions that are covered by privilege. Most importantly, however, the amended statute would leave to the counselor's discretion whether the statute should cover a communication.

Eric S. Janus & Wayne A. Logan, *Substantive Due Process And the Involuntary Confinement of Sexually Violent Predators,* 35 CONN. L. REV. 319 (2003)

The main purpose of commitment laws is the incapacitation of sexually violent predators. While these laws promise treatment to those that need it, thus avoiding Constitutionality concerns, they fail to deliver. The authors advocate treatment for the predators that are entitled to non-punitive conditions of confinement. They urge the court system to push states to deliver on their treatment promise and to intervene if states do not have a compelling reason for failing to provide treatment. The authors argue that treatment is important because once treated, predators can be released from confinement, thus freeing resources, which can be used for other state needs.

Jennifer Ann Smulin, Note, *Protecting Life And Liberty: Constitutional And Necessity Of Civil Commitment Of Sexual Predators,* 52 DEPAUL L. REV. 1245 (2003)

This note argues that the civil commitment of sexual predators is constitutional. The author's conclusion is based on a close reading of the Kansas Sexually Violent Predator Act, which requires a trial to be held to determine if a person is a "sexually violent predator." The author opines that the benefits of civil commitment are two-fold. Civil commitment protects society from sexual offenders and offers treatment to reduce or eliminate their antisocial personality traits. She agrees with the Supreme Court that the commitment's constitutionality should not be questioned for lack of substantive due process since the Kansas Act requires proof of dangerousness as well as mental abnormality or a personality disorder.

Kimberly B. Wilkins, Comment, *Sex Offender Registration and Community Notification Laws: Will These Laws Survive?,* 37 U. RICH. L. REV. 1245 (2003)

This comment discusses the history and evolution of sex offender and community notification laws. In particular, the author explores two recent Supreme Court cases where these laws were challenged as violations of the Ex Post Facto and Procedural Due Process clauses. The author suggests that while the Court failed to find constitutional violations, it left open the question of whether sex offender and community notification laws are proscribed by substantive due process and equal protection concerns. The author posits that sex offenders forfeit their privacy rights when they commit heinous sexual crimes and that the Supreme Court will continue to uphold

these laws.

SEXUAL IDENTITY

Stephen Clark, *Same-Sex But Equal: Reformulating the Miscegenation Analogy*, 34 RUTGERS L.J. 107 (2002)

The article looks at the argument against homosexual discrimination, which relies on drawing a parallel between anti-miscegenation laws and discrimination against same-sex couples. While refusing to abandon the basis of this argument, the author analyzes the shortcomings of analogizing race and sex. To draw out the argument's weaknesses, the author examines historical race-discrimination cases as well as more recent same-sex discrimination cases where this argument succeeded or failed. He also explores the strongest counterarguments against making the leap between race and sex. The author concludes that the analogy can be of use but it needs to be restructured in light of these counter arguments to be most successful.

Janine M. deManda, Comment, *Our Transgressions: The Legal System's Struggle With Providing Equal Protection to Transgender and Transsexual People*, 71 UMKC L. REV. 507 (2002)

Transgendered individuals are forced to defend their sex to society throughout their whole lives, however, the legal system has begun to accept their status. The legal system is the most advantageous means for a disadvantaged class to achieve greater protections. There are more steps to creating societal equality for transgendered people and the courts are helping society move in the correct direction.

Jessica A. Hoogs, Note, *Divorce Without Marriage: Establishing A Uniform Dissolution Procedure For Domestic Partners Through A Comparative Analysis Of European And American Domestic Partner Laws*, 54 HASTINGS L.J. 707 (2003)

This note compares the current dissolution procedures for same-sex couples in California, Hawaii and Vermont with equivalent European statutes. Of the three states that have established domestic partner registries, only Vermont treats the dissolution of same-sex partnerships identically to divorce for married couples. Neither California nor Hawaii have any substantive procedures for addressing child custody and support, property division and maintenance. In contrast, Denmark, Norway, Sweden, Iceland,

the Netherlands, France and Belgium generally give same-sex couples the same benefits and obligations as married couples, including spousal support upon dissolution. In order to protect the economic and property rights of lesbians and gay men, as well as rights respecting their children, the author argues that states should extend the obligations of same-sex couples upon dissolution by requiring them to undergo a formal dissolution proceeding in the court system.

Anna Kirkland, *Victorious Transsexuals in the Courtroom: A Challenge for Feminist Legal Theory*, 28 LAW & SOCIAL INQUIRY 1 (2003).

Can a feminist in the legal field who wants to represent transgendered clients, really know what is best for her client just by polling transsexuals or gender activists? There is a great potential for conflict when a feminist makes legal arguments on the behalf of their transgendered clients. Feminists fundamentally do not understand or fully believe in the mystical inner truth associated with transsexualism. The conflict surrounding feminism and transsexuals is most prevalent when a client is seeking sexual reassignment surgery. Transsexuals have the right to receive unbiased legal representation regarding their sexual reassignment surgery.

Samantha J. Levy, Comment, *Trans-Forming Notions of Equal Protection: The Gender Identity Class*, 12 TEMP. POL. & CIV. RTS. L. REV. 141 (2002)

This comment addresses the fact that transsexuals are increasing their presence in the courts and legal community. The author suggests that transsexuals and transgendered individuals should be viewed along a continuum that challenges traditional notions of gender. The current legal descriptions of sex, sexual orientation and disability fail to adequately describe "trans" people and their needs. Currently, there are no laws that protect transgendered people within Federal anti-discrimination laws. Moreover, the author states that the Americans with Disabilities Act explicitly excludes these individuals from protection under its power. The author argues that the best way to oppose "trans-discrimination" is to create a separate class with its own protections, a "gender-identity" class.

Christopher Rizzo, *Banning State Recognition of Same-Sex Relationships: Constitutional Implications of Nebraska's Initiative 416*, 11 J.L. & POL'Y 1 (2002)

The article examines Nebraska's Initiative 416, an amendment to the state constitution passed by popular vote in 2000. This amendment states that no same-sex union will be recognized in Nebraska. The author analyzes the importance of the amendment's second sentence, which goes beyond other states' similar laws by specifically excluding recognition of same-sex civil unions and domestic partnerships. Using this language as a guide, the author explores the possible implications of this amendment through the Full Faith and Credit and the Contract Clause of the United States Constitution. The author concludes that the language should be redacted because it violates the United States Constitution by extending beyond the parameters of marriage.

Ruthann Robson, *Assimilation, Marriage, and Lesbian Liberation*, 75 TEMP. L. REV. 709 (2002)

Assimilation describes the normalization process into society of those with minority sexual identities, including homosexuals and transsexual. The issue of same-sex marriage is among the most controversial issues because of its symbolic and tangible benefits it can often provide. Marital status can involve serious problems for sexual minorities because of the issues of children and child rearing are often coupled with marriage. The author argues that issues of marriage and parenting need to be taken more seriously in regards to advocacy, litigation and scholarship.

Josephine Ross, *Riddle For Our Times: The Continued Refusal to Apply the Miscegenation Analogy to Same-Sex Marriage*, 54 RUTGERS L. REV. 999 (2002)

Massachusetts's law regarding same sex marriages is currently under examination by the courts. The Attorney General of Massachusetts has made a statement encouraging the limitation of the reach of *Loving v. Virginia*, but not expanding the interpretation of sex discrimination to include same-sex marriage. Under Massachusetts law, the scope of sex discrimination will be pivotal in the decision to allow same sex marriages in the state.

Christopher D. Sawyer, Note, *Practice What You Preach: California's Obligation To Give Full Faith And Credit To The Vermont Civil Union*, 54 HASTINGS L.J. 727 (2003)

In this note, the author considers whether the federal Defense of Marriage Act (DOMA) and California's "little DOMA," Proposition 22, preclude the state from giving effect to same-sex civil unions created in Vermont. While DOMA nullifies a state's obligation to give full faith and credit to a same-sex marriage created in another state, it may not impede recognition of same-sex civil unions in California for three reasons. A civil union is not a marriage; a civil union may not be sufficiently "treated as marriage" to bring it within DOMA's scope; and DOMA removes California's federal obligation to give full faith and credit but does not preclude recognition of such unions. California's DOMA likewise refers only to same-sex marriage, not same-sex civil unions. Because California's constitution, domestic partnership scheme and case law demonstrate a public policy of equal protection for its homosexual citizens, the author argues that California courts must afford full faith and credit to the Vermont civil union statute.

WORKPLACE DISCRIMINATION & HARRASSMENT

Bryan Garner, Note, *Enforcing Civil Rights Against the States: An Analysis of the Pregnancy Discrimination Act of 1978 Under the Court's Section 5 Jurisprudence*, 22 REV. LITIG. 711 (2003)

The author creates a hypothetical case where a state worker sues for the failure to include pregnancy in the state's disability insurance program. The note analyzes the chance of success based on the Pregnancy Discrimination Act of 1978 as an enforcement tool of Congress' Section 5 power under the Fourteenth Amendment. In Section 5 litigation, the courts go through a three-step analysis. The biggest hurdle is step one, identifying the scope of the constitutional right at issue. To be successful, the Supreme Court would need to overrule its holding in *Geduldig v. Aiello*, where it concluded that pregnancy discrimination does not constitute gender discrimination. The author argues that should this rather unlikely event happen, the hypothetical suit would likely be successful under the next two steps in the equal protection analysis. The Pregnancy Discrimination Act shows Congress' intent to abrogate state sovereignty and the Act is a congruent and proportional response to discrimination.

Kiera Meehan, Note, *Installation of Internet Filters in Public Libraries: Protection of Children and Staff vs. The First Amendment*, 12 B.U. PUB. INT. L.J. 483 (2003)

Twelve employees of the Minneapolis Public Libraries filed complaints of sexual harassment due to the unlimited Internet access in their branches. The Minneapolis office of the Equal Employment Opportunity Commission ("EEOC") conducted a study that found the library may have created a hostile work environment in violation of Title VII by exposing the employees to sexually explicit material on the computer monitors at Internet terminals. Installing Internet filters was viewed as one potential remedy to the problem. The author discusses the results of the EEOC study, which was conducted in light of Congressional legislation mandating filter installation in libraries. The author stipulates that Internet filters in public libraries amount to censorship and violate First Amendment protection even though they may protect employees from sexual harassment.

Meredith L. Meyers, Comment, *Grades Are No Longer Just For Students: Forced Ranking, Discrimination, and the Quest To Attain a More Competent Workforce*, 33 SETON HALL L. REV. 681 (2003)

Many large companies, in an effort to strengthen their work force, are using the "forced-ranking" system for employee performance appraisals. This system pits one employee against another and inevitably leaves someone out of a job. Many feel that the forced ranking system has a disproportionate effect on certain "protected classes" and thus it has lead to an increase in discrimination lawsuits. However, even if this novel approach can cause potentially discriminatory results, the system is too effective to be completely avoided by employers. The solution for employers seeking to use forced-ranking is to diminish the likelihood of suit by using statistical analysis to ensure that the effects of the appraisals are not creating a disparate effect on protected classes.

Dana Page, *D.C.F.D.: An Equal Opportunity Employer – As Long as You Are Not Pregnant*, 24 WOMEN'S RTS. L. REP. 9 (2002).

The author explores how the Pregnancy Discrimination Act (PDA) and the Americans with Disabilities Act (ADA) do not afford enough job protection to pregnant women. Both acts interpret pregnancy protection using different definitions and at different stages. Using the Washington D.C. Fire Department (D.C.F.D.) to demonstrate this point, the author recalls how an incoming class of D.C.F.D. recruits was told by an interim

Assistant Chief of Operations that they would be terminated if they became pregnant during their probationary year. The author demonstrates bias against pregnant employees throughout the article with examples of workers being told they should seek an abortion if they become pregnant or risk being fired, a direct violation of the PDA. Title VII states that pregnant women are considered disabled until they give birth whereas the ADA does not consider pregnancy to be a disability because it is a temporary condition. Because pregnancy is treated differently under both statutes, it creates a loophole through which employers may fire pregnant employees.

Kelly Cahill Timmons, *Sexual Harassment and Disparate Impact: Should Non-Targeted Workplace Sexual Conduct Be Actionable Under Title VII?*, 81 NEB. L. REV. 1152 (2003)

This article explores whether employees have a sexual discrimination cause of action under Title VII when the workplace contains non-targeted sexual conduct. The author traces the evolution of sexual harassment and discusses the differences between disparate treatment discrimination and non-targeted sexual conduct. While positing that employees should be able to take legal action after non-targeted sexual conduct only if the conduct is particularly egregious, the author analyzes the impact under a disparate treatment theory and a disparate impact theory of discrimination.

Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers who are Discriminated Against on the Job,* 26 HARV. WOMEN'S L.J. 77 (2003)

While many women experience the glass ceiling, other women never get near it because the maternal wall long ago thwarted them. The maternal wall can arise at three points: during pregnancy, motherhood or when the woman begins working part-time. While some have argued that the courts will not be successful in confronting the maternal wall, the author asserts that several recent cases have indicated that courts may be inclined to rule in favor of plaintiffs attempting to move beyond the maternal wall. The author argues for an alternative thinking about caregivers' needs that distinguishes between accommodation and discrimination. Women facing the maternal wall should not frame their claims as a need for workplace accommodation, but rather as incidences of gender discrimination. The author concludes that the recent success of maternal wall plaintiffs will encourage employers to stop their discriminatory practices.