

BIBLIOGRAPHY

**GERONTOLOGY AND THE LAW:
A SELECTED ANNOTATED
BIBLIOGRAPHY: 1999–2001 UPDATE**

COMPILED BY

DIANA C. JAQUE*

JENNIFER S. MURRAY** & JESSICA WIMER***

* Senior Law Librarian—Head of Collection Development and Acquisitions, Gabriel and Matilda Barnett Information Technology Center and The Asa V. Call Law Library, University of Southern California. B.A., 1990, University of Southern California; M.A., 1996, University of Southern California; M.L.I.S., 1999, San José State University.

** Senior Law Librarian—Research and Instructional Services, Gabriel and Matilda Barnett Information Technology Center and The Asa V. Call Law Library, University of Southern California. B.S., 1994, Arizona State University; J.D., 1998, Arizona State University; M.L.S., 2001, University of Arizona.

*** Law Librarian—Research Services, Gabriel and Matilda Barnett Information Technology Center and The Asa V. Call Law Library, University of Southern California. B.A., 1996, Indiana University; J.D., 2000, Indiana University; M.L.S., 2001, Indiana University.

The bibliographers wish to express their gratitude to Michelle Boon, Administrative Assistant, who was solely responsible for the typing of this document. Her competence, dedication, and patience were invaluable in completing this update. We could not have completed this endeavor without her assistance. The bibliographers also would like to thank Charles Miller, Supervising Library Assistant, for his dedication in obtaining the cited materials included herein.

The bibliographers also wish to thank the entire Law Library for their cooperation and support in the completion of this publication. In particular, thanks are owed to Albert Brecht, Associate Dean, Chief Information Officer, and John Stauffer Professor of Law; Brian Raphael, Assistant Director of the Law Library; and Leonette Williams, Associate Director of the Law Library for Collections and Technical Services.

PREFACE

This bibliography serves as the 1999–2001 update to *Gerontology and the Law: A Selected Annotated Bibliography*. The *Gerontology and the Law Bibliography* was first published in the *Law Library Journal* in 1980.¹ Subsequently, six updates to the bibliography were published in the *Southern California Law Review* between the years 1982 and 1999.² The original bibliography and the five subsequent updates provided citations of books, reports, and articles focusing on law-related topics concerning gerontology, the elderly, and aging. Following the format of the sixth update, this seventh update is more specific than its early predecessors in terms of its coverage of topics and types of materials. Like the sixth update, this annotated bibliography provides descriptive annotations that summarize the topics and/or major points discussed in the cited books or articles.

Because of the vast amount of gerontology-related materials published between 1999 and 2001, the bibliography contains only selected pieces of literature. The included sources are comprised of scholarly discussions of legal issues associated with various gerontology-related topics. Therefore, articles that do not discuss both law and gerontology and those that do not provide a scholarly analysis of the topic are excluded. In addition, publications directed toward the general public (for example, self-help publications and articles from popular magazines), book reviews, newspaper articles, and other articles reporting new laws, or other legal developments without sufficient analysis or commentary are excluded. Although some previous updates have included conference proceedings and dissertations, the bibliographers have excluded those materials as well. Further, the bibliography emphasizes gerontology and the law from an American perspective and does not contain foreign-language publications. Yet, some works with an international perspective on gerontology and the law in the United States are included. Finally, new editions of previously published books are included. However, only the most recent edition is included for those with more than one edition published during the time period covered by this update.

This bibliography update also includes two new categories of materials: web sites and congressional documents. The authors have included these new categories because of their value in the legal research process.

1. See 73 L. LIBR. J. 255 (1980).

2. See 56 S. CAL. L. REV. 289 (1982); 57 S. CAL. L. REV. 631 (1984); 60 S. CAL. L. REV. 897 (1987); 64 S. CAL. L. REV. 1675 (1991); 69 S. CAL. L. REV. 287 (1995); 72 S. CAL. L. REV. 1461 (1999).

The included web sites comprise those of the seminal organizations related to aging and the law in the United States. Inherent in the nature of web sites is a constant revision of content and organization, and as a consequence, the bibliographers have decided not to include annotations for the web sites. The included congressional documents comprise those from notable gerontology-related agencies and/or speakers that discuss gerontology issues but do not address a single bill or a specific state or community. Because of the extensiveness of the information contained in the citations to the congressional documents, the bibliographers have decided not to include annotations for these documents.

The bibliographers conducted online database searches periodically from August 2002 through November 2002 and used the following databases for this update:

Ageline (produced by the American Association of Retired Persons; searched via Silver Platter)

Congressional Universe (produced by LexisNexis, a division of Reed Elsevier Inc.)

Journals and Law Reviews (Westlaw database)

Legal Resource Index (produced by Information Access Co.; searched via Westlaw)

Medline (produced by the National Library of Medicine; searched via Ovid Online)

Social Scisearch (produced by the Institute for Scientific Information; searched via ISI Web of Knowledge)

WorldCat (produced by OCLC Online Computer Library Center, Inc.; searched via OCLC FirstSearch)

As with previous updates, the citations in this bibliography do not conform entirely to *The Bluebook: A Uniform System of Citation* or to *The Chicago Manual of Style*. Instead, the citation format used is a combination of the two styles and is consistent with previous updates of the bibliography.

TABLE OF CONTENTS

I. GENERAL WORKS ON LAW AND AGING	703
Books.....	703
Articles	704
Congressional Documents.....	704
Web Sites.....	704
II. INCOME MAINTENANCE AND FINANCIAL/RETIREMENT PLANNING.....	705
A. GENERAL WORKS/MISCELLANY (INCLUDING PRIVATE PENSIONS).....	705
Books.....	705
Articles	705
B. SOCIAL SECURITY/PUBLIC PENSIONS	707
Books.....	707
Articles	709
Congressional Documents.....	712
III. AGE DISCRIMINATION.....	712
A. GENERAL WORKS/MISCELLANY	712
Books.....	712
Articles	712
B. AGE DISCRIMINATION IN EMPLOYMENT	713
1. GENERAL WORKS/MISCELLANY.....	713
Books.....	713
Articles	713
2. EMPLOYEE BENEFITS.....	720
Articles	720
IV. HEALTHCARE	721
A. GENERAL WORKS/MISCELLANY	721
Books.....	721
Articles	722
Congressional Documents.....	722
B. LONG-TERM CARE/NURSING HOMES	723
Books.....	723
Articles	724
Congressional Documents.....	727
C. FINANCING LONG-TERM HEALTHCARE/MEDICAID ESTATE PLANNING.....	728
Books.....	728
Articles	729

2003]	<i>GERONTOLOGY AND THE LAW</i>	703
	D. COMPETENCY/CAPACITY FOR DECISIONMAKING (INCLUDING GUARDIANSHIPS)	732
	Articles	732
	E. RIGHT TO DIE/DECISIONS ABOUT DYING (INCLUDING ADVANCE DIRECTIVES)	737
	Articles	737
	Congressional Documents	740
V.	SOCIAL POLICY/SOCIAL ISSUES.....	741
	A. SOCIAL POLICY	741
	Books.....	741
	Articles	741
	Congressional Documents.....	744
	B. VICTIMIZATION OF THE ELDERLY	744
	Books.....	744
	Articles	744
	Congressional Documents.....	749
	C. AGED OFFENDERS.....	749
	Articles	749
VI.	ELDER PRACTICE	751
	Articles	751

I. GENERAL WORKS ON LAW AND AGING

Books

COX, HAROLD. *LATER LIFE: THE REALITIES OF AGING*, 5TH ED. Upper Saddle River, NJ: Prentice Hall, 2001. In this gerontology textbook, Cox presents an interdisciplinary analysis of gerontology. Several chapters focus on public policy issues, such as victimization of the elderly, the aged and politics, and social services for the elderly.

FROLIK, LAWRENCE A., ED. *AGING AND THE LAW: AN INTERDISCIPLINARY READER*. Philadelphia, PA: Temple University Press, 1999. This collection of articles and essays addresses many social, political, and legal problems resulting from the increasing population of aging individuals. Ten major categories are further subdivided, allowing the provided entries to explain specific aspects of the larger issues in great detail.

FROLIK, LAWRENCE A. & KAPLAN, RICHARD L. *ELDER LAW IN A NUTSHELL*, 2ND ED. St. Paul, MN: West Group, 1999. This book provides a general outline of most elder law issues and discusses seminal cases on the topic. It includes chapters on advance direc-

tives, guardianship, long-term care, and elder abuse. For many readers, this work would be an excellent introduction to elder law.

SMITH, OLIVIA J., ED. *AGING IN AMERICA*. New York, NY: H. W. Wilson, 2000. This book explains a few of the major issues associated with aging, such as employment, elder care, and the unique challenges that face the baby-boom generation. It is a collection of personal profiles, feature stories, news reports, and commentaries.

Articles

FENGE, LEE-ANN. *Empowerment and Community Care Projecting the "Voice" of Older People*. 23(4) *JOURNAL OF SOCIAL WELFARE & FAMILY LAW* 427 (2001). Fenge discusses the possibility of empowering the elderly as part of the community-care system by allowing them a part in taking care of their own needs. Through a postmodern interpretation of empowerment, the author concludes that this is a viable option, provided the government is willing to commit to the concept.

Congressional Documents

Living Longer, Living Better: The Challenge to Policymakers: Committee on Aging, Special. Senate, S. Hrg. 106-819 (2000).

Long-Term Care for the 21st Century: A Common Sense Proposal to Support Family Caregiver: Committee on Aging, Special. Senate, S. Hrg. 106-102 (1999).

Older Americans Act: Oversight and Review: Committee on Health, Education, Labor, and Pensions. Senate, S. Hrg. 106-15 (1999).

Web Sites

AARP Home Page, at <http://www.aarp.org/> (November 5, 2002).

Administration on Aging Home Page, at <http://www.aoa.dhhs.gov/> (November 5, 2002).

American Society on Aging Home Page, at <http://www.asaging.org/> (November 5, 2002).

ElderWeb Home Page, at <http://www.elderweb.com> (November 5, 2002).

FirstGov for Seniors Home Page, <http://www.seniors.gov/> (November 5, 2002).

2003]

GERONTOLOGY AND THE LAW

705

Gerontological Society of America Home Page, at <http://www.geron.org/> (November 5, 2002).

National Academy of Elder Law Attorneys Home Page, at <http://www.naela.com/> (November 5, 2002).

National Institute on Aging Home Page, at <http://www.nia.nih.gov/> (November 7, 2002).

United States Department of Health and Human Services Home Page, at <http://www.os.dhhs.gov/> (November 5, 2002).

II. INCOME MAINTENANCE AND FINANCIAL/RETIREMENT PLANNING

A. GENERAL WORKS/MISCELLANY (INCLUDING PRIVATE PENSIONS)

Books

MITCHELL, DANIEL J. B. *PENSIONS, POLITICS, AND THE ELDERLY: HISTORIC SOCIAL MOVEMENTS AND THEIR LESSONS FOR OUR AGING SOCIETY*. Armonk, NY: M. E. Sharpe, 2000. This book provides background information on historic social movements and pension development in the United States, and it proposes ways the current population facing retirement might proceed. California is used as an example to show how the elderly can be politically active to achieve gains in areas such as Social Security and Medicare.

SCHULZ, JAMES H. *ECONOMICS OF AGING, 7TH ED.* Westport, CT: Auburn House, 2001. This book is designed to answer questions about the financial aspects of aging and to address the economics behind public policy arguments regarding aging. The seventh edition provides new information on such topics as aging demographics; poverty measurements; and financial issues for the elderly, such as Social Security and pensions.

Articles

DILLEY, PATRICIA E. *Taking Public Rights Private: The Rhetoric and Reality of Social Security Privatization*. 41 *BOSTON COLLEGE LAW REVIEW* 975 (2000). Dilley examines the foundations of the Social Security-privatization debate and discusses the benefits and detriments of privatization. She argues that the largest issue of the debate

rests with the concept of public entitlement versus private property rights. The works of Charles Reich and others are discussed in this context.

MEDILL, COLLEEN E. *Targeted Pension Reform*. 27 JOURNAL OF LEGISLATION 1 (2001). Medill argues that plans for pension reform should target individuals who are likely to have inadequate retirement funds. She states that past attempts at pension reform have been tied to balancing the federal budget, she examines current proposals for reform, and she proposes a model to help the majority of workers obtain an adequate retirement income.

MITZNER, IRA R. *Legal Decisions Affecting Pension Plans*. 25 EMPLOYEE BENEFITS JOURNAL 45 (June 2000). This article discusses recent legal decisions and their implications for pension plans. It offers various hypothetical situations through which readers can test their knowledge of the law surrounding pension plans.

RODINE, JOSHUA A. *Does the Cash Ever Balance After Conversion?: An Examination of Cash Balance Pension Plan Conversions and ADEA Claims*. 9 ELDER LAW JOURNAL 285 (2001). In this law review note, the author analyzes how the Age Discrimination in Employment Act ("ADEA") interrelates with cash balance pension plan conversions. The author argues that such conversions treat the elderly in an unfair manner and, as a result, that the legislature should remedy the inequity in pension plan conversions.

RUDOLPH, NOEMI V. & LUBITZ, JAMES. *Capitated Payment Approaches for Medicaid-Financed Long-Term Care Services*. 21 HEALTH CARE FINANCING REVIEW 51 (1999). The authors analyze five capitated payment approaches for long-term-care services. The description of each of these programs focuses on Medicaid reimbursement and highlights both the differences and the similarities of the approaches taken by the program in setting capitation rates.

VANDERHEI, JACK & COPELAND, CRAIG. *Changing Face of Private Retirement Plans*. 232 EBRI ISSUE BRIEF 1 (April 2001). VanDerhei and Copeland take on the assumption that the Social Security program is in trouble. They look at different types of private pension plans as substitutes for the current Social Security program. The differences between defined benefit and defined contribution plans are discussed, and cash balance plans are explained.

YABIKU, SCOTT T. *Family History and Pensions: The Relationships Between Marriage, Divorce, Children, and Private Pension Coverage*.

14 JOURNAL OF AGING STUDIES 293 (2000). This article uses the relationships between gender, marital status, and whether a person has children to analyze the likelihood of private pension receipt. Several conclusions are made from this analysis, including that married men are likely to have a greater pension receipt and that married women are less likely to have a greater pension receipt relative to their unmarried counterparts.

B. SOCIAL SECURITY/PUBLIC PENSIONS

Books

AARON, HENRY J. & OTHERS. SHOULD THE UNITED STATES PRIVATIZE SOCIAL SECURITY? Cambridge, MA: MIT Press, 1999. This collection of papers addresses changes that need to be made to Social Security. The primary question addressed is whether to shift from a pay-as-you-go system to one where individuals retain control over the investment of their own funded assets.

BAKER, DEAN & WEISBROT, MARK. SOCIAL SECURITY: THE PHONY CRISIS. Chicago, IL: University of Chicago Press, 1999. Baker and Weisbrot address the popular prediction that within thirty years the Social Security Trust Fund will have a major shortfall. They argue that this prediction is a fallacy, that in reality the program is operating at a significant surplus, and that although workers may expect to increase their contributions to the program, Social Security will continue to dispense benefits for future generations.

BLAHOUS, CHARLES P., III. REFORMING SOCIAL SECURITY FOR OURSELVES AND OUR POSTERITY. Westport, CT: Praeger Publishers, 2000. The author recommends various reforms to the Social Security system. He concentrates on the necessity of prefunding benefit payments now for those retiring after 2030 by setting aside funds from taxable payrolls. Ultimately, however, the author recognizes that no single reform can solve the complex problems of the Social Security system.

DIAMOND, PETER A., ED. ISSUES IN PRIVATIZING SOCIAL SECURITY: REPORT OF AN EXPERT PANEL OF THE NATIONAL ACADEMY OF SOCIAL INSURANCE. Cambridge, MA: MIT Press, 1999. The book arises from a National Academy of Social Insurance panel that conducted research and issued findings and recommendations about social insurance and Social Security. Two proposals that would in-

crease advance funding for Social Security, and the issues that arise from each proposal, are the topics of this published study.

MITCHELL, OLIVIA S. AND OTHERS, EDS. *PROSPECTS FOR SOCIAL SECURITY REFORM*. Philadelphia, PA: University of Pennsylvania Press, 1999. This is a collection of essays discussing the necessity of reforming the present Social Security system. Contributors include economists, actuaries, fund managers, pension experts, market analysts, and policymakers. Articles discuss the basic issues of the present system and propose several different paths for reform.

PETERSON, WALLACE C. *SOCIAL SECURITY PRIMER: WHAT EVERY CITIZEN SHOULD KNOW*. Armonk, NY: M.E. Sharpe, 1999. This book is designed to explain how Social Security works, identify the problem areas, and highlight what needs to be done to make the system better. Organized in five sections, it discusses the history and future of Social Security, misconceptions about the system, and ways to view problems from a new perspective. Solutions are offered to solve current problems, and predictions about future difficulties are made.

SCHIEBER, SYLVESTER J. & SHOVEN, JOHN B. *REAL DEAL: THE HISTORY AND FUTURE OF SOCIAL SECURITY*. New Haven, CT: Yale University Press, 1999. Schieber and Shoven trace the history of Social Security and examine past attempts and proposals to change the present system. Proposals from the 1994-96 Advisory Council are discussed, as are those put forth by Ball, Gramlich, Ferrara, Moynihan and Kerrey, Schieber and Weaver, and Feldstein and Samwick.

SHAVIRO, DANIEL N. *MAKING SENSE OF SOCIAL SECURITY REFORM*. Chicago, IL: University of Chicago Press, 2000. The author evaluates the present retirement-income system of Social Security and analyzes the economic impact both as a whole and on individuals by socioeconomic class and age. He also discusses the consequences of various proposed Social Security reforms.

WHITE, JOSEPH. *FALSE ALARM: WHY THE GREATEST THREAT TO SOCIAL SECURITY AND MEDICARE IS THE CAMPAIGN TO "SAVE" THEM*. Baltimore, MD: Johns Hopkins University Press, 2001. White discusses the future of Social Security and Medicare and addresses the claims that these systems must be reformed. He discusses the current role of Medicare and Social Security as social insurance programs, disputes claims that the current system is unworkable, provides examples of proposed reforms that would not improve the system, and gives suggestions for "responsible" reform.

Articles

- BAUM, CHARLES L. & FORD, WILLIAM F. *The Effect of "The Senior Citizen's Freedom to Work Act of 2000" on Delayed Retirement Incentives*. 52 LABOR LAW JOURNAL 3 (Spring 2001). This short article examines The Senior Citizen's Freedom to Work Act of 2000 and its implications for delayed retirement incentives. The article discusses the optimal age to cease employment under the Act and who would most likely be affected by the Act. It also analyzes empirical data relating to the Act.
- BOSWORTH, BARRY AND OTHERS. *Lifetime Earnings Patterns, the Distribution of Future Social Security Benefits, and the Impact of Pension Reform*. 63(4) SOCIAL SECURITY BULLETIN 74 (2000). The authors implement two new methods for the estimation of lifetime earning patterns for the American workforce. They then use this data in comparison with other data previously collected to discuss the future of pension reform. They conclude that the standard methods for estimation of lifetime earning patterns have only limited applicability for policy discussion and pension reform.
- CHOI, NAMKEE G. *Potential Consequences of Raising the Social Security Eligibility Age on Low-Income Older Workers*. 11(4) JOURNAL OF AGING & SOCIAL POLICY 15 (2000). This study evaluates the potential consequences of raising the Social Security retirement age on future low-income elderly individuals. The authors base their results on data collected in the Health and Retirement Study, 1992-94, that show that having disabilities is the most significant predictor of non-work. The authors conclude that raising the Social Security eligibility age could result in an increased number of Disability Insurance claimants.
- FORMAN, JONATHAN B. *How Federal Pension Laws Influence Individual Work and Retirement Decisions*. 54 TAX LAWYER 143 (Fall 2000). Forman considers how federal pension laws should be changed to encourage elderly employees to remain in the workforce. The author provides general information on aging in America, gives examples of federal legislation and IRS provisions that influence retirement decisions, discusses the proper role of government, and recommends modifications to current laws and regulations that would encourage the elderly to remain in the workforce.
- FORMAN, JONATHAN B. *Legal Issues in Cash Balance Pension Plan Conversions*. 17 BENEFITS QUARTERLY 27 (First Quarter 2001). This ar-

ticle explains the general characteristics of cash balance pension plans and their differences from traditional pensions. It delineates possible actions for Congress to take in light of the popularity of cash balance pensions, and it identifies and discusses legal issues raised under the Internal Revenue Code, the Employee Retirement Income Security Act ("ERISA"), and the ADEA. Ultimately, the author concludes that it is perfectly legal for employers to switch to cash balance plans in spite of the fact that older workers have argued that cash balance plans will reduce their pension benefits.

MARKHAM, JERRY W. *Privatizing Social Security*. 38 SAN DIEGO LAW REVIEW 747 (2001). The author argues that, because the current Social Security system fails to provide actual social security, the United States should implement privatization of the Social Security system. Although privatization would be costly, it could be achieved through tax credits and deductions, as well as through the removal of government control over investments.

MOJIRI-AZAD, NINA. *Social Security Benefits to Widows: The Ongoing Favoritism of Single-Earner Families and the Impact on Elderly Women*. 17 LAW & INEQUALITY: A JOURNAL OF THEORY & PRACTICE 537 (1999). Mojiri-Azad compares Social Security payouts to widows from single- and dual-income families. She shows how the current system penalizes widows from dual-earner families with a diminished level of benefits, and she examines current proposals to reform Social Security and how these changes would affect benefits to widows.

MOORE, KATHRYN L. *Raising the Social Security Retirement Ages: Weighing the Costs and Benefits*. 33 ARIZONA STATE LAW JOURNAL 543 (2001). The author first analyzes the legislative history of the current statutory Social Security retirement age. Then, after weighing the costs and benefits of raising the retirement age, the author proposes that the age should be raised.

MOORE, KATHRYN L. *Redistribution Under the Current Social Security System*. 61 UNIVERSITY OF PITTSBURGH LAW REVIEW 955 (2000). This article describes how Social Security redistributes income to lift the elderly and other risk groups out of poverty. It also examines how the following elements affect those groups: the method by which benefits are paid out, the progressive benefit formula, disability benefits, and auxiliary benefits.

- MORGAN, LESLIE A. *The Continuing Gender Gap in Later Life Economic Security*. 11(2/3) JOURNAL OF AGING & SOCIAL POLICY 157 (2000). Morgan furnishes statistics revealing the economic health of retired men and women aged sixty-five and older. The economic disadvantages many women face in retirement may be attributable to choices such as marital status and family size. To remedy the economic problems for retired women, Morgan proposes revisions to the Social Security system, including an earnings-sharing system combining the wages of both spouses.
- MOSKOWITZ, SEYMOUR. *On Golden Pond: Integrating Legal Issues of the Elderly into Family Law*. 30 STETSON LAW REVIEW 1427 (2001). In this article, the author discusses different issues relating to the elderly that could potentially be discussed in a family law course, including marriage, child custody, mediation of disputes, intra-family support, elder abuse, and legal ethics. The author also discusses the most effective ways of presenting this information in a family law course, such as through the use of hypotheticals and statutes.
- PARK, NEUNG HOO & GILBERT, NEIL. *Social Security and the Incremental Privatization of Retirement Income*. 26 JOURNAL OF SOCIOLOGY & SOCIAL WELFARE 187 (1999). The authors demonstrate how, over the last thirty years, the proportion of retirement income provided by Social Security has gradually diminished and how, at the same time, the proportion of retirement income from private pensions has grown, especially for the wealthiest Americans.
- PIRMANTGEN, THOMAS G. *Respecting Your Elders: The "Highly Marketable" Skills Standard for Social Security Disability Claimants over Age Sixty*. 65 MISSOURI LAW REVIEW 267 (Winter 2000). This law review note analyzes *Kerns v. Apfel*, a case of first impression in the Eighth Circuit Court of Appeals, where the court applied a highly marketable-skills standard to a Social Security disability claim. The author argues that, although applying such a standard may be appropriate from a public policy perspective, it may not be an appropriate legal inquiry.
- SOLOMON, LEWIS D. & BERSON, BRYAN L. *Private Market Reforms for Social Security: A Comprehensive Guide for Composing Reform Legislation*. 11 SOUTHERN CALIFORNIA INTERDISCIPLINARY LAW JOURNAL 117 (2001). Solomon and Berson discuss the government's part in the Social Security system, private market modifications, and the Presidential Commission to Strengthen Social Security. The article analyzes the U.S. government's role in Social Security and com-

pires it to the Chilean government's role in that country's Social Security system. The ultimate goal of the article is to provide an understanding of the current Social Security system and how it can best achieve success.

SPURGEON, EDWARD D. & MUSTARD, ELIZABETH J. *Integrating Tax and Elder Law into Elder Law and Tax Courses*. 30 STETSON LAW REVIEW 1375 (2001). Spurgeon and Mustard discuss how elder law is incorporated into law school curricula. The authors recommend ways to increase the coverage of relevant tax and nontax topics in elder law course materials. The authors review casebooks and recommend improvements for covering tax aspects of elder law in individual income tax and tax policy casebooks.

WILLIAMSON, JOHN B. & RIX, SARA E. *Social Security Reform: Implications for Women*. 11(4) JOURNAL OF AGING & SOCIAL POLICY 41 (2000). Williamson and Rix discuss the fact that more women than men are reliant on their Social Security income, they examine current proposals to reform Social Security, and they describe what effect each reform will have on the financial well-being of women.

Congressional Documents

Hybrid Pension Plans: Committee on Health, Education, Labor, and Pensions. Senate, S. Hrg. 106-393 (1999).

III. AGE DISCRIMINATION

A. GENERAL WORKS/MISCELLANY

Books

PLATT, L. STEVEN & VENTRELL-MONSEES, CATHY. AGE DISCRIMINATION LITIGATION. Costa Mesa, CA: James Publishing, 2000. This practice guide, which includes a CD-ROM, instructs the reader on the process of litigating an age discrimination claim. The guide provides direction on each step of the litigation process, including administrative hearings, discovery, and appeals.

Articles

FENTONMILLER, KEITH R. & SEMMEL, HERBERT. *Where Age and Disability Discrimination Intersect: An Overview of the ADA for the ADEA Practitioner*. 10 GEORGE MASON UNIVERSITY CIVIL RIGHTS LAW

JOURNAL 227 (Summer 2000). This article explains how older workers are able to realize benefits under the Americans with Disabilities Act ("ADA") that are unavailable through the ADEA. It describes the individuals who can be sued under the ADA and ADEA, the three principle types of ADA employment claims as compared to potential remedial theories under the ADEA, and theories of age discrimination.

NEUMARK, DAVID & STOCK, WENDY A. *Age Discrimination Laws and Labor Market Efficiency*. 107 JOURNAL OF POLITICAL ECONOMY 1081 (1999). Neumark and Stock examine federal and state age discrimination laws and Lazear's model of long-term incentive contracts. Findings from this study show that the age-earnings profile is steepened by age discrimination laws and thus encourages employers to utilize Lazear contracts.

B. AGE DISCRIMINATION IN EMPLOYMENT

1. GENERAL WORKS/MISCELLANY

Books

GREGORY, RAYMOND F. *AGE DISCRIMINATION IN THE AMERICAN WORKPLACE: OLD AT A YOUNG AGE*. New Brunswick, NJ: Rutgers University Press, 2001. This book begins with a brief discussion of older workers in today's workplace and then addresses many aspects of employment discrimination in great detail. Age-related issues such as stereotypes, retirement plans, hiring, promotions, and proving age discrimination are just a few of the relevant topics included.

SEGRAVE, KERRY. *AGE DISCRIMINATION BY EMPLOYERS*. Jefferson, NC: McFarland, 2001. This book chronicles the history of age discrimination from the late nineteenth century to the present day. Each chapter discusses prevailing attitudes and early efforts to identify and combat this type of discrimination. The most important legislation from each time period is highlighted.

Articles

ABERNATHY, CONIE L. *The O'Connor Standard—How Wide Is the Divide?* 31 UNIVERSITY OF MEMPHIS LAW REVIEW 611 (2001). Abernathy reviews the major U.S. appellate court decisions that relate to the O'Connor Standard, which is the requirement that a plaintiff show a substantial age difference to establish a prima facie ADEA claim.

The author supports the Seventh Circuit's objective standard as a uniform approach for all circuits.

- ALEXANDER, ROBERTA S. *The Future of Disparate Impact Analysis for Age Discrimination in a Post-Hazen Paper World*. 25 UNIVERSITY OF DAYTON LAW REVIEW 75 (1999). After the Supreme Court's decision in the *Hazen* case, some circuit courts have split on whether disparate impact analysis may be used on ADEA claims. This comment explains the ADEA and the different analyses applied, and it summarizes the *Hazen* holding and its significance.
- BAILEY, JAMES C. *Age Discrimination Models After Hazen Paper Co. v. Biggins*. 9 ELDER LAW JOURNAL 175 (2001). This article discusses the means of proving age discrimination via an age proxy. The author argues that courts will consider an age proxy factor as evidence of age discrimination provided the plaintiff can demonstrate the proxy factor is directly related to age.
- BARKER, ROSINA B. & O'BRIEN, KEVIN P. *Cash Balance Plans: Are Wear-Away Transitions Legal Under the ADEA?* 13 BENEFITS LAW JOURNAL 1 (2000). Cash balance transition issues may result when employers convert traditional benefit pension plan formulas to cash balance formulas. This article discusses whether "wear-away" transition formulas are legal under the ADEA. The authors conclude that typical formulas satisfy relevant sections of the ADEA, ERISA, and the Code.
- BASS, STUART L. *Reeves v. Sanderson: United States Supreme Court Attempts to Clarify Plaintiff's Burden in "ADEA" Claims*. 105 COMMERCIAL LAW JOURNAL 275 (2000). Bass discusses ADEA claims that involve intentional disparate treatment by an employer of an employee because of the employee's age in light of *Reeves v. Sanderson*. The author concludes that *Reeves* imposes an unreasonable burden of proof upon the plaintiff in an ADEA claim.
- BASS, STUART L. & ROUKIS, GEORGE S. *Age Discrimination in Employment: Will Employers Focus on Business Necessities and the "ROFTA" [sic] Defense?* 104 COMMERCIAL LAW JOURNAL 229 (1999). Bass and Roukis explain the ADEA and the reasonable-factor-other-than-age ("RFOTA") defense exception. Recent California and federal cases concerning RFOTA are discussed.
- BENDICK, MARC, JR. AND OTHERS. *No Foot in the Door: An Experimental Study of Employment Discrimination Against Older Workers*. 10(4) JOURNAL OF AGING & SOCIAL POLICY 5 (1999). This study uses

pairs of equally qualified testers, one aged fifty-seven and one aged thirty-two, applying for management level jobs, in order to determine whether age is a factor in the treatment of job applicants. The authors conclude that the evidence confirms the existence of age discrimination in hiring practices and that current approaches that rely on legal enforcement are unlikely to remedy the situation.

BLAIR, AMY R. *Mandatory Arbitration Agreements of ADEA Claims: An Analysis of Their Validity Under the Older Workers Benefit Protection Act*. 16 OHIO STATE JOURNAL ON DISPUTE RESOLUTION 195 (2000). This note examines the history of mandatory arbitration agreements and discusses seminal cases on the topic. The note examines the 1990 enactment of the Older Workers Benefit Protection Act ("OWBPA") and its attempts to set minimum requirements for valid and enforceable waivers of rights. Opinions discussing OWBPA are included, and the author concludes that the courts must revisit the *Gilmer* decision in light of OWBPA.

BODENSTEINER, IVAN A. & LEVINSON, ROSALIE B. *Litigating Age and Disability Claims Against State and Local Government Employers in the New "Federalism" Era*. 22 BERKELEY JOURNAL OF EMPLOYMENT & LABOR LAW 99 (2001). The authors analyze the ability of a plaintiff to sue a state or local agency under the ADEA. They conclude that, while a local employee could bring an ADEA claim, such a claim would prove problematic for a state employee. The article then suggests ways that the state employee might be able to bring an ADEA claim.

CHASE, MICHAEL C. *"Transferable Skills" and the Older Claimant's Dilemma: A Call for Allowing Employer Hiring Practices and Other Economic Justifications to Be Relevant in the Decision to Award Disability Benefits*. 31 RUTGERS LAW JOURNAL 553 (2000). Older workers under sixty years of age face considerable challenges when finding employment after their disability claims have been denied and they have been found to have other marketable skills. This note explains the procedure for making a disability claim and the challenges faced by these older workers.

CLEMONS, JENNIFER J. & BALES, RICHARD A. *ADEA Disparate Impact in the Sixth Circuit*. 27 OHIO NORTHERN UNIVERSITY LAW REVIEW 1 (2000). Clemons and Bales discuss the applicability of disparate impact claims under the ADEA. Although they emphasize the Sixth Circuit, the authors look at how each circuit court has or has not ruled

on the issue, and they suggest that Congress should intervene legislatively to codify disparate impact cases under the ADEA.

DENNARD, H. LANE, JR. & KELLY, KENDALL L. *Price Waterhouse: Alive and Well under the Age Discrimination in Employment Act*. 51 MERCER LAW REVIEW 721 (2000). Dennard and Kelly discuss the correct application of the *Price Waterhouse* decision to ADEA cases. The authors analyze today's changing workforce and the elements and evidentiary framework of the ADEA. Their discussion supports the conclusion that those bringing ADEA claims must show that age was a substantial factor in the employment decision.

DUBOIS, MATTHEW R. *Legal Planning for Gay, Lesbian, and Non-Traditional Elders*. 63 ALBANY LAW REVIEW 263 (1999). This law review comment discusses legal issues unique to nontraditional elderly clients, including elderly gay and lesbian individuals. These legal issues include financial planning, healthcare planning, insurance, planning for incapacity, and estate planning.

GEMBALA, MARGARET M. *ADEA and the Hostile Work Environment Claim: Are the Circuit Courts Dragging Their Feet at the Expense of the Harassed Older Worker?* 7 ELDER LAW JOURNAL 341 (1999). Gembala advocates recognizing the hostile-work-environment claim as a valid claim under the ADEA because it is consistent with the purpose of the law and its relationship with Title VII, and because it follows public policy. Her article analyzes the purpose of the ADEA, the policies it promotes, and the similarities between the ADEA and Title VII.

HENKEL, JAN W. *Waiver of Claims under the Age Discrimination in Employment Act After Oubre v. Entergy Operations, Inc.* 35 WAKE FOREST LAW REVIEW 395 (2000). Henkel analyzes the case of *Oubre v. Entergy Operations, Inc.* and how it relates to the waiver of OWBPA claims by an employee. The author fears that this case will be used to justify the waiver of other discrimination claims.

HOLMES, NATHAN E. *Age Discrimination in Employment Act of 1967: Are Disparate Impact Claims Available?* 69 UNIVERSITY OF CINCINNATI LAW REVIEW 299 (2000). Claims of age discrimination against older workers may result when employers switch from traditional defined benefit pension plans to cash balance plans. The claims arise from differences in the manner in which benefits accrue under these plans. This note argues that courts consistently are wrong in applying the

ADEA because it does not support disparate impact claims allowable under Title VII.

The Irrational Application of Rational Basis: Kimel, Garrett, and Congressional Power to Abrogate State Sovereign Immunity. 114 HARVARD LAW REVIEW 2146 (2001). This law review note analyzes *Kimel v. Florida Board of Regents* and *Board of Trustees of the University of Alabama v. Garrett*. The note argues that when state employees use age to discriminate against an individual, the court should apply a heightened scrutiny standard of review. Such a standard of review would allow for the abrogation of state sovereign immunity by the courts.

JOHNSON, BRETT I. *Six of One, Half Dozen of Another: Mullin v. Ration Co. as a Representative of Federal Circuit Courts Erroneously Distinguishing the ADEA from Title VII Regarding Disparate Impact Liability.* 36 IDAHO LAW REVIEW 303 (Spring 2000). This note argues that disparate impact claims brought under the ADEA should receive the same treatment as those brought under Title VII of the 1964 Civil Rights Act, and it provides causes of action under both Title VII and the ADEA. The author outlines recent decisions, focusing on *Mullen*, which he argues was incorrectly decided.

KANDEL, W. L. *After Reeves: Proving Pretext, Imprecision or Imperfection?* 26 EMPLOYEE RELATIONS LAW JOURNAL 5 (Winter 2000). This article examines the *Reeves* case, decided by the Supreme Court in 2000, and similar age discrimination cases leading up to it. The author gives an idea of the possible outcomes and impact that the *Reeves* decision will have on future litigation under the ADEA

KEARNEY, ROBERT A. *Rethinking Employment Discrimination: How Lawyers and Judges Both Can Do Better.* 2001 LAW REVIEW OF MICHIGAN STATE UNIVERSITY—DETROIT COLLEGE OF LAW 1077 (2001). This article provides an in-depth analysis and critique of the age discrimination case *Baker v. Speedway Superamerica LLC*. The article also discusses the implications of the case for the future of employment discrimination law.

KNEISEL, EDMUND M. & NORTHUP, JULIE S. *Enforcement of Employer "Self-Help" Remedy Clauses When Employees Attack ADEA Waivers.* 25 EMPLOYEE RELATIONS LAW JOURNAL 71 (Autumn 1999). This article outlines cases involving employers' remedies when sued under the OWBPA amendment to the ADEA, and it discusses a proposed EEOC regulation that would significantly limit most forms of

employer remedies. The authors contend that current case law suggests that employers should use caution before invoking certain contractual remedies.

MILLER, DAVID C. *Alone in Its Field: Judicial Trend to Hold that the ADEA Preempts § 1983 in Age Discrimination in Employment Claims.* 29 STETSON LAW REVIEW 573 (2000). The author argues that the ADEA preempts § 1983 in employment age discrimination claims and that the leading case in this area of law, *Zombro v. Baltimore City Police Department*, was incorrect in its holding. The author describes the appropriate means of deciding this preemption issue and also discusses why Title VII is not appropriate for resolving this issue.

MORNEAU, JEFF. *Too Good, Too Bad: "Overqualified" Older Workers.* 22 WESTERN NEW ENGLAND LAW REVIEW 45 (2000). Older workers face considerable employment challenges in finding and keeping employment because of factors such as downsizing and/or "overqualification." While the ADEA protects applicants from discrimination based on age, employers are able to reject applicants for reasons associated with being overqualified. This article discusses how different circuits have considered the use of "overqualification," and it proposes a way for employers to limit their potential liability under the ADEA.

OSBORNE, TOM. *Proving Age Discrimination with Ageist Comments.* 35 TRIAL 18 (1999). This article serves as a practical guide to the use of ageist comments as evidence at trial in age discrimination cases. It sets forth the rule as applied, its application, and other important factors to be considered in preparation for litigation.

PETERSON, CARSTEN A. *New Twist to an Old Injustice—Genetic Discrimination and Medicare Reform.* 36 IDAHO LAW REVIEW 345 (2000). This law review comment analyzes the need for Medicare reform to address genetic discrimination in order to prevent insurers from denying, limiting, or overcharging for insurance coverage. The comment uses the Human Genome Project to demonstrate why such reform is necessary, and it specifically addresses how genetic discrimination would affect the elderly.

POSNER, RICHARD A. *Employment Discrimination: Age Discrimination and Sexual Harassment.* 19 INTERNATIONAL REVIEW OF LAW & ECONOMICS 421 (1999). Posner begins with a general discussion of the problem of age discrimination. He includes a description of most

elements of age discrimination in employment, he considers the types of cases resulting from the ADEA, and he gives statistics about how many plaintiffs prevail in each type of case. He also provides a section on sexual harassment in the workplace, which is not specific to the aged worker.

SPINDLER, KESTER. *Shareholder Demands for Higher Corporate Earnings Have Their Price: How Courts Allow Employers to Fire Older Employees for Their Achievements*. 27 PEPPERDINE LAW REVIEW 807 (May 2000). The intent of Congress when enacting the ADEA was to protect older workers from age discrimination. This comment proposes that by allowing salary-based discrimination and by finding that age and salary are analytically distinct, courts fail to act in accordance with the intent of the law.

VENTRELL-MONSEES, CATHY. *"Take the Money and Run or It's Too Late Baby": Early Retirement Incentives and the Age Discrimination in Employment Act*. 29 UNIVERSITY OF MEMPHIS LAW REVIEW 783 (1999). The author discusses early-retirement incentives through both the ADEA and the OWBPA. She uses case law on this legal issue to analyze the burden of proof and defenses to age discrimination claims. The author concludes that, as long as the employer meets certain criteria, early-retirement incentives are not illegal.

WOLFF, MARK J. *Sex, Race and Age: Double Discrimination in Torts and Taxes*. 78 WASHINGTON UNIVERSITY LAW QUARTERLY 1341 (2000). This article provides an extensive analysis of § 104(a)(2) of the Internal Revenue Code, which prohibits the taxation of monetary damage awards for personal injury but not damage awards for discrimination. The article also analyzes the case law surrounding this statute. It then discusses the public policy and tax policy arguments regarding the statute and the effect of civil rights law and tort reform on the statute. The article concludes that the statute discriminates by sex, race, and age, and that there is an immediate need for the legislature to reform the statute.

ZIAJA, ERIN. *Do Independent and Assisted Living Communities Violate the Fair Housing Amendments Act and the Americans with Disabilities Act?* 9 ELDER LAW JOURNAL 313 (Fall 2001). The Fair Housing Amendments Act ("FHAA") is necessary to protect the disabled elderly from housing discrimination because these citizens are uniquely underprivileged and disadvantaged. The author examines the protections provided by the FHAA and the ADA, and the success the eld-

erly have had in enforcing their rights. She recommends that class action litigation be used to enforce the civil rights of elderly citizens.

ZIMMER, MICHAEL J. *Chaos or Coherence: Individual Disparate Treatment Discrimination and the ADEA*. 51 MERCER LAW REVIEW 693 (2000). Zimmer looks at individual disparate impact discrimination from the perspective of the ADEA. He discusses seminal cases, such as *Price Waterhouse v. Hopkins* and *McDonnell Douglas Corp. v. Green*.

2. EMPLOYEE BENEFITS

Articles

SAXINGER, DEANA. *Cash Balance Plans: They Work for Employers but Do They Work for Employees?* 34 JOHN MARSHALL LAW REVIEW 345 (2000). Saxinger explains cash balance pension plans and their effects on younger and older employees. She considers if cash balance pension plans violate the ADEA, ultimately concluding that they do not. After a brief discussion, she determines that litigation under disparate impact is viable.

SHEA, RICHARD C. AND OTHERS. *Age Discrimination in Cash Balance Plans: Another View*. 19 VIRGINIA TAX REVIEW 763 (Spring 2000). In this response to an article by Professor Zelinsky in the same issue of the *Virginia Tax Review*, the authors argue that, although Zelinsky's article contains a thoughtful analysis of cash balance plans, his thesis is faulty. The authors explain that the flaw in his analysis lies in his method for determining benefit accrual.

SHEPPARD, LEE A. *The Down-Aging of Pension Plans*. 82 TAX NOTES 171 (1999). Sheppard analyzes cash balance pension plans and the problems that they present for the IRS and the Labor Department. One problem is that cash balance pension plans could allow age discrimination through the reduction in benefits and use of age accruals. The author concludes that legislation regarding cash balance pension plans is necessary.

ZELINSKY, EDWARD A. *The Cash Balance Controversy*. 19 VIRGINIA TAX REVIEW 683 (2000). Zelinsky explains the general characteristics of cash balance pension plans and compares cash balance to defined benefit plans. He presents the pros and cons of cash balance pensions and states that they violate statutory provisions on age-based

reductions in the accrual rate of benefits. He then proposes legislative compromises to address these violations.

IV. HEALTH CARE

A. GENERAL WORKS/MISCELLANY

Books

EDELSTEIN, STEPHANIE & GADDY, KAREN. *ASSISTED LIVING: SUMMARY OF STATE STATUTES*. Washington, DC: AARP, Public Policy Institute, 2000. This three-volume set provides the reader with general information about the assisted-living statutes and regulations in all fifty states. The statutory and regulatory information outlines such issues as transfer and discharge, contractual requirements, and grievance procedures.

KAPP, MARSHALL B., ED. *GERIATRICS AND THE LAW: UNDERSTANDING PATIENT RIGHTS AND PROFESSIONAL RESPONSIBILITIES*. New York, NY: Springer Publishing Company, 1999. This book provides guidance for healthcare professionals on meeting the legal challenges that arise when dealing with older persons who need medical services. In outlining emerging legal issues, the authors focus on patients' rights and the duties and behavior of healthcare professionals when interacting with elderly patients.

LESNOFF-CARAVAGLIA, GARI, ED. *AGING AND PUBLIC HEALTH: TECHNOLOGY AND DEMOGRAPHY: PARALLEL EVOLUTIONS*. Springfield, IL: Charles C. Thomas, 2001. This collection examines the biological and social aspects of aging. Emphasis is placed on specific population groups and the effect of technology on the elderly. The broad range of topics covered makes this book a good introduction to all aspects of public health policy for seniors.

MARMOR, THEODORE R. *THE POLITICS OF MEDICARE*, 2ND ED. Hawthorne, NY: Aldine de Gruyter, 2000. This book provides an analysis of the political process that surrounded the passage and implementation of the Medicare program. The first edition of *The Politics of Medicare*, reprinted in part for the second edition, provides an analytical structure for understanding the complex forces of governments and politics. The second edition incorporates an analysis of Medicare in the 1990s.

RETTENMAIER, ANDREW J. & SAVING, THOMAS R., EDS. *MEDICARE REFORM: ISSUES AND ANSWERS*. Chicago, IL: University of Chicago Press, 1999. This series of essays, written from a variety of standpoints and perspectives, discusses the problems facing the Medicare system today and how it can be reorganized more effectively. When addressing the economic problems that face the healthcare industry, the contributors also predict future trends and provide solutions for revising the system.

SCHOEN, CATHY AND OTHERS. *COUNTING ON MEDICARE: PERSPECTIVES AND CONCERNS OF AMERICANS AGES 50 TO 70: FINDINGS FROM THE COMMONWEALTH FUND 1999 HEALTH CARE SURVEY OF ADULTS AGES 50 TO 70*. New York, NY: Commonwealth Fund, 2000. This 1999 survey asks adults aged fifty to sixty-four about their level of trust in Medicare and asks adults aged sixty-five to seventy to compare Medicare's services with their previous health coverage. Those surveyed indicate a higher opinion of the Medicare program versus other available coverage. Although many express concern over prescription-drug coverage, most of those between the ages of fifty and sixty-four would like to enroll prior to age sixty-five, if the program allowed it.

Articles

BYOCK, IRA R. *End-of-Life Care: A Public Health Crisis and an Opportunity for Managed Care*. 7 *AMERICAN JOURNAL OF MANAGED CARE* 1123 (2001). This article compares the quality of care in palliative and hospice environments to those in nursing homes. It cites studies showing better pain management and improved patient care in the hospice setting, and it encourages managed-care providers to implement aspects of hospice care within the managed-care setting.

Congressional Documents

Assisted Living in the 21st Century: Examining Its Role in the Continuum of Care: Committee on Aging, Special. Senate, S. Hrg. 107-64 (2001).

Family Caregiving and the Older American Act: Caring for the Caregiver: Committee on Aging, Special. Senate, S. Hrg. 107-80 (2001).

Medicare Reform: Providing Prescription Drug Coverage for Seniors: Committee on Energy and Commerce. House, (2001).

2003]

GERONTOLOGY AND THE LAW

723

Passport to Independence: Battling the Leading Causes of Disability Among Seniors: Committee on Aging, Special. Senate, S. Hrg. 106-199 (1999).

B. LONG-TERM CARE/NURSING HOMES

Books

GIACALONE, JOSEPH A. *THE U.S. NURSING HOME INDUSTRY*. Armonk, NY: M.E. Sharpe, 2001. The author closely examines public policy issues related to nursing-home care in the United States. Discussion topics include, but are not limited to, national expenditures on health- and nursing-home care, the history and current structure of the industry, and cost and financing challenges.

KATZ, PAUL R. AND OTHERS, EDS. *EMERGING SYSTEMS IN LONG-TERM CARE*. New York, NY: Springer Publishing Company, 1999. This is a collection of essays discussing all facets of long-term care, including Medicare home health services, community-based care, and involuntary admissions to nursing homes. Each chapter contains an extensive bibliography of recent materials on the various topics. Overall, this collection is a useful starting place for research on long-term care.

PRATT, JOHN R. *LONG-TERM CARE: MANAGING ACROSS THE CONTINUUM*. Gaithersburg, MD: Aspen Publishers, 1999. Pratt discusses the current role of long-term care in American society. His text is designed to provide a thorough explanation of the changing system and of care providers, and it predicts future trends. Several audiences will find this book useful, including students, healthcare administrators, policymakers, and consumers.

WUNDERLICH, GOOLOO S. & KOHLER, PETER O., EDS. *IMPROVING THE QUALITY OF LONG-TERM CARE*. Washington, DC: National Academy Press, 2001. This report, completed by the Institute of Medicine's Committee on Improving Quality in Long-Term Care, provides information regarding existing long-term-care services and concentrates on five areas for future improvement: access to long-term care, quality assurance through external oversight, strengthening the workforce, building organizational capacity, and reimbursement.

ZIMMERMAN, SHERYL AND OTHERS, EDS. *ASSISTED LIVING: NEEDS, PRACTICES, AND POLICIES IN RESIDENTIAL CARE FOR THE ELDERLY*. Baltimore, MD: Johns Hopkins University Press, 2001. The author

examines issues involving residential care, including regulation, reimbursement, and staffing. The author bases the book on a four-state study of assisted-living facilities. This study includes analysis of the past, present, and future of the facilities; the residents; and the services offered.

Articles

BRAUN, JULIE A. & CAPEZUTI, ELIZABETH A. *The Legal and Medical Aspects of Physical Restraints and Bed Siderails and Their Relationship to Falls and Fall-Related Injuries in Nursing Homes*. 4 DEPAUL JOURNAL OF HEALTH CARE LAW 1 (2000). The authors give a thorough discussion of the use of physical restraints and siderails in nursing homes and how their use impacts falls and injuries in the nursing home. After an analysis of the regulations of the use of restraints and rails and a discussion of strategies to avoid liability for such falls and injuries, the authors conclude that a case-by-case assessment of risk of falls and injuries is best.

BROOKS, CORY W. *Skilled Nursing Homes: Replacing Patient Restraints with Patient Rights*. 45 SOUTH DAKOTA LAW REVIEW 606 (2000). The Nursing Home Reform Law, enacted to ensure that the elderly receive adequate treatment, subjects almost every aspect of the lives of nursing-home residents to state or federal regulation. Brooks discusses the issue of nursing homes and elder abuse by focusing on the use of physical and chemical restraints and their relationship to injuries in nursing-home facilities.

CARLSON, ERIC M. *Siege Mentality: How the Defensive Attitude of the Long-Term Care Industry Is Perpetuating Poor Care and an Even Poorer Public Image*. 31 MCGEORGE LAW REVIEW 749 (2000). Carlson looks at the negative public perceptions of the nursing-home industry. These perceptions may be blamed on publicized problems with the enforcement system for the industry. In order to improve their image, long-term-care providers must work together, and the government needs to commit to effective enforcement of standards in long-term-care facilities.

COHEN, PAMELA S. *Being "Reasonable": Defining and Implementing a Right to Community-Based Care for Older Adults with Mental Disabilities Under the Americans with Disabilities Act*. 24 INTERNATIONAL JOURNAL OF LAW & PSYCHIATRY 233 (March/June 2001). Cohen discusses the possibility of defining and implementing a right to community-based care for the elderly with mental disabili-

ties. She explains the need for reform and the current legal right to such care under the ADA, and she recommends strategies for implementing a right to community-based care.

FEDER, JUDITH AND OTHERS. *Long-Term Care in the United States: An Overview*. 19(3) HEALTH AFFAIRS 40 (May–June 2000). This article, based on a presentation given at the Commonwealth Fund's 1999 International Symposium on Health Care Policy, considers the lack of long-term-care coverage for the elderly in the United States. The authors critique Medicaid's long-term-care coverage and argue that the need for improvement is critical.

GORDON, M. AND OTHERS. *Addressing Ethical Issues in Geriatrics and Long-Term Care: Ethics Education at the Baycrest Centre for Geriatric Care*. 19 MEDICINE & LAW 475 (2000). This article outlines the program used at the Baycrest Centre for Geriatric Care, which can serve as a model for other long-term-care and geriatric-care facilities wanting to incorporate formal bioethics training programs. The authors describe the program used at Baycrest and identify some of the ethical issues that must be handled in the geriatric- and long-term-care setting.

GRASSLEY, CHARLES. *The Resurrection of Nursing Home Reform: A Historical Account of the Recent Revival of the Quality of Care Standards for Long-Term Care Facilities Established in the Omnibus Reconciliation Act of 1987*. 7 ELDER LAW JOURNAL 267 (1999). This essay written by Iowa Sen. Charles Grassley outlines the sanctions and enforcement aspects of the Omnibus Reconciliation Act ("OBRA") of 1987. Rising concerns in the 1990s led a senate committee headed by Grassley to reconsider OBRA's effectiveness and led to a series of hearings on long-term care. Grassley's essay includes a synopsis of these hearings and outlines areas for future reform in the nursing-home industry.

HARKINS, MALCOLM J., III. *Be Careful What You Ask for: The Repeal of the Boren Amendment and Continuing Federal Responsibility to Assure that State Medicaid Programs Pay for Cost Effective Quality Nursing Facility Care*. 4 JOURNAL OF HEALTH CARE LAW & POLICY 159 (2001). Harkins analyzes the history of payment standards under the Medicaid Act, specifically the repealed Boren Amendment and the legislation that replaced the Boren Amendment, as well as the case law interpreting these standards. The author argues that the repeal of the Boren Amendment did not achieve its intended effect and

that states no longer have the protections that the amendment allowed them.

KAPP, MARSHALL B. *Consumer Choice in Long-Term Care: What the United States Can Teach and Learn from Others About Decisionally Incapacitated Consumers*. 24 INTERNATIONAL JOURNAL OF LAW & PSYCHIATRY 199 (2001). A recent trend in the financing and delivery of health- and long-term care is toward greater consumer choice, control, and direction. These duties traditionally have been filled by the government. This article focuses on the issue of consumer control for the decisionally impaired consumer, and it compares the practice in the United States with other international programs.

KAPP, MARSHALL B. *Quality of Care and Quality of Life in Nursing Facilities: What's Regulation Got to Do with It?* 31 MCGEORGE LAW REVIEW 707 (2000). Kapp considers the impact of nursing-facility regulation through the "therapeutic jurisprudence" perspective to determine what benefit, if any, these regulations provide. The author concludes that, although some benefit occurred from the regulations, there remains much room for improvement.

MARTIN, NATHALIE D. *Funding Long-Term Care: Some Risk-Spreaders Create More Risks than They Cure*. 16 JOURNAL OF CONTEMPORARY HEALTH LAW & POLICY 355 (Summer 2000). This article examines the options available to seniors to finance long-term care, and it looks at the ways individuals can ensure personal funds are not depleted by long-term-care needs. The author explains traditional and alternative long-term-care programs and other cost issues resulting from long-term care in the United States.

MARTIN, NATHALIE D. & ROURKE, ELIZABETH. *Les Jeux Ne Sont Pas Faits: The Right to Dignified Long-Term Care in the Face of Industry-Wide Financial Failure*. 10 CORNELL JOURNAL OF LAW & PUBLIC POLICY 129 (2000). Martin and Rourke examine the consequences of the 1997 Balanced Budget Act ("BBA") in light of current bankruptcy problems in the nursing-home industry. They recommend a public dialogue about federal policy respecting aging and long-term care. The authors feel that legislation was not thoroughly considered as to which long-term-care services should be covered by Medicare.

MENKIN, CORI. *Senior Citizen Overlay Districts and Assisted Living Facilities: Different but the Same*. 21 PACE LAW REVIEW 481 (2001). In this article, Menkin analyzes the statutes and case law surrounding assisted-living facilities and senior-citizen overlay districts to deter-

mine why the two are treated differently despite their similarities. The author then goes on to analyze the definitions of the terms “elderly” and “handicapped” under the Fair Housing Act and concludes that their interpretations support similar treatment of the assisted-living facility and senior overlay district.

QUINN, ANGELA S. *Imposing Federal Criminal Liability on Nursing Homes: A Way of Deterring Inadequate Health Care and Improving the Quality of Care Delivered?* 43 SAINT LOUIS UNIVERSITY LAW JOURNAL 653 (1999). Quinn looks at the development of a national nursing home standard as mandated by OBRA, describes the federal government’s means of enforcing standards, and examines state statutes imposing criminal penalties for substandard care. Quinn feels that only a small number of programs will be made to combat the poor quality of nursing-home care, and she urges Congress to enact legislation criminalizing poor behavior by nursing-home staff that causes injury to nursing-home patients.

WHITTON, LINDA S. *Navigating the Hazards of the Eldercare Continuum.* 6 JOURNAL OF MENTAL HEALTH & AGING 145 (Summer 2000). Whitton discusses elderly housing and long-term-care legislation and argues that such legislation results in the increased vulnerability of the elderly. Thus, additional legislation is necessary to provide better safeguards for the elderly regarding these issues.

WILLIAMS, CHRISTINE V. *The Nursing Home Dilemma in America Today: The Suffering Must Be Recognized and Eradicated.* 41 SANTA CLARA LAW REVIEW 867 (2001). Williams proposes solutions to remedy the mistreatment of nursing-home residents who suffer abuse in long-term-care facilities. She explains how long-term-care facilities are funded, provides examples of many of the problems that plague these institutions, and gives suggestions for possible solutions.

WYTYCHAK, MICHAEL, III. *Payment of Nursing Home Bills Through the Medicaid Program.* 36 IDAHO LAW REVIEW 243 (2000). This article outlines the steps to Medicaid eligibility and the payment of nursing-home bills through Medicaid. It includes a brief discussion about Medicaid spend down of assets. This article is useful, as it dispels common misconceptions many seniors have about Medicaid.

Congressional Documents

Affordability of Long-Term Care: Committee on Finance. Senate, S. Hrg. 107-61 (2001).

Consumers Assess the Nursing Home Initiative: Committee on Aging, Special. Senate, S. Hrg. 106-430 (1999).

HCFA Regional Offices: Inconsistent, Uneven, Unfair: Committee on Aging, Special. Senate, S. Hrg. 106-485 (1999).

Long-Term Care After Olmstead: Aging and Disability Groups Seek Common Ground: Committee on Aging, Special. Senate, S. Hrg. 107-179 (2001).

Long-Term Care: Who Will Care for the Aging Baby Boomers Committee on Aging, Special. Senate, S. Hrg. 107-106 (2001).

Nursing Home Initiative: A Two-Year Progress Report: Committee on Aging, Special. Senate, S. Hrg. 106-818 (2000).

Nursing Home Initiative: Results at Year One: Committee on Aging, Special. Senate, S. Hrg. 106-353 (1999).

Older Americans Act and a Long-Term Family Caregiver Program: Committee on Health, Education, Labor, and Pensions. Senate, S. Hrg. 106-133 (1999).

Residents at Risk? Weaknesses Persist in Nursing Home Complaint Investigation and Enforcement: Committee on Aging, Special. Senate, S. Hrg. 106-108 (1999).

C. FINANCING LONG-TERM HEALTHCARE/MEDICAID ESTATE PLANNING

Books

BROWN, KAREN S. *GUIDE TO LONG-TERM CARE FINANCIAL MANAGEMENT*. New York, NY: Wiley, 2001. This book provides an overview of important demographics, issues, and programs, as well as a state-by-state comparison of long-term-care markets, financing, and regulation. Serving as a sourcebook, it also provides a fifty-state overview of statistical and program information, as well as state-specific resources and organizations.

MCCALL, NELDA, ED. *WHO WILL PAY FOR LONG-TERM CARE? INSIGHTS FROM THE PARTNERSHIP PROGRAMS*. Chicago, IL: Health Administration Press; and Washington, DC: Academy for Health Services Research and Health Policy, 2001. This collection discusses methods to meet the financial needs of the elderly who are not poor but who are unable to pay for long-term care. It presents varying propositions that explore alternatives to long-term-care financing by encouraging

the blending of private and public insurance designed to meet the needs of middle-class Americans. Contributors outline the problems and successes encountered when trying to implement the Robert Wood Johnson Foundation's Partnership for Long-Term Care.

Articles

- AHMAD, OMAR N. *Medicaid Eligibility Rules for the Elderly Long-Term Care Applicant: History and Developments, 1965–1998*. 20 JOURNAL OF LEGAL MEDICINE 251 (1999). Ahmad provides an introduction to the history of the Medicaid program and an analysis of the meaning of the spousal impoverishment laws under the Medicaid program. The author also discusses recent legislation criminalizing fraudulent transfers of assets to establish Medicare eligibility, focusing in particular on attorney liability for such fraudulent transfers.
- ALLEN, BROOKS E. *The Price of Reform: Cost-Sharing Proposals for the Medicare Home Health Benefit*. 17 YALE JOURNAL ON REGULATION 137 (Winter 2000). Cost-sharing is one proposed solution to reform the Medicare home health program. The author explains how this is not a workable solution because of practical limitations that would result in inequitable consequences. Alternative proposals that would generate savings without the limitations associated with beneficiary cost-sharing are highlighted.
- BRADY, JENNIFER G. *Long-Term Care under Fire: A Case for Rational Enforcement*. 18 JOURNAL OF CONTEMPORARY HEALTH LAW & POLICY 1 (2001). Brady describes the history of nursing-home regulation and outlines recent state and federal regulations related to the industry. She details the impact of the BBA of 1997 on the financial situation of the industry. Many nursing homes have been forced into bankruptcy at a time of increasing private litigation against nursing homes. The article concludes with recommendations for addressing concerns about the industry.
- CONNOLLY, MARIE-THERESE. *Federal Law Enforcement in Long-Term Care*. 4 JOURNAL OF HEALTH CARE LAW & POLICY 230 (2001). Connolly gives an overview of federal enforcement of long-term-care laws and discusses the situations in which violations of such laws occur. The article critically analyzes case law regarding federal enforcement of both civil and criminal liability against agencies responsible for the enforcement of long-term-care laws. In addition, Connolly discusses preventative measures taken to ensure that such violations do not occur, and she concludes that the enforcement of

laws and preventative measures are resulting in improvements to the system.

CURRY, LESLIE AND OTHERS. *Medicaid Estate Planning: Perceptions of Morality and Necessity*. 41 GERONTOLOGIST 34 (February 2001). This study looks at the prevalence of Medicaid estate planning and the factors that influence individuals' decisions in this area. It considers the views of adults living in elder-care communities and the views of family caregivers. The authors address changing social norms and the implications for social policy.

FARLEY, MICHAEL. *When "I Do" Becomes "I Don't": Eliminating the Divorce Loophole to Medicaid Eligibility*. 9 ELDER LAW JOURNAL 27 (2001). It is not unheard of for middle-class couples to divorce in an attempt to qualify for government assistance in order to pay for medical costs and to preserve their marital assets. Farley argues that the laws should be revised and that the practice of divorce simply to receive benefits should be prohibited.

JAKOBSEN, KRISTEN R. *Space-Age Medicine, Stone-Age Government: How Medicare Reimbursement of Telemedicine Services Is Depriving the Elderly of Quality Medical Treatment*. 8 ELDER LAW JOURNAL 151 (2000). This note considers the delivery of medical services to the rural elderly via telemedicine. It includes a description of current telemedicine technology and the reimbursement for telemedicine treatment under the Medicare program. Jakobsen looks at the legislation currently in place that addresses telemedicine reimbursement, gives a cost-benefit analysis for telemedicine treatment, and proposes enhanced reimbursement under the Medicare program for telemedicine expenses.

LOCK, SARAH L. & SIEMON, DOROTHY. *Litigation Strategies for Medicare and Medicaid Home Health Coverage*. 34 CLEARINGHOUSE REVIEW 318 (September/October 2000). This article examines lawsuits where litigants challenged the denial, reduction, or termination of their Medicare and Medicaid home healthcare. The cases involve the following issues: lack of available attendants for prescribed home care services, beneficiaries' notice and appeal rights not being enforced, discrimination against cognitively impaired individuals, and the state's failure to observe due process in denying services.

MARMOR, THEODORE R. *How Not to Think about Medicare Reform*. 26 JOURNAL OF HEALTH POLITICS, POLICY & LAW 107 (2001). Marmor encourages readers to reexamine some common myths about Medi-

care, including the notion that baby boomers will have a devastating financial effect on Medicare and the opinion that Medicare must be changed to emulate private health insurance plans. Readers are advised to avoid common pitfalls and ways of thinking about Medicare. Marmor concludes that the system needs adjusting, but not as much as the public has been led to believe.

MARMOR, THEODORE R. & MCKISSICK, GARY J. *Medicare's Future: Fact, Fiction and Folly*. 26 AMERICAN JOURNAL OF LAW & MEDICINE 225 (2000). Marmor and McKissick contend that the Medicare debate derives from the political aspects of the program and that, because analysts pay little attention to those politics, the debate continues to grow in complexity. The article provides a history of the Medicare program and a discussion of the means for analyzing the debate.

TAYLOR, DONALD H. AND OTHERS. *Formation of Trusts and Spend Down to Medicaid*. 54B JOURNALS OF GERONTOLOGY: SERIES B: PSYCHOLOGICAL SCIENCES & SOCIAL SCIENCES S194 (1999). This article examines the role of trusts in Medicaid spend down. It demonstrates that a cross sample of those surveyed said that Medicaid spend down was not the primary reason to establish a trust—avoiding probate was the main reason. But the authors warn that future studies should monitor this data.

WALKER, LESLIE AND OTHERS. *Medicaid Eligibility Workers Discuss Medicaid Estate Planning for Nursing Home Care*. 39 GERONTOLOGIST 201 (1999). This article reports on a study of elder law attorneys, certified financial planners, and Medicaid eligibility workers regarding Medicaid estate planning for nursing-home care. Study participants discuss factors perceived to influence asset transfers for individuals trying to qualify for Medicaid. This article makes recommendations for asset-transfer practices.

WEISBROT, MARK. *Demographic Tidal Waves and Other Myths: Social Security and Medicare*. 9 ELDER LAW JOURNAL 1 (2001). The author argues that both Social Security and Medicare are sustainable and not at risk of financial problems. He supports this argument through the study of demographics and the impact of “myths” on the public policy debate surrounding these issues. In addition, the author argues against the privatization of Medicare and Social Security.

WIENER, JOSHUA M. AND OTHERS. *Federal and State Initiatives to Jump Start the Market for Private Long-Term Care Insurance*. 8 ELDER

LAW JOURNAL 57 (2000). The authors examine federal and state methods used to encourage individuals to purchase long-term-care policies. Methods used by the government include various tax deductions or credits for those who purchase these policies, tax incentives for employer contributions to long-term-care insurance, and the formation of public-private partnerships for long-term care. The authors provide reasons for their conclusion that these programs are largely ineffective.

D. COMPETENCY/CAPACITY FOR DECISIONMAKING
(INCLUDING GUARDIANSHIPS)

Articles

- CHANNICK, SUSAN A. *The Myth of Autonomy at the End-of-Life: Questioning the Paradigm of Rights*. 44 VILLANOVA LAW REVIEW 577 (1999). Channick considers the autonomy paradigm and informed consent in medical decisionmaking at the end of life. The article includes a discussion of recent U.S. Supreme Court cases looking at rights jurisprudence at life's end, and it proposes a shift away from the autonomy paradigm and informed consent to a more "communitarian" model that allows greater input from the immediate family.
- COLLOPY, BART J. *The Moral Underpinning of the Proxy-Provider Relationship: Issues of Trust and Distrust*. 27 JOURNAL OF LAW, MEDICINE & ETHICS 37 (Spring 1999). This article discusses the morality of proxy decisionmaking. The author argues that the focus of moral concerns regarding proxies should be trust and discretion instead of strict rules that prevent risk and uncertainty.
- DERSE, ARTHUR R. *Making Decisions About Life-Sustaining Medical Treatment in Patients with Dementia: The Problem of Patient Decision-Making Capacity*. 20 THEORETICAL MEDICINE 55 (January 1999). Derse closely examines the issue of informed consent in patients with dementia. He focuses on the issues of decisionmaking capacity and the refusal of treatment, and he states that patients with dementia should not be presumed automatically to lack decisionmaking capacity. Instead, an analysis of this capacity should be made. Individuals with some degree of decisionmaking capacity should be permitted to make choices about their medical treatment, even if this means forgoing treatment.
- EARNST, KELLY S. AND OTHERS. *Cognitive Models of Physicians' Legal Standard and Personal Judgments of Competency in Patients with*

Alzheimer's Disease. 48 JOURNAL OF THE AMERICAN GERIATRICS SOCIETY 919 (2000). The authors give results of a study examining five physicians' competency decisions concerning Alzheimer's patients. The study identifies cognitive patient predictors of physicians' judgment using defined legal standards and the physician's personal judgment.

FINUCANE, THOMAS. *Thinking About Life-Sustaining Treatment Late in the Life of a Demented Person.* 35 GEORGIA LAW REVIEW 691 (2001). In this article, the author addresses the specific situation where an ailing elderly patient suffers from dementia and must make a decision about whether to receive medical treatment that would sustain life but be difficult and painful. Using the Standard Paradigm, the author discusses the legal issues surrounding this situation and the medical procedures that might be used.

FRANCIS, LESLIE P. *Decisionmaking at the End of Life: Patients with Alzheimer's or Other Dementias.* 35 GEORGIA LAW REVIEW 539 (2001). This article describes end-of-life care for individuals in various stages of dementia. It considers advance directives and living wills as a means of precedent autonomy, and it reports on the instability of preferences for care and how these preferences may change at various different stages of life. It discusses the problems inherent in how to assess and act in the best interest of patients with dementia, and it proposes that in caring for someone with dementia, physicians should strike a balance between precedent autonomy and best-interest practices.

HOFFMAN, DIANE E. AND OTHERS. *Regulating Research with Decisionally Impaired Individuals: Are We Making Progress?* DEPAUL JOURNAL OF HEALTH CARE LAW 547 (2000). This article provides both a history of the regulation of research upon individuals without the capacity to consent and the current legal status of such research. The author believes that further regulatory controls are necessary to ensure appropriate treatment of such individuals.

JOHNS, A. FRANK. *Ten Years After: Where Is the Constitutional Crisis with Procedural Safeguards and Due Process in Guardianship Adjudication?* 7 ELDER LAW JOURNAL 33 (Spring 1999). Written in response to Mark Andrews' note asserting that there is a constitutional crisis in guardianship, this article gives a detailed history of guardianship and presents rebuttal state statutory evidence. Detailed charts accompany his analysis. The author concludes that although there are

definite areas that need attention, these do not include constitutional due process or procedural rights in the guardianship process.

JOHNS, A. FRANK. *Three Rights Make Strong Advocacy for the Elderly in Guardianship: Right to Counsel, Right to Plan, and Right to Die*. 45 SOUTH DAKOTA LAW REVIEW 492 (2000). Johns focuses on the elder law attorney's involvement in the guardianship process. He includes a discussion about the right to counsel for the alleged incompetent person ("AIP"), and he examines the administration of the guardianship estate and the guardian's roles in asset preservation (including Medicaid planning and spend down). He concludes with a section on the termination of guardians by honoring the advanced directives of the AIP.

KANE, MICHAEL N. *Legal Guardianship and Other Alternatives in the Care of Elders with Alzheimer's Disease*. 16(2) AMERICAN JOURNAL OF ALZHEIMER'S DISEASE & OTHER DEMENTIAS 89 (March–April 2001). Kane discusses the capacity issues of Alzheimer's disease and how these issues can be addressed through legal guardianship and directives. The paper illustrates that legal guardianships can be extremely restrictive and that other alternatives, such as directives, care management, and adult protective services, might be more appropriate in certain circumstances.

KAPP, MARSHALL B. *Physicians' Legal Duties Regarding the Use of Genetic Tests to Predict and Diagnose Alzheimer's Disease*. 21 JOURNAL OF LEGAL MEDICINE 445 (2000). This article addresses physicians' potential responsibilities and exposure to liability with the possible use of emerging genetic techniques in the prediction and diagnosis of Alzheimer's disease. The author outlines the impact the disease has on the population, explains legal obligations associated with medical genetics, and predicts possible future issues that could expose physicians to liability.

MARSON, DANIEL C. *Loss of Competency in Alzheimer's Disease: Conceptual and Psychometric Approaches*. 24 INTERNATIONAL JOURNAL OF LAW & PSYCHIATRY 267 (2001). The legal doctrine of informed consent requires that a valid consent to treatment be informed, voluntary, and competent. Loss of competency is a consequence of Alzheimer's disease and other related neurodegenerative disorders. The purpose of this article is to help the reader understand the issues surrounding competency loss in patients with neurodegenerative disorders. The authors provide a general explanation of competency assessment and research, present a cognitive model of the relationship

of treatment consent capacity and its relationship to Alzheimer's disease, and discuss the methods and results of testing competency in patients.

MARSON, DANIEL C. AND OTHERS. *Consistency of Physicians' Legal Standard and Personal Judgments of Competency in Patients with Alzheimer's Disease*. 48 JOURNAL OF THE AMERICAN GERIATRICS SOCIETY 911 (2000). This study examines experienced physicians' assessing the consent capacity of Alzheimer's patients. The findings state that when guided by a specific legal standard, experienced physicians show more consistency when assessing competency in Alzheimer's patients.

MEZEY, MATHY AND OTHERS. *Decision-Making Capacity to Execute a Health Care Proxy: Development and Testing of Guidelines*. 48 JOURNAL OF THE AMERICAN GERIATRICS SOCIETY 179 (February 2000). This study evaluates the reliability of guidelines used to determine capacity in nursing-home residents to execute a healthcare proxy. The authors find that seventy-three percent of those tested had sufficient capacity to execute a healthcare proxy.

MORGAN, DEANNE. *The Admission of Alzheimer's Patients to Hospital Inpatient Psychiatric Units*. 32 JOURNAL OF HEALTH LAW 269 (1999). Morgan begins by describing symptoms and treatment for Alzheimer's patients. Often times, hospitals or nursing homes may not feel that they can control the patient, or they feel that the patient is a danger to others. In these circumstances, hospitals may decide to transfer Alzheimer's patients to psychiatric units. The article includes a discussion of the legal and ethical issues surrounding such admission and Medicare coverage for Alzheimer's patients.

OSUNA, E. AND OTHERS. *Informed Consent: Evaluation of the Information Provided to Elderly Patients*. 20 MEDICINE & LAW 379 (2001). In this study, the authors critically analyze the information received by patients and family members from healthcare providers for the basis of making informed consent. The study concludes that the information was directed primarily to family members and that patients were given little, if any, information. As a result, patients had minimal information upon which to base their informed consent.

OVERMAN, WILLIAM H. AND OTHERS. *The Chronically Ill Elder Client: A Legal-Medical Perspective*. 6(2) JOURNAL OF MENTAL HEALTH & AGING 173 (Summer 2000). Overman argues that elder law attorneys must be able to identify chronic illness and depression in order to

know when to recommend that their clients seek medical attention. The article outlines the symptoms of various chronic illnesses and depression and how such illnesses can affect the attorney-client relationship.

RABINS, PETER V. *Dementia and Alzheimer's Disease: An Overview*. 35 GEORGIA LAW REVIEW 451 (2001). Rabins describes the physical impairments causing dementia, discusses the stages of dementia and their likely effect on decisionmaking capacity, and briefly lists the ethical and legal challenges facing families of those with Alzheimer's disease. He then outlines the stages of treatment for an Alzheimer's patient.

ROSSITER, WENDY C. *No Protection for the Elderly: The Inadequacy of the Capacity Doctrine in Avoiding Unfair Contracts Involving Seniors*. 78 OREGON LAW REVIEW 807 (Fall 1999). Because seniors are often the target of unfair contracts, the author states they deserve greater protection than provided under current contract law. After explaining why seniors are a vulnerable group, this article discusses problems with applying the capacity doctrine when trying to avoid contracts entered into by seniors. The author provides and critiques possible solutions.

SABATINO, CHARLES P. *Representing a Client with Diminished Capacity: How Do You Know It and What Do You Do About It?* 16 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS 481 (Winter 2000). The author discusses the professional ethics and responsibilities of an attorney in the representation of a client suffering from diminished capacity. The article addresses the identification of diminished capacity, the mechanisms to screen for a diminution of capacity, and what actions an attorney should take after the screening process is complete.

SCHIMER, MARIA R. & ANETZBERGER, GEORGIA J. *Examining the Gray Zones in Guardianship and Involuntary Protective Services Laws*. 10 JOURNAL OF ELDER ABUSE AND NEGLECT 19 (1999). This study compares professionals' criteria to identify vulnerable adults as either incapacitated, which does not result in involuntary intervention, or incompetent, which can result in involuntary intervention. The authors also provide a historical analysis of involuntary protection and the legal standard for incompetence and incapacity. A decisionmaking grid is presented to assist professionals in reducing biases and regional differences.

2003]

GERONTOLOGY AND THE LAW

737

TEPLY, LARRY L. *The Elderly and Civil Procedure: Service and Default, Capacity Issues, Preserving and Giving Testimony, and Compulsory Physical or Mental Examinations*. 30 STETSON LAW REVIEW 1273 (2001). Tepy addresses elder law issues that are appropriate for discussion in law school civil procedure courses. The author focuses on the following procedural topics: service and default, capacity-related issues, preserving and giving testimony, and compulsory physical or mental examinations. Brief explanations on how to incorporate these topics into class lectures are provided.

WEYRAUCH, SAMANTHA. *Decision Making for Incompetent Patients: Who Decides and by What Standards?* 35 TULSA LAW JOURNAL 765 (2000). This law review comment discusses, through the use of case law and legislation, the problems with competency standards used to assess a patient's decisionmaking ability. The author ultimately concludes that the adoption of a uniform standard would greatly reduce the problems of assessment and its treatment in the legal arena.

WILBER, KATHLEEN AND OTHERS. *New Perspectives on Conservatorship: The Views of Older Adult Conservatees and Their Conservators*. 8 AGING, NEUROPSYCHOLOGY & COGNITION 225 (September 2001). This study assesses how conservatorship is experienced from the perspective of the conservatee and how a conservatorship serves the older adult. The goal is to gain insight that would allow for improvements in the conservatorship practice and enhancements in the quality of life for conservatees.

ZRONEK, SUE AND OTHERS. *Elderly Patients' Understanding of Advance Directives*. 1(2) JONA'S HEALTHCARE LAW, ETHICS & REGULATION 23 (June 1999). The authors describe their study in which they analyzed patients' understanding of advance directives. The authors find that, while patients understand some general concepts about advance directives, most also had misconceptions as to their practical application. The authors offer suggestions for the education of patients regarding advance directives.

E. RIGHT TO DIE/DECISIONS ABOUT DYING (INCLUDING ADVANCE DIRECTIVES)

Articles

BISHOP, MARK S. *Crossing the Decisional Abyss: An Evaluation of Surrogate Decision-Making Statutes as a Means of Bridging the Gap Between Post-Quinlan Red Tape and the Realization of an Incompetent*

Patient's Right to Refuse Life-Sustaining Medical Treatment. 7 ELDER LAW JOURNAL 153 (1999). The author argues that, although surrogate decisionmaking statutes are essential to the ability of an incompetent patient to refuse medical treatment to prolong life, they must be carefully drafted and updated as appropriate. The article specifically analyzes the surrogate statutes in Illinois, New Mexico, and Ohio.

BRADLEY, ELIZABETH H. & RIZZO, JOHN A. *Public Information and Private Search: Evaluating the Patient Self-Determination Act.* 24 JOURNAL OF HEALTH POLITICS, POLICY & LAW 239 (April 1999). The Patient Self-Determination Act ("PSDA") is intended to make the public aware of the right to refuse or accept life-sustaining treatment and to participate in medical-treatment decisionmaking at the end of life. This article provides the results of a study conducted to examine the impact of the PSDA on patient decisionmaking, and it proposes guidelines for legislative initiatives. The authors conclude that the impact of the law on documentation is greatest among individuals for whom information is most beneficial but for whom a private search is most costly.

CANTOR, NORMAN L. *Twenty-Five Years after Quinlan: A Review of the Jurisprudence of Death and Dying.* 29 JOURNAL OF LAW, MEDICINE & ETHICS 182 (2001). In this article, the author analyzes the history of right-to-die case law since *Quinlan*. The author argues that, although the laws surrounding the right to die have advanced, they also have become more convoluted.

ENGLISH, DAVID M. & MORGAN, REBECCA C. *Nursing Home Residents and the New California Health Care Decisions Law.* 31 MCGEORGE LAW REVIEW 733 (2000). This article discusses advance directives and the lack thereof for nursing-home residents. It includes a significant section on the California Health Care Decisions Law, which addresses advance directives, and it talks about form directives and oral directives in light of this California statute.

HAFEMEISTER, THOMAS L. *End-of-Life Decision Making, Therapeutic Jurisprudence, and Preventive Law: Hierarchical v. Consensus-Based Decision-Making Model.* 41 ARIZONA LAW REVIEW 329 (1999). Hafemeister advocates using a consensus-based decisionmaking model for end-of-life decisions. He contends that this model will reduce the number of controversies facing the courts and will better serve the interests of all the individuals associated with these deci-

sions. He discusses his method for integrating the therapeutic-jurisprudence and preventative-law approaches into one model.

KING, DEBORAH A. AND OTHERS. *Family Matters: A Social System Perspective on Physician-Assisted Suicide and the Older Adult*. 6 PSYCHOLOGY, PUBLIC POLICY & LAW 434 (2000). The authors argue that the right-to-die decision should be made through a "family systems perspective" that includes the patient's family in the decision-making process. The authors conclude that if the patient refuses family participation in the process, physicians should investigate further the reasons for the patient's refusal.

MOODY, LINDA E. AND OTHERS. *A Nursing Perspective on End-of-Life Care: Research and Policy Issues*. 2 JOURNAL OF HEALTH CARE LAW & POLICY 243 (1999). This article discusses advance directives, informed consent, and autonomy within the context of nursing. It delineates areas in which nursing research will improve the quality of end-of-life care.

MOORE, CRYSTAL DEA & SHERMAN, SUSAN R. *Factors that Influence Elders' Decisions to Formulate Advance Directives*. 31(1/2) JOURNAL OF GERONTOLOGICAL SOCIAL WORK 21 (1999). In this study, the authors evaluate the factors that affect advance directive decisions by the elderly, including religion, family members, and ethnicity. They conclude that those assisting the elderly in preparing advance directives should be sensitive to those factors that might affect the decisionmaking process.

PRATT, DAVID A. *Too Many Physicians: Physician-Assisted Suicide After Glucksberg/Quill*. 9 ALBANY LAW JOURNAL OF SCIENCE & TECHNOLOGY 161 (1999). After discussing the legal history of physician-assisted suicide, the author argues that the right to refuse treatment is distinguishable from and does not include physician-assisted suicide. The author contends that, instead of changing the law to allow physician-assisted suicide, medical care at the end of life should be improved.

PUCHALSKI, CHRISTINA M. AND OTHERS. *Patients Who Want Their Family and Physician to Make Resuscitation Decisions for Them: Observations from SUPPORT and HELP*. 48 JOURNAL OF THE AMERICAN GERIATRICS SOCIETY S84 (May 2000). This study analyzes existing data from the Hospitalized Elderly Longitudinal Project ("HELP") and the Study to Understand Prognosis and Preferences for Outcomes and Risks of Treatments ("SUPPORT"). The authors conclude that

older, seriously ill patients would prefer to have their family and physicians make resuscitation decisions for them rather than following their own stated preferences, were they to lose their decisionmaking capacity.

RODRIGUEZ, KELLEN F. *Suing Health Care Providers for Saving Lives: Liability for Providing Unwanted Life-Sustaining Treatment*. 20 JOURNAL OF LEGAL MEDICINE 1 (1999). Rodriguez emphasizes recent studies showing that the majority of heroic life-saving treatment is given in spite of a patient's advance directive. The author examines legal liability in cases where the patient's advance directives have been disregarded. He emphasizes the need for improved communication among physicians, patients, and family members.

ROSENFELD, AMY B. *Assisted Suicide, Depression, and Right to Die*. 6 PSYCHOLOGY, PUBLIC POLICY & LAW 467 (2000). This article analyzes previous literature discussing both assisted suicide and euthanasia. The author then uses this analysis to critique the literature and to recommend areas of concentration for those who want to research the issues further.

SOVELL, EMILY J. *Elderly, Be Alert: The Battle Continues over Deathbed Rights*. 45 SOUTH DAKOTA LAW REVIEW 670 (2000). Sovell gives an overview of key issues in the assisted-suicide debate. The author outlines the pros and cons of the issue and a discussion of recent U.S. Supreme Court cases. She compares U.S. decisions on assisted suicide to those in the Netherlands.

ZELEZNIK, JOMARIE AND OTHERS. *The Doctor-Proxy Relationship: Perception and Communication*. 27 JOURNAL OF LAW, MEDICINE & ETHICS 13 (1999). This article gives an overview of healthcare proxies and discusses the results of a survey conducted to determine how proxies are perceived by physicians. The study also examines communication within the physician-proxy relationship. Findings include the fact that many physicians were unaware that proxy documents were in their patients' files.

Congressional Documents

Death Planning Made Difficult: The Danger of Living Trust Scams: Committee on Aging, Special. Senate, S. Hrg. 106-694 (2000).

2003]

GERONTOLOGY AND THE LAW

741

V. SOCIAL POLICY/SOCIAL ISSUES

A. SOCIAL POLICY

Books

BUTLER, ROBERT N. AND OTHERS, EDS. *LIFE IN AN OLDER AMERICA*. New York, NY: Century Foundation Press, 1999. This book is a collection of works by experts from the fields of public policy, health-care policy, economics, media, and advertising. The general theme of this collection is to demystify the conception of aging and to remedy faulty predictions for the elderly in America.

CAHILL, SEAN AND OTHERS. *OUTING AGE: PUBLIC POLICY ISSUES AFFECTING GAY, LESBIAN, BISEXUAL AND TRANSGENDER ELDERS*. Washington, DC: Policy Institute of the National Gay and Lesbian Task Force Foundation, 2000. This is a report from the National Gay and Lesbian Task Force Policy Institute on issues affecting the growing elder gay, lesbian, bisexual, and transgendered ("GLBT") community. The issues arise from the fact that federal and state government social services programs that support the lives of the nation's elderly do not recognize or support GLBT families. The report describes this population and important policy issues, and it makes recommendations for policy change.

KOFF, THEODORE H. & PARK, RICHARD W. *AGING PUBLIC POLICY: BONDING THE GENERATIONS*, 2ND ED. Amityville, NY: Baywood Publishing Company, 1999. This comprehensive work on public policy and aging begins by describing the policymaking process. It then traces the development of specific aging policies in U.S. healthcare, employment, and retirement. The final section looks at future directions for policy developments concerning the aged.

WEISSTUB, DAVID N. AND OTHERS, EDS. *AGING: CULTURE, HEALTH, AND SOCIAL CHANGE*. Boston, MA: Kluwer Academic Publishers, 2001. This book is an interdisciplinary compilation of works by individual authors. The authors discuss a variety of issues related to aging and the implications for social health policy both in the United States and internationally.

Articles

ABRAMS, SUSAN. *Inebriated Elders: The Problem of Substance Abuse Among the Elderly*. 9(2) *ELDER LAW JOURNAL* 229 (2001). Sub-

stance abuse is a growing problem among the elderly. In discussing the problem, the author examines the factors making this a problem that is difficult to treat, and she outlines social, medical, and legal inadequacies that keep this problem largely hidden. Recommendations to prevent, detect, and treat the problem of senior substance abuse are provided.

GINGISS, RANDALL J. *Second Marriage Considerations for the Elderly*. 45 SOUTH DAKOTA LAW REVIEW 469 (2000). In this article, the author discusses a variety of legal issues surrounding second marriages, including effects on children from the first marriage, prenuptial agreements, and elective-share statutes. The article also discusses the tax implications of the federal estate tax marital deduction and the impact of the deduction on the second spouse and children from the first marriage.

GOSKER, ERIKA. *The Marketing of Gambling to the Elderly*. 7 ELDER LAW JOURNAL 185 (1999). The elderly spend a considerable amount of money on gambling and are particularly vulnerable to marketing efforts. The author examines the potential to regulate marketing techniques to protect this group and whether advertising directed at the elderly receives commercial speech protection. The nursing-home industry is charged with taking a role in preventing the gambling industry from targeting its residents.

GROGAN, WILLIAM H. *The Tension Between Local Zoning and the Development of Elderly Housing: Analyzing the Use of the Fair Housing Act and the Americans with Disabilities Act to Override Zoning Decisions*. 33 SUFFOLK UNIVERSITY LAW REVIEW 317 (2000). Grogan examines various cities' opposition to senior housing in light of the Fair Housing Act ("FHA") and the ADA. He looks at recent cases that challenge local zoning decisions under the FHA and ADA.

HAHN, OLIVER G. *Constitutional and Family Law—Grandparent Visitation in the Face of the Fourteenth Amendment Due Process Clause: Parental or Grandparental Rights? Troxel v. Granville, 530 U.S. 57*. 24 UNIVERSITY OF ARKANSAS AT LITTLE ROCK LAW REVIEW 199 (2001). This law review note analyzes the Supreme Court decision of *Troxel v. Granville* and its legal implications for substantive due process and fundamental rights. The note also analyzes the case in light of state legislation regarding grandparent visitation.

HUDDY, LEONIE AND OTHERS. *Compassionate Politics: Support for Old-Age Programs Among the Non-Elderly*. 22 POLITICAL PSYCHOLOGY

443 (2001). This study analyzes the reasons nonelderly individuals support old-age programs such as Social Security and Medicare. It focuses on individuals who support these programs based on the recipients' perceived need, and it reveals that individuals are more likely to support government programs when they feel the aged are financially impoverished. The collected data indicate that support of old-age programs is a compassionate rather than self-interested response to need.

MEADOWS, ROBYN L. *Bankruptcy Reform and the Elderly: The Effect of Means-Testing on Older Debtors*. 36 IDAHO LAW REVIEW 227 (2000). The author argues that means-based testing will have a negative impact on the elderly because of their fixed incomes. The article was written in light of the impending passage of the Bankruptcy Reform Act of 1999.

PILLITIRE, MELODIE. *Grandparent Visitation Rights: The Pitfalls and the Promise*. 2 LOYOLA JOURNAL OF PUBLIC INTEREST LAW 177 (2001). Pillitire looks at grandparents' visitation rights and statutes allowing grandparents the right to sue for visitation. She recounts the changing structure of U.S. families and parental rights. She also discusses visitation cases involving grandparents and proposes standards for awarding or denying visitation.

REIG, M. L. *The Unspoken Poor: Single Elderly Women Surviving in Rural America*. 9 ELDER LAW JOURNAL 257 (2001). The author contends that Social Security and SSI must be adjusted to increase the income of impoverished elderly women. The author provides the history of the rural elderly poor and of the government programs designed to assist this group, analyzes the causes of poverty among single elderly women in rural America, and makes recommendations that would help the economic situation of many of these women.

SUTHERLAND, D. DIXON & MORGAN, REBECCA C. *Dying and Social Policy in the New Millennium*. 11(2-3) JOURNAL OF AGING & SOCIAL POLICY 145 (2000). Sutherland and Morgan discuss the decision-making processes in growing old and how the interrelationships between medicine, law, and religion impact that process. The authors critique society's inclination to allow the court system to be the ultimate arbiter of the complicated social issues surrounding the quality of life for the elderly. The authors argue that society must place greater emphasis on medicine and religion to create balance in the decisionmaking process.

Congressional Documents

Boomers Are Coming: Challenges of Aging in the New Millennium: Committee on Aging, Special. Senate, S. Hrg. 106-445 (1999).

Field Hearings on the Older Americans Act: Meeting the Needs of Our Nation's Seniors: Committee on Education and the Workforce. House, (1999).

Hearing on Now Hiring: The Rising Demand for Older Workers: Committee on Aging, Special. Senate, S. Hrg. 106-690 (2000).

Older Americans Act: Meeting the Needs of Our Nation's Seniors: Committee on Education and the Workforce. House, (1999).

B. VICTIMIZATION OF THE ELDERLY*Books*

CARP, FRANCES M. ELDER ABUSE IN THE FAMILY: AN INTERDISCIPLINARY MODEL FOR RESEARCH. New York, NY: Springer Publishing Company, 2000. Designed to encourage greater research on elder abuse, this work outlines the history of elder abuse and develops a comprehensive conceptual model of domestic abuse of the aged. Sections identify core literature on the topic and areas for future research.

ROTHMAN, MAX B. AND OTHERS, EDS. ELDERS, CRIME, AND THE CRIMINAL JUSTICE SYSTEM: MYTH, PERCEPTIONS, AND REALITY IN THE 21ST CENTURY. New York, NY: Springer Publishing Company, 2000. This book is comprised of a collection of works on gerontology and the criminal justice system. With a different author for each chapter, the book discusses a variety of topics from various disciplines, including criminology, law, sociology, psychology, and social work. A wide selection of empirical data is provided as well.

TATARA, TOSHIO, ED. UNDERSTANDING ELDER ABUSE IN MINORITY POPULATIONS. Philadelphia, PA: Brunner/Mazel, 1999. This book contains a series of essays and studies discussing elder maltreatment in racial and ethnic minority populations. The four racial and ethnic populations discussed in depth are African American, Hispanic, Asian American, and American Indian. A fifth section takes a broader, multicultural approach in its examination of elder abuse issues.

Articles

- ALFONSO, HAYDEE I. *Mortgage Fraud Prevention Program: Volunteer Legal Services Program of the Bar Association of San Francisco*. 12 JOURNAL OF ELDER ABUSE & NEGLECT 75 (2000). This article discusses the circumstances leading to elderly persons' losing their homes through foreclosure as a result of fraud and unfair or deceptive business practices. The article describes a volunteer program in San Francisco that advocates on behalf of seniors facing home loss, and it includes training information for lawyers trying to develop similar programs for seniors.
- BAGINSKIS, MARK A. *Telemarketing Fraud upon the Elderly Shows No Signs of Slowing*. 11 LOYOLA CONSUMER LAW REVIEW 4 (1999). This article discusses the federal Senior Citizens Against Marketing Scams Act and the attempts to prevent telemarketing fraud upon the elderly. The author argues that until telemarketing fraud is addressed at the state level, it will continue to occur at an alarming rate.
- BERGERON, L. RENE. *Elder Abuse Case Study: Caregiver Stress or Domestic Violence? You Decide*. 34 JOURNAL OF GERONTOLOGICAL SOCIAL WORK 47 (2001). Bergeron uses a case example to explain the theories of caregiver stress and domestic violence as the cause of elder abuse. Elder abuse laws largely are shaped by the theory of caregiver stress, and this theory influences the case assessments and interventions offered to elderly victims. The author urges practitioners to examine more closely the domestic violence theory for shaping policy.
- BRANDL, BONNIE & MEUER, TESS. *Domestic Abuse in Later Life*. 8(2) ELDER LAW JOURNAL 297 (2000). State definitions of elder abuse vary, but they usually include physical and sexual abuse, financial exploitation, neglect, and self-neglect. This article, focusing on women and written for professionals who have close contact with the elderly, provides a definition of abuse, steps that can be taken to intervene, relevant civil and criminal laws that address elder abuse, and the most effective interventions shown to help victims.
- BRATKIEWICZ, JEFFREY L. *"Here's a Quarter, Call Someone Who Cares": Who Is Answering the Elderly's Call for Protection from Telemarketing Fraud?* 45 SOUTH DAKOTA LAW REVIEW 586 (2000). In this article, the author addresses the negative impact of telemarketing fraud on the elderly. The author then goes on to analyze legislation intended to prevent such fraud, namely, the federal Seniors Safety Act of 1999 and legislation passed in South Dakota.

- BRAUN, JULIE A. & CAPEZUTI, ELIZABETH A. *A Medico-Legal Evaluation of Dehydration and Malnutrition Among Nursing Home Residents*. 8 ELDER LAW JOURNAL 239 (2000). Braun and Capezuti look at dehydration and malnutrition as forms of elder abuse in nursing homes. They examine federal and state regulations concerning nutrition, as well as nursing-home standards governing nutrition and the use of feeding tubes in long-term-care facilities.
- CHOI, NAMKEE G. & MAYER, JAMES. *Elder Abuse, Neglect, and Exploitation: Risk Factors and Prevention Strategies*. 33 JOURNAL OF GERONTOLOGICAL SOCIAL WORK 5 (2000). Social workers are among those who first may be able to detect signs of elder maltreatment and who are responsible for providing intervention and preventative services. This source is a report of a study designed to help social workers by examining the differences between self-neglecting elders and those abused and/or neglected by others, and by identifying risk factors.
- CONWAY, GAIL C. *"There Oughtta Be a Law": A Survey of Legislative Responses to Elder Abuse*. 35 CLEARINGHOUSE REVIEW 41 (2001). Conway describes various state statutes criminalizing abuse and the financial exploitation of the elderly. Although statutes vary state-to-state, some states give increased penalties for crimes against the elderly. Some of these statutes treat issues such as the misuse of power of attorney and background checks for caregivers.
- CRICHTON, SUSAN J. AND OTHERS. *Elder Abuse: Feminist and Ageist Perspectives*. 10 JOURNAL OF ELDER ABUSE & NEGLECT 115 (1999). This article analyzes gender and age as significant variables in explaining elder abuse, and it uses a feminist theoretical approach to organize these variables. The authors compare elder abuse by a spouse to elder abuse by an adult child.
- DESSIN, CAROLYN L. *Financial Abuse of the Elderly*. 36 IDAHO LAW REVIEW 203 (2000). Dessin outlines the four basic categories of financial abuse of the elderly: theft, fraud, negligence, and breach of duty by fiduciary or caregiver. She broadly discusses the ways of avoiding abuse and reporting guidelines. Punishment for abusers varies by state, and in some circumstances the abusers may be prosecuted under theft or fraud statutes.
- HARKNESS, DONNA S. *Predatory Lending Prevention Project: Prescribing a Cure for the Home Equity Loss Ailing the Elderly*. 10 BOSTON UNIVERSITY PUBLIC INTEREST LAW JOURNAL 1 (2000). Harkness de-

scribes the prevalence of predatory lending practices involving senior citizens. Although the government has enacted disclosure laws such as the Truth in Lending and Home Ownership & Equity Protection Acts, violations still are rampant. To avoid these unethical practices, the author proposes a program of mandatory home counseling to aged home equity loan borrowers.

JORDAN, LISAE C. *Elder Abuse and Domestic Violence: Overlapping Issues and Legal Remedies*. 15 AMERICAN JOURNAL OF FAMILY LAW 147 (2001). Jordan provides a practical discussion for the elder law attorney dealing with clients who may be victims of abuse. The author outlines risk factors for elder abuse and the legal remedies that are available for such abuse. In addition, the author offers approaches for dealing with issues of capacity and safety planning.

KORPUS, KYMBERLEIGH N. *Extinguishing Inheritance Rights: California Breaks New Ground in the Fight Against Elder Abuse but Fails to Build an Effective Foundation*. 52 HASTINGS LAW JOURNAL 537 (January 2001). This note describes the growing problem of elder abuse in the United States and the remedies currently available to abused elders. The author explains inheritance doctrines and proposes a Chinese behavior-based model of inheritance as an alternative to traditional American descent doctrines. Behavior-based models punish misconduct and encourage familial ties, and they might serve to reduce elder abuse. California Probate Code § 259 is evaluated and identified as based on the same principles as Chinese inheritance statutes.

LOUE, SANA. *Elder Abuse and Neglect in Medicine and Law: The Need for Reform*. 22 JOURNAL OF LEGAL MEDICINE 159 (2001). This article examines the broad topic of elder abuse and its differing manifestations, and it describes theories or models that explain the existence of elder abuse. It looks at various state laws punishing elder abusers, and it outlines different ways in which healthcare workers and legal workers must respond to or report the abuse. Also, it addresses different ways to protect the elderly from further abuse.

MARCIANO, JENNIFER. *Mandatory Criminal Background Checks of Those Caring for Elders: Preventing and Eliminating Abuse in Nursing Homes*. 9 ELDER LAW JOURNAL 203 (2001). The author analyzes the federal and state legislation enacted for the protection of nursing-home patients from elder abuse. In addition, she analyzes the effectiveness of nursing-home regulation. She concludes that mandatory

criminal background checks are necessary to protect the elderly placed in nursing homes.

MOSKOWITZ, SEYMOUR & DEBOER, MICHAEL J. *When Silence Resounds: Clergy and the Requirement to Report Elder Abuse and Neglect.* 49 DEPAUL LAW REVIEW 1 (1999). Because of the increasing problem of elder abuse and neglect, many jurisdictions require clergy to report elder mistreatment. This can conflict with a tradition of confidentiality in the context of clergy-parishioner communications. This article examines various religious traditions' clergy-parishioner communications and the impact of statutory reporting requirements on this communication, analyzes potential criminal and civil liabilities clergy face when violating reporting laws, and provides an analysis of the legal protections available to clergy.

SACCO, VINCENT F. & NAKHAIE, M. REZA. *Coping with Crime: An Examination of Elderly and Nonelderly Adaptations.* 24 INTERNATIONAL JOURNAL OF LAW & PSYCHIATRY 305 (2001). The authors study the behavioral manifestation of fear among the elderly. They argue that such a measurement of fear is more appropriate because it focuses on the actions of the elderly as opposed to the perceptions or feelings of the elderly. This approach also allows for better data with which to analyze policy decisions regarding the elderly and victimization.

THILGES, AMANDA A. *Abuse of a Power of Attorney: Who Is More Likely to Be Punished, the Elder or the Abuser.* 16 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS 579 (2000). This law review comment discusses state statutes addressing the use of power of attorney to exploit the elderly financially. The author concludes that as financial exploitation of the elderly grows, these statutes will provide necessary remedies for those elders who fall victim to such abuse.

THOMAS, CYNTHIA. *First National Study of Elder Abuse and Neglect: Contrast with Results from Other Studies.* 12 JOURNAL OF ELDER ABUSE & NEGLECT 1 (2000). This article compares the methods and results of the National Elder Abuse Incidence Study ("NEAIS") with several previous studies, and it makes recommendations for future studies. The author outlines features of the NEAIS, contrasts the methods and results with those of other studies with similar objectives, and assesses estimates provided by the studies to determine the cause of the differences.

TWITTY, JANET L. *Some Older People Do Not Have the Same Rights as Convicted Criminals: Bill's Story*. 5 JOURNAL OF ETHICS, LAW & AGING 51 (1999). Twitty explains unreasonable confinement in light of one elderly man living in rural Georgia. Although her article is a commentary, unreasonable confinement is discussed in relationship to the Georgia code. The article also lists warning signs of unreasonable confinement.

Congressional Documents

Deceptive Sweepstakes Mailings: Committee on Government Reform. House, (1999).

Fraud: Targeting America's Seniors: Committee on Commerce, Science, and Transportation. Senate, S. Hrg. 106-1018 (1999).

Misleading Mailings Targeted to Seniors: Committee on Ways and Means. House, (2001).

Older Americans Act: Elder Abuse: Committee on Health, Education, Labor, and Pensions. Senate, S. Hrg. 106-27 (1999).

Protecting Seniors from Fraud: Committee on Aging, Special. Senate, S. Hrg. 106-851 (2000).

Saving Our Seniors: Preventing Elder Abuse, Neglect, and Exploitation: Committee on Aging, Special. Senate, S. Hrg. 107-105 (2001).

C. AGED OFFENDERS

Articles

ADAMS, WILLIAM E., JR. *The Intersection of Elder Law and Criminal Law: More Traffic than One Might Assume*. 30 STETSON LAW REVIEW 1331 (2001). In this article, the author argues for the inclusion of elder law issues in the first year law student criminal law curriculum. The author believes that this curriculum should discuss both the elderly as the victim and the elderly as the criminal.

COHN, FELICIA. *The Ethics of End-of-Life Care for Prison Inmates*. 27 JOURNAL OF LAW, MEDICINE & ETHICS 252 (1999). Cohn considers arguments for improving end-of-life care for aged prisoners. She discusses the fact that it is difficult to put into practice improvements, as prison-hospital caregivers often have negative attitudes toward easing prisoners' suffering at life's end. She describes general concepts, such as the value of persons, concepts of justice, and an-eye-for-an-

eye, and she asks readers to consider if prisoners deserve the same standards of care as the nonprison population.

CORWIN, PATRICIA S. *Senioritis: Why Elderly Federal Inmates Are Literally Dying to Get out of Prison.* 17 JOURNAL OF CONTEMPORARY HEALTH LAW & POLICY 687 (2001). This law review comment queries whether there is a duty to elderly inmates through the Eighth Amendment and its restriction against cruel and unusual punishment. The author also considers both state and federal treatment of elderly inmates and concludes that the state and federal governments are not dealing with elderly inmates appropriately.

CURRAN, NADINE. *Blue Hairs in the Bighouse: The Rise in Elderly Inmate Population, Its Effect on the Overcrowding Dilemma and Solutions to Correct It.* 27 NEW ENGLAND JOURNAL ON CRIMINAL & CIVIL CONFINEMENT 225 (2000). Curran addresses issues facing the growing elderly-inmate population and its impact on prison overcrowding. A description of the problem of overcrowding, its causes, and how it affects inmates is provided. The author considers possible methods of alleviating overcrowding and of mitigating the problems the elderly face in prison on a daily basis, and she analyzes various legal claims that elderly inmates make against federal and state prison systems.

GALLAGHER, ELAINE M. *Elders in Prison: Health and Well-Being of Older Inmates.* 24 INTERNATIONAL JOURNAL OF LAW & PSYCHIATRY 325 (2001). This article reviews existing data on the elderly in prisons. The author argues that policy changes in the treatment of elderly prisoners are necessary to address the fact that prisons are not intended for the elderly.

RATHBONE-MCCUAN, ELOISE. *Elder Abuse Within the Context of Intimate Violence.* 69 UMKC LAW REVIEW 215 (2000). This article gives a brief history of the reported cases of elder abuse in the United States. It describes state programs to protect the elderly and discusses the reporting requirements of various professions. It also talks about the role of law enforcement and lawyers in reporting elder abuse, and it includes a section devoted to the prosecution of elder abuse under Missouri law.

STEFFENSMEIER, DARRELL & MOTIVANS, MARK. *Older Men and Older Women in the Arms of Criminal Law: Offending Patterns and Sentencing Outcomes.* 55B JOURNAL OF GERONTOLOGY: SERIES B: PSYCHOLOGICAL SCIENCES & SOCIAL SCIENCES S141 (May 2000).

Steffensmeier and Motivans report the results of a study conducted to determine if older defendants are given more lenient sentences than younger defendants and whether the pattern is similar for older male and female defendants. In most situations, the elderly are less likely to be imprisoned, and those who are imprisoned receive shorter prison terms than younger offenders. The study addresses whether the differences result from legitimate concerns regarding older offenders, such as their propensity to commit future crimes

YATES, JEFF & GILLESPIE, WILLIAM. *The Elderly and Prison Policy*. 11(2/3) JOURNAL OF AGING & SOCIAL POLICY 167 (2000). Yates and Gillespie discuss the graying of the prison population since the 1980s. They compare the higher costs associated with essential services to elderly prisoners versus younger prisoners. Added costs for older prisoners include prescriptions and other fees associated with health-care for aged individuals. The authors encourage readers to reconsider the added costs of incarcerating aged offenders.

VI. ELDER PRACTICE

Articles

FLEMING, ROBERT B. & MORGAN, REBECCA C. *Lawyers' Ethical Dilemmas: A "Normal" Relationship when Representing Demented Clients and Their Families*. 35 GEORGIA LAW REVIEW 735 (2001). The authors analyze the Model Rules of Professional Conduct as they apply to the attorney-client relationship with demented clients. They also suggest approaches that attorneys can apply in maintaining that relationship.

GRAMA, JOANNA L. *The "New" Newlyweds: Marriage Among the Elderly, Suggestions to the Elder Law Practitioner*. 7 ELDER LAW JOURNAL 379 (1999). Grama addresses special concerns for the elderly who decide to remarry and the issues that attorneys representing these clients should know. Problems that the elderly encounter with later marriages that can serve as deterrents to marriage include protecting the wealth of both partners, medical care concerns, the possible loss of a widow's pension, and the family's reaction.

HAYES, ROBERT D. AND OTHERS. *What Attorneys Should Know About Long-Term Care Insurance*. 7 ELDER LAW JOURNAL 1 (1999). The authors encourage elder law attorneys to advise clients on the benefits and availability of long-term-care insurance. Their article informs at-

torneys of the major features of such policies, and it details the exclusions from long-term-care policies and information about premium costs.

LONGAN, PATRICK E. *Elder Law Across the Curriculum: Professional Responsibility*. 30 STETSON LAW REVIEW 1413 (2001). The author establishes a recommended curriculum for legal instruction on professional responsibility and elder law. The article includes problems, discussion questions, and analysis.

LONGAN, PATRICK E. *Middle-Class Lawyering in the Age of Alzheimer's: The Lawyer's Duties in Representing a Fiduciary*. 70 FORDHAM LAW REVIEW 901 (2001). This article serves as a guide for attorneys practicing elder law by highlighting key issues and problems to watch for when dealing with aging clients. Attorneys must be aware of the growing problem of financial abuse of the elderly and must realize that their presence can serve as a deterrent to such abuse. The article provides options for attorneys to prevent financial abuse by a fiduciary.

MORGAN, REBECCA C. *Who Is the Client? Ethical Issues in an Elder Law Practice*. 16 JOURNAL OF THE AMERICAN ACADEMY OF MATRIMONIAL LAW 463 (2000). Morgan discusses the attorney-client relationship between an attorney and both the elderly client and the client's family. She recommends approaches to delineate clearly the attorney-client relationship and to avoid ethical issues.

PANNEN, MARY L. *A Win-Win Partnership: The Elder Law Attorney and Geriatric Care Manager*. 34(3) JOURNAL OF GERONTOLOGICAL SOCIAL WORK 25 (2001). Pannen suggests that the elder law attorney and geriatric-care manager can work in conjunction to increase efficiency and provide added value for the client. The author provides specific scenarios where such a relationship would be beneficial to the client.

PREMACK, PAUL. *Elder Law Practice: An Overview*. 45 SOUTH DAKOTA LAW REVIEW 461 (Fall 2000). Premack provides an overview of elder law practice. Elderly clients come with unique characteristics and challenges. This article describes typical legal problems elderly clients face and the practical needs of elder law attorneys.

ROSENBERG, JOSEPH A. *Adapting Unitary Principles of Professional Responsibility to Unique Practice Contexts: A Reflective Model for Resolving Ethical Dilemmas in Elder Law*. 31 LOYOLA UNIVERSITY CHICAGO LAW JOURNAL 403 (2000). Rosenberg proposes a reflec-

2003]

GERONTOLOGY AND THE LAW

753

tive model in which lawyers examine their own ethical values and standards of professional conduct in challenging circumstances. He provides an overview of most elder law issues, including Medicaid estate planning, guardianship, informed consent, and decisionmaking capacity.

RUBINSON, ROBERT. *Constructions of Client Competence and Theories of Practice*. 31 ARIZONA STATE LAW JOURNAL 121 (1999). Rubinson examines the relationship between elderly clients and their lawyers. He disputes the typical view that aging leads to diminished cognitive function. Lawyers often interpret their clients' behavior as a result of cognitive impairment, and he proposes a new client-oriented type of lawyering involving differing forms of communication.

