

CONTENTS

Page

Essay

- THE HOSTAGES IN THE 'HOOD*Robert A. Destro* 785

Gang violence is increasing in small and large communities throughout the United States. Legislators have reacted in predictable, and sometimes piecemeal, ways. This essay argues that the first principle of "gang control" legislation should be the protection of those who live in neighborhoods occupied by gangs, and suggests that the Fourth Geneva Convention "Relative to the Protection of Civilians in Time of War" provides useful starting point for the analysis.

Articles

- MEDIATING LIFE AND DEATH DECISIONS*Dianē E. Hoffmann* 821

Recently, mediation techniques have been introduced to some health care providers and hospital ethics committees as a way to resolve disputes between providers and their patients and family members. Most often, these disputes involve the termination of life support for a patient who lacks decision-making capacity. Although practically the technique may have something to offer ethics committees and health care providers, the theoretical justification for the application of the technique in termination of life support cases has not been fully articulated or explored. In this article, the author takes on that task and concludes that there is reason to be cautious about the application of mediation to termination of life support cases.

- POWER PLAYS: A SOCIOLINGUISTIC STUDY
OF INEQUALITY IN CHILD CUSTODY
MEDIATION AND A HEARSAY ANALOG
SOLUTION*Randy Frances Kandel* 879

This article is a study of the strategic deployment of verbal power in court sponsored child custody mediation based upon three representative cases from the author's extended field study in the Los Angeles County Superior Court. The article applies sociolinguistic theory, especially the concept of "constructed dialogue" to reveal how the way parents speak affects the custodial arrangements they get. Section Two critiques the relevant literature on gender, power and language, and explains the theory of constructed dialogue. Section Three analyzes segments of three cases line-by-line to show how constructed dialogue is used to shift responsibility and blame, and empathetically involve the speaker and hearer in a powerfully persuasive "little play". Section Four explains how the characteristics of constructed dialogue meld with the broader discourse of mediation as a hybrid of law and psychology, creating a risk of power abuse. Section Five proposes a way to counterweight improper power through an analog of the Hearsay Rule adapted to the context and purpose of mediation and suggests ten guidelines for its implementation.

VIVA LA DIFERENCIA: A NON-SOLUTION

TO THE DIFFERENCE DILEMMA.....*John E. Morrison* 973

This article examines the difference dilemma in the United States Supreme Court. The difference dilemma is the condition in which inequality can be created by treating people either symmetrically or asymmetrically. The opinions of the justices on the Court illustrate how the justices are all caught in the dilemma and shift between symmetrical and asymmetrical solutions without explanation. Rather than choose either symmetry or asymmetry, recent cases in the Supreme Court show how we can use the existence of the difference dilemma as an indication of oppression, and try to alleviate that oppression by employing both symmetry and asymmetry simultaneously.

Notes

UNWED FATHERS AND THEIR NEWBORN

CHILDREN PLACED FOR ADOPTION:

PROTECTING THE RIGHTS OF BOTH IN

CUSTODY DISPUTES.....*Lynn Kirsch* 1011

Treatment of unwed fathers' rights in adoption proceedings vary from state to state and from court to court. This note proposes a two step process to be uniformly implemented in custody disputes between unwed fathers and adoptive parents. This two step process is proposed as an attempt to protect the rights of both the biological father and his child who has been placed for adoption. Along with a plea for uniformity among the courts this note argues that whatever procedure is implemented courts must resolve these disputes in a fast and efficient manner.

THE PHYSICAL CONTACT RULE FOR UNINSURED

MOTORIST COVERAGE IN ARIZONA: WHERE

WE WERE, WHERE WE ARE, AND WHERE

WE OUGHT TO BE.....*Robert K. Lewis* 1033

This note examines judicial and legislative treatment of the physical contact provision (PCP) both in Arizona and in other jurisdictions. Then, the note examines the goal maximization and cost association with: allowing PCPs, completely invalidating PCPs, and invalidating PCPs but requiring the insured to provide corroborating evidence of the phantom vehicle.

SCIENCE IN EVIDENCE: THE EFFECT OF

DAUBERT V. MERRELL DOW ON

ARIZONA'S FRYE RULE*Craig Hunter Wisnom* 1057

This note examines the standard for the admissibility of scientific evidence in Arizona in the wake of a recent United States Supreme Court decision, *Daubert v. Merrell Dow Pharmaceuticals, Inc.* The *Daubert* case abandoned the *Frye* standard, which is still the law in Arizona. This note examines the *Frye* standard, the new *Daubert* standard and explains the benefits and difficulties of each. It further examines the likely future of the standard in Arizona, and suggests a novel approach to the admissibility of scientific evidence — an independent scientific committee.

Index