

1994

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Recommended Citation

Sandra S. Klein, *Your Right to Privacy and Children's Rights/Family Law: A Selective Bibliography*, 13 *Legal Reference Services Q.* 125 (1994).

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Your Right to Privacy and Children's Rights/Family Law: A Selective Bibliography

Sandra S. Klein

INTRODUCTION

In a society increasingly aware of real or perceived social inequities, it is not surprising to note a greater concern for the rights of children and their families. It is also apparent that privacy issues are an integral subset of the larger social sphere of interests. Privacy aspects can be seen to be involved pervasively throughout the area of law dealing with children and families, especially in view of the fact that there is obvious potential for conflict not only between families and the state, but between children and the families of which they are a part.

SCOPE

The bibliography which follows includes books and periodical articles. All entries are listed alphabetically by the author's last name. Annotations have been provided for those entries where the subject of the work was not clear from the title. The range of years covered is from 1980-1992. While most of the works included here assume some knowledge of the area, they are not inaccessible to the novice researcher in this area of study. Nearly all of the books and articles included have their own bibliographies which provide an even wider range of research possibilities.

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The author wishes to thank Gregory E. High for his invaluable assistance.

Legal Reference Services Quarterly, Vol. 13(4) 1994
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DISCUSSION

Research in the area of family law might well begin with a reading of Harry D. Krause's very complete 1992 series *Child Law: Parent, Child, and State, Family Law: Volume I: Society and Family*, and *Family Law Volume II: Cohabitation, Marriage, and Divorce*. As a general overview, it is difficult to find a more exhaustive perspective on this area of law and its relationship to the family and society.

There are other general sources, however, which merit attention for their equally valuable summaries. Another 1992 publication, *Children, Rights and the Law* (edited by Philip Alston, Stephen Parker, and John Seymour), treats many of the same substantive areas as does Prof. Krause, while other publications look in somewhat different directions. Editors John M. Eekelar and Sanford N. Katz, for example, take a comparative approach in their book, *The Resolution of Family Conflict: Comparative Legal Perspectives*. In a similarly comparative sense, Mary Ann Glendon looks at a changing family law picture in *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe*. An even wider comparative view is illustrated by editors Cynthia Price Cohen and Howard A. Davidson in *Children's Rights in America: U.N. Convention on the Rights of the Child Compared With United States Law*.

A review of the periodical literature shows a wide assortment of privacy issues in the area of children's rights and family law. A list of these issues would include, but would not be limited to, privacy and education, parental consent, the parent-child privilege, contraception, surrogacy, historical and court perspectives, and adoption.

Schools enter the arena of privacy in several ways, the most immediate being at the teacher-student interface. Mary Gordon Baker offers a sound overview of this issue in "The Teacher's Need to Know versus the Student's Right to Privacy." Also of relevant interest is Ursula H. Hyman's "The Family Educational Rights and Privacy Act of 1974 and the College Record Systems of the Future," and Jerald E. Ogg's "Student Records Privacy and Campus Crime Reporting: The Buckley Amendment After Bauer."

Also related to general educational privacy matters is the controversy surrounding a school's policy toward coursework dealing with sex education and its stance regarding the issuance of contraceptives. A review of these areas can be found in Donald Shoemaker's article "Sex Education: The Dissemination of Family Planning Services and Contraception in the Public Schools."

Parental consent, especially in regard to abortion, grew in importance as an issue when the Supreme Court, in *Planned Parenthood v. Danforth*,

428 US 52 (1976), held that statutes requiring parental consent for abortions sought by minors are unconstitutional if "overbroad." David C. Boatwright discusses this case, and some subsequent caselaw, in his article, "Wherefore Art Thou Danforth: *Bellotti v. Baird*," and concludes that these cases are critical in underlining the development of a constitutional privacy right for minors. Susan A. Bush also reviews consent issues in "Parental Notification: A State-Created Obstacle to a Minor Woman's Right of Privacy," as does John R. McArthur in "Constitutional Law—Supreme Court is Undecided on Parental Notification Requirement's for Minor's Abortion."

Another area of consideration has developed around the question of parent-child privilege. Donald Cofer asks if such a privilege should exist in "Parent-Child Privilege: Constitutional Right or Specious Analogy?" Gregory Franklin reviews the same question in his article, "The Judicial Development of the Parent-Child Testimonial Privilege: Too Big for its Britches?" Ann M. Stanton, in a very thorough look at this issue, offers both a close analysis and a well-developed example of what form such a privilege should take in her article "Child-Parent Privilege for Confidential Communications: An Examination and Proposal."

Access to contraception in a general, as well as an educational setting, is another facet of the child's right to privacy. Stephanie Eber's "The Right of Privacy and Minors' Confidential Access to Contraceptives," and Nancy Hosek's "Minors' Right of Privacy: Contraceptives Without Parental Notification," both examine this emotionally charged issue. Looking more at the state-related aspects is an article by Eve Paul and Dara Klassel, "Minors' Right to Confidential Contraceptive Services: The Limits of State Power."

Two equally emotionally-charged aspects of the issue are those of surrogacy and adoption. Among the articles discussing the surrogacy issue are Louise Graham's "Surrogate Gestation and the Protection of Choice," and John Jabro's "Surrogate Motherhood: The Outer Limits of Protected Conduct."

Alternatively, adoption as a privacy concern usually focuses on the right of adoptees to know their biological parents and on the concomitant right of those parents to remain unknown. Articles included in this bibliography include examples of both aspects. Both Nancy Sparks' article "Adoption: Sealed Adoption Record Laws—Constitutional Violation or a Need for Judicial Reform," and Tim Watts' article in "The Right of Adoptees to Know Their Biological Parents: A Bibliography," examine one side of the issue, while Paul Tartanella in "Sealed Adoption Records

and the Constitutional Right of Privacy of the Natural Parent," focuses on the other.

Finally, a number of articles are included that deal primarily with either the historical or the Supreme Court/Constitutional aspects of children's rights and family law as they pertain to privacy. Steven Mintz offers an historical overview in "Children, Families, and the State: American Family Law an Historical Perspective." This article serves as a good introduction to the issue of family law as a whole, and is certainly worth reviewing to give historical context to associated research.

Equally informative to those concerned with family privacy issues is Robert Keiter's examination of "Privacy, Children, and Their Parents: Reflections on and Beyond the Supreme Court's Approach." While limited to decisions made by the Court before 1982, this article is a concise and thoughtful look at how the Court has approached the relevant issues.

The related constitutional aspects are also reviewed by David Richards in "The Individual, the Family, and the Constitution: A Jurisprudential Perspective," and in articles written by Carl E. Schneider. Mr. Schneider focuses primarily on ethical and constitutional aspects of the privacy issue, specifically on how the 14th amendment may serve as a basis for analysis for family law matters relating to marriage, abortion, non-marital relations, and the like.

In the end, it should not be surprising that this particular aspect of the overall set of privacy issues is becoming a matter of increasing public concern. The emotional elements that accrue to a discussion of abortion or contraception among adults, for example, are equally emotional when they revolve around children or families. To the extent that emotional issues become public/political issues, then, as society focuses on the needs and growth processes of children and of families, it is likely society will focus as well on the legitimate concerns both children and families have for privacy considerations.

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