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Student Note Section

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STUDENT NOTES SECTION

The Notes in this section contain a Supreme Court of Wisconsin case on insurance for punitive damages liability, two Supreme Court of the United States opinions; one on the role of the jury in capital cases and the second on a state statute limiting medical malpractice recoveries, and a Ninth Circuit wage discrimination case.

The Supreme Court of Wisconsin recently joined a growing majority of jurisdictions that allow insurance for punitive damages liability. Many commentators contend that insurance renders the punitive damages doctrine worthless as a source of punishment and deterrence. The persuasiveness of this simple logic compels the author to conclude that the decision in *Brown v. Maxey* actually represents an indirect assault on the punitive damages doctrine itself.

In *Cabana v. Bullock* the Supreme Court of the United States reexamined *Enmund v. Florida* to explore the relationship between the felony murder rule and the death penalty. *Enmund* constitutionally requires that the death penalty not be imposed upon a co-felon who did not himself kill, attempt or intend to kill, but who aides and abets a co-felon in the commission of a murder. The Court held that *Enmund* does not constitutionally require specific jury findings on a defendant's culpability. The author questions the Court's willingness to sanction the diminishing role of the jury as sentencers in capital cases.

In *Fein v. Permanente Medical Group* the Supreme Court dismissed an appeal which upheld California's limitation on the recovery of noneconomic damages in medical malpractice actions. The case signals the Supreme Court's willingness to let state courts determine the constitutionality of state statutes limiting medical malpractice recoveries. The author identifies how the selection of constitutional standards may affect the way in which a reviewing court handles this type of crisis motivated legislation.

The Court of Appeals for the Ninth Circuit reviewed a suit claiming the state wage structure discriminated against women in violation of Title VII of the Civil Rights Act of 1964 in *AFSCME v. Washington*. The court upheld the state wage structure because the union failed to show the state intended to discriminate against female employees. The authors question the court's rejection of the concept of comparable worth in light of the legislative history of Title VII.