

ARIZONA LAW REVIEW

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Essays

- THE APPEARANCE OF JUSTICE: COURT TV,
CONVENTIONAL TELEVISION, AND
THE PUBLIC UNDERSTANDING OF
THE CRIMINAL JUSTICE SYSTEM*David A. Harris* 785

Professor Harris argues that the public perception of the criminal justice system formed by television matters in a democracy. Since the beginning of the medium, television has offered viewers images of the criminal justice system. Whether in the form of news or entertainment, all of these images have presented a picture of the system that is, at best, incomplete, and at worst, inaccurate. The Courtroom Television Network, or Court TV, a cable television system offering live coverage of actual trials, offers an opportunity to correct the erroneous beliefs generated by conventional television. While Court TV has many benefits, Professor Harris argues that it can also skew perceptions. For example, viewers may think that a trial takes place in the typical criminal case, when in fact a trial is actually a rare occurrence. Professor Harris suggests addressing these shortcomings by adding to Court TV an additional cable channel focused on the daily work of local courts.

- THE RELIABILITY OF CITATION COUNTS IN
JUDGMENTS ON PROMOTION,
TENURE, AND STATUS.....*Arthur Austin* 829

The number of times that an article has been cited by a peer is considered a reliable indication of its influence in the sciences. This Article discusses the use of citation counts in legal scholarship.

Unlike the sciences and other disciplines, legal scholarship is rarely subjected to review by peers prior to publication. Without peer review, determination of why an article was cited is impossible. There is, moreover, the problem of "biased citing," i.e., citation for political motivations. These and other problems require caution in the use of citation counts in judging legal scholarship.

Articles

- WHY IS HARVARD TAX EXEMPT? (AND
OTHER MYSTERIES OF TAX
EXEMPTION FOR PRIVATE
EDUCATIONAL INSTITUTIONS)*John D. Colombo* 841

This Article applies to private educational institutions the various theories advanced to explain tax exemption. The Article concludes that the donative theory, which ties exemption to the level of donations received by a nonprofit entity, provides the best foundation for exempting private educational institutions and the best overall approach to granting exemption.

THE FRUITS OF LABOR: WORKER

PRIORITIES IN BANKRUPTCY..... *Daniel Keating* 905

Professor Keating's Article is the first to explore comprehensively the numerous issues that arise when workers assert their unique rights as claimants in the bankruptcy of their employer. Whenever Congress creates special rights for certain parties outside of bankruptcy, the nature and priority of those rights will invariably have to be translated into the bankruptcy forum. The labor arena is one field in which there are a number of statutorily created rights that workers enjoy outside of bankruptcy.

Professor Keating examines the Bankruptcy Code-created priorities for workers' wages and benefits, and considers the troublesome questions that arise when workers attempt to leapfrog past other creditors by exerting their inherent leverage as employees of the business. After exploring two major sources of nonbankruptcy priorities enjoyed by workers, the Fair Labor Standards Act and the Worker Adjustment Retraining and Notification Act, Professor Keating concludes by questioning whether the benefits created by the worker priorities are indeed worth the litigation and uncertainty that such priorities have often created.

SOMETHING NOT SO FUNNY HAPPENED ON

THE WAY TO CONVICTION: THE

PRETRIAL INTERROGATION OF CHILD

WITNESSES *Jean Montoya* 927

Professor Montoya argues that concern for the child witness is appropriate, but that the legislative emphasis on trial reform has been misplaced. She argues that the social science literature and experience indicate instead that legislatures should focus on the pretrial experience of child witnesses. Accordingly, she recommends regulation of the pretrial interrogation of child witnesses to protect both the children and the criminal process from abusive interviewing procedures. Her recommendations, which include both proposals to videotape child witness interviews and for limited hearsay reform, aspire to give children a voice without compromising the adversarial nature of criminal proceedings.

UNIFYING THE LAW OF HOSTILE

TAKEOVERS: BRIDGING THE

UNOCAL/REVLON GAP *Robert A. Ragazzo* 989

This Article argues that, when adopting defensive tactics designed to preclude inadequate bids, a target company's board should be required to prove that it has reasonable grounds to believe that its conduct is value-maximizing. This Article also argues that, once a board decides to sell a target company, the board should be allowed to consider the interests of nonshareholder constituencies as long as it can demonstrate that any diminution in shareholder value is not excessive. Both of these proposals represent changes in existing law.

JUDICIAL SELF-DEMISE: ARTICLE III

SEPARATION OF POWERS AFTER

SEATTLE AUDUBON AND THE NEW

SECTION OF THE 1934 SECURITIES

EXCHANGE ACT *Amy D. Ronner* 1037

Professor Ronner suggests that after *United States v. Klein*, the border between legislative and judicial power has been destroyed. The courts are accomplishing their own demise by approving legislation which infiltrates that innermost core of judicial power. Although the courts have had many occasions to address the question of when Congress violates the separation of powers doctrine, this Article is limited primarily to an analysis of three such events which illustrate the progressive annihilation of judicial power. The Article then

discusses the most significant policies behind the separation of powers doctrine—the trepidation about government's tendency to lead toward tyranny and oppression. Professor Ronner proposes that the separation between legislative and judicial power is just as essential to liberty today as it was to the Framers. Professor Ronner suggests an atavistic, but modified version of the *Klein* test, which can be used to determine when Congress has impermissibly intruded upon judicial power.

Notes

PRESUMPTIONS UNDER ARIZONA LAW:

DIVINING THE STANDARDS *Alexander L. Broadfoot* 1073

This Note examines the function and operation of presumptions under Arizona law. Despite considerable scholarly discussion, there remains a conspicuous lack of consensus regarding their effect. The Note considers presumptions as procedural devices and explores the treatment of presumptions in the Arizona courts. Notwithstanding attempts to clarify the issue by the Arizona Supreme Court, the effect of presumptions remains a source of confusion. The author argues that, by considering the rationale underlying presumptions, we can better understand their use and construct a useful and meaningful framework for their application.

DETAINING DANGER UNDER THE BAIL

REFORM ACT OF 1984: PARADOXES

OF PROCEDURE AND PROOF *Michael Harwin* 1091

This Note examines provisions in section 3142 of the Bail Reform Act of 1984 that allow for pretrial detention predicated upon a determination by a judge or magistrate that the defendant constitutes a danger to the community. The author argues that the procedural safeguards afforded by section 3142 have been so eroded that particular applications may be violative of due process.

COMMERCIAL TERRORISM: A COMMERCIAL

ACTIVITY EXCEPTION UNDER §

1605(2) OF THE FOREIGN SOVEREIGN

IMMUNITIES ACT *Margot C. Wuebbels* 1123

In 1986, agents of the Iranian government kidnapped United States citizen Joseph Cicippio and held him hostage in an attempt to force the release of Iranian assets frozen in U.S. banks. The Iranian government's acts constitute commercial terrorism—terrorism undertaken for financial gain. Under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1605 (a)(2), Iran's commercial acts caused a direct effect on the United States. Consequently, Iran waived its foreign sovereign immunity and is subject to jurisdiction in the United States federal courts.

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