ARIZONA LAW REVIEW

VOLUME 33 1991 NUMBER 3

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Critical Essays

UNDERSTANDING FREEDMAN'S ETHICS ..... *Teresa Stanton Collett* 455

In his new book, *Understanding Lawyers' Ethics*, Professor Monroe Freedman maintains his position that the lawyer's duty to assist criminal defendants includes presenting perjurious testimony if the client insists. Professor Collett challenges Professor Freedman, arguing that he mistakenly defines the defendant's right as one to any conceivable defense, rather than a defense based upon the facts and law of the case. Professor Collett suggests that intentional denial of justice in the individual case is not the price of greater systemic justice, but rather a cause of less systemic justice.

IN DEFENSE OF MEDIATION ..... *Joshua D. Rosenberg* 467

Professor Rosenberg responds to Professor Tina Gillo's criticism of mandatory mediation in child custody cases in *The Mediation Alternative: Process Dangers for Women*. This response explains that, as judged by both women and men, mandatory mediation is significantly more satisfying than litigation. Professor Rosenberg explains what mediation is, and how Family Systems Theory works. He also suggests that many mediators, but not judges, are women of color, so that mediation is likely to provide an alternative that is less subject to race and gender bias than is litigation.

Essays

INDETERMINACY: I HARDLY KNEW THEE..... *Kenney Hegland* 509

A current hotly contested jurisprudential point is the degree to which law constrains judges. Critical Legal Theorists suggest "Not much," arguing that there are no easy cases in that all cases can be legitimately decided either way. Professor Hegland disagrees. In this Essay, he continues an exchange with Professor Anthony D'Amato, a "Crit Deconstructionist." Professor Hegland examines the vibrant relationship between rule and outcome, the nature of communication, quantum physics and the possibility of innate ideas to conclude that legal rules do indeed constrain, not always, but often.

COUNTERINTUITIVE CONSEQUENCES OF "PLAIN MEANING"..... *Anthony D'Amato* 529

Many scholars are finding Justice Scalia's insistence on "plain meaning" to be a welcome interpretive tool in controlling and constraining judicial decisionmaking. Professor D'Amato argues that such a tool will not do the job, that quantum theory shows the world itself cannot be encapsulated in verbal formulas, and, counterintuitively, enacting plainly-worded statutes to control behavior can result in a lessened degree of control.

LOOKING FOR CERTAINTY IN
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As his writings indicate, Professor D'Amato has an affirmative agenda in addition to his negative one. While he argues that law cannot constrain judges, concepts of justice can. In this Essay, Professor Hegland responds to this analysis and renews his plea that Professor D'Amato more clearly develop and defend his contention that concepts of justice can be certain.

Article

THE REGULATORY SEPARATION OF BANKING
FROM SECURITIES AND COMMERCE IN
THE MODERN FINANCIAL MARKETPLACE ..... *Peter J. Ferrara* 583

A longstanding, central feature of American banking regulation has been the attempt to separate banking from other financial activities, such as securities and insurance, and from general commerce. In the modern financial marketplace, such separation is no longer viable or desirable, and serves only to undermine the competitiveness and soundness of the formal U.S. banking system. Sweeping regulatory reforms proposed by the Bush Administration represent a sound, workable approach to effectively eliminate that separation, though a reform proposal offered by the Federal Deposit Insurance Corporation, in 1987, seems even more desirable.

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