CURRENT CONTENTS

WEEKLY COVERAGE OF MORE THAN 700 CURRENT LEGAL AND LAW-RELATED JOURNALS

THIS ISSUE ALSO AVAILABLE AT:
http://law.wlu.edu/library/research/currcont/

A Service of the
WASHINGTON AND LEE LAW LIBRARY
Lexington, Virginia 24450
<table>
<thead>
<tr>
<th>Title</th>
<th>Volume</th>
<th>Issue</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air &amp; Space Law</td>
<td>30</td>
<td>1</td>
<td>February 2005</td>
</tr>
<tr>
<td>American Indian Law Review</td>
<td>29</td>
<td>1</td>
<td>2004-2005</td>
</tr>
<tr>
<td>American Journal of Criminal Law</td>
<td>31</td>
<td>1</td>
<td>Fall 2003</td>
</tr>
<tr>
<td>Comm/Ent</td>
<td>27</td>
<td>2</td>
<td>Winter 2005</td>
</tr>
<tr>
<td>Emory Law Journal</td>
<td>53</td>
<td>4</td>
<td>Fall 2004</td>
</tr>
<tr>
<td>Journal of Maritime Law and Commerce</td>
<td>36</td>
<td>1</td>
<td>January 2005</td>
</tr>
<tr>
<td>Journal of the Patent and Trademark Office Society</td>
<td>87</td>
<td>2</td>
<td>February 2005</td>
</tr>
<tr>
<td>Minnesota Law Review</td>
<td>89</td>
<td>3</td>
<td>February 2005</td>
</tr>
<tr>
<td>Ohio State Law Journal</td>
<td>65</td>
<td>6</td>
<td>2004</td>
</tr>
<tr>
<td>Practical Lawyer</td>
<td>51</td>
<td>1</td>
<td>February 2005</td>
</tr>
<tr>
<td>Texas Law Review</td>
<td>83</td>
<td>3</td>
<td>February 2005</td>
</tr>
<tr>
<td>U.C. Davis Law Review</td>
<td>38</td>
<td>2</td>
<td>February 2005</td>
</tr>
<tr>
<td>University of Pennsylvania Law Review</td>
<td>153</td>
<td>3</td>
<td>January 2005</td>
</tr>
<tr>
<td>Valparaiso University Law Review</td>
<td>39</td>
<td>1</td>
<td>Fall 2004</td>
</tr>
<tr>
<td>Yale Journal of Law and Feminism</td>
<td>16</td>
<td>2</td>
<td>2004</td>
</tr>
</tbody>
</table>
Contents

Editor's Note

LEADING ARTICLES

Post 9/11 – Air Carrier Liability Towards Third Parties on Land or Water as a Consequence of War or Terrorism
HAROLD CAPLAN

The Cape Town Convention and the Aircraft Equipment Protocol: Protecting the Registered Secured Interests of Airline Lessees
B. PATRICK HONNEBIER

Cross-Border Aircraft Financing: An Indian Perspective
JITHEESH THILAK AND TAJ KUNWAR PAUL

REPORTS OF CONFERENCES

European Air Law Association, 16th Annual Conference
ALEXANDER F. VERHEUGT

CASE LAW DIGEST

THIRTY YEARS AIR & SPACE LAW

CAB v. KLM; Bermuda at Bay*
ANDREAS F. LOWENFELD

Thirty Years Later
HENRI Wassenbergh

* This article has been left in its original state; no updating or additional editing has been done.

Closing date for contributions for
Vol. XXXI, Number 3 (2005):
21 February 2005

AIR & SPACE LAW, VOL. XXXI (FEBRUARY 2005)
CONTENTS

ARTICLES
Colonizing the Last Frontier
David J. Bloch 1

The Voting Rights Act in Indian Country: South Dakota, A Case Study
Laughlin McDonald 43

Brown and Tee-Hit-Ton
Earl M. Maltz 75

NOTES
Take-or-Pay Royalties, the Trust Doctrine and the Shoshone Case
Dr. Christopher S. Kulander 101

Oklahoma’s State/Tribal Water Compact: Three Cheers for Compromise
Jennifer E. Pelphrey 127

Glacier National Park and the Blackfoot Nation’s Reserved Rights:
Does a Valid Tribal Co-Management Authority Exist?
Curt Sholar 151

Microenterprise Through Microfinance and Microlending: The Missing
Piece in the Overall Tribal Economic Development Puzzle
R.H. Tipton III 173

SPECIAL FEATURES
Applying Twenty-Five Years of Experience: The Iowa Indian Child
Welfare Act
Kirk Albertson 193

Winner, Best Appellate Brief in the 2004 Native American Law Student
Association Moot Court Competition
Kevin McCulloch & April Winecke 215
Articles

Can Fingerprints Lie?: Re-weighing Fingerprint Evidence In Criminal Jury Trials  
*Tamara F. Lawson* ................................................................. 1

Standing Between the Child and the Executioner: The Special Role of Defense Counsel in Juvenile Death Penalty Cases  
*Victor L. Streib* ....................................................................... 67

A Uniform Code of Procedure for Revoking Probation  
*Daniel F. Piar* .......................................................................... 117

Race-Conscious Grand Juror Selection: The Equal Protection Clause and Strict Scrutiny  
*Eric M. Albritton* ..................................................................... 175
AN EARTHY ENIGMA: THE ROLE OF LOCALISM IN THE POLITICAL, CULTURAL AND ECONOMIC DIMENSIONS OF MEDIA OWNERSHIP REGULATION

by Paul Cowling ........................................... 257

This article examines the Federal Communications Commission's public interest principle of localism and its role in media ownership regulation, particularly the National Television Station Ownership rule. The article explains the enigmatic concept of localism by approaching it from several angles, including other regulatory spheres, such as banking and antitrust; Canadian nationalism; historical broadcast regulation; federalism; and contemporary debates on media ownership. While explaining what localism means, the article identifies the territorial impulse behind media ownership regulation and its link with territorial reference points in the self-determination of national and local communities. In doing so, the article constructs a simple yet unique account that offers an alternative to unsubstantiated assumptions and the public choice critique. The author argues that localism and localist ownership regulation reflect the tension between the persistent relevance of territorial parameters in defining communities and the media's increasing capacity to defy territory. The article thereby goes beyond the ideological dichotomy between regulatory and marketplace models for realizing the public interest and offers a balanced approach, enriched with political, cultural and economic perspectives, that refreshes the debate between proponents and critics of media ownership regulation and its liberalization.
WHY PROTECT POLITICAL ART AS "POLITICAL SPEECH"?

by David Greene ............................................................... 359

Politics and art make for a volatile combination both socially and jurisprudentially. Although the capacity of artistic expression to relay political ideas was one of the driving forces behind the recognition of strong First Amendment rights for artistic expression, governmental officials tend toward the censorious when art communicates too much and "offends" or causes "controversy." Indeed, when art is "public," that is funded or exhibited by a governmental entity, public officials would often prefer that it contain no message at all. This article reviews the evolution of First Amendment protection for artistic expression, discusses why artistic expression is protected by the First Amendment even when it communicates no discernible message, and looks at what happens when government attempts to discriminate against "political" art in making arts funding decisions.

NOTES

THE FAILURE OF THE BROADCAST FLAG:
COPYRIGHT PROTECTION TO MAKE HOLLYWOOD HAPPY

by Lisa M. Ezra ............................................................... 383

Digital online piracy of television programming is a growing problem that has the television industry, production studios, and the Motion Picture Association of America searching for a cure. The FCC's planned cure is the "broadcast flag," which requires manufacturers of television equipment to bear the burden of protecting broadcast programming from pirates. The FCC's scheme not only contains several loopholes allowing pirates to circumvent the flag technology, it also protects only a tiny fraction of digital television content, at the cost of consumers. This note explains the ineffectiveness of the "broadcast flag," and suggests an alternate scheme based around copyright law and a new business model akin to one implemented by the music industry.

"NO ANIMALS WERE HARmed...": PROTECTING CHIMPANZEES FROM CRUELTY BEHIND THE CURTAIN

by Lorraine L. Fischer .................................................... 405

Many people, interested in the way animals are treated in the entertainment industry, rely on the American Humane Association's end credit disclaimer, "No Animals Were Harmed During the Making of this Production" to quiet their concerns about animal mistreatment and to avoid supporting films or television programs that injure animals. However, the AHA's end credit disclaimer is misleading because it suggests that projects with the disclaimer are cruelty free. Even if a film or television show
receives the “No Animals Were Harmed...” designation, chimpanzees cannot become “actors” and appear on the stage or screen without being subject to severe physical and psychological abuse. The only way to prevent chimpanzees from behaving naturally—from being curious, playful, and rambunctious—and instead, to routinely perform mundane tasks over and over again on cue is against fear of physical pain. Chimpanzees require protection beyond the hollow safeguards currently afforded to them; they need and deserve a law prohibiting their exploitation in entertainment because federal regulations suffer from non-enforcement and anti-cruelty statutes are explicitly designed not to interfere with many activities that most people would regard as cruel. This author hopes that with the inherent brutality behind the onstage and onscreen presentation of chimpanzee “actors” exposed to the light, the next decade will free chimpanzees from props and human clothing, and allow them to live in closer semblance to the life they would have known.

WORDS SIGNIFYING NOTHING? THE EVOLUTION OF § 315(a) IN AN AGE OF DEREGULATION AND ITS EFFECTS ON TELEVISION NEWS COVERAGE OF PRESIDENTIAL ELECTIONS

by Colin Vandell .......................................................... 443

Focusing on private networks’ television news coverage of presidential campaigns, this Note addresses the enactment and rise of Section 315(a) of the Communications Act of 1934 (the equal time rule) and the fairness doctrine that it officially operated in conjunction with for forty years. The Note then turns to the deregulation trend that abolished the fairness doctrine and took much of the bite out of Section 315(a). The Note concludes by examining the rise of ideology-driven and also of market-driven political coverage that a laxly-enforced Section 315(a) has allowed.
CONTENTS

ARTICLES

The Supreme Court and Private Law: The Vanishing Importance of Securities and Antitrust .............................................. E. Thomas Sullivan & Robert B. Thompson 1571

Broken Scales: Obesity and Justice in America .............................................. Adam Benforado, Jon Hanson, & David Yosifon 1645

Viewing the Cathedral from Behind the Color Line: Property Rules, Liability Rules, and Environmental Racism .......................................................... Rachel D. Godsil 1807


COMMENTS

User Registration Websites: Possible E-Loopholes to the National Do-Not-Call Registry .............................................. Michael P. Considine 1951

Subsequent Performance of Process Steps by Different Entities: Time To Close Another Loophole in U.S. Patent Law .............................................. Kristin E. Gerdeman 1987

Another Victim of the War in Iraq: The Looting of the National Museum in Baghdad and the Inadequacies of International Protection of Cultural Property .............................................. Sasha P. Paroff 2021
 Articles:
Jones Act Claims Against the States After *Alden v. Maine*:
The Surprisingly Strong Case for a Compulsory State Court Forum

.................. *James E. Pfander* 1

The Law and Practice of Average in Medieval Towns
of the Eastern Adriatic .................. *Nevenka Bogojevic-GLusevic* 21

South African Admiralty and its English Origins—
Will it Jump or Must it be Pushed? ................. *Michael Wagener* 61

Maritime Policy in China after WTO: Impacts and Implications
for Foreign Investment
.................. *Kevin X. Li, Kevin Cullinane, Hong Yan, and Jin Cheng* 77

Case Note:
*Lis Pendent* by Convention: Concurrent Application of the International
Convention Relating to the Limitation of the Liability of Owners of
Sea-Going Ships (1957) and the EC Brussels Convention on
Jurisdiction and the Enforcement of Judgements in Civil and Commercial

.................. *Małgorzata Anna Nesterowicz* 141
Journal of the Patent and Trademark Office Society

Contents

—Dale L. Carlson, Katarzyna Przychodzen and Petra Scamborova

Re-Thinking Patent Bar Admission: Which Bag of Tools Rules? ............................................. 113
—Dale L. Carlson, Robert A. Migliorini and Carolyn J. Vacchiano

Trouble on the Commons: A Lockean Justification for Patent Law Harmonization .......... 141
—Andrew R. Sommer
CONTENTS

ARTICLES

Excessive Prison Sentences, Punishment Goals, and the Eighth Amendment: “Proportionality” Relative to What?..........................Richard S. Frase 571

Generic Constitutional Law..........................David S. Law 652

Monopolization, Exclusion, and the Theory of the Firm...........................................Alan J. Meese 743

Earthquakes and Tremors in Statutory Interpretation: An Empirical Study of the Dynamics of Interpretation..................Daniel A. Farber 848

NOTE

Setting Sail with The Charming Betsy: Enforcing the International Court of Justice’s Avena Judgment in Federal Habeas Corpus Proceedings.........................Laura A. Young 890
OHIO STATE LAW JOURNAL
Volume 65, Number 6, 2004

CONTENTS

Articles

The Entrepreneurship Effect: An Accidental Externality in the Federal Income Tax
Leandra Lederman ................................................................. 1401

Embracing Addiction: Drug Courts and the False Promise of Judicial Interventionism
Eric J. Miller ........................................................................ 1479

Notes

At the Crossroads of Three Codes: How Employers Are Using ERISA, the Tax Code, and Bankruptcy to Evade Their Pension Obligations
Nicholas J. Brannick ................................................................. 1577

Satellite Surveillance Within U.S. Borders
Patrick Korody................................................................. 1627
Drafting The Consideration Provision Of A Contract
Tina L. Stark  
Consideration provisions are often the very heart of the contract. In this article, Tina L. Stark provides guidelines on stating the amount, identifying who is paying whom, when the consideration is payable and in what form, how to draft for separate payments, whether consideration should be contingent, and stating formulas accurately.

A Guide To Union Picketing And Handbilling
Steven Wheless and Nicole Miller  
When picketing happens, both the employer and the pickets need to know what they can and cannot do pursuant to the NLRA. In this article, Steven Wheless and Nicole Miller discuss organizational picketing, informational picketing, signal picketing, area standards picketing, picketing of secondary employers, consumer picketing, and picketing in the contexts of unfair labor practice strikes and economic strikes.

Working Families Tax Relief Act Of 2004
Robert E. Ward  
In this article, Robert E. Ward discusses many of the Act’s new provisions, including extension of the child tax credit, extension of the increase in the standard deduction for married joint filers, extension of the increase in income subject to the 10 percent bracket, the treatment of combat pay as earned income, the uniform definition of “child,” the extension of the tax credits for research and development, work opportunity, welfare-to-work, electric and clean-fuel vehicles, and more.

What Corporate Counsel Should Know About IP Planning For Technology-Driven Alliances (Part 1)
Joseph Yang  
In this article, Joseph Yang discusses why joint ownership is a common choice when there are IP assets, how joint ownership arises under U.S. law, the wide variation in joint owners’ rights from country to country, and provides a pre-enforcement checklist to use before seeking to enforce a jointly owned IP asset.

Rainmaking: Business Development And Retention Techniques
Bonnie Mayfield  
In this article, Bonnie Mayfield discusses overcoming the negative in rainmaking, developing a marketing persona, how to select a marketing mentor, identifying client “fishing holes,” how to get the business and keep it, following the “Rule of Seven” to maintain client contacts, and offers a reading list for rainmakers.

A Brief History Of Workouts And Foreclosures
Patrick E. Mears, William T. Burgess, Daniel F. Gosch, Michael C. Hammer, Edgar C. Howbert, James A. Plemmons  
In this article, Patrick E. Mears, William T. Burgess, Daniel F. Gosch, Michael C. Hammer, Edgar C. Howbert, and James A. Plemmons discuss the history of forbearance and debt restructuring agreements, the mechanics of foreclosures, and the workout process, including typical forms of relief sought by the debtor, terms that the creditor is likely to want, and how creditors go about deciding whether or not to grant the relief that the debtor seeks.
ARTICLES

The Lost Jurisprudence of the Ninth Amendment
Kurt T. Lash 597

Credible Coercion
Oren Bar-Gill and Omri Ben-Shahar 717

Managing Gerrymandering
Mitchell N. Berman 781

BOOK REVIEW ESSAY

Are “the People” Missing in Action
(and Should Anyone Care)?
L. A. Powe, Jr.

reviewing
THE PEOPLE THEMSELVES:
POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW 855

NOTES

A Tort by Any Other Name? In Search of the Distinction Between Regulation Through Litigation and Conventional Tort Law
Edward T. Schroeder 897

Timing is Everything: The Social Context Behind the Emergence of Separation Ideology During the Presidential Campaign of 1800
Elizabeth G. Myers 933
# TABLE OF CONTENTS

## ARTICLES

**Private Motive and Perpetual Conditions in Charitable Naming Gifts:**
When Good Names Go Bad .......................... *John K. Eason* 375

**Et Tu, Fair Use? The Triumph of Natural-Law Copyright:**
................................................. *John Tehranian* 465

## ESSAY

**Lawrence v. Texas as the Perfect Storm**
................................................... *Christopher R. Leslie* 509

## NOTES

**Perpetuating the Exclusion of Asian Americans from the Affirmative Action Debate:**
An Oversight of the Diversity Rationale in *Grutter v. Bollinger* ............... *Victoria Choy* 545

**Indirect Employer Liability:**
The Ninth Circuit Limits Liability for Racial Discrimination .................... *Monica Johnson* 573

© 2005 by the Regents of the University of California
CONTENTS

ARTICLES

State Courts and the Making of Federal Common Law ................................................ Anthony J. Bellia Jr. 825

Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent .................. Solangel Maldonado 921

COMMENTS

Enforceable Rights, No Child Left Behind, and Political Patriotism: A Case for Open-Minded Section 1983 Jurisprudence ....................... Sarah D. Greenberger 1011

Within Each Lawyer’s Conscience a Touchstone: Law, Morality, and Attorney Civil Disobedience .............................................. Robert M. Palumbos 1057

Raining on the Parade of Horribles: Of Slippery Slopes, Faux Slopes, and Justice Scalia’s Dissent in Lawrence v. Texas ....................... Ruth E. Sternglanz 1097
ARTICLE

FROM SELF-DETERMINATION TO SELF-DOMINATION: NATIVE AMERICANS, WESTERN CULTURE, AND THE PROMISE OF CONSTITUTIONAL-BASED REFORM

Joshua Fershee 1

MONSANTO LECTURE

THE ENTERPRISE OF LIABILITY

Anita Bernstein 27

ESSAYS

WHY WERE PERRY MASON’S CLIENTS ALWAYS INNOCENT? THE CRIMINAL LAWYER’S MORAL DILEMMA — THE CRIMINAL DEFENDANT WHO TELLS HIS LAWYER HE IS GUILTY

Randolph Braccialarghe 65

A VOICE CRYING OUT IN THE WILDERNESS: A WORD ABOUT BROWN V. BOARD OF EDUCATION

Ellis Washington 87

NOTES

MISSING THE MARK: THE SEARCH FOR AN EFFECTIVE CLASS CERTIFICATION PROCESS

Jeremy Bertsch 95

“CHILDREN ARE NOT SECOND CLASS CITIZENS”: CAN PARENTS STOP PUBLIC SCHOOLS FROM TREATING THEIR CHILDREN LIKE GUINEA PIGS?

Beth Garrison 147

THOU SHALT REASONABLY FOCUS ON ITS CONTEXT: ANALYZING PUBLIC DISPLAYS OF THE TEN COMMANDMENTS

Julie Van Groningen 219
Contents

Articles
Egyptian Feminism:
   Trapped in the Identity Debate .................................. Lama Abu-Odeh 145

When Daddy Doesn’t Want to Be Daddy Anymore:
   An Argument Against
   Paternity Fraud Claims ............................................. Melanie B. Jacobs 193

“To the Tables Down at Mory’s”:
   Equality as Membership and
   Leadership in Places of Public
   Accommodations ..................................................... Daphna Renan 241

Essay
Paradoxes of Health and Equality:
   When a Boy Becomes a Girl ........................................... Noa Ben-Asher 275

Cover illustration by Jacqueline Coy Charlesworth.
Graphic design by Ann Mackey.