

Volume 50 | Issue 1

1999

Volume 50 Issue 1 (1999)

Case Western Reserve University Law Review

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Case Western Reserve University Law Review, *Volume 50 Issue 1 (1999)*, 50(1) Case W. Res. L. Rev. Front Matter (1999)
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol50/iss1/2>

This Front Matter is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

CASE WESTERN RESERVE LAW REVIEW

K
3
.A76
c.1
JAN 06 2000

VOLUME 50

FALL 1999

NUMBER 1

SUMNER CANARY LECTURE

UNDER SHELTER OF CONFIDENTIALITY

GEOFFREY C. HAZARD, JR.

ARTICLES

SHOULD THE COURTS INCORPORATE A BEST EVIDENCE
RULE INTO THE STANDARD DETERMINING THE
ADMISSIBILITY OF SCIENTIFIC TESTIMONY?: ENOUGH
IS ENOUGH EVEN WHEN IT IS NOT THE BEST

EDWARD J. IMWINKELRIED

WHEN DIFFERENT MEANS THE SAME: APPLYING A
DIFFERENT STANDARD OF PROOF TO WHITE PLAINTIFFS
UNDER THE *McDONNELL DOUGLAS* PRIMA FACIE
CASE TEST

ANGELA ONWUACHI-WILLIG

NOTES

GHOSTS OF THE HOLOCAUST: HOLOCAUST VICTIM FINE
ARTS LITIGATION AND A STATUTORY APPLICATION OF
THE DISCOVERY RULE

STEPHAN J. SCHLEGELMILCH

NOWHERE TO RUN, NOWHERE TO HIDE: AUGUSTO PINOCHET,
UNIVERSAL JURISDICTION, THE ICC, AND A WAKE-UP CALL
FOR FORMER HEADS OF STATE

JAMISON G. WHITE

COMMENT

OPENING THE DOOR BUT KEEPING THE LIGHTS OFF: *KUMHO
TIRE CO. V. CARMICHAEL* AND THE APPLICABILITY OF THE
DAUBERT TEST TO NONSCIENTIFIC EVIDENCE

K. ISSAC DE VYVER

CASE WESTERN RESERVE LAW REVIEW

Volume 50, Number 1
Fall 1999



52 237PT 1157
07/00 XL 00-104-06 GBC



CASE WESTERN RESERVE LAW REVIEW

VOLUME 50

FALL 1999

NUMBER 1

Managing Editor

JAMISON G. WHITE

Editor in Chief

CHRISTOPHER M. O'CONNOR

Publisher

TINA M. LUZADER

Executive Articles Editor

MATTHEW E. ALBERS

Executive Contributing Editor

STEPHAN J. SCHLEGELMILCH

Executive Notes Editor

LEIGH S. O'HARA

External Affairs Coordinator

GITTE J. WENDELL

Associate Coordinator

DIANNA SNYDER KARG

Articles Editors

BRIAN ALAN BARGMEYER

SALIM A. KAFTI

ANTHONY E. KUHEL, JR.

SARAH POLLYEA

BEN SASSÉ

TOM J. SMOLDERS

Contributing Editors

K. ISSAC DEVYVER

PATTI DONZE

DANIEL M. FORD

JEFFREY C. METZCAR

Notes Editors

ANDRAEA D. CARLSON

ANNA L. MOSCIONI

CHRISTIAN A. NATIELLO

WILLIAM R. POST

JANE L. WOLLIN

Associates

JOHN ALLOTTA

STEPHANIE BENDER

LINDSEY CARR

DAVID L. DEVERNOE

SUSAN M. EASTMAN

KEVIN H. FINK

JAYME GARLICH

MOLLY S. HAMBY

AUDRA HOUSEHOLDER WEBB

EMERY G. LEE III

AMY MCGANN

STEVEN D. MCGREW

CHRISTOPHER S. MAYNARD

NATALIE H. RAUF

SCOTT SIEGLER

LOUIS VITALE

ROBERT WAGNER

SEAN A. WATTERSON

ANDREA WHITAKER

ANDREW J. WILSON

JEROME G. WYSS

Faculty Advisor

ROBERT N. STRASSFELD

Coordinator of Student Publications

CAROLYN L. SPEAKER

CASE WESTERN RESERVE UNIVERSITY
SCHOOL OF LAW FACULTY

Administrative Officers

GERALD KORNGOLD, B.A., J.D., *Dean*
WILBUR C. LEATHERBERRY, A.B., J.D., *Associate Dean for Academic Affairs*
BRYAN L. ADAMSON, Ph.B., B.S., M.A., J.D., *Assistant Dean for Student Services*
BARBARA F. ANDELMAN, B.A., J.D., *Assistant Dean for Admissions, Financial Aid, and Special Projects*
SONIA M. WINNER, B.A., J.D., *Assistant Dean for Career Services*
CATHERINE SCHWARTZ, B.A., *Associate Dean for Development and Public Affairs*

Professors Emeriti

SIMON L. GOREN, Dip. Law, M.L.S.
EDWARD A. MEARNES, JR., B.S., LL.B.
HUGH A. ROSS, B.S., LL.B., LL.M., S.J.D.
OLIVER C. SCHROEDER, JR., A.B., J.D., *Albert J. Weatherhead III and
Richard W. Weatherhead Professor Emeritus*
LOUIS A. TOEPFER, A.B., LL.B., *Dean Emeritus, President Emeritus of the University*

Professors of Law

ARTHUR D. AUSTIN II, B.S., LL.B.
Edgar A. Hahn Professor
LAURA BROWN CHISOLM, B.A., J.D.
HIRAM E. CHODOSH, B.A., J.D.
*Director, Frederick K. Cox International
Law Center*
RONALD J. COFFEY, A.B., LL.B., LL.M.
GEORGE W. DENT, JR., B.A., J.D., LL.M.
*Schott—van den Eynden Professor of Business
Organizations Law*
MELVYN R. DURCHSLAG, B.S., J.D.
JONATHAN L. ENTIN, A.B., J.D.
Professor of Law and Political Science
LEON GABINET, Ph.B., J.D.
Executive Director, LL.M. Taxation
PETER M. GERHART, B.A., J.D.
PAUL C. GIANNELLI, B.A., M.S.F.S., J.D., LL.M.
*Albert J. Weatherhead III and
Richard W. Weatherhead Professor*
THOMAS I. HAUSMAN, B.A., J.D., LL.M.
*Adjunct Professor and Administrative
Director, LL.M. Taxation*
MICHAEL HEISE, A.B., J.D., Ph.D.
ERIK M. JENSEN, S.B., M.A., J.D.
David L. Brennan Professor
PETER D. JUNGER, A.B., LL.B.
LEWIS R. KATZ, A.B., J.D.
*John C. Hutchins Professor and
Director, LL.M. United States Legal Studies*
HENRY T. KING, JR., B.A., LL.B.
*Instructor and U.S. Director,
Canada-U.S. Law Institute*
GERALD KORNGOLD, B.A., J.D.
Everett D. and Eugenia S. McCurdy Professor

JULIET P. KOSTRITSKY, A.B., J.D.
John Homer Kapp Professor
ROBERT P. LAWRY, B.A., J.D., Dip. Law,
Director, Center for Professional Ethics
WILBUR C. LEATHERBERRY, A.B., J.D.
JUDITH P. LIPTON, B.A., M.S.S.W., J.D.
Codirector, Milton A. Kramer Law Clinic
KENNETH R. MARGOLIS, B.A., J.D.
Codirector, Milton A. Kramer Law Clinic
WILLIAM P. MARSHALL, B.A., J.D.
Galen J. Roush Professor
JAMES W. MCELHANEY, A.B., LL.B.
Joseph C. Hostetler Professor
LOUISE W. MCKINNEY, B.A., J.D.
KEVIN C. MCMUNIGAL, B.A., J.D.
MAXWELL J. MEHLMAN, B.A., J.D.
*Arthur E. Petersilge Professor and
Director, Law-Medicine Center*
ANDREW P. MORRISS, A.B., M.P.A., J.D., Ph.D.
*Professor of Law and Associate Professor of
Economics*
SPENCER NETH, A.B., J.D., LL.M.
SIDNEY I. PICKER, JR., A.B., LL.B., LL.M.
MORRIS G. SHANKER, B.S.E.E., M.B.A., J.D.
CALVIN WILLIAM SHARPE, B.A., M.A., J.D.
*John Deaver-Drinko/Baker & Hostetler
Professor*
ANN SOUTHWORTH, B.A., J.D.
ROBERT N. STRASSFELD, B.A., M.A., J.D.
WENDY ELIZABETH WAGNER, B.A., M.S., J.D.
*Professor of Law and Professor of
Marketing and Policy Studies*

Associate Professors of Law

BRYAN L. ADAMSON, Ph.B., B.S., M.A., J.D.
KATHLEEN M. CARRICK, B.A., M.L.S., J.D., *Director of the Library*
KENNETH F. LEDFORD, B.A., J.D., M.A., Ph.D., *Associate Professor of History and Law*
THEODORE L. STEINBERG, B.A., Ph.D., *Associate Professor of History and Law*

Assistant Professors of Law

JESSICA BERG, B.A., J.D.
SHARONA HOFFMAN, B.A., J.D., LL.M.

Instructors in Law

DAVID J. CARNEY, B.A., J.D.
PETER B. FRIEDMAN, B.A., J.D.
*Director, Research, Analysis, Writing
and Skills Course*
JONATHAN GORDON, B.A., J.D.
KATHRYN SORDS MERCER, A.B., M.S.S.W., J.D.

The CASE WESTERN RESERVE LAW REVIEW (ISSN 0008-7262), formerly the Western Reserve Law Review, is published quarterly by the students of the Case Western Reserve University School of Law. Editorial and business offices are located at Case Western Reserve University, 11075 East Boulevard, Cleveland, Ohio 44106, telephone (216) 368-3312. The submission of unsolicited manuscripts is invited. Subscriptions are entered for the entire volume for \$25.00 per year. Subscriptions are automatically renewable and any correspondence regarding this should be sent to the Coordinator of Student Publications. The Review's policy requires that unless a claim for nonreceipt of an issue is received within three months after the mailing date, the Review cannot be held responsible for supplying that issue without charge. Single issues of the current volume are available for \$15.00 each. Back issues from earlier volumes are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209. Citations conform to *The Bluebook: A Uniform System of Citation* (16th ed. 1996), copyright by the Columbia Law Review, the Harvard Law Review, the University of Pennsylvania Law Review, and the Yale Law Journal. Style conforms generally to *The Chicago Manual of Style* (14th ed. 1993).

The Case Western Reserve Law Review grants permission for each article in this volume to be copied for use by nonprofit educational institutions, provided that (1) copies are distributed at or below cost, (2) the author and the Review are identified, and (3) proper notice of copyright is affixed to each copy. This issue went to press in November 1999.

CASE WESTERN RESERVE LAW REVIEW

VOLUME 50

FALL 1999

NUMBER 1

COPYRIGHT © 1999 BY CASE WESTERN RESERVE LAW REVIEW

SUMNER CANARY LECTURE

UNDER SHELTER OF CONFIDENTIALITY

Geoffrey C. Hazard, Jr......1

ARTICLES

SHOULD THE COURTS INCORPORATE A BEST EVIDENCE RULE INTO THE STANDARD DETERMINING THE ADMISSIBILITY OF SCIENTIFIC TESTIMONY?: ENOUGH IS ENOUGH EVEN WHEN IT IS NOT THE BEST

Edward J. Imwinkelried.....19

WHEN DIFFERENT MEANS THE SAME: APPLYING A DIFFERENT STANDARD OF PROOF TO WHITE PLAINTIFFS UNDER THE *MCDONNELL DOUGLAS* PRIMA FACIE CASE TEST

Angela Onwuachi-Willig.....53

NOTES

GHOSTS OF THE HOLOCAUST: HOLOCAUST VICTIM FINE ARTS LITIGATION AND A STATUTORY APPLICATION OF THE DISCOVERY RULE

Stephan J. Schlegelmilch.....87

NOWHERE TO RUN, NOWHERE TO HIDE: AUGUSTO PINOCHET, UNIVERSAL JURISDICTION, THE ICC, AND A WAKE-UP CALL FOR FORMER HEADS OF STATE

Jamison G. White.....127

COMMENT

OPENING THE DOOR BUT KEEPING THE LIGHTS OFF: *KUMHO TIRE CO. V. CARMICHAEL* AND THE APPLICABILITY OF THE *DAUBERT* TEST TO NONSCIENTIFIC EVIDENCE

K. Issac deVyver.....177