

2005

Volume 56 Issue 2 (2005)

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 56 Issue 2 (2005)*, 56(2) Case W. Rsrv. L. Rev. Front Matter (2005)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol56/iss2/2>

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
SCHOOL OF LAW

K
3
.476
c.1

JUN 10 2006

CASE WESTERN RESERVE LAW REVIEW

VOLUME 56

WINTER 2005

NUMBER 2

ARTICLES

- | | |
|---|--------------------|
| CALLING IN THE DOGS: SUSPICIONLESS SNIFF SEARCHES AND REASONABLE EXPECTATIONS OF PRIVACY | CECIL J. HUNT, II |
| HARD BARGAINING ON BEHALF OF THE GOVERNMENT TORTFEASOR: A STUDY IN GOVERNMENTAL LAWYER ETHICS | STEVEN K. BERENSON |
| LAW AS DESIGN: OBJECTS, CONCEPTS, AND DIGITAL THINGS | MICHAEL J. MADISON |

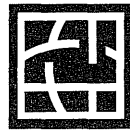
NOTES

- | | |
|---|---------------------|
| CONDITIONAL LIBERTY: RESTRICTING PROCREATION OF CONVICTED CHILD ABUSERS AND DEAD BEAT DADS | SARA C. BUSCH |
| PROTECTING THE "RIGHT" TO CHOOSE OF WOMEN WHO ARE INCOMPETENT: ETHICAL, DOCTRINAL, AND PRACTICAL ARGUMENTS AGAINST FETAL REPRESENTATION | CATHERINE M. FRENCH |

CWRU LAW LIBRARY

**CASE
WESTERN
RESERVE
LAW REVIEW**

Volume 56, Number 2
Winter 2005



CASE

SCHOOL OF LAW

CASE WESTERN RESERVE LAW REVIEW

VOLUME 56

WINTER 2005

NUMBER 2

Managing Editor

NORAH J. GUEQUIERRE

Editor in Chief

SARA C. BUSCH

Publisher

KEVIN M. SAMUELS

Executive Articles Editor

RAMI BARDENSTEIN

Executive Contributing Editor

JOHN N. TITTLE

Executive Notes Editor

CATHERINE M. FRENCH

External Affairs Coordinator

JUSTIN HUGHES

Associate Coordinator

JOHN LOGAN SCHRIVER

Contributing Editors

DANIEL A. APPLGATE

JASON R. GROVE

KEVIN PENDERGAST

ALEXANDER VAN VOORHEES

Articles Editors

JESSICA BENSON

PATRICK D. BURNS

ALEXANDER J. CLARK

BRADLEY W. HARRISON

JOSLYN E. KAYE

GREGORY A. LEWIS

JAY C. STIFFLER

Notes Editors

CATHERINE L. BECK

LISA M. COX

TASIA E. MCINTYRE

BRIAN W. SCHREYER

Associates

JEFFREY THOMAS CICARELLA

MICHAEL J. COOK

KATHARINE ANN DAVIS

STEVEN W. DAY

P. JOSHUA DEASON

STEPHEN CHRISTOPHER DOWDELL

ROBERT E. HAFFKE

M. JASON HALE

JOHN W. HUTCHINSON

MATTHEW E. KELLY

ELIZABETH LEBLANC

NICOLETTE J. LEE

RANDALL LEEMAN JR.

JENNIFER B. ORR

STEPHEN P. PARRINELLO

MARK T. PAVKOV

JOSHUA SCHAEFFLER POMERANZ

KATHRYN E. SCHILL

MICHAEL SEAN SERTIC

GEORGE EDWARD SPENCER

BENJAMIN STULBERG

REBECCA J. WHITMARSH

Faculty Advisor

DALE A. NANCE

CASE WESTERN RESERVE UNIVERSITY
SCHOOL OF LAW FACULTY

Administrative Officers

GERALD KORNGOLD, B.A., J.D., *Dean*
HIRAM E. CHODOSH, *Associate Dean for Academic Affairs*
SONIA M. WINNER, *Associate Dean for Leadership Outreach and Strategic Initiatives*
MELISSA A. SANTEE, *Interim Associate Dean for Development and Public Affairs*
BARBARA F. ANDELMAN, B.A., J.D., *Associate Dean for Student Services, Enrollment Planning and Special Projects*
SARAH MCFARLANE POLLY, B.A., J.D., *Assistant Dean for Career Services*

Professors Emeriti

PETER D. JUNGER, A.B., LL.B.
JAMES W. MCELHANEY, A.B., LL.B., *Joseph C. Hostetler Professor Emeritus of Trial Practice and Advocacy*
EDWARD A. MEARNS, JR., B.S., LL.B.
SIDNEY I. PICKER, JR., A.B., LL.B., LL.M.
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*

Professors of Law

ARTHUR D. AUSTIN II, B.S., J.D.
Edgar A. Hahn Professor of Jurisprudence
JESSICA WILEN BERG, B.A., J.D.
LAURA BROWN CHISOLM, B.A., J.D.
HIRAM E. CHODOSH, B.A., J.D.
Joseph C. Hostetler – Baker & Hostetler Professor of Law
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.
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 of Law
AMOS N. GUIORA, B.A., J.D.,
Director, Institute for Global Security Law and Policy
KATHERINE M. HESSLER, B.A., J.D., LL.M.,
Associate Director, Center for the Interdisciplinary Study of Conflict and Dispute Resolution
SHARONA HOFFMAN, B.A., J.D., LL.M.
Professor of Law and Bioethics and Associate Director, Law-Medicine Center
ERIK M. JENSEN, S.B., M.A., J.D.
David L. Brennan Professor
LEWIS R. KATZ, A.B., J.D.
John C. Hutchins Professor and Director, Graduate Program for Foreign Students in U.S. & Global Legal Studies
GERALD KORNGOLD, B.A., J.D.
Everett D. and Eugenia S. McCurdy Professor
JULIET P. KOSTRITSKY, A.B., J.D.
John Homer Kapp Professor
RAYMOND KU, A.B., J.D.
Associate Director, Center for Law, Technology, and the Arts
ROBERT P. LAWRY, B.A., J.D., D.P. LAW
Director, Center for Professional Ethics
WILBUR C. LEATHERBERRY, A.B., J.D.
Director, Skills Program and Externships
JUDITH P. LIPTON, B.A., M.S.S.W., J.D.
Co-Director, Milton A. Kramer Law Clinic Center
KENNETH R. MARGOLIS, B.A., J.D.
Co-Director, Milton A. Kramer Law Clinic Center and Director, CaseArc
LOUISE W. MCKINNEY, B.A., J.D.
KEVIN C. MCMUNIGAL, B.A., J.D.
Judge Ben C. Green Professor
MAXWELL J. MEHLMAN, B.A., J.D.
Arthur E. Petersilge Professor, Professor of Bioethics and Director, Law-Medicine Center
ANDREW P. MORRIS, A.B., J.D., M.P.A., PH.D.
Galen J. Roush Professor of Business Law and Regulation and Director, Center for Business Law and Regulation
DALE A. NANCE, B.A., M.A., J.D.
CRAIG ALLEN NARD, B.A., J.D., LL.M., J.S.D.
Tom J.E. and Bette Lou Walker Professor of Law and Director, Center for Law, Technology, and the Arts
SPENCER NETH, B.A., J.D., LL.M.
MICHAEL P. SCHARF, A.B., J.D.
Director, Frederick K. Cox International Law Center
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 and Director, Center for the Interdisciplinary Study of Conflict and Dispute Resolution
ANN SOUTHWORTH, B.A., J.D.
THEODORE L. STEINBERG, B.A., PH.D.,
Professor of History and Law
ROBERT N. STRASSFELD, B.A., M.A., J.D.
MARTHA WOODMANSEE, B.A., M.A. PH.D.
Professor of English and Law

Associate Professors of Law

JONATHAN H. ADLER, B.A., J.D., *Associate Director, Center for Business Law and Regulation*
KATHLEEN M. CARRICK, B.A., M.L.S., J.D., *Director of the Law Library*
WILLIAM M. CARTER, JR., B.S., J.D.
TIMOTHY CASEY, B.A., J.D., LL.M.
KENNETH F. LEDFORD, B.A., J.D., M.A., PH.D., *Associate Professor of History and Law*
JACQUELINE D. LIPTON, B.A., LL.B., LL.M., PH.D., *Associate Director, Frederick K. Cox International Law Center*
MATTHEW ROSSMAN, B.A., J.D.

Assistant Professors of Law

OLUFUNMILAYO B. AREWA, B.A., M.A., PH.D., A.M., J.D., *Assistant Director, Center for Law, Technology, and the Arts*
CRAIG M. BOISE, B.S., J.D., LL.M., *Assistant Director, Center for Business Law and Regulation*
BRIAN K. GRAN, B.A., J.D., PH.D.
B. JESSIE HILL, B.A., J.D., *Assistant Director, Institute for Global Security Law and Policy*
D. R. JONES, B.A., J.D., M.L.S., *Adjunct Assistant Professor of Law*

Instructors of Law

DAVID J. CARNEY, B.A., J.D.
PETER B. FRIEDMAN, B.A., J.D., *Instructor and Director of Moot Court and Mock Trial Programs*
JONATHAN GORDON, B.A., J.D.
HENRY T. KING, JR., B.A., LL.B., *Instructor and U.S. Director, Canada—U.S. Law Institute*
KATHRYN S. MERCER, A.B., M.S.S.W., J.D., PH.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. Periodicals postage paid at Cleveland, Ohio and at additional mailing offices. Editorial and business offices are located at Case Western Reserve University, 11075 East Boulevard, Cleveland, Ohio 44106, telephone (216) 368-3312. POSTMASTER: Send address changes to Case Western Reserve Law Review, 11075 East Boulevard, Cleveland, Ohio 44106. The submission of unsolicited manuscripts is invited. Subscriptions are entered for the entire volume for \$30.00 per year. Subscriptions are automatically renewable. 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* (18th ed. 2005), 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* (15th ed. 2003).

For all photocopy or republication requests, please contact Copyright Clearance Center, Inc. by mail: 222 Rosewood Drive, Danvers, MA 01923, by phone: (978) 646-2600, by fax: (978) 646-8600, by email: infoat@copyright.com, or online: www.copyright.com. This issue went to press in March 2006.

CASE WESTERN RESERVE LAW REVIEW

VOLUME 56

WINTER 2005

NUMBER 2

COPYRIGHT © 2005 BY CASE WESTERN RESERVE LAW REVIEW

ARTICLES

- CALLING IN THE DOGS: SUSPICIONLESS SNIFF SEARCHES AND
REASONABLE EXPECTATIONS OF PRIVACY
Cecil J. Hunt, II..... 285
- HARD BARGAINING ON BEHALF OF THE GOVERNMENT TORTFEASOR:
A STUDY IN GOVERNMENTAL LAWYER ETHICS
Steven K. Berenson..... 345
- LAW AS DESIGN: OBJECTS, CONCEPTS, AND DIGITAL THINGS
Michael J. Madison..... 381

NOTES

- CONDITIONAL LIBERTY: RESTRICTING PROCREATION OF CONVICTED
CHILD ABUSERS AND DEAD BEAT DADS
Sara C. Busch..... 479
- PROTECTING THE "RIGHT" TO CHOOSE OF WOMEN WHO ARE
INCOMPETENT: ETHICAL, DOCTRINAL, AND PRACTICAL
ARGUMENTS AGAINST FETAL REPRESENTATION
Catherine M. French..... 511