

Volume 57 | Issue 3

2007

Volume 57 Issue 3 (2007)

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 57 Issue 3 (2007)*, 57(3) Case W. Res. L. Rev. Front Matter (2007)
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol57/iss3/2>

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

VOLUME 57

SPRING 2007

NUMBER 3

TRIBUTE
PROFESSOR ROBERT P. LAWRY

REFLECTIONS IN HONOR OF BOB LAWRY	WILLIAM E. DEAL
ROBERT P. LAWRY: INTELLECTUAL, RACONTEUR, GENTLEMAN, AND TRUE FRIEND	MELVYN R. DURCHSLAG
ROBERT P. LAWRY: COLLEAGUE AND FRIEND	JONATHAN L. ENTIN
TRIBUTE TO PROFESSOR ROBERT LAWRY	KEVIN McMUNIGAL

SYMPOSIUM
PROSECUTORIAL ETHICS AND THE RIGHT TO A FAIR TRIAL:
THE ROLE OF THE *BRADY* RULE IN THE MODERN CRIMINAL JUSTICE SYSTEM

INTRODUCTION	LEWIS R. KATZ
LITIGATING <i>BRADY v. MARYLAND</i> : GAMES PROSECUTORS PLAY	BENNETT L. GERSHMAN
COMMENTARY: <i>BRADY, BRADY</i> , WHEREFORE ART THOU <i>BRADY</i> ?	MICHAEL J. BENZA
COMMENTARY: <i>BRADY</i> 'S BRAINTEASER: THE ACCIDENTAL PROSECUTOR AND COGNITIVE BIAS	ALAFAIR BURKE
CAN PROSECUTORS BLUFF? <i>BRADY v. MARYLAND</i> AND PLEA BARGAINING	JOHN G. DOUGLASS
<i>BRADY</i> AND JAILHOUSE SNITCHES	PAUL C. GIANNELLI
COMMENTARY: <i>BRADY</i> FROM THE PROSECUTOR'S PERSPECTIVE	STEVEN M. DETTELBACH
<i>BRADY</i> AND JAILHOUSE INFORMANTS: RESPONDING TO INJUSTICE	PETER A. JOY
GUILTY PLEAS, <i>BRADY</i> DISCLOSURE, AND WRONGFUL CONVICTIONS	KEVIN C. McMUNIGAL

NOTE

SCHOOL FINANCING IN OHIO YESTERDAY, TODAY AND TOMORROW: SEARCHING FOR A "THOROUGH AND EFFICIENT" SYSTEM OF PUBLIC SCHOOLS	SHADYA YAZBACK
---	----------------

COMMENT

INTERPRETING THE NEW RULE 609(A)(2)	GEORGE EDWARD SPENCER
-------------------------------------	-----------------------

CASE
WESTERN
RESERVE
LAW REVIEW

Volume 57, Number 3
Spring 2007



CASE
SCHOOL OF LAW

CASE WESTERN RESERVE LAW REVIEW

VOLUME 57

SPRING 2007

NUMBER 3

Managing Editor

JENNIFER B. ORR

Editor in Chief

ELIZABETH K. LEBLANC

Publisher

NICOLETTE J. LEE

Executive Articles Editor

M. JASON HALE

Executive Contributing Editor

GEORGE EDWARD SPENCER

Executive Notes Editor

RANDALL J. LEEMAN JR.

Executive Symposium Editor

STEVEN W. DAY

Associate Coordinator

BENJAMIN STULBERG

Senior Editors

JEFFREY THOMAS CICARELLA

MICHAEL J. COOK

KATHARINE ANN DAVIS

P. JOSHUA DEASON

STEPHEN CHRISTOPHER DOWDELL

ROBERT E. HAFFKE

Contributing Editors

JOHNNY HUTCHINSON

MARK T. PAVKOV

Senior Editors

MATTHEW E. KELLY

STEPHEN P. PARRINELLO

KATHRYN E. SCHILL

MICHAEL SEAN SERTIC

REBECCA J. WHITMARSH

Associates

MARKUS E. APELIS

NIVEDITA BETKERUR

MICHELLE D. BOGLE

KYLE CUTTS

WILLIAM EADIE

IZODUWA E. EBOSE

TODD M. EPSTEIN

FRANK ESPOSITO

ADAM GRIFFIN

JAMES HENDERSON

KATHERINE J. MIDDLETON

ANUP MISRA

JEFFREY MOON

CARL F. OLSON

RACHAEL REAM

CHRISTOPHER RIHA

DAVID ROBERTS

JENNIFER M. STONE

JUSTIN L. THOMPSON

JOHN C. WEBER

EMILY E. WEIDENHAMER

JOHN W. WHITTLESEY

TRAVIS YONKER

Faculty Advisor

JONATHAN L. ENTIN

CASE WESTERN RESERVE UNIVERSITY
SCHOOL OF LAW FACULTY

Administrative Officers

GARY J. SIMSON, B.A., J.D., *Dean*
SHARONA HOFFMAN, *Associate Dean for Academic Affairs*
MELVYN DURCHSLAG, *Interim Associate Dean for Academic Affairs*
SONIA M. WINNER, *Associate Dean for Leadership Outreach and Strategic Initiatives*
MELISSA A. SANTEE, *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

JAMES W. MCELHANEY, A.B., LL.B., *Joseph C. Hostetter Professor Emeritus of Trial Practice and Advocacy*
EDWARD A. MEARN, 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

JONATHAN H. ADLER, B.A., J.D.
Co-Director, Center for Business Law and Regulation
ARTHUR D. AUSTIN II, B.S., J.D.
Edgar A. Hahn Professor of Jurisprudence
JESSICA WILEN BERG, B.A., J.D.
Professor of Law and Bioethics, Associate Director, Law-Medicine Center, and Associate Director, Institute for Global Security Law and Policy
LAURA BROWN CHISOLM, B.A., J.D.
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
SCOTT FINE, B.A., M.B.A.
Professor for the Practice of Banking and Finance Law
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 Co-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
HENRY T. KING, JR., B.A., LL.B.
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
RAYMOND SHIH RAY KU, A.B., J.D.
Co-Director, Center for Law, Technology, and the Arts
ROBERT P. LAWRY, B.A., J.D., DIP. LAW
Director, Center for Professional Ethics
WILBUR C. LEATHERBERRY, A.B., J.D.
Director, Skills Program and Externships
JACQUELINE D. LIPTON, B.A., LL.B., LL.M., PH.D.
Co-Director, Center for Law, Technology, and the Arts and Associate Director, Frederick K. Cox International Law Center
JUDITH P. LIPTON, B.S., 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. MCMUNGAL, 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 Co-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 Co-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 & Hostetter Professor and Director, Center for the Interdisciplinary Study of Conflict and Dispute Resolution
GARY J. SIMSON, B.A., J.D.
Joseph C. Hostetter—Baker & Hostetter Professor of Law
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

CRAIG M. BOISE, B.A., J.D., LL.M., *Associate Director, Center for Business Law and Regulation*
DAVID J. CARNEY, B.A., J.D.
KATHLEEN M. CARRICK, B.A., M.L.S., J.D., *Director of the Law Library*
WILLIAM M. CARTER, JR., B.S., J.D.
TIMOTHY M. CASEY, B.A., J.D., LL.M.
PETER B. FRIEDMAN, B.A., J.D.
JONATHAN GORDON, B.A., J.D.
KENNETH F. LEDFORD, B.A., J.D., M.A., PH.D., *Associate Professor of History and Law*
KATHRYN S. MERCER, A.B., M.S.S.W., J.D., PH.D.
MATTHEW ROSSMAN, B.A., J.D.
ROSALIND SIMSON, B.A., PH.D.

Assistant Professors of Law

JENNIFER CUPAR, B.S., J.D.
BRIAN K. GRAN, B.A., J.D., PH.D.
B. JESSIE HILL, B.A., J.D.
D. R. JONES, B.A., J.D., M.L.S., *Adjunct Assistant Professor of Law and Deputy Director of the Law Library*
MAUREEN SHERIDAN KENNY, B.A., J.D.
CAROLYN SEYMOUR, B.A., 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. 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 February 2008.

CASE WESTERN RESERVE LAW REVIEW

VOLUME 57

SPRING 2007

NUMBER 3

COPYRIGHT © 2007 BY CASE WESTERN RESERVE LAW REVIEW

TRIBUTE PROFESSOR ROBERT P. LAWRY

REFLECTIONS IN HONOR OF BOB LAWRY

William E. Deal..... 507

ROBERT P. LAWRY: INTELLECTUAL, RACONTEUR, GENTLEMAN, AND TRUE FRIEND

Melvyn R. Durchslag..... 511

ROBERT P. LAWRY: COLLEAGUE AND FRIEND

Jonathan L. Entin..... 515

TRIBUTE TO PROFESSOR ROBERT LAWRY

Kevin McMunigal..... 519

SYMPOSIUM

PROSECUTORIAL ETHICS AND THE RIGHT TO A FAIR TRIAL: THE ROLE OF THE *BRADY* RULE IN THE MODERN CRIMINAL JUSTICE SYSTEM

INTRODUCTION

Lewis R. Katz..... 521

LITIGATING *BRADY V. MARYLAND*: GAMES PROSECUTORS PLAY

Bennett L. Gershman..... 531

COMMENTARY: *BRADY, BRADY, WHEREFORE ART THOU BRADY?*

Michael J. Benza..... 567

COMMENTARY: *BRADY'S BRAINTEASER: THE ACCIDENTAL PROSECUTOR AND COGNITIVE BIAS*

Alafair Burke 575

CAN PROSECUTORS BLUFF? *BRADY V. MARYLAND* AND PLEA BARGAINING

John G. Douglass..... 581

BRADY AND JAILHOUSE SNITCHES

Paul C. Giannelli 593

COMMENTARY: <i>BRADY</i> FROM THE PROSECUTOR'S PERSPECTIVE <i>Steven M. Dettelbach</i>	615
<i>BRADY</i> AND JAILHOUSE INFORMANTS: RESPONDING TO INJUSTICE <i>Peter A. Joy</i>	619
GUILTY PLEAS, <i>BRADY</i> DISCLOSURE, AND WRONGFUL CONVICTIONS <i>Kevin C. McMunigal</i>	651

NOTE

SCHOOL FINANCING IN OHIO YESTERDAY, TODAY AND TOMORROW: SEARCHING FOR A "THOROUGH AND EFFICIENT" SYSTEM OF PUBLIC SCHOOLS <i>Shadya Yazback</i>	671
--	-----

COMMENT

INTERPRETING THE NEW RULE 609(A)(2) <i>George Edward Spencer</i>	717
---	-----