

2007

### Volume 58 Issue 1 (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 58 Issue 1 (2007)*, 58(1) Case W. Rsrv. L. Rev. Front Matter (2007)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol58/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  
UNIVERSITY

SCHOOL OF LAW

K  
3  
A76  
c.1

MAY 14 2008

# CASE WESTERN RESERVE LAW REVIEW

VOLUME 58

FALL 2007

NUMBER 1

## TRIBUTE

PROFESSOR RONALD J. COFFEY

RON COFFEY—A STUDENT'S APPRECIATION

KENNETH B. DAVIS, JR.

RON COFFEY: THE THINKER'S THINKER

PETER M. GERHART

"THE PRICE OF WISDOM IS ABOVE RUBIES" A TRIBUTE TO RONALD J. COFFEY  
CASE WESTERN RESERVE SCHOOL OF LAW 1966–2007  
(ON HIS RETIREMENT)

JULIET P. KOSTRITSKY

RONALD J. COFFEY, MASTER MENTOR

GARY J. SIMSON

## ARTICLES

FEAR AND LOATHING IN INSANITY LAW: EXPLAINING THE OTHERWISE  
INEXPLICABLE *CLARK V. ARIZONA*

SUSAN D. ROZELLE

ELECTION DAY AT THE BAR

ALLISON R. HAYWARD

THE LOW ROAD TO CY PRES REFORM: PRINCIPLED PRACTICE  
TO REMOVE DEAD HAND CONTROL OF CHARITABLE ASSETS

ROB ATKINSON

WHAT'S IN A NAME OR, BETTER YET, WHAT'S IT WORTH?  
CITIES, SPORTS TEAMS AND THE RIGHT OF PUBLICITY

MITCHELL NATHANSON

PARENTAL LEAVE AND AMERICAN EXCEPTIONALISM

SAUL LEVMORE

## NOTES

THE RIGHT OF PUBLICITY AND FANTASY SPORTS: WHY THE *C.B.C.*  
*DISTRIBUTION* COURT GOT IT WRONG

DAVID G. ROBERTS, JR.

AGENCY KNOWS BEST? RESTRICTING JUDGES' ABILITY TO PLACE CHILDREN  
IN ALTERNATIVE PLANNED PERMANENT LIVING ARRANGEMENTS

EMILY W. MCGILL

## 2007 NOTE OF THE YEAR

A MODICUM OF RECOVERY: HOW CHILD SEX TOURISM CONSTITUTES  
SLAVERY UNDER THE ALIEN TORT CLAIMS ACT

KYLE CUTTS

CWRU LAW LIBRARY

**CASE  
WESTERN  
RESERVE  
LAW REVIEW**

Volume 58, Number 1  
Fall 2007



**CASE WESTERN RESERVE  
UNIVERSITY**

SCHOOL OF LAW

# CASE WESTERN RESERVE LAW REVIEW

---

VOLUME 58

FALL 2007

NUMBER 1

---

*Managing Editor*

JEFFREY D. MOON

*Editor in Chief*

FRANK ESPOSITO

*Publisher*

RACHAEL A. REAM

*Executive Articles Editor*

CARL F. OLSON

*Executive Contributing Editor*

KYLE CUTTS

*Executive Notes Editor*

KATHERINE MIDDLETON

*Executive Symposium Editor*

ADAM GRIFFIN

*Associate Coordinator*

JAMES HENDERSON

*Senior Editors*

MARKUS E. APELIS  
NIVEDITA BETKERUR  
MICHELLE BOGLE  
WILLIAM EADIE  
IZODUWA EBOSE  
TODD EPSTEIN

*Contributing Editors*

DAVID ROBERTS  
EMILY WEIDENHAMER  
JOHN W. WHITTLESEY

*Senior Editors*

ANUP MISRA  
CHRISTOPHER RIHA  
JENNIFER M. STONE  
JOHN WEBER  
TRAVIS YONKER

*Associates*

RANIA ARJA  
ASHLEY BUDD  
ERIN DE LA MARE  
BENJAMIN FALLER  
JAMES FARIS  
SEAN GANLEY  
MICHAEL HALPER  
MARTIN HARVEY

KATHLEEN HINES  
KELLY JOHNSON  
MARY LOMBARDI  
KRISTIN MARSTELLAR  
JESSICA MATE  
JEFFREY MOYLE  
GIDEON NEWMARK  
RAJIV PRASAD

S. COLIN G. PETRY  
BRIAN POLIS  
TESSA SCHNEIDER  
ERIN SIMMONS  
SARA WITT  
KARI WHITE

*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, B.A., J.D., LL.M., *Senior Associate Dean for Academic Affairs*  
JONATHAN L. ENTIN, A.B., J.D., *Associate Dean for Academic Affairs*  
LISA M. MENCINI, B.A., M.B.A., *Associate Dean for Development and Public Affairs*  
SARAH MCFARLANE POLLY, B.A., J.D., *Associate Dean for Student Services*

*Professors Emeriti*

ROBERT P. LAWRY, B.A., J.D., *DIP. LAW, Director, Center for Professional Ethics*  
JAMES W. MCELHANEY, A.B., LL.B., *Joseph C. Hostetler Professor Emeritus of Trial Practice and Advocacy*  
SIDNEY I. PICKER, JR., A.B., LL.B., LL.M.

*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*  
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*  
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. 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*  
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 & Hostetler Professor and Director, Center for the Interdisciplinary Study of Conflict and Dispute Resolution*  
GARY J. SIMSON, B.A., J.D.  
*Joseph C. Hostetler—Baker & Hostetler 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 I. CARNEY, B.A., J.D.  
KATHLEEN M. CARRICK, B.A., M.L.S., J.D., *Director of the Law Library*  
PETER B. FRIEDMAN, B.A., J.D.  
JONATHAN GORDON, B.A., J.D.  
RICHARD GORDON, B.A., J.D.  
KENNETH F. LEDFORD, B.A., J.D., M.A., PH.D., *Associate Professor of History and Law*  
LAURA MCNALLY, B.A., J.D.  
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*

TIMOTHY M. CASEY, B.A., J.D., LL.M.  
JENNIFER CUPAR, B.S., J.D.  
BRIAN K. GRAN, B.A., J.D., PH.D.  
B. JESSIE HILL, B.A., J.D.  
DANIEL A. JAFFE, 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.  
CASSANDRA B. ROBERTSON, B.A., M.A./M.P. AFF., 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 \$32.00 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 \$16.00 each. Back issues from earlier volumes are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209. Back issues are also available in PDF format through HeinOnline <http://heinonline.org/>. 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](mailto:infoat@copyright.com), or online: [www.copyright.com](http://www.copyright.com). This issue went to press in February 2008.

---

# CASE WESTERN RESERVE LAW REVIEW

VOLUME 58

FALL 2007

NUMBER 1

COPYRIGHT © 2007 BY CASE WESTERN RESERVE LAW REVIEW

## TRIBUTE PROFESSOR RONALD J. COFFEY

- RON COFFEY—A STUDENT’S APPRECIATION  
*Kenneth B. Davis, Jr.* ..... 1
- RON COFFEY: THE THINKER’S THINKER  
*Peter M. Gerhart* ..... 7
- “THE PRICE OF WISDOM IS ABOVE RUBIES” A TRIBUTE TO RONALD J.  
COFFEY, CASE WESTERN RESERVE SCHOOL OF LAW 1966 – 2007  
(ON HIS RETIREMENT)  
*Juliet P. Kostritsky* ..... 11
- RONALD J. COFFEY, MASTER MENTOR  
*Gary J. Simson* ..... 17

## ARTICLES

- FEAR AND LOATHING IN INSANITY LAW: EXPLAINING THE OTHERWISE  
INEXPLICABLE *CLARK V. ARIZONA*  
*Susan D. Rozelle* ..... 19
- ELECTION DAY AT THE BAR  
*Allison R. Hayward* ..... 59
- THE LOW ROAD TO CY PRES REFORM: PRINCIPLED PRACTICE TO  
REMOVE DEAD HAND CONTROL OF CHARITABLE ASSETS  
*Rob Atkinson* ..... 97
- WHAT’S IN A NAME OR, BETTER YET, WHAT’S IT WORTH? CITIES,  
SPORTS TEAMS AND THE RIGHT OF PUBLICITY  
*Mitchell Nathanson* ..... 167
- PARENTAL LEAVE AND AMERICAN EXCEPTIONALISM  
*Saul Levmore* ..... 203

NOTES

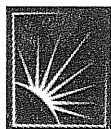
THE RIGHT OF PUBLICITY AND FANTASY SPORTS: WHY THE C.B.C.  
DISTRIBUTION COURT GOT IT WRONG  
*David G. Roberts, Jr.* .....223

AGENCY KNOWS BEST? RESTRICTING JUDGES' ABILITY TO PLACE  
CHILDREN IN ALTERNATIVE PLANNED PERMANENT LIVING  
ARRANGEMENTS  
*Emily W. McGill*.....247

2007 NOTE OF THE YEAR

A MODICUM OF RECOVERY: HOW CHILD SEX TOURISM CONSTITUTES  
SLAVERY UNDER THE ALIEN TORT CLAIMS ACT  
*Kyle Cutts* .....277





CASE WESTERN RESERVE  
UNIVERSITY

LAW REVIEW

To our readers and subscribers:

Due to circumstances beyond our control, Volume 58:1 of the Case Western Reserve University Law Review has been printed before Volume 57:4. It is our preference to publish excellent and timely scholarship as soon as possible so that it is useful to the legal community, rather than holding such scholarship back in order to conform to a rigid publication schedule.

We would like to reassure you that Volume 57:4 is in the last stages of publication, and will be available to you soon. We appreciate your understanding.

—The Executive Board of the Case Western Reserve Law Review