

Volume 46 | Issue 1

---

1995

## Volume 46 Issue 1 (1997)

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 46 Issue 1 (1997)*, 46(1) Case W. Res. L. Rev. Front Matter (1995)  
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol46/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

---

VOLUME 46

FALL 1995

NUMBER 1

---

## CANARY LECTURE

DEATH: THE ULTIMATE RUN-ON SENTENCE

ALEX KOZINSKI & SEAN GALLAGHER

## ARTICLE

I GAVE MY EMPLOYER A CHICKEN THAT HAD  
NO BONE: JOINT FIRM-STATE RESPONSIBILITY  
FOR LINE-SPEED-RELATED OCCUPATIONAL INJURIES

MARC LINDER

## NOTES

ELECTION OF REMEDIES IN EMPLOYMENT  
DISCRIMINATION LAW: DOORWAY INTO  
THE LEGAL HALL OF MIRRORS

DAVID C. BELT

HOW MUCH IS ENOUGH? ASSESSING THE IMPACT  
OF *DOLAN v. CITY OF TIGARD*

KIM I. STOLLAR

DEFINING CYBERLIBEL: A FIRST AMENDMENT  
LIMIT FOR LIBEL SUITS AGAINST INDIVIDUALS  
ARISING FROM COMPUTER BULLETIN BOARD SPEECH

JEREMY STONE WEBER

## COMMENT

*ADARAND CONSTRUCTORS, INC. v. PENA*—A STRICT  
SCRUTINY OF AFFIRMATIVE ACTION

STEPHEN C. MINNICH

# CASE WESTERN RESERVE LAW REVIEW

---

VOLUME 46

FALL 1995

NUMBER 1

---

*Managing Editor*  
ROBERT C. HEINTEL

*Editor in Chief*  
MATTHEW L. STORMS

*Publisher*  
KIM I. STOLLAR

*Executive Articles Editor*  
JULIA M. JORDAN

*Executive Contributing Editor*  
REBECCA A. WISTNER

*Executive Notes Editor*  
ROBERT C. PIVONKA

*Symposium Coordinator*  
KRISTIN L. PRUITT

*Associate Coordinator*  
JOSEF KEGLEWITSCH

*Articles Editors*  
DAVID C. BELT  
ROBIN F. BRUCKMANN  
MARIANN E. BUTCH  
ALEXANDER C. ELSBERG  
MOLLY M. GROOM  
ERICA E. HARRISON  
BETH LASSOFF

*Contributing Editors*  
RAINA E. BRUBAKER  
STEPHEN C. MINNICH  
GEOFFREY M. WARDLE  
JEREMY STONE WEBER

*Notes Editors*  
KEVIN W. HERRING  
LAURIE A. KECO  
KENNETH G. SAUNDERS  
TRACEY L. TURNBULL  
CYNAMON T. WARREN

## *Associates*

JOSH BERGER  
JENNIFER M. CANFIELD  
HAROLD A. CHRISTY  
AMY B. CHURCH  
BRANDON S. COLLIER  
SEAN PATRICK COSTELLO  
STEVEN A. DELCHIN  
JAMES T. DIXON  
MICHAEL A. FIXLER  
ALBERT S. HO

JONATHAN T. HYMAN  
JENNIFER J. JASONIS  
PAUL V. KELLER  
ABBY R. LEVINE  
EDWARD D. MANCHESTER  
JIM MILLER  
DEREK MOHR  
DEAN J. PASALIS  
CHRISTOPHER D. PERRY  
LAURIE G. PETERSON

JONATHAN A. PLATT  
HALLE E. REED  
MELINDA L. REYNOLDS  
SHEILA SAEGH  
CHRISTIAN D. SAINÉ  
NEELY B. SCHONFELD  
ANN N. SKERRY  
CHRISTINA M. SMITH  
WADE R. WAGATSUMA  
KATHRYN A. WILLIAMS

*Faculty Advisor*  
JULIET P. KOSTRITSKY

*Business Manager*  
CAROLYN L. SPEAKER

*Manuscript Secretary*  
DEBBIE KORENCHAN

CASE WESTERN RESERVE UNIVERSITY  
SCHOOL OF LAW FACULTY

*Administrative Officers*

PETER M. GERHART, B.A., J.D., *Dean*  
DANIEL T. CLANCY, B.S., LL.B., *Associate Dean for External Affairs*  
WILBUR C. LEATHERBERRY, A.B., J.D., *Associate Dean for Academic Affairs*  
JOANNE U. JACKSON, B.A., J.D., *Associate Dean for Students and Administrative Affairs*  
BARBARA F. ANDELMAN, B.A., J.D., *Assistant Dean for Admissions and Financial Aid*  
JOHN R. BOOMER, B.A., J.D., *Assistant Dean for Employer Services*

*Professors Emeriti*

SIMON L. GOREN, Dip. Law, M.L.S.  
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 of Law and Criminal Justice*  
LOUIS A. TOEPFFER, A.B., LL.B., *Dean Emeritus, President Emeritus of the University*

*Professors of Law*

ARTHUR D. AUSTIN II, B.S., LL.B. <i>Edgar A. Hahn Professor of Jurisprudence</i>	GERALD KORNGOLD, B.A., J.D. <i>Everett D. and Eugenia S. McCurdy Professor of Law</i>
LAURA BROWN CHISOLM, B.A., J.D.	JULIET P. KOSTRITSKY, A.B., J.D.
RONALD J. COFFEY, A.B., LL.B., LL.M.	ROBERT P. LAWRY, B.A., J.D., Dip. Law, <i>Director, Center for Professional Ethics</i>
GEORGE W. DENT, B.A., J.D., LL.M.	WILBUR C. LEATHERBERRY, A.B., J.D.
REBECCA SUSAN DRESSER, B.A., M.S., J.D.	WILLIAM P. MARSHALL, B.A., J.D. <i>Galen J. Roush Professor of Law</i>
MELVYN R. DURCHSLAG, B.S., J.D.	JAMES W. MCELHANEY, A.B., LL.B. <i>Joseph C. Hostetler Professor of Trial Practice and Advocacy</i>
JONATHAN L. ENTIN, A.B., J.D.	KEVIN C. MCMUNIGAL, B.A., J.D.
LEON GABINET, Ph.B., J.D. <i>David L. Brennan Professor of Law</i>	EDWARD A. MEARNS, JR., B.S., LL.B.
PETER M. GERHART, B.A., J.D.	MAXWELL J. MEHLMAN, B.A., J.D. <i>Director, Law-Medicine Center</i>
PAUL C. GIANNELLI, B.A., M.S.F.S., J.D., LL.M. <i>Albert J. Weatherhead III and Richard W. Weatherhead Professor of Law and Criminal Justice</i>	SPENCER NETH, A.B., J.D., LL.M.
ERIK M. JENSEN, S.B., M.A., J.D.	SIDNEY I. PICKER, JR., A.B., LL.B., LL.M.
PETER D. JUNGER, A.B., LL.B.	MORRIS G. SHANKER, B.S.E.E., M.B.A., J.D. <i>John Homer Kapp Professor of Law</i>
LEWIS R. KATZ, A.B., J.D. <i>John C. Hutchins Professor of Law, Director, LL.M. United States Legal Studies</i>	CALVIN WILLIAM SHARPE, B.A., J.D.
HENRY T. KING, JR., B.A., LL.B. <i>U.S. Director, Canada-U.S. Law Institute</i>	ROBERT N. STRASSFELD, B.A., M.A., J.D.

*Associate Professors of Law*

KATHLEEN CARRICK, B.A., M.L.S., J.D., *Librarian*  
ANDREW P. MORRIS, A.B., M.P.A., J.D., Ph.D.

*Assistant Professors of Law*

HIRAM E. CHODOSH, B.A., J.D., *Director, Comparative Legal Studies*  
PETER A. JOY, A.B., J.D., *Director, Kramer Legal Clinic*  
ANN SOUTHWORTH, B.A., J.D.  
WENDY ELIZABETH WAGNER, B.A., M.S., J.D.

*Instructors in Law*

BRYAN L. ADAMSON, B. Phil., B.S., M.A., J.D.	JUDITH P. LIPTON, B.A., M.S.S.W., J.D.
CHRISTINE A. CORCOS, A.B., M.A., A.M.L.S., J.D.	KENNETH R. MARGOLIS, B.A., J.D.
JONATHAN GORDON, B.A., J.D.	LOUISE W. MCKINNEY, B.A., J.D.
THOMAS I. HAUSMAN, B.A., J.D., LL.M.	KATHRYN SORDS MERCER, A.B., M.S.S.W., J.D.
MARY KATHERINE KANTZ, A.B., J.D.	JANE I. ROLNICK, 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.

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 Business Manager. 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 \$10.00 each. Special and Symposium issues are \$15.00. Back issues from earlier volumes are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209.

The Review is a member of the National Conference of Law Reviews. Citations conform to THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (15th ed. 1991), 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 WILLIAM STRUNK, JR. & E.B. WHITE, THE ELEMENTS OF STYLE (3d ed. 1979).

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, 1995.

# CASE WESTERN RESERVE LAW REVIEW

VOLUME 46

FALL 1995

NUMBER 1

COPYRIGHT © 1995 BY CASE WESTERN RESERVE LAW REVIEW

## CANARY LECTURE

DEATH: THE ULTIMATE RUN-ON SENTENCE

*Alex Kozinski & Sean Gallagher* . . . . . 1

## ARTICLE

I GAVE MY EMPLOYER A CHICKEN THAT HAD NO BONE: JOINT  
FIRM-STATE RESPONSIBILITY FOR LINE-SPEED-RELATED  
OCCUPATIONAL INJURIES

*Marc Linder* . . . . . 33

## NOTES

ELECTION OF REMEDIES IN EMPLOYMENT DISCRIMINATION LAW:  
DOORWAY INTO THE LEGAL HALL OF MIRRORS

*David C. Belt* . . . . . 145

HOW MUCH IS ENOUGH? ASSESSING THE IMPACT  
OF *DOLAN V. CITY OF TIGARD*

*Kim I. Stollar* . . . . . 193

DEFINING CYBERLIBEL: A FIRST AMENDMENT LIMIT FOR LIBEL  
SUITS AGAINST INDIVIDUALS ARISING FROM COMPUTER  
BULLETIN BOARD SPEECH

*Jeremy Stone Weber* . . . . . 235

## COMMENT

*ADARAND CONSTRUCTORS, INC. V. PENA*—A STRICT SCRUTINY OF  
AFFIRMATIVE ACTION

*Stephen C. Minnich* . . . . . 279