

Washington Law Review

Volume 87
Number 2 *Symposium: The First Amendment in
the Modern Age*

6-1-2012

Contents

anon

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>

Recommended Citation

anon, Table of Contents, *Contents*, 87 Wash. L. Rev. i (2012).
Available at: <https://digitalcommons.law.uw.edu/wlr/vol87/iss2/1>

This Table of Contents is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

WASHINGTON LAW REVIEW

VOLUME 87, NUMBER 2, JUNE 2012

Published by Students of the
University of Washington School of Law

CONTENTS

SYMPOSIUM

THE FIRST AMENDMENT IN THE MODERN AGE

FOREWORD

The Guardians of Knowledge in the Modern State: Post's
Republic and the First Amendment

Ronald K.L. Collins & David M. Skover 369

ESSAYS

The First Amendment, the Courts, and "Picking Winners"

Judge Thomas L. Ambro & Paul J. Safier 397

Public Discourse, Expert Knowledge, and the Press

Joseph Blocher 409

The First Amendment's Epistemological Problem

Paul Horwitz 445

A View from the First Amendment Trenches: Washington
State's New Protections for Public Discourse and
Democracy

Bruce E.H. Johnson & Sarah K. Duran 495

Democratic Competence, Constitutional Disorder, and the
Freedom of the Press

Stephen I. Vladeck 529

REPLY

Understanding the First Amendment

Robert C. Post 549

BIBLIOGRAPHY

Robert C. Post, Selected Bibliography of First Amendment
Scholarship

565

COMMENTS

Defining “Breach of The Peace” in Self-Help Repossessions

Ryan McRobert 569

Addressing the Costs and Comity Concerns of International
E-Discovery

John T. Yip 595

Copyright © 2012, Washington Law Review Association. Except as otherwise provided, the author of each article in this issue has granted permission for copies of that article to be made for classroom use, provided that (1) copies are distributed at or below cost, (2) the author and journal are identified, (3) proper notice of copyright is affixed to each copy, and (4) the Washington Law Review Association is notified of the use.

WASHINGTON LAW REVIEW (ISSN 0043-0617) is published quarterly by students of the University of Washington School of Law. Periodicals postage paid at Seattle, Washington, and additional mailing offices.

POSTMASTER: Send address changes to:

Frances Johnson
Washington Law Review
University of Washington
Gallagher Law Library
William H. Gates Hall
Box 353025
Seattle, Washington 98195

SUBSCRIPTION INFORMATION: Subscription price for Vol. 87: \$41.06 per year in Washington State (tax included), \$37.50 per year in the United States, and \$47.50 elsewhere. Single issue: \$12.00 (order directly from Washington Law Review Business Office). Subscriptions are renewed automatically unless the business office is notified of cancellation. No refunds will be issued.

BACK ISSUES: See advertisement at the back of this issue.

SUBSCRIPTION & BACK ISSUE CORRESPONDENCE:

Frances Johnson
Washington Law Review
University of Washington
Gallagher Law Library
William H. Gates Hall
Box 353025
Seattle, Washington 98195
e-mail: franj@u.washington.edu

MANUSCRIPTS: WASHINGTON LAW REVIEW invites the submission of unsolicited manuscripts. Manuscripts should be double-spaced with double-spaced footnotes. WASHINGTON LAW REVIEW prefers the use of gender-neutral language.

CITATION FORM: For Volume 87, WASHINGTON LAW REVIEW adopts the citation form of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (19th ed. 2010).

EDITORIAL CORRESPONDENCE: Editor-in-Chief
Washington Law Review
University of Washington
School of Law
William H. Gates Hall
Box 353025
Seattle, Washington 98195
e-mail: wlr@u.washington.edu

Member, National Conference of Law Reviews

WORLD WIDE WEB HOME PAGE: <http://www.law.washington.edu/WLR>

WASHINGTON LAW REVIEW

VOLUME 87
2012

2011–2012 EDITORIAL BOARD

Editor-in-Chief

KATHERINE KIRKLIN O'BRIEN

Associate Editor-in-Chief

LAURA EPLER KLEIN

Associate Editor-in-Chief

LEE MARCHISIO

Chief Articles Editor

REBECCA LEVINE

Chief Managing Editor

TOM WYRWICH

Chief Comments Editor

MICHAEL FELTON

Executive Articles Editor

ANDREW ZELLERS

Executive Managing Editor

MARY SWIFT

Executive Comments Editor

ERIN MOODY

Articles Editors

JULIAN BEATTIE
JEREMY GELMS
MICHAEL KIM
DAVID RUBENSTEIN

Managing Editors

EILEEN ALEXANDER
ANDREA BRADFORD
GREGORY GEORGE
MARK ORTHMANN
ISHAM REAVIS
ANDREW RUSSELL
SOFIA SALAZAR-RUBIO
VICTORIA STEPHANOVA

Comments Editors

JEFF BARNUM
ANGELA GALLOWAY
BRADLEY LEWIS
RYAN MCROBERT
MATTHEW VIERS

EDITORIAL STAFF

DAVID CRAWFORD
STEPHANIE CURRY
JEFF DEGROOT
JOSEPHINE ENNIS
JUSTIN GILLETTE
JOSHUA HANSEN-KING
THOMAS HUDSON
KATHLEEN KLINE

JEANINE LUTZENHISER
ELIZABETH MUSTIN
KEVIN NAUD
ANGELA NOAKES
TIMOTHY REYNOLDS
JAY SCHULKIN
ROSS SILER
OLIVER STIEFEL

CLIFTON STRATTON
REBECCA THOMPSON
MARK TYSON
JAMES WENDELL
KIEL WILLMORE
JESSE WOO
JOHN YIP
LAURA ZANZIG

WASHINGTON LAW REVIEW ASSOCIATION FACULTY BOARD

CRAIG ALLEN
THOMAS ANDREWS

KAREN BOXX
GREGORY HICKS

LINDA HUME
KATHY MCGINNIS

BUSINESS STAFF

Faculty Business Manager
PENNY HAZELTON

Faculty Adviser
ROBERT GOMULKIEWICZ

Business Office
JONATHAN FRANKLIN
FRAN JOHNSON

University of Washington School of Law 2011–2012

OFFICERS OF ADMINISTRATION

Michael Young, B.A., J.D., President of the University
Kelye Y. Testy, B.A., J.D., Dean, James W. Mifflin University Professor of Law
Samuel Donaldson, B.A., J.D., LL.M., Associate Dean for Academic Administration, Professor of Law
Penny A. Hazelton, B.A., J.D., M.L.L., Associate Dean for Library & Computing Services, Professor of Law
Mary Hotchkiss, B.A., M.S.L.S., J.D., LL.M., Associate Dean for Students & Academic Life, Senior Law Lecturer
Kathryn Watts, B.S., J.D., Associate Dean for Research & Faculty Development, Associate Professor of Law
Stephanie Cox, B.A., Assistant Dean for Advancement
Elizabeth Ford, B.A., J.D., Assistant Dean
Michelle Gonzalez, J.D., M.P.A., Assistant Dean for Professional & Leadership Development
Michele Storms, B.A., J.D., Assistant Dean for Public Service

FACULTY EMERITI

William R. Andersen, B.S.L., LL.B., LL.M.
Robert H. Aronson, B.A., J.D.
William T. Burke, B.S., J.D., J.S.D.
Robert L. Fletcher, A.B., LL.B.
Roland L. Hjorth, A.B., LL.B.
John Huston, B.A., J.D., LL.M.
John M. Junker, B.A., J.D.
Richard O. Kummert, B.S., C.P.A., M.B.A., LL.B.
John R. Price, A.B., LL.B.
Roy L. Prosterman, B.A., J.D.
Marjorie D. Rombauer, B.A., J.D.
Charles Z. Smith, B.S., J.D.
Frank W. Smith, B.A., J.D., LL.M.
William B. Stoebeck, B.A., M.A., J.D., S.J.D.
Philip A. Trautman, B.A., J.D.

FACULTY OF LAW

Craig H. Allen, B.S., J.D., LL.M., Judson Falknor Professor of Law
Kimberly D. Ambrose, B.A., J.D., Law Lecturer
Helen A. Anderson, B.A., J.D., Associate Professor of Law
Robert T. Anderson, B.A., J.D., Professor of Law, Director of Native American Law Center
Thomas R. Andrews, B.A., M.A., J.D., Professor of Law
Karen E. Boxx, B.A., J.D., Associate Professor of Law
Steve P. Calandrillo, B.A., J.D., Charles I. Stone Professor of Law
Thomas D. Cobb, B.A., M.A., M.A., J.D., Senior Law Lecturer
Molly M. Cohan, B.A., J.D., Law Lecturer
William Covington, B.A., J.D., Assistant Professor of Law
Samuel A. Donaldson, B.A., J.D., LL.M., Professor of Law
Signe Dortch, B.A., J.D., Law Lecturer, Director of Immigration Law Clinic
Dwight J. Drake, B.S., J.D., Associate Professor of Law
Jonathan A. Eddy, B.A., J.D., Professor of Law, Director of Asian Law Center, Manager of Afghanistan Legal Educators Project
Mary D. Fan, B.A., J.D., M.Phil., Assistant Professor of Law
Julia Gold, B.A., J.D., Senior Law Lecturer, Director of Mediation Clinic
Robert W. Gomulkiewicz, B.A., M.A., J.D., Professor of Law, Director of Law, Technology & Arts Group
James H. Hardisty, A.B., LL.B., Professor of Law
Penny A. Hazelton, B.A., J.D., M.L.L., Professor of Law
Gregory A. Hicks, B.A., J.D., Professor of Law
Mary A. Hotchkiss, B.A., M.S.L.S., J.D., LL.M., Senior Law Lecturer
Maureen A. Howard, B.A., J.D., Associate Professor of Law, Director of Trial Advocacy Program
Linda S. Hume, B.A., J.D., Professor of Law
Stewart M. Jay, A.B., J.D., Professor of Law
Sarah Kaltsounis, B.S., M.Ed., J.D., Law Lecturer
Yong-Sung (Jonathan) Kang, B.A., J.D., Assistant Professor of Law
Sylvia Kang'ara, LL.B., LL.M., S.J.D., Assistant Professor of Law
Lisa Kelly, B.A., J.D., Professor of Law, Bobbe & Jonathan Bridge Professorship in Child & Family Advocacy, Director of Children & Youth Advocacy Clinic
Alan Kirtley, B.A., J.D., Associate Professor of Law
Sanne Knudsen, B.S., M.S., J.D., Assistant Professor of Law
Anita K. Krug, B.A., M.A., J.D., Ph.D., Assistant Professor of Law
Patricia C. Kuszler, B.A., M.D., J.D., Charles I. Stone Professor of Law, Director of Multidisciplinary Initiatives
Clark B. Lombardi, B.A., M.A., J.D., Ph.D., Associate Professor of Law, Adjunct Associate Professor of Law in International Affairs
Deborah Maranville, B.A., J.D., Professor of Law, Director of Clinical Law Program, Director of Unemployment Compensation Clinic
Anna C. Mastroianni, B.S., B.A., J.D., M.P.H., Professor of Law
Kathleen M. McGinnis, B.A., J.D., Senior Law Lecturer
Jacqueline McMurtrie, B.G.S., J.D., Associate Professor of Law, Director of Innocence Project Northwest
Theodore A. Myhre, B.A., M.A., M.A., J.D., Law Lecturer
Joel M. Ngugi, LL.B., LL.M., S.J.D., Associate Professor of Law
Peter Nicolas, B.A., M.P.P., J.D., Jeffrey & Susan Brotman Professor of Law

Sean O'Connor, B.A., M.A., J.D., Professor of Law, Director of Law, Technology & Arts Group, Director of Entrepreneurial Law Clinic
 Kathleen O'Neill, B.A., J.D., Professor of Law
 Rafael Pardo, B.A., J.D., Professor of Law
 Anita Ramasastry, B.A., M.A., J.D., D. Wayne & Anne Gittinger Professor of Law, Director for Journals & Conferences, Law, Technology, & Arts Group
 Beth Rivin, B.A., M.D., M.P.H., Research Associate Professor of Law, Director of Global Health & Justice Project
 William H. Rodgers, B.A., J.D., Stimson Bullitt Professor of Environmental Law
 Zahr Said, B.A., J.D., Ph.D., Assistant Professor of Law
 Sallie Thieme Sanford, B.A., J.D., Assistant Professor of Law
 Eric Schnapper, B.A., M.A., B.Phil., LL.B., Professor of Law
 Scott A. Schumacher, B.A., J.D., LL.M., Associate Professor of Law, Director of Federal Tax Clinic, Director of Graduate Program in Taxation
 Toshiko Takenaka, B.A., LL.M., Ph.D., W. Hunter Simpson Professor of Law, Director of CASRIP, Director of Law, Technology & Arts Group
 Michael E. Townsend, B.A., M.A., Ph.D., J.D., Associate Professor of Law
 Lea B. Vaughn, A.B., J.D., Professor of Law
 Walter J. Walsh, B.C.L., LL.M., S.J.D., Associate Professor of Law
 Kathryn Watts, B.S., J.D., Associate Professor of Law
 Ron J. Whitener, B.A., J.D., Senior Law Lecturer, Director of Tribal Court Criminal Defense Clinic
 Brenda Williams, B.A., M.P.A., J.D., Law Lecturer
 Jane K. Winn, B.Sc., J.D., Charles I. Stone Professor of Law, Director for International Programs, Law, Technology & Arts Group
 Louis E. Wolcher, B.A., J.D., Charles I. Stone Professor of Law
 Dongsheng Zang, LL.B., LL.M., LL.M., S.J.D., Associate Professor of Law

ADJUNCT, AFFILIATE, AND VISITING FACULTY

William Bailey, B.A., J.D., Professor from Practice
 Gad Barzilai, B.A., LL.S., LL.B., M.A., Ph.D., Adjunct Professor of Law
 Andrew Benjamin, J.D., Ph.D., Affiliate Professor of Law
 Sharan E. Brown, B.A., M.A., J.D., Ed.D., Adjunct Research Associate Professor of Law
 Ronald K.L. Collins, B.A., J.D., Visiting Professor of Law, Harold S. Sheffelman Scholar
 Nancy S. Jecker, B.A., M.A., M.A., Ph.D., Adjunct Professor of Law
 Lisa Marshall Manheim, B.A., J.D., Visiting Assistant Professor of Law
 Michael McCann, B.A., M.A., Ph.D., Adjunct Professor of Law
 Saadia Pekkanen, B.A., M.I.A., Ph.D., M.S.L., Adjunct Associate Professor of Law
 Elizabeth Porter, B.A., M.Ed., J.D., Visiting Assistant Professor of Law
 Hugh D. Spitzer, B.A., J.D., LL.M., Affiliate Professor of Law
 Susan Whiting, B.A., Ph.D., Adjunct Associate Professor of Law
 Richard O. Zerbe, Jr., A.B., Ph.D., Adjunct Professor of Law

GALLAGHER LAW LIBRARY STAFF

Crystal Alberthal, B.A., Library Specialist, Serials
 Karen Ballard, B.A., Library Specialist, Cataloging
 Rob Britt, B.A., M.A., M.A., Japanese Legal Materials Specialist, East Asian Law
 Theresa Chemnick, B.A., Assistant to the Director
 Melia Cossette, B.A., J.D., M.L.I.S., CILP Co-Editor
 Judy Davis, B.A., M.L.S., Librarian, Resource Sharing
 Flora Escarez, B.S., Library Specialist, Cataloging
 Jonathan Franklin, A.B., A.M., J.D., M.L.S., Associate Law Librarian
 Sharon Hall, Library Specialist Supervisor, Cataloging
 Tricia Hart, B.A., M.L.S., Librarian, Cataloging
 Ingrid Holmlund, A.B., J.D., M.L.I.S., CILP Co-Editor
 Peggy Jarrett, B.A., M.S.L.I.S., Librarian, Collection Development & Reference
 Fran Johnson, Fiscal Specialist, Washington Law Review, Pacific Rim Law & Policy Journal
 Richard Jost, B.A., M.A., M.A., Information Systems Coordinator
 Choong Kim, B.A., Fiscal Specialist
 Sherry Leysen, B.A., M.A., J.D., M.L.I.S., Librarian, Reference
 Kaden Mack, B.A., Library Tech, Circulation
 Craig Morley, B.A., Library Materials Conservation Supervisor, Serials
 Jessica Moskowitz, B.A., Library Tech, Circulation
 Ann Nez, B.A., M.L.S., Technical Services Coordinator
 Vickie Northington, B.A., Library Supervisor, Circulation
 Cheryl Nyberg, B.A., M.S.L.S., Librarian, Coordinator of Reference Services
 Nikki Pike, Information Specialist, CILP
 Patty Roberts, B.A., Library Tech Lead, Evening Circulation Supervisor
 Tania Schriwer, B.S., J.D., M.L.I.S., CILP Co-Editor
 Emily Smith, B.A., J.D., M.L.I.S., Librarian, Reference
 Dave Tawatao, Senior Computer Specialist
 Trinie Thai-Parker, B.Sc., LL.M., LL.B., M.S.L.I.S., Librarian, Reference
 Reba Turnquist, B.A., M.L.S., Librarian, Collection Development
 Rachel Turpin, B.A., J.D., M.L.I.S., CILP Co-Editor
 Mary Whisner, B.A., J.D., M.L.S., Librarian, Reference
 Alena Wolotira, B.A., J.D., M.L.I.S., Librarian, Reference; CILP Co-Editor
 Alysha Yagoda, B.A., J.D., CILP Co-Editor
 Quan (John) Zhang, B.A., M.A., Ph.D., Library Specialist, Acquisitions