Washington Law Review

Volume 87

Number 3 In Memoriam: Professor Emeritus

Richard O. Kummert

10-1-2012

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/iss3/1

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 3, OCTOBER 2012

Published by Students of the University of Washington School of Law

CONTENTS

Т	ו קד	RI	רו	ΓE
	1		, ,	

In Memoriam: Professor Emeritus Richard O. Kummert Foreword: A Tribute

Kellye Y. Testy 639

Memorial Remarks

William R. Andersen 642

C. Kent Carlson 646

Robert W. Gomulkiewicz 648

Roland L. Hjorth 650

Paula C. Littlewood 653

ARTICLES

State Default and Synthetic Bankruptcy

Richard M. Hynes 657

Selling Advice and Creating Expectations: Why Brokers Should Be Fiduciaries

Arthur B. Laby 707

COMMENTS

Talking Drugs: The Burdens of Proof in Post-*Garcetti* Speech Retaliation Claims

Thomas E. Hudson 777

Executive Privilege Under Washington's Separation of Powers Doctrine

Lee Marchisio 813

Pressing Washington's Wine Industry into the Twenty-First Century: Rethinking What It Means to Be a Winery

Rebecca Thompson 851

Protecting Child Victims' Rights As Vigorously As Criminal Defendants' When Prosecuting Possession or Distribution of Child Pornography

Kiel Willmore 883

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

Executive Articles Editor
ANDREW ZELLERS

Articles Editors
JULIAN BEATTIE
JEREMY GELMS
MICHAEL KIM
DAVID RUBENSTEIN

Chief Managing Editor
TOM WYRWICH

Executive Managing Editor
MARY SWIFT

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

Chief Comments Editor
MICHAEL FELTON

Executive Comments Editor
ERIN MOODY

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

LINDA HUME KATHY MCGINNIS

BUSINESS STAFF

Faculty Business Manager PENNY HAZELTON $Faculty\ Adviser \\ {\tt ROBERT\ GOMULKIEWICZ}$

Business Office Jonathan Franklin Fran Johnson

2012–2013 EDITORIAL BOARD

Editor-in-Chief
JAMES WENDELL

Associate Editor-in-Chief
DAVID CRAWFORD

DAVID CRAWFORD

Chief Articles Editor

THOMAS HUDSON

Executive Articles Editor

JESSE WOO

Articles Editors
JOSEPHINE ENNIS
ELIZABETH MUSTIN
REBECCA THOMPSON
KIEL WILLMORE

Associate Editor-in-Chief
TIMOTHY REYNOLDS

Chief Managing Editor
KATHLEEN KLINE

Executive Managing Editor
CLIFTON STRATTON

Managing Editors
NIKKI CARSLEY
STEPHANIE CURRY
KAYLA FELD
JUSTIN GILLETTE
JOSHUA HANSEN-KING
KEVIN NAUD
ANGELA NOAKES
ROSS SILER

Comments Editors
JEFF DEGROOT
JEANINE LUTZENHISER
JAY SCHULKIN
OLIVER STIEFEL

EDITORIAL STAFF

JONATHAN COLLINS
PETER DOLAN
BRADY DOUGLAS
ARTHUR MICHAEL EDWARDS
BRIAN EPLEY
SCOTT FORBES
GLENDA GERTZ
WILLIAM GOODLING

BROOKE HOWLETT
DAVID LAI
STEPHANIE LIU
NIKI MORRISON
ADAM MURRAY
TONY NGUYEN
CAITLIN PARK
LAURA POWELL

DANIEL RICHARDS
BROOKE SARGEANT
KATHERINE SEABRIGHT
SAMUEL SEAL
JENNA SMITH
MATTHEW SOUZA
EMILY TOLER
LAUREN WATTS

Associate Editor-in-Chief

LAURA ZANZIG

Chief Comments Editor

MARK TYSON

Executive Comments Editor
JOHN YIP

^{*}Washington Law Review issues are produced on a calendar-year schedule; the Editorial Board's term of office, however, corresponds to the school year. Accordingly, editorial responsibilities for the October issue are apportioned between consecutive Boards.

University of Washington School of Law 2012–2013

OFFICERS OF ADMINISTRATION Michael Young, B.A., J.D., President of the University Kellye Y. Testy, B.A., J.D., Dean, James W. Mifflin University Professor of Law Patricia Kuszler, M.D., J.D., 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 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. 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. Stoebuck, 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., Senior 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., Professor of Law Steve P. Calandrillo, B.A., J.D., Charles I. Stone Professor of Law Ryan Calo, B.A., J.D., Assistant 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 Ronald K.L. Collins, B.A., J.D., Acting Professor of Law, Harold S. Shefelman Scholar William Covington, B.A., J.D., Assistant 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., Associate Professor of Law Julia Gold, B.A., J.D., Principal 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., Miller, Pendelton Endowed 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

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

Elizabeth Porter, B.A., M.Ed., M.A., J.D., Assistant 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., Betts, Patterson & Mines 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., Garvey, Schubert & Barer 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

David Ziff, A.B., J.D., Law Lecturer

ADJUNCT AND VISITING FACULTY

William Bailey, B.A., J.D., Professor from Practice

Matt Barreto, B.S., M.S., Ph.D. Adjunct Associate Professor, Political Science

Gad Barzilai, B.A., LL.S., LL.B., M.A., Ph.D., Adjunct Professor of Law

Katherine Beckett, B.A., M.A., Ph.D., Adjunct Professor, Law Societies and Justice Program, Sociology

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 Denise Dudzinski, Ph.D., MTS, Adjunct Professor, Bioethics and Humanities Carl Goodman, B.B.A., J.D., LL.M., Visiting Professor, Georgetown University Michael Hatfield, B.A., M.A., J.D., Visiting Professor

Thomas Hazlet, B.S., Pharm.D., Dr.P.H., Adjunct Associate Professor, Pharmacy

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

Arzoo Osanloo, B.A., J.D., Ph.D., Adjunct Associate Professor of Law, Law, Societies and Justice Program

Saadia Pekkanen, B.A., M.I.A., Ph.D., M.S.L., Adjunct Associate Professor of Law

Stephen A. Rosenbaum, B.A., J.D., M.P.P., Visiting Senior Lecturer

Clare Ryan, B.S., M.S., Ph.D., Adjunct Professor, School of Environmental and Forest Sciences

Hugh D. Spitzer, B.A., J.D., LL.M., Visiting Professor of Law

Anna Tolin, B.A., J.D., Supervising Attorney and Visiting Lecturer

Susan Whiting, B.A., Ph.D., Adjunct Associate Professor of Law Todd Wildermuth, B.S., M.S., Ph.D., Scholar in Residence

Richard O. Zerbe, Jr., A.B., Ph.D., Adjunct Professor of Law

GALLAGHER LAW LIBRARY STAFF

Crystal Alberthal, B.A., Library Specialist, Serials Jessica Anderson, B.A., Library Tech, Circulation

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 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

Kaden Mack, B.A., Library Tech, Circulation

Craig Morley, B.A., Library Materials Conservation Supervisor, Serials

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 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 Michael Umberger, B.A., J.D., M.L.I.S., Librarian, Reference 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