

Washington Law Review

Volume 89 | Number 2

6-1-2014

Contents

anon

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

Recommended Citation

anon, Table of Contents, *Contents*, 89 Wash. L. Rev. i (2014).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol89/iss2/12>

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 cnyberg@uw.edu.

WASHINGTON LAW REVIEW

VOLUME 89, NUMBER 2, JUNE 2014

Published by Students of the
University of Washington School of Law

CONTENTS

ARTICLES

“All His Sexless Patients”: Persons with Mental Disabilities
and the Competence to Have Sex

Michael L. Perlin & Alison J. Lynch 257

Much Ado About Something: The First Amendment and
Mandatory Labeling of Genetically Engineered Foods

Stephen Tan & Brian Epley 301

Enlightened Regulatory Capture

David Thaw 329

The Constitutional Structure of Voting Rights Enforcement

Franita Tolson 379

RESPONSE AND REJOINDER

Gully and the Failure to Stake a 28 U.S.C. § 1331 “Claim”

Lumen N. Mulligan 441

The Claim-Centered Approach to Arising-Under Jurisdiction:
A Brief Rejoinder to Professor Mulligan

Simona Grossi 487

COMMENTS

Arriving at Clearly Established: The Taser Problem and
Reforming Qualified Immunity Analysis in the Ninth Circuit

Kate Seabright 491

Not-So-Harmless Error: A Higher Standard for Mitigation Errors
on Capital Habeas Review

Ryan C. Thomas 515

“Without Good Cause”: The Case for a Standard-Based
Approach to Determining Worker Qualification for
Unemployment Benefits

Emily Toler 559

Loss-of-Chance Doctrine in Washington: From *Herskovits* to
Mohr and the Need for Clarification

Matthew Wurdeman 603

Copyright © 2014, 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. 89: \$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: fran@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 89, 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 89
2014

2013–2014 EDITORIAL BOARD

| | | |
|---|---|--|
| | <i>Editor-in-Chief</i> LAUREN WATTS | |
| <i>Associate Editor-in-Chief</i> MATTHEW SOUZA | <i>Associate Editor-in-Chief</i> ARTHUR MICHAEL EDWARDS | <i>Associate Editor-in-Chief</i> STEPHANIE LIU |
| <i>Chief Articles Editor</i> BROOKE HOWLETT | <i>Chief Managing Editor</i> LAURA POWELL | <i>Chief Comments Editor</i> CAITLIN PARK SHIN |
| <i>Executive Articles Editor</i> ADAM MURRAY | <i>Executive Managing Editor</i> BROOKE SARGEANT | <i>Executive Comments Editor</i> JONATHAN COLLINS |
| <i>Articles Editors</i> PETER DOLAN DAVID LAI TONY NGUYEN KATHERINE SEABRIGHT | <i>Managing Editors</i> BRIAN EPLEY SCOTT FORBES WILLIAM GOODLING NIKI MORRISON DANIEL RICHARDS SAMUEL SEAL ANDREA WOODS | <i>Comments Editors</i> BRADY DOUGLAS GLENDA GERTZ JENNA SMITH EMILY TOLER |

EDITORIAL STAFF

| | | |
|---|---|--|
| JOHNATHAN CHONG DEVRA COHEN ANDREW DURLAND JESSICA ERICKSON MICHAEL ELLIS MALLORY GITT LE HOANG CHARLES HAUSBERG | MAUREEN JOHNSTON DARIN JONES JESSICA KNOWLES KELSEY MARTIN BRYCE NELSON KIRSTEN NELSEN PHILIP PAINE CECILY SHIEL | WALKER STANOVSKY ROSS TANAKA RYAN THOMAS DANE WESTERMAYER BRADLEY WESTMORELAND RACHEL WILKA ALEXANDER WISBEY MATTHEW WURDEMAN |
|---|---|--|

WASHINGTON LAW REVIEW ASSOCIATION FACULTY BOARD

| | | |
|-------------------------------|--------------------------------|------------------------------|
| CRAIG ALLEN THOMAS ANDREWS | KAREN BOXX SARAH KALTSOUNIS | LINDA HUME KATHY MCGINNIS |
|-------------------------------|--------------------------------|------------------------------|

BUSINESS STAFF

| | | |
|---|---|---|
| <i>Faculty Business Manager</i> PENNY HAZELTON | <i>Faculty Adviser</i> ROBERT GOMULKIEWICZ | <i>Business Office</i> JONATHAN FRANKLIN FRAN JOHNSON |
|---|---|---|

University of Washington School of Law 2013–2014

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
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. 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., 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
Lisa Marshall Manheim, B.A., J.D., Visiting Assistant Professor of Law
Anna C. Mastroianni, B.S., B.A., J.D., M.P.H., Professor of Law
Shannon McCormack, B.A., J.D., LL.M., Assistant 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
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
Kellie Y. Testy, B.A., J.D., Dean, James W. Mifflin University Professor of Law
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 Bareto, 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
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
Karen Ballard, B.A., Library Specialist, Cataloging
Rob Britt, B.A., M.A., M.A., Japanese Legal Materials Specialist, East Asian Law
Judy Davis, B.A., M.L.S., Librarian, Resource Sharing
Anna Ender, B.A., J.D., M.L.I.S., Librarian, Reference
Flora Escarez, B.S., Library Specialist, Cataloging
Grace Feldman, B.A., J.D., M.L.I.S., Librarian, Reference
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
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
Natalie Riha, B.F.A., M.F.A., Assistant to the Director
Patty Roberts, B.A., Library Tech Lead, Evening Circulation Supervisor
Tania Schriwer, B.A., J.D., M.L.I.S., CILP Co-Editor
Dave Tawatao, Senior Computer Specialist
Reba Turnquist, B.A., M.L.S., Librarian, Collection Development
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
Quan (John) Zhang, B.A., M.A., Ph.D., Library Specialist, Acquisitions