

DEPAUL LAW REVIEW

Volume 57

Fall 2007

Number 1

CONTENTS

ARTICLES

- CORPORATE GOVERNANCE, EXECUTIVE
COMPENSATION, CORPORATE PERFORMANCE,
AND WORKER RIGHTS IN BANKRUPTCY:
SOME LESSONS FROM GAME THEORY*Steven H. Kropp* 1
- REINVENTING CONSUMER
PROTECTION..... *David Adam Friedman* 45
- MENTAL HEALTH COURT JUDGES
AS DYNAMIC RISK MANAGERS:
A NEW CONCEPTUALIZATION
OF THE ROLE OF JUDGES*Shauhin Talesh* 93

COMMENT

- UNDUE DEFERENCE: TOWARD A
DUAL SYSTEM OF BURDENS UNDER
THE INDIVIDUALS WITH DISABILITIES
EDUCATION ACT*Jennifer M. Saba* 133

NOTES

- CALLAHAN V. EDGEWATER CARE &
REHABILITATION CENTER: THE ILLINOIS
WHISTLEBLOWER ACT DOES NOT
PREEMPT THE COMMON LAW TORT
OF RETALIATORY DISCHARGE* *Sarah M. Baum* 161
- FAILURE TO OBJECT TO IN-COURT RESTRAINTS:
THE *BOOSE* AND PLAIN ERROR DOCTRINES
IN *PEOPLE V. ALLEN**James Benjamin* 193

Cite as 57 DEPAUL L. REV.
Copyright © 2007 DePaul University
All Rights Reserved
DePaul Law Review

DePaul Law Review (ISSN 0011-7188) is published quarterly by DePaul University College of Law, 25 East Jackson Boulevard, Chicago, Illinois 60604-2287. Periodicals postage paid at Chicago, Illinois and additional mailing offices. Change of addresses should be mailed to the *Review* at least thirty days before the next issue to ensure delivery. Include new and old addresses, with ZIP codes. POSTMASTER: send change of address notice to DePaul Law Review, 25 East Jackson Boulevard, Chicago, Illinois 60604-2287.

SUBSCRIPTIONS: Subscriptions are accepted on a per volume basis only. They are payable in advance and will be renewed automatically unless notification to the contrary is received. The annual price for a subscription to DePaul Law Review is \$30.00.

SINGLE & BACK ISSUES: Back issues of the *DePaul Law Review* can be obtained directly from William S. Hein & Co., Inc. 1285 Main Street, Buffalo, New York 14209. The cost is \$16.00 plus shipping for a single issue. For more information, call 1-800-828-7571. Single copies of the most current issue are also available for sale at the law review office. The cost is \$10.00.

MANUSCRIPT SUBMISSION: Manuscripts submitted for publication in the *DePaul Law Review* must be typed and double spaced with footnotes appended to the main body of the article. Citations must conform to *The Bluebook: A Uniform System of Citation* (18th ed. 2005), copyright by the *Columbia, Harvard, and University of Pennsylvania Law Reviews* and the *Yale Law Journal*. Send manuscripts to the editorial offices at 25 East Jackson Boulevard, Chicago, Illinois 60604-2287. Manuscripts will not be returned unless specifically requested.

LAW REVIEW WEBSITE: For more information, visit our website at www.law.depaul.edu.

DePaul University is an equal-opportunity educator and employer.

DEPAUL LAW REVIEW

Volume 57

Fall 2007

Number 1

BOARD OF EDITORS

GEOFFREY T. BURKHART
Editor in Chief

JEREMY M. ROE
Executive Editor

MICHAEL GENTITHES
Managing Editor of Lead Articles

CATHERINE CEKO
Managing Editor of Notes and Comments

SHAY-ANN HEISER SINGH
Symposium Editor

PATRICK F. ROSS
Business Manager

SARAH M. BAUM
*Editor of Articles,
Notes, and Comments*

JOSEPH A. CULIG
*Editor of Articles,
Notes, and Comments*

MARY C. MEIXNER
*Editor of Articles,
Notes, and Comments*

KATHRYN B. RICHARDS
*Editor of Articles,
Notes, and Comments*

ELLIOTT M. RIEBMAN
*Editor of Articles,
Notes, and Comments*

KIMBER A. RUSSELL
*Editor of Articles,
Notes, and Comments*

STEPHANIE L. STALTER
Editor of Articles, Notes, and Comments

JONATHAN H. URBANEK
Editor of Articles, Notes, and Comments

MEMBERS

STEPHANIE M. AILOR
JESSICA A. BAER
JAMES R. BENJAMIN
P. DANIEL BOND
MARIANN S. CARBONE
YEKATERINA CHUDNOVSKY
KATHLEEN CURTIN
CATHERINE B. DIGGINS
KATHLEEN DORTON

DANIEL B. DUKICH
JAMES D. FIGURA
KATARZYNA A. HOMENDA
JOSHUA P. LARSEN
JULIE S. LEE
MICHELLE K. MAREK
MARTIN S. MASAR III
GUINEVERE M. MOORE
ROMA G. PARIKH
ELIZABETH R. POZOLO

KELLY L. RAZZOUK
JENNIFER M. SABA
KATHRINE E. SCHELLENBERG
BEVIN B. SEIFERT
AMY JO SMITH
ELISABETH A. SUSTMAN
TIMOTHY W. TYLER
ELIINA M. VIELE
LANCE C. ZIEBELL

CANDIDATES

BRIAN N. ANDROW
SARA M. CIENIEWSKI
RYAN M. CROCKETT
LISA DUARTE
JESSICA RYAN DURKIN
MELANIE J. GREER
JOSHUA GRENARD
KRISTEN E. HENGTGEN

ZACHARY J. HOUGHTON
ELISABETH R. JARDINE
BRANDON R. KEEL
CHRISTOPHER J. LETKEWICZ
LISA M. LUKASZEWSKI
VALERIE A. MAGNUSON
WES R. MCCART
MICHAEL J. NEVILLE
NATHAN T. NIEMAN

GABRIELA D. OLTEANU
KEVIN R. O'NEILL
JUSTIN L. PIPER
JASON P. ROACH
JONATHAN N. SCHILDT
MATTHEW SCHWEIGER
VALERIE R. SHERMAN
MELISSA J. SKINNER
SETH A. STERN

SUMA UDUPA
NISHA VERMA
MARIE K. WADE
AARON D. WHITE
MICHAEL WHITLOW
GERRITT J. WIERINGA
MICHAEL T. WYCKLENDT
MARC S. ZASLAVSKY

FACULTY ADVISORY COMMITTEE

STEPHAN A. LANDSMAN
Chairperson

SUSAN A. BANDES

SUMI K. CHO

MICHAEL S. JACOBS

ALLISON ORTLIEB

STEPHEN A. SIEGEL

JEFFREY M. SHAMAN

MEMBER, NATIONAL CONFERENCE OF LAW REVIEWS

DEPAUL UNIVERSITY COLLEGE OF LAW

GENERAL ADMINISTRATION

REV. DENNIS H. HOLTSCHNEIDER, C.M., Ed.D., President
REV. JOHN T. RICHARDSON, C.M., S.T.D., Chancellor
HELMUT P. EPP, Ph.D., Provost
SCOTT L. SCARBOROUGH, Ph.D., C.P.A., Executive Vice President
REV. EDWARD R. UDOVIC, C.M., Ph.D., Secretary of the University
JOSE D. PADILLA, J.D., Vice President, General Counsel
JOHN BERGHOLZ, Vice President for Development
J.D. BINDENAGEL, Vice President for Community, Government, and International Affairs
M. JAY BRAATZ, Senior Executive for Presidential Operations
JAMES R. DOYLE, Vice President for Student Affairs
MARY C. FINGER, Senior Vice President for Advancement
VINCENT J. KELLEN, Vice President for Information Services
ROBERT JANIS, Vice President for Facility Operations
ROBERT L. KOZOMAN, C.P.A., Vice President for Finance
DAVID H. KALSBECK, Ph.D., Vice President for Enrollment Management
DAVID O. DABNEY, C.P.A., Treasurer of the University
WILLIAM SEITHEL, Vice President for Human Resources
ELIZABETH F. ORTIZ, Senior Executive for Institutional Diversity
BONNIE HIRSCH, C.P.A., Controller

LAW ADMINISTRATION

GLEN WEISSENBARGER, Dean
MICHAEL BURNS, Associate Dean for Enrollment Management & Director of Admissions
ELIZABETH ELLIS, Assistant Dean, Law Career Services
STEPHEN R. GREENBERGER, Associate Dean
LEIGH GEORGELL, Business Manager
BRIAN F. HAVEL, Associate Dean for Centers, Institutes & Programs
DEBORAH HOWARD, Assistant Dean, Marketing & Communications
ANDREA D. LYON, Associate Dean for Clinical Programs
HOWARD M. RUBIN, Associate Dean for Lawyering Skills, Operations & External Affairs
STEPHEN A. SIEGEL, Associate Dean for Research, Scholarship & Faculty Development
CHARLOTTE D. TAYLOR, Assistant Dean, Multicultural Affairs & Student Ombudsperson
SUSAN E. THROWER, Director, Legal Writing & Research Program
DIANA C. WHITE, Assistant Dean, Student Affairs

LAW FACULTY

BENJAMIN E. ALBA, Instructor: B.S., DePaul University; J.D., Loyola University Chicago
SIOBAN ALBIOL, Instructor: B.A., University of Texas; J.D., Loyola University Chicago
PHILLIP S. ASHLEY, Associate Professor: B.A., Rockford College; J.D., Tulsa University;
LL.M., New York University
SUSAN A. BANDES, Distinguished Research Professor: B.A., State University of New York at
Buffalo; J.D., University of Michigan
M. CHERIF BASSIOUNI, Distinguished Research Professor: J.D., Indiana University; LL.M.,
John Marshall Law School; S.J.D., George Washington University
MARY BECKER, Distinguished Research Professor: B.S., Loyola University Chicago; J.D.,
University of Chicago.
RODNEY J. BLACKMAN, Professor: B.A., University of Michigan; M.A., University of
Chicago; J.D., Harvard University; Ph.D., University of Wisconsin
WILLIAM E. BLAIS, Instructor: A.B., University of Chicago; J.D., ITT Chicago-Kent
BARBARA B. BRESSLER, Associate Professor: B.S., University of Minnesota; J.D., DePaul
University
SHERYL LEE BUSKE, Instructor: B.A., J.D., DePaul University
JACOB M. CARPENTER, Instructor: B.A., DePaul University; J.D., Mercer University
LEONARD L. CAVISE, Professor: A.B., Hamilton College; J.D., Georgetown University
SUMI K. CHO, Professor: B.A., J.D., Ph.D., University of California

ALBERTO R. COLL, Associate Professor: B.A., Princeton University; J.D., Ph.D., University of Virginia

JAMES W. COLLITON, Professor: A.B., Stanford University; J.D., University of California Hastings; LL.M., Georgetown University

JOHN F. DECKER, Emeritus Professor: B.A., University of Iowa; J.D., Creighton University; LL.M., New York University; J.S.D. New York University

KATHERYN M. DUTENHAVER, Associate Professor: B.A., North Central College; J.D., DePaul University

MICHAEL R. EVANS, Visiting Professor: A.B., Duke University; J.D., Stanford University

JOAN FLYNN, Visiting Professor: B.A., Grinnell College; J.D., New York University

DAVID L. FRANKLIN, Assistant Professor: B.A., Yale College; J.D., University of Chicago

JEROLD A. FRIEDLAND, Professor: B.A., M.A., New York University; J.D., Brooklyn Law School; LL.M., Georgetown University

PATTY GERSTENBLITH, Professor: A.B., Bryn Mawr College; Ph.D., Harvard University; J.D., Northwestern University

ANDREW GOLD, Assistant Professor: B.A., Dartmouth College; J.D., Duke University

STEVEN R. GREENBERGER, Associate Professor: B.A., University of Illinois; J.D., Yale University

RAY J. GRZEBIELSKI, Associate Professor: B.A., Northwestern University; M.B.A., University of Chicago; J.D., Northwestern University; LL.M., Georgetown University

BRIAN F. HAVEL, Professor: B.A., M.A., B.C.L., University of Dublin; LL.M., J.S.D. Columbia University

DONALD H.J. HERMANN, Professor: A.B., Stanford University; M.A., Northwestern University; J.D., Columbia University; LL.M., Harvard University; Ph.D., Northwestern University; M.A.A.H., Art Institute of Chicago

MICHAEL S. JACOBS, Professor: B.A., Dartmouth College; J.D., Yale University; M.P.H., Johns Hopkins University

BARRY KELLMAN, Professor: B.A., University of Chicago; J.D., Yale University

TERRENCE F. KIELY, Professor: B.S., Loyola University-Chicago; J.D., DePaul University; LL.M., New York University

SARAH K. KLAPER, Instructor: B.S. Ohio University; J.D., University of Cincinnati

ROBERTA R. KWALL, Raymond P. Niro Professor of Intellectual Property: A.B., Brown University; J.D., University of Pennsylvania

STEPHAN A. LANDSMAN, Robert A. Clifford Professor of Tort Law and Public Policy: B.A., Kenyon College; J.D., Harvard University

WAYNE K. LEWIS, Professor: B.A., Rutgers University; J.D., Cornell University

MARGIT LIVINGSTON, Professor: B.A., Augsburg College; M.A., J.D., University of Minnesota; LL.M., University of Illinois

ANDREA D. LYON, Associate Professor: B.A., Rutgers University; J.D., Antioch School of Law

MICHAEL J. MALINOWSKI, Visiting Professor: B.A., Tufts University; J.D., Yale University

CHRYS MEADOR, Instructor: B.S., University of Kansas; M.I.S., George Washington University; J.D., University of Denver

CRAIG B. MOUSIN, Director of Center for Church/State Studies: B.A., Johns Hopkins; M. Div., Chicago Theological Seminary; J.D., University of Illinois

ALLISON ORTLIEB, Instructor: B.A., J.D., University of Chicago

BRUCE L. OTTLEY, Professor: B.A., University of Missouri; M.A., University of Iowa; J.D., University of Iowa; LL.M., Columbia University

MARTHA PAGLIARI, Instructor: B.A., University of Notre Dame; J.D. DePaul University

STEVEN RESNICOFF, Professor: A.B., Princeton University; J.D., Yale University

L. SONG RICHARDSON, Assistant Professor: B.A., Harvard University; J.D., Yale University

JOHN C. ROBERTS, Professor: B.S., Northwestern University; LL.B., Yale University

HOWARD M. RUBIN, Associate Professor: B.A., University of Illinois; J.D., DePaul University

THOMAS RUFFNER, Instructor: B.S., Wake Forest University; J.D., DePaul University College of Law

JANE RUTHERFORD, Professor: A.B., University of Chicago; J.D., University of Michigan

MATTHEW SAG, Assistant Professor: B.A., Australian National University; LL.B., Australian National University

JEFFREY M. SHAMAN, Vincent de Paul Professor of Law: B.A., Pennsylvania State University; J.D., University of Southern California; LL.M., Georgetown University

STEPHEN A. SIEGEL, Distinguished Research Professor: B.A., Columbia University; J.D., LL.M., Harvard University;

KATHERINE J. STRANDBURG, Associate Professor: B.S., Stanford University; J.D., University of Chicago; Ph.D., Cornell University

WILLIAM W. STUART, Professor: B.A., Stanford University; LL.B., Washington & Lee University
 SUSAN E. THROWER, Instructor: B.A., University of Virginia; J.D., Wake Forest University
 N. MORRISON TORREY, Professor: A.B., Wellesley College; J.D., Drake University
 ANTHONY G. VOLINI, Instructor: B.S., Benedictine University; J.D., Loyola University Chicago
 MARK C. WEBER, Vincent de Paul Professor of Law: B.A., Columbia University; J.D., Yale University
 GLEN WEISSENBERGER, Professor: B.A., University of Cincinnati; J.D., Harvard University

VINCENT G. RINN LAW LIBRARY

ALLEN R. MOYE, Director: B.A., Howard University; J.D., University of Richmond; M.L.S., Catholic University
 WALTER BAUMAN, Librarian, Government Documents: B.A., University of Illinois at Chicago; M.L.S., Rosary College
 MARK GIANGRANDE, Librarian, Legal Research Specialist: B.S., Northwestern University; J.D., IIT Chicago-Kent; M.L.S., University of Texas
 DENISE GLYNN, Librarian, Head of Cataloging: B.S., Northern Illinois University; M.L.S., Rosary College
 MILTA HALL, Associate Director, Public Services: B.A., Memphis State University; M.A., University of Wisconsin at Madison, University of Illinois; J.D., DePaul University
 MARY LU LINNANE, Associate Director, Technical Services: B.A., Marquette University; M.L.S., University of Wisconsin at Milwaukee
 MICHAEL SCHIFFER, Associate Director, Computer Services: B.A., University of Chicago; J.D., University of Michigan; M.L.S., Rosary College
 MARIA WILMER, Librarian, Legal Research Specialist: B.A., A.M.L.S., University of Michigan

ADJUNCT FACULTY

Jeff Atkinson, J.D.	Roderic Heard, M.S., Ph.D.	Jennifer Jendusa Orrico, J.D.
Brett August, J.D.	Thomas Hennelly, J.D.	Adam Oyebanji, J.D.
Robert Badesch, J.D.	Colleen Hyland, J.D.	Stuart E. Palmer, J.D.
Hon. Patricia Banks, J.D.	Hon. John Hynes, J.D.	John Paniaguas, J.D.
Timothy Barnes, J.D.	Robert Kallen, J.D.	Mark Parts, J.D.
Peter Baroni, J.D.	Susan L. Kennedy, J.D.	Mark Peil, J.D.
Miles N. Beerman, J.D.	John Kirby, J.D.	Joan Pernecke, J.D.
Michael Bennett, J.D.	Kenneth Kraus, J.D.	Brett Rappaport, J.D.
S. Jan Brakel, J.D.	James Krueger, J.D.	Martin Robins, J.D.
Amy A. Breyer, J.D.	James Lanning, J.D.	Herbert Rosenberg, J.D.
Douglas Bristol, J.D.	Robert Lehrer, J.D.	Howard Rosenberg, J.D.
Hon. Mary M. Brosnahan, J.D.	Mark Leipold, J.D.	Howard Rosenfeld, J.D.
James Burstein, J.D.	Valerie Leopold, J.D.	William Schurgin, J.D.
Anthony Calabrese, J.D.	Julie Livergood, J.D.	Alison Siegler, J.D.
Mary Anne Capron, J.D.	Robert Loeb, J.D.	James Simon, J.D.
James Clark, J.D.	Mary Rita Luecke, J.D.	Kent Sinson, J.D.
Michael Clark, J.D.	Paul McGrady, J.D.	Deborah Skorupski, J.D.
Bradley Cohn, J.D.	Colleen McManus, J.D.	James Sowerby, J.D.
Brian Collins, J.D.	Thomas Mahoney, J.D.	Ken Spina, J.D.
Susan Compernelle, J.D.	Crystal Marchigiani, J.D.	Thomas Stine, J.D.
Jeffrey Cramer, J.D.	Tony Masciopinto, J.D.	Peter Strand, J.D.
Daniel Cullen, J.D.	Mary Meegan, J.D.	Geraldine Stroka, J.D.
James Dechene, J.D.	Michael Morrissey, J.D.	Michael M. Tannen, J.D.
Nanette Elster, J.D.	Peter Newman, J.D.	Carlina Tapia-Ruano, J.D.
Christopher Evers, J.D.	Dean Niro, J.D.	Henry Thomas, J.D., LL.M.
Joanne Fehn, J.D.	John Nisivaco, J.D.	Shannon Verner, J.D.
Paul Fine, J.D.	Lisa Noller, J.D.	Susan Walker, B.A., J.D.
Mary Foster, J.D.	Kevin Noonan, J.D.	Megan Webster, J.D.
Lawrence Fox, J.D.	David Nyberg, J.D.	Michael Whitaker, J.D.
Barry Gomberg, J.D.	David O'Connor, J.D.	Audra Wilson, J.D.
John Haarlow, J.D.	Gregory O'Reilly, J.D.	Patricia Wrona, J.D.