2002

Index (Volume 63, 2002)

http://hdl.handle.net/1811/70520

Downloaded from the Knowledge Bank, The Ohio State University's institutional repository
Lead Articles—Authors

Storm Clouds on the Horizon of Darwinism:
Teaching the Anthropic Principle and
Intelligent Design in the Public Schools
Jeffrey F. Addicott ................................................................. 1507

Opportunities for Obtaining and Using Litigation Reserves and Disclosures
Matthew J. Barrett ................................................................. 1017

Foreword:
Addressing Capital Punishment Through Statutory Reform
Douglas A. Berman ..................................................................... 1

Constitutional Citizenship Through the Prism of Alienage
Linda Bosniak ............................................................................ 1285

Expanding Felony-Murder in Ohio:
Felony-Murder or Murder-Felony?
Dana K. Cole .............................................................................. 15

Seeking Greater Fairness When Awarding Multiple Plaintiffs
Punitive Damages for a Single Act by a Defendant
Howard A. Denemark ................................................................... 931

When Legislatures Delegate Death:
The Troubling Paradox Behind State Uses of Electrocution
and Lethal Injection and What it Says About Us
Deborah W. Denno ..................................................................... 63

Fifty/Fifty:
Ending Sex Segregation in School Sports
B. Glenn George ...................................................................... 1107

The Myth of State Sovereignty
Steven G. Gey .......................................................................... 1601

The Proposed Innocence Protection Act Won't—
Unless It Also Curbs Mistaken Eyewitness Identifications
Margery Malkin Koosed ........................................................... 263

Opting for Real Death Penalty Reform
James S. Liebman .................................................................. 315

Remote Control:
Revised Article 9 and the Negotiability of Information
Jonathan C. Lipson .................................................................. 1327
Federal Habeas Relief and the New Tolerance for “Reasonably Erroneous” Application of Federal Law
Todd E. Pettys ........................................................................................................... 731

The “New Abolitionism” and the Possibilities of Legislative Action: The New Hampshire Experience
Austin Sarat ............................................................................................................. 343

Waiver-in-Litigation: Eleventh Amendment Immunity and the Voluntariness Questions
Gil Seinfeld ............................................................................................................... 871

The Death Penalty in Ohio: Fairness, Reliability, and Justice at Risk—A Report on Reforms in Ohio’s Use of the Death Penalty Since the 1997 Ohio State Bar Association Recommendations Were Made
S. Adele Shank ...................................................................................................... 371

Globalization and the (Foreign Affairs) Constitution
Peter J. Spiro .......................................................................................................... 649

Should Abolitionists Support Legislative “Reform” of the Death Penalty?
Carol S. Steiker & Jordan M. Steiker ...................................................................... 417

Gendering the Death Penalty: Countering Sex Bias in a Masculine Sanctuary
Victor L. Streib ...................................................................................................... 433

Striving to Eliminate Unjust Executions: Why the ABA’s Individual Rights and Responsibilities Section Has Issued Protocols on Unfair Implementation of Capital Punishment
Ronald J. Tabak .................................................................................................... 475

Kids Will Be Kids? Reconsidering Conceptions of Children’s Rights Underlying Immigration Law
David B. Thronson ................................................................................................ 979

Ohio’s Death Penalty Statute: The Good, the Bad, and the Ugly
Joseph E. Wilhelm & Kelly L. Culshaw .................................................................. 549

Lead Articles—Titles

Constitutional Citizenship Through the Prism of Alienage
Linda Bosniak .......................................................................................................... 1285

The Death Penalty in Ohio: Fairness, Reliability, and Justice at Risk—A Report on Reforms in Ohio’s Use of the Death Penalty Since the 1997 Ohio State Bar Association Recommendations Were Made
S. Adele Shank .................................................................................................... 371
<table>
<thead>
<tr>
<th>Title</th>
<th>Author</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>the Death Penalty in the United States</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expanding Felony-Murder in Ohio: Felony-Murder or Murder-Felony?</td>
<td>Dana K. Cole</td>
<td>15</td>
</tr>
<tr>
<td>Federal Habeas Relief and the New Tolerance for “Reasonably</td>
<td>Todd E. Pettys</td>
<td>731</td>
</tr>
<tr>
<td>Erroneous” Applications of Federal Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fifty/Fifty: Ending Sex Segregation in School Sports</td>
<td>B. Glenn George</td>
<td>1107</td>
</tr>
<tr>
<td>Foreward: Addressing Capital Punishment Through Statutory Reform</td>
<td>Douglas A. Berman</td>
<td>1</td>
</tr>
<tr>
<td>Gendering the Death Penalty: Countering Sex Bias in a Masculine</td>
<td>Victor L. Streib</td>
<td>433</td>
</tr>
<tr>
<td>Sanctuary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Globalization and the (Foreign Affairs) Constitution</td>
<td>Peter J. Spiro</td>
<td>649</td>
</tr>
<tr>
<td>Kids Will Be Kids? Reconsidering Conceptions of Children’s Rights</td>
<td>David B. Thronson</td>
<td>979</td>
</tr>
<tr>
<td>Underlying Immigration Law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Myth of State Sovereignty</td>
<td>Stephen G. Gey</td>
<td>1601</td>
</tr>
<tr>
<td>The “New Abolitionism” and the Possibilities of Legislative Action:</td>
<td>Austin Sarat</td>
<td>343</td>
</tr>
<tr>
<td>The New Hampshire Experience</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ohio’s Death Penalty Statute: The Good, the Bad, and the Ugly</td>
<td>Joseph E. Wilhelm &amp; Kelly L. Culhsaw</td>
<td>549</td>
</tr>
<tr>
<td>Opportunities for Obtaining and Using Litigation Reserves and</td>
<td>Matthew J. Barrett</td>
<td>1017</td>
</tr>
<tr>
<td>Disclosures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Opting for Real Death Penalty Reform</td>
<td>James S. Liebman</td>
<td>315</td>
</tr>
<tr>
<td>The Proposed Innocence Protection Act Won’t— Unless It Also Curb</td>
<td>Margery Malkin Koosed</td>
<td>263</td>
</tr>
<tr>
<td>Mistaken Eyewitness Identifications</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Remote Control:
Revised Article 9 and the Negotiability of Information
Jonathan C. Lipson ................................................................. 1327

Seeking Greater Fairness When Awarding Multiple Plaintiffs
Punitive Damages for a Single Act by a Defendant
Howard A. Denemark .............................................................. 931

Should Abolitionists Support Legislative “Reform” of the Death Penalty?
Carol S. Steiker & Jordan M. Steiker ........................................... 417

Storm Clouds on the Horizon of Darwinism:
Teaching the Anthropic Principle and Intelligent Design in the Public Schools
Jeffrey F. Addicott ................................................................ 1507

Striving to Eliminate Unjust Executions:
Why the ABA’s Individual Rights and Responsibilities Section Has Issued Protocols on Unfair Implementation of Capital Punishment
Ronald J. Tabak .................................................................... 475

Waiver-in-Litigation:
Eleventh Amendment Immunity and the Voluntariness Question
Gil Seinfeld ........................................................................... 871

When Legislatures Delegate Death:
The Troubling Paradox Behind State Uses of Electrocution and Lethal Injection and What It Says About Us
Deborah W. Denno .................................................................. 63

Notes
Any Port in a Storm?
The Right of Entry for Reasons of Force Majeure or Distress in the Wake of the Erika and the Castor
Christopher F. Murray .............................................................. 1465

Discovering Pharmacy Error:
Must Reporting, Identifying, and Analyzing Pharmacy Dispensing Errors Create Liability for Pharmacists?
Eric M. Grasha ..................................................................... 1419

Fit for Its Ordinary Purpose?
Tobacco, Fast Food, and The Implied Warranty of Merchantability
Franklin E. Crawford ................................................................. 1165

Napster Opens Pandora’s Box:
Examining How File-Sharing Services Threaten the Enforcement of Copyright on the Internet
Matthew Green ........................................................................ 799
Safety First:  
Student Discipline Under the 1997 Amendments to the 
IDEA and the Need for Further Reform  
Richard S. Boothby ................................................................. 1683

Standardizing the Rules Restricting Publication  
and Citation in the Federal Courts of Appeals  
Thomas F. Kibbey ................................................................. 833

There’s No Place Like Home:  
Housing for the Most Vulnerable Individuals  
with Severe Mental Disabilities  
Rachel Rubey .......................................................................... 1729

Trials in Times of War:  
Do the Bush Military Commissions Sacrifice Our Freedoms?  
Anne English French ............................................................. 1225
Accounting
Opportunities for Obtaining and Using Litigation Reserves and Disclosures
Matthew J. Barrett ................................................................. 1017

Alienage
Constitutional Citizenship Through the Prism of Alienage
Linda Bosniak ................................................................. 1285
Kids Will Be Kids?
Reconsidering Conceptions of Children’s Rights
Underlying Immigration Law
David B. Thronson ................................................................. 979

Bankruptcy
Opportunities for Obtaining and Using Litigation Reserves and Disclosures
Matthew J. Barrett ................................................................. 1017
Waiver-in-Litigation:
Eleventh Amendment Immunity and the Voluntariness Question
Gil Seinfeld ........................................................................... 871

Capital Punishment
Death Without Justice:
A Guide for Examining the Administration
of the Death Penalty in the United States
American Bar Association ....................................................... 487

Foreward:
Addressing Capital Punishment Through Statutory Reform
Douglas A. Berman ................................................................. 1

Expanding Felony-Murder in Ohio:
Felony-Murder or Murder-Felony?
Dana K. Cole ........................................................................ 15

When Legislatures Delegate Death:
The Troubling Paradox Behind State Uses of Electrocution
and Lethal Injection and What It Says About Us
Deborah W. Denno ................................................................. 63

The Proposed Innocence Protection Act Won’t—
Unless It Also Curbs Mistaken Eyewitness Identifications
Margery Malkin Koosed ............................................................. 263
<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opting for Real Death Penalty Reform</td>
<td>James S. Liebman</td>
<td>315</td>
</tr>
<tr>
<td>Federal Habeas Relief and the New Tolerance</td>
<td>Todd E. Pettys</td>
<td>731</td>
</tr>
<tr>
<td>The &quot;New Abolitionism&quot; and the Possibilities of Legislative Action:</td>
<td>Austin Sarat</td>
<td>343</td>
</tr>
<tr>
<td>The Death Penalty in Ohio:</td>
<td>S. Adele Shank</td>
<td>371</td>
</tr>
<tr>
<td>Should Abolitionists Support Legislative &quot;Reform&quot; of the Death Penalty?</td>
<td>Carol S. Steiker &amp; Jordan M. Steiker</td>
<td>417</td>
</tr>
<tr>
<td>Gendering the Death Penalty:</td>
<td>Victor L. Streib</td>
<td>433</td>
</tr>
<tr>
<td>Striving to Eliminate Unjust Executions:</td>
<td>Ronald J. Tabak</td>
<td>475</td>
</tr>
<tr>
<td>Ohio’s Death Penalty Statute:</td>
<td>Joseph E. Wilhelm &amp; Kelly L. Culshaw</td>
<td>549</td>
</tr>
<tr>
<td>Civil Procedure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Opportunities for Obtaining and Using Litigation Reserves and Disclosures</td>
<td>Matthew J. Barrett</td>
<td>1017</td>
</tr>
<tr>
<td>Discovering Pharmacy Error:</td>
<td>Eric M. Grasha</td>
<td>1419</td>
</tr>
<tr>
<td>Federal Habeas Relief and the New Tolerance</td>
<td>Todd E. Pettys</td>
<td>731</td>
</tr>
</tbody>
</table>
Civil Rights Law

Death Without Justice:
A Guide for Examining the Administration
of the Death Penalty in the United States
American Bar Association ................................................................. 487

Trials in Times of War:
Do the Bush Military Commissions Sacrifice Our Freedoms?
Anne English French ........................................................................ 1225

Fifty/Fifty:
Ending Sex Segregation in School Sports
B. Glenn George ................................................................................ 1107

There’s No Place Like Home:
Housing for the Most Vulnerable Individuals
with Severe Mental Disabilities
Rachel Rubey ..................................................................................... 1729

The Death Penalty in Ohio:
Fairness, Reliability, and Justice at Risk—A Report on Reforms
in Ohio’s Use of the Death Penalty Since the 1997 Ohio State
Bar Association Recommendations Were Made
S. Adele Shank .................................................................................... 371

Gendering the Death Penalty:
Countering Sex Bias in a Masculine Sanctuary
Victor L. Streib .................................................................................. 433

Striving to Eliminate Unjust Executions:
Why the ABA’s Individual Rights and Responsibilities Section
Has Issued Protocols on Unfair Implementation of Capital Punishment
Ronald J. Tabak .................................................................................. 475

Constitutional Law

Storm Clouds on the Horizon of Darwinism:
Teaching the Anthropic Principle and
Intelligent Design in the Public Schools
Jeffrey F. Addicott ............................................................................ 1507

Death Without Justice:
A Guide for Examining the Administration
of the Death Penalty in the United States
American Bar Association ................................................................. 487

Foreward:
Addressing Capital Punishment Through Statutory Reform
Douglas A. Berman ........................................................................... 1
Constitutional Citizenship Through the Prism of Alienage
   Linda Bosniak ......................................................... 1285

Expanding Felony-Murder in Ohio:
   Felony-Murder or Murder-Felony?
   Dana K. Cole .......................................................... 15

Seeking Greater Fairness When Awarding Multiple Plaintiffs
   Punitive Damages for a Single Act by a Defendant
   Howard A. Denemark ................................................ 931

When Legislatures Delegate Death:
   The Troubling Paradox Behind State Uses of Electrocution
   and Lethal Injection and What It Says About Us
   Deborah W. Denno ................................................... 63

Trials in Times of War:
   Do the Bush Military Commissions Sacrifice Our Freedoms?
   Anne English French ............................................... 1225

Fifty/Fifty:
   Ending Sex Segregation in School Sports
   B. Glenn George .................................................... 1107

The Myth of State Sovereignty
   Steven G. Gey ........................................................ 1601

Standardizing the Rules Restricting Publication
   and Citation in the Federal Courts of Appeals
   Thomas F. Kibbey .................................................... 833

The Proposed Innocence Protection Act Won’t—
   Unless It Also Curbs Mistaken Eyewitness Identifications
   Margery Malkin Koosed ........................................... 263

Opting for Real Death Penalty Reform
   James S. Liebman .................................................... 315

The “New Abolitionism” and the Possibilities of Legislative Action:
   The New Hampshire Experience
   Austin Sarat ........................................................... 343

Waiver-in-Litigation:
   Eleventh Amendment Immunity and the Voluntariness Question
   Gil Seinfeld ............................................................ 871

The Death Penalty in Ohio:
   Fairness, Reliability, and Justice at Risk—A Report on Reforms
   in Ohio’s Use of the Death Penalty Since the 1997 Ohio State
   Bar Association Recommendations Were Made
   S. Adele Shank ....................................................... 371
Globalization and the (Foreign Affairs) Constitution
Peter J. Spiro ................................................................. 649

Should Abolitionists Support Legislative “Reform” of the Death Penalty?
Carol S. Steiker & Jordan M. Steiker ........................................... 417

Gendering the Death Penalty:
Countering Sex Bias in a Masculine Sanctuary
Victor L. Streib ....................................................................... 433

Striving to Eliminate Unjust Executions:
Why the ABA’s Individual Rights and Responsibilities Section
Has Issued Protocols on Unfair Implementation of Capital Punishment
Ronald J. Tabak .................................................................... 475

Ohio’s Death Penalty Statute: The Good, the Bad, and the Ugly
Joseph E. Wilhelm & Kelly L. Culshaw .................................... 549

Corporate Law
Opportunities for Obtaining and Using Litigation Reserves and Disclosures
Matthew J. Barrett ............................................................... 1017

Fit for Its Ordinary Purpose?
Tobacco, Fast Food, and the Implied Warranty of Merchantability
Franklin E. Crawford ............................................................. 1165

Seeking Greater Fairness When Awarding Multiple Plaintiffs
Punitive Damages for a Single Act by a Defendant
Howard A. Denemark ............................................................ 931

Remote Control:
Revised Article 9 and the Negotiability of Information
Jonathan C. Lipson .............................................................. 1327

Eleventh Amendment Immunity and the Voluntariness Question
Gil Seinfeld ........................................................................ 871

Disability Discrimination
Safety First:
Student Discipline Under the 1997 Amendments to the
IDEA and the Need for Further Reform
Richard S. Boothby ............................................................. 1683

There’s No Place Like Home:
Housing for the Most Vulnerable Individuals
with Severe Mental Disabilities
Rachel Rubey ....................................................................... 1729
Education Law

Storm Clouds on the Horizon of Darwinism:
Teaching the Anthropic Principle and Intelligent Design in the Public Schools
Jeffrey F. Addicott ........................................................................................................... 1507

Safety First:
Student Discipline Under the 1997 Amendments to the IDEA and the Need for Further Reform
Richard S. Boothby ......................................................................................................... 1683

Fifty/Fifty:
Ending Sex Segregation in School Sports
B. Glenn George ........................................................................................................... 1107

Environmental Law

Any Port in a Storm?
The Right of Entry for Reasons of Force Majeure or Distress in the Wake of the Erika and the Castor
Christopher F. Murray .................................................................................................... 1465

Federalism

The Myth of State Sovereignty
Steven G. Gey .................................................................................................................. 1601

Globalization and the (Foreign Affairs) Constitution
Peter J. Spiro ................................................................................................................... 649

Foreign Affairs

Globalization and the (Foreign Affairs) Constitution
Peter J. Spiro ................................................................................................................... 649

Gender Discrimination

Fifty/Fifty:
Ending Sex Segregation in School Sports
B. Glenn George ........................................................................................................... 1107

There’s No Place Like Home:
Housing for the Most Vulnerable Individuals with Severe Mental Disabilities
Rachel Rubey ..................................................................................................................... 1729

Gendering the Death Penalty:
Countering Sex Bias in a Masculine Sanctuary
Victor L. Streib .................................................................................................................. 433
Immigration Law

Globalization and the (Foreign Affairs) Constitution
Peter J. Spiro ................................................................. 649

Kids Will Be Kids?
Reconsidering Conceptions of Children’s Rights
Underlying Immigration Law
David B. Thronson.......................................................... 979

Intellectual Property

Napster Opens Pandora’s Box:
Examining How File-Sharing Services Threaten
the Enforcement of Copyright on the Internet
Matthew Green ................................................................. 799

Remote Control:
Revised Article 9 and the Negotiability of Information
Jonathan C. Lipson.......................................................... 1327

International Law

Trials in Times of War:
Do the Bush Military Commissions Sacrifice Our Freedoms?
Anne English French .................................................... 1225

Any Port in a Storm?
The Right of Entry for Reasons of Force Majeure
or Distress in the Wake of the Erika and the Castor
Christopher F. Murray .................................................. 1465

Globalization and the (Foreign Affairs) Constitution
Peter J. Spiro ................................................................. 649

Kids Will Be Kids?
Reconsidering Conceptions of Children’s Rights
Underlying Immigration Law
David B. Thronson.......................................................... 979

Juvenile Law

Death Without Justice:
A Guide for Examining the Administration
of the Death Penalty in the United States
American Bar Association ............................................. 487

Striving to Eliminate Unjust Executions:
Why the ABA’s Individuals Rights and Responsibilities Section
Has Issued Protocols on Unfair Implementation of Capital Punishment
Ronald J. Tabak ............................................................ 475
Kids Will Be Kids?
Reconsidering Conceptions of Children’s Rights
Underlying Immigration Law
David B. Thronson ........................................................................................................ 979

Ohio’s Death Penalty Statute: The Good, the Bad, and the Ugly
Joseph E. Wilhelm & Kelly L. Culshaw ........................................................................ 549

Law and Cyberspace
Napster Opens Pandora’s Box:
Examining How File-Sharing Services Threaten
the Enforcement of Copyright on the Internet
Matthew Green ............................................................................................................. 799

Remote Control:
Revised Article 9 and the Negotiability of Information
Jonathan C. Lipson ..................................................................................................... 1327

Maritime Law
Any Port in a Storm?
The Right of Entry for Reasons of Force Majeure
or Distress in the Wake of the Erika and the Castor
Christopher F. Murray ............................................................................................... 1465

Mental Illness/Retardation
Death Without Justice:
A Guide for Examining the Administration
of the Death Penalty in the United States
American Bar Association .......................................................................................... 487

There’s No Place Like Home:
Housing for the Most Vulnerable Individuals
with Severe Mental Disabilities
Rachel Rubey .............................................................................................................. 1729

The Death Penalty in Ohio:
Fairness, Reliability, and Justice at Risk—A Report on Reforms
in Ohio’s Use of the Death Penalty Since the 1997 Ohio State
Bar Association Recommendations Were Made
S. Adele Shank ............................................................................................................ 371

Striving to Eliminate Unjust Executions:
Why the ABA’s Individual Rights and Responsibilities Section
Has Issued Protocols on Unfair Implementation of Capital Punishment
Ronald J. Tabak ........................................................................................................... 475

Ohio’s Death Penalty Statute: The Good, the Bad, and the Ugly
Joseph E. Wilhelm & Kelly L. Culshaw ........................................................................ 549
Military Commissions

Trials in Times of War:
Do the Bush Military Commissions Sacrifice Our Freedoms?
Anne English French ................................................................. 1225

Professional Standards

Opportunities for Obtaining and Using Litigation Reserves and Disclosures
Matthew J. Barrett ................................................................. 1017

Tax Law

Opportunities for Obtaining and Using Litigation Reserves and Disclosures
Matthew J. Barrett ................................................................. 1017