Lead Articles—Authors

Keynote Address:
Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence
The Honorable Shirley S. Abrahamson ................................................... 3

New Opportunities for Obtaining and Using Litigation Reserves and Disclosures
Matthew J. Barrett .................................................................................. 1183

Judicial Elections and Judicial Independence: The Voter’s Perspective
Lawrence Baum ..................................................................................... 13

Recalibrating Federal Judicial Independence
James J. Brudney .................................................................................... 149

Foreword: Perspectives on Judicial Independence
James J. Brudney & Lawrence Baum ..................................................... 1

What Do We Mean by “Judicial Independence”? 
Stephen B. Burbank ............................................................................... 323

Eminent Domain Economics: Should “Just Compensation” Be Abolished, and Would “Takings Insurance” Work Instead?
Steve P. Calandrillo ............................................................................... 451

Know Before You Go: A Case for Publicly Funded Voters’ Guides
Cynthia Canary ....................................................................................... 81

Thoughts on Goldilocks and Judicial Independence
Frank B. Cross ....................................................................................... 195

Regulatory Givings and the Anticommons
Reza Dibadj ............................................................................................ 1041
Judicial Independence and the Ambiguity of Article III Protections  
*Tracey E. George* ................................................................. 221

Why Judicial Elections Stink  
*Charles Gardner Geyh* ...................................................... 43

Judicial Independence Through the Lens of *Bush v. Gore*:  
Four Lessons from Political Science  
*Howard Gillman* ................................................................. 249

Public Funding of Judicial Elections:  
The Role of Judges and the Rules of Campaign Finance  
*Deborah Goldberg* .............................................................. 95

Counselor, Gatekeeper, Shareholder, Thief:  
*Christine Hurt* ........................................................................ 897

When Freedom Isn’t Free:  
The Costs of Judicial Independence in *Bush v. Gore*  
*Pamela S. Karlan* ................................................................. 265

Mercy, Rehabilitation, and Quid Pro Quo: A Radical Reassessment of Individual Bankruptcy  
*Jason J. Kilborn* ................................................................... 855

The Right to a Jury Decision on Questions of Fact Under the Seventh Amendment  
*Paul F. Kirgis* ................................................................. 1125

Possibilities for Collaborative Law:  
Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering  
*John Lande* ............................................................... 1315

The Interplay Between Norms and Enforcement in Tax Compliance  
*Leandra Lederman* ........................................................... 1453
From Social Friction to Social Meaning: 
What Expressive Uses of Code Tell Us About Free Speech
David McGowan ..................................................................................................................1515

In Defense of the Corpus Delicti Rule
David A. Moran .....................................................................................................................817

Einstein on the Bench?:
Exposing What Judges Do Not Know About Science and Using Child Abuse Cases to Improve How Courts Understand and Evaluate Scientific Evidence
Joëlle Anne Moreno .............................................................................................................531

Commentary: The Role of the Organized Bar in Promoting an Independent and Accountable Judiciary
D. Dudley Oldham & Seth S. Andersen ..................................................................................341

Toward a Multiple Party Representation Model:
Moderating Power Disparity
Henry Ordower ..................................................................................................................1263

A Normative Appraisal of Social Scientific Knowledge Regarding Judicial Independence
Terri Peretti ..........................................................................................................................349

Keynote Speech:
Electoral Accountability and Judicial Independence
The Honorable Thomas R. Phillips .....................................................................................137

Yet Another Article on Bush v. Gore
Ronald D. Rotunda ...........................................................................................................283

Proposed Legislation on Judicial Election Campaign Finance
Roy Schotland ..................................................................................................................127

Private Lawmaking
David V. Snyder ..................................................................................................................371

Re-Examining the Constitutionality of Remittitur
Under the Seventh Amendment
Suja A. Thomas ..................................................................................................................731
The Prevention Justification for Affirmative Action
Michael J. Yelnosky ................................................................. 1385

Lead Articles—Titles

Commentary: The Role of the Organized Bar in Promoting an
Independent and Accountable Judiciary
D. Dudley Oldham & Seth S. Andersen........................................ 341

Counselor, Gatekeeper, Shareholder, Thief:
Why Attorneys Who Invest in Their Clients in a Post-Enron
World Are “Selling Out,” Not “Buying In”
Christine Hurt ........................................................................... 897

Keynote Speech:
Electoral Accountability and Judicial Independence
The Honorable Thomas R. Phillips ............................................. 137

Einstein on the Bench?:
Exposing What Judges Do Not Know About Science and
Using Child Abuse Cases to Improve How Courts
Understand and Evaluate Scientific Evidence
Joëlle Anne Moreno ................................................................. 531

Eminent Domain Economics:
Should “Just Compensation” Be Abolished, and
Would “Takings Insurance” Work Instead?
Steve P. Calandrillo ................................................................. 451

Foreword: Perspectives on Judicial Independence
James J. Brudney & Lawrence Baum .......................................... 1

From Social Friction to Social Meaning:
What Expressive Uses of Code Tell Us
About Free Speech
David McGowan ........................................................................ 1515

In Defense of the Corpus Delicti Rule
David A. Moran ...................................................................... 817

The Interplay Between Norms and
Enforcement in Tax Compliance
Leandra Lederman .................................................................. 1453
Judicial Elections and Judicial Independence: The Voter’s Perspective
Lawrence Baum ................................................................. 13

Judicial Independence and the Ambiguity of Article III Protections
Tracey E. George ............................................................... 221

Judicial Independence Through the Lens of Bush v. Gore: Four Lessons from Political Science
Howard Gillman ................................................................. 249

Know Before You Go: A Case for Publicly Funded Voters’ Guides
Cynthia Canary ................................................................. 81

Mercy, Rehabilitation, and Quid Pro Quo: A Radical Reassessment of Individual Bankruptcy
Jason J. Kilborn ................................................................. 855

New Opportunities for Obtaining and Using Litigation Reserves and Disclosures
Matthew J. Barrett ........................................................... 1183

A Normative Appraisal of Social Scientific Knowledge Regarding Judicial Independence
Terri Peretti ................................................................. 349

The Prevention Justification for Affirmative Action
Michael J. Yelnosky .......................................................... 1385

Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering
John Lande ................................................................. 1315

Private Lawmaking
David V. Snyder .............................................................. 371

Proposed Legislation on Judicial Election Campaign Finance
Roy Schotland ................................................................. 127
<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Funding of Judicial Elections: The Role of Judges and the Rules of Campaign Finance</td>
<td>Deborah Goldberg</td>
<td>95</td>
</tr>
<tr>
<td>Recalibrating Federal Judicial Independence</td>
<td>James J. Brudney</td>
<td>149</td>
</tr>
<tr>
<td>Re-Examining the Constitutionality of Remittitur Under the Seventh Amendment</td>
<td>Suja A. Thomas</td>
<td>731</td>
</tr>
<tr>
<td>Regulatory Givings and the Anticommons</td>
<td>Reza Dibadj</td>
<td>1041</td>
</tr>
<tr>
<td>The Right to a Jury Decision on Questions of Fact Under the Seventh Amendment</td>
<td>Paul F. Kirgis</td>
<td>1125</td>
</tr>
<tr>
<td>Keynote Address: Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence</td>
<td>The Honorable Shirley S. Abrahamson</td>
<td>3</td>
</tr>
<tr>
<td>Thoughts on Goldilocks and Judicial Independence</td>
<td>Frank B. Cross</td>
<td>195</td>
</tr>
<tr>
<td>Toward a Multiple Party Representation Model: Moderating Power Disparity</td>
<td>Henry Ordower</td>
<td>1263</td>
</tr>
<tr>
<td>What Do We Mean by “Judicial Independence”?</td>
<td>Stephen B. Burbank</td>
<td>323</td>
</tr>
<tr>
<td>Why Judicial Elections Stink</td>
<td>Charles Gardner Geyh</td>
<td>43</td>
</tr>
<tr>
<td>Yet Another Article on Bush v. Gore</td>
<td>Ronald D. Rotunda</td>
<td>283</td>
</tr>
</tbody>
</table>
Essay

The Ohio Motto Survives the Establishment Clause
*The Honorable Richard F. Suhrheinrich & T. Melinda Bush* ..............585

Notes

Concurrent Use of Trademarks on the Internet:
Reconciling the Concept of Geographically Delimited Trademarks with the Reality of the Internet
*Robert Nupp* ..............................................................................................617

Guaranteeing High Prices by Guaranteeing the Lowest Price
*Matthew C. Corcoran* ................................................................................1427

Invasion of Privacy for the Greater Good:
Why *Bartnicki v. Vopper* Disserves the Right of Privacy and the First Amendment
*Ryan Kilkenney* ..........................................................................................999

Is Richmond Newspapers in Peril After 9/11?
*Howard W. Chu* ..........................................................................................1655

Is There Still a “Sound Legal Basis?”:
The Freedom of Information Act in the Post-9/11 World
*Keith Anderson* ..........................................................................................1605

May I Be Recused? The Tension Between Judicial Campaign Speech and Recusal After *Republican Party of Minnesota v. White*
*Matthew D. Besser* ..................................................................................1197

A One Way Street to Unconstitutionality:
The “Choose Life” Specialty License Plate:
*Sarah E. Hurst* ............................................................................................957

The Religious Freedom Peace Tax Fund Act: Becoming Conscious of the Need to Accommodate Conscience
*Colleen M. Garrity* ....................................................................................1229
The Straw that Broke the Camel's Back?
Grand Staircase-Escalante National Monument
Antiquates the Antiquities Act

*Eric C. Rusnak*...669
# Subject Index

## Volume 64

### 2003

<table>
<thead>
<tr>
<th>Category</th>
<th>Title</th>
<th>Authors</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Accounting</strong></td>
<td>New Opportunities for Obtaining and Using Litigation Reserves and Disclosures</td>
<td>Matthew J. Barrett</td>
<td>1183</td>
</tr>
<tr>
<td><strong>Administrative Law</strong></td>
<td>Regulatory Givings and the Anticommons</td>
<td>Reza Dibadj</td>
<td>1041</td>
</tr>
<tr>
<td></td>
<td>The Straw that Broke the Camel's Back? Grand Staircase-Escalante National Monument Antiquates the Antiquities Act</td>
<td>Eric Rusnak</td>
<td>669</td>
</tr>
<tr>
<td><strong>Affirmative Action</strong></td>
<td>The Prevention Justification for Affirmative Action</td>
<td>Michael J. Yelnosky</td>
<td>1385</td>
</tr>
<tr>
<td><strong>Alternative Dispute Resolution</strong></td>
<td>Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering</td>
<td>John Lande</td>
<td>1315</td>
</tr>
<tr>
<td><strong>Anti Trust</strong></td>
<td>Guaranteeing High Prices by Guaranteeing the Lowest Price</td>
<td>Matthew C. Corcoran</td>
<td>1427</td>
</tr>
<tr>
<td><strong>Bankruptcy</strong></td>
<td>New Opportunities for Obtaining and Using Litigation Reserves and Disclosures</td>
<td>Matthew J. Barrett</td>
<td>1183</td>
</tr>
</tbody>
</table>
Mercy, Rehabilitation, and Quid Pro Quo: A Radical Reassessment of Individual Bankruptcy
Jason J. Kilborn..................................................................................................................855

Civil Procedure

New Opportunities for Obtaining and Using Litigation Reserves and Disclosures
Matthew J. Barrett...........................................................................................................1183

The Right to a Jury Decision on Questions of Fact Under the Seventh Amendment
Paul F. Kirgis ..................................................................................................................1125

Einstein on the Bench?: Exposing What Judges Do Not Know About Science and Using Child Abuse Cases to Improve How Courts Understand and Evaluate Scientific Evidence
Joëlle Anne Moreno ......................................................................................................531

Re-Examining the Constitutionality of Remittitur Under the Seventh Amendment
Suja A. Thomas ..............................................................................................................731

Civil Rights Law

The Prevention Justification for Affirmative Action
Michael J. Yelnosky .......................................................................................................1385

Contract Law

Private Lawmaking
David V. Snyder ...........................................................................................................371

Constitutional Law

Is There Still a “Sound Legal Basis?”:
The Freedom of Information Act in the Post-9/11 World
Keith Anderson .............................................................................................................1605
May I Be Recused? The Tension Between Judicial Campaign Speech and Recusal After Republican Party of Minnesota v. White
Matthew D. Besser .............................................................. 1197

Eminent Domain Economics:
Should “Just Compensation” Be Abolished, and Would “Takings Insurance” Work Instead?
Steve P. Calandrillo ............................................................ 451

Is Richmond Newspapers in Peril After 9/11?
Howard W. Chu ........................................................................ 1655

Regulatory Givings and the Anticommons
Reza Dibadj ........................................................................... 1041

The Religious Freedom Peace Tax Fund Act: Becoming Conscious of the Need to Accommodate Conscience
Colleen M. Garrity ................................................................. 1229

Judicial Independence and the Ambiguity of Article III Protections
Tracey E. George .................................................................. 221

Judicial Independence Through the Lens of Bush v. Gore:
Four Lessons from Political Science
Howard Gillman ................................................................. 249

A One Way Street to Unconstitutionality:
The “Choose Life” Specialty License Plate
Sarah E. Hurst ..................................................................... 957

When Freedom Isn’t Free:
The Costs of Judicial Independence in Bush v. Gore
Pamela S. Karlan ................................................................. 265

Invasion of Privacy for the Greater Good:
Why Bartnicki v. Vopper Disserves the Right of Privacy and the First Amendment
Ryan Kilkenny ..................................................................... 999

The Right to a Jury Decision on Questions of Fact Under the Seventh Amendment
Paul F. Kirgis ........................................................................ 1125
<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>From Social Friction to Social Meaning:</td>
<td>David McGowan</td>
<td>1515</td>
</tr>
<tr>
<td>What Expressive Uses of Code Tell Us About Free Speech</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In Defense of the Corpus Delicti Rule</td>
<td>David A. Moran</td>
<td>817</td>
</tr>
<tr>
<td>Yet Another Article on Bush v. Gore</td>
<td>Ronald D. Rotunda</td>
<td>283</td>
</tr>
<tr>
<td>The Ohio Motto Survives the Establishment Clause</td>
<td>The Honorable Richard F. Suhrheinrich &amp; T. Melinda Bush</td>
<td>585</td>
</tr>
<tr>
<td>Re-Examining the Constitutionality of Remittitur Under the Seventh Amendment</td>
<td>Suja A. Thomas</td>
<td>731</td>
</tr>
</tbody>
</table>

**Corporate Law**

<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Opportunities for Obtaining and Using Litigation Reserves and Disclosures</td>
<td>Matthew J. Barrett</td>
<td>1183</td>
</tr>
</tbody>
</table>

**Criminal Procedure**

<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Defense of the Corpus Delicti Rule</td>
<td>David A. Moran</td>
<td>817</td>
</tr>
<tr>
<td>Einstein on the Bench?: Exposing What Judges Do Not Know About Science and Using Child Abuse Cases to Improve How Courts Understand and Evaluate Scientific Evidence</td>
<td>Joëlle Anne Moreno</td>
<td>531</td>
</tr>
</tbody>
</table>
Election Law

Judicial Elections and Judicial Independence:
The Voter’s Perspective
Lawrence Baum ................................................................. 13

May I Be Recused? The Tension Between
Judicial Campaign Speech and Recusal After
Republican Party of Minnesota v. White
Matthew D. Besser .......................................................... 1197

Know Before You Go:
A Case for Publicly Funded Voters’ Guides
Cynthia Canary ................................................................. 81

Thoughts on Goldilocks and Judicial Independence
Frank B. Cross ................................................................. 195

Why Judicial Elections Stink
Charles Gardner Geyh ........................................................ 43

Judicial Independence Through the Lens of Bush v. Gore:
Four Lessons from Political Science
Howard Gillman ................................................................. 249

Public Funding of Judicial Elections:
The Role of Judges and the Rules of Campaign Finance
Deborah Goldberg ............................................................... 95

When Freedom Isn’t Free:
The Costs of Judicial Independence in Bush v. Gore
Pamela S. Karlan ............................................................... 265

Keynote Speech:
Electoral Accountability and Judicial Independence
The Honorable Thomas R. Phillips ........................................... 137

Yet Another Article on Bush v. Gore
Ronald D. Rotunda ........................................................... 283

Proposed Legislation on Judicial Election Campaign Finance
Roy Schotland ................................................................. 127
Environmental Law

The Straw that Broke the Camel’s Back?
Grand Staircase-Escalante National Monument
Antiquates the Antiquities Act
Eric C. Rusnak

Evidence Law

In Defense of the Corpus Delicti Rule
David A. Moran

Einstein on the Bench?:
Exposing What Judges Do Not Know About Science and
Using Child Abuse Cases to Improve How Courts
Understand and Evaluate Scientific Evidence
Joëlle Anne Moreno

Federalism

The Straw that Broke the Camel’s Back?
Grand Staircase-Escalante National Monument
Antiquates the Antiquities Act
Eric C. Rusnak

Private Lawmaking
David V. Snyder

Intellectual Property Law

From Social Friction to Social Meaning:
What Expressive Uses of Code Tell Us
About Free Speech
David McGowan

Concurrent Use of Trademarks on the Internet:
Reconciling the Concept of Geographically Delimited
Trademarks with the Reality of the Internet
Robert Nupp
# Internet Law

From Social Friction to Social Meaning:
- What Expressive Uses of Code Tell Us About Free Speech
  - David McGowan .......................................................... 1515

Concurrent Use of Trademarks on the Internet:
- Reconciling the Concept of Geographically Delimited Trademarks with the Reality of the Internet
  - Robert Nupp .............................................................. 617

# Judicial Independence

Keynote Address:
- Thorny Issues and Slippery Slopes: Perspectives on Judicial Independence
  - The Honorable Shirley S. Abrahamson ........................................... 3

Judicial Elections and Judicial Independence:
- The Voter’s Perspective
  - Lawrence Baum .............................................................. 13

May I Be Recused? The Tension Between Judicial Campaign Speech and Recusal After Republican Party of Minnesota v. White
- Matthew D. Besser ............................................................ 1197

Recalibrating Federal Judicial Independence
- James J. Brudney ............................................................... 149

Foreword: Perspectives on Judicial Independence
- James J. Brudney & Lawrence Baum ........................................... 1

What Do We Mean by “Judicial Independence”?
- Stephen B. Burbank .......................................................... 323

Know Before You Go:
- A Case for Publicly Funded Voters’ Guides
  - Cynthia Canary ................................................................. 81

Thoughts on Goldilocks and Judicial Independence
- Frank B. Cross ................................................................. 195
Judicial Independence and the Ambiguity of Article III Protections
Tracey E. George ................................................................. 221

Why Judicial Elections Stink
Charles Gardner Geyh .................................................. 43

Judicial Independence Through the Lens of Bush v. Gore:
Four Lessons from Political Science
Howard Gillman ............................................................... 249

Public Funding of Judicial Elections:
The Role of Judges and the Rules of Campaign Finance
Deborah Goldberg ........................................................... 95

When Freedom Isn’t Free:
The Costs of Judicial Independence in Bush v. Gore
Pamela S. Karlan .............................................................. 265

Commentary: The Role of the Organized Bar in Promoting an Independent and Accountable Judiciary
D. Dudley Oldham & Seth S. Andersen .......................... 341

A Normative Appraisal of Social Scientific Knowledge Regarding Judicial Independence
Terri Peretti ................................................................. 349

Keynote Speech:
Electoral Accountability and Judicial Independence
The Honorable Thomas R. Phillips ............................... 137

Yet Another Article on Bush v. Gore
Ronald D. Rotunda ........................................................ 283

Proposed Legislation on Judicial Election Campaign Finance
Roy Schotland ............................................................... 127

Labor and Employment Law

The Prevention Justification for Affirmative Action
Michael J. Yelnosky ........................................................... 1385
Lawmaking

Private Lawmaking
  David V. Snyder ........................................................................................ 371

Legal Professions

Counselor, Gatekeeper, Shareholder, Thief:
  Christine Hur tennis ............................................................................ 897

Possibilities for Collaborative Law:
  Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering
  John Lande ............................................................................................. 1315

Commentary: The Role of the Organized Bar in Promoting an Independent and Accountable Judiciary
  D. Dudley Oldham & Seth S. Andersen .................................................. 341

Toward a Multiple Party Representation Model:
  Moderating Power Disparity
  Henry Ordower .......................................................................................... 1263

Privacy Law

Invasion of Privacy for the Greater Good:
  Why Bartnicki v. Vopper Disserves the Right of Privacy and the First Amendment
  Ryan Kilkenney ........................................................................................ 999

Professional Ethics and Standards

New Opportunities for Obtaining and Using Litigation Reserves and Disclosures
  Matthew J. Barrett .................................................................................. 1183

Possibilities for Collaborative Law:
  Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering
  John Lande ............................................................................................. 1315
Toward a Multiple Party Representation Model: Moderating Power Disparity
Henry Ordower ........................................................................................................ 1263

Property Law

Eminent Domain Economics: Should “Just Compensation” Be Abolished, and Would “Takings Insurance” Work Instead?
Steve P. Calandrillo ................................................................................................. 451

Regulatory Givings and the Anticommons
Reza Dibadj ............................................................................................................. 1041

Public Records Law

Is There Still a “Sound Legal Basis?”: The Freedom of Information Act in the Post-9/11 World
Keith Anderson .......................................................................................................... 1605

Is Richmond Newspapers in Peril After 9/11?
Howard W. Chu ......................................................................................................... 1655

Tax Law

New Opportunities for Obtaining and Using Litigation Reserves and Disclosures
Matthew J. Barrett ..................................................................................................... 1183

Eminent Domain Economics: Should “Just Compensation” Be Abolished, and Would “Takings Insurance” Work Instead?
Steve P. Calandrillo ................................................................................................. 451

The Religious Freedom Peace Tax Fund Act: Becoming Conscious of the Need to Accommodate Conscience
Colleen M. Garrity .................................................................................................... 1229

The Interplay Between Norms and Enforcement in Tax Compliance
Leandra Lederman ..................................................................................................... 1453