

CALIFORNIA WESTERN LAW REVIEW

VOLUME 49

SPRING 2013

NUMBER 2

TABLE OF CONTENTS

ARTICLES

CONTROLLING MEDICARE WITH LESSONS FROM ENDOWMENT EFFECT EXPERIMENTS <i>Justin L. Bernstein</i>	169
PRISONERS AND THE PRESS: THE FIRST AMENDMENT ANTIDOTE TO CIVIL DEATH AFTER PLRA <i>Dennis Temko</i>	195
BATTLE FOR THE DISCLOSURE TORT <i>Jared A. Wilkerson</i>	231

COMMENTS

FORCING THE TRIBE TO BET ON THE HOUSE THE LIMITED OPTIONS AND RISKS TO THE TRIBE WHEN INDIAN GAMING OPERATIONS SEEK BANKRUPTCY RELIEF <i>Stephan A. Hoover</i>	269
THE AMERICANS WITH DISABILITIES ACT: WHO PAYS FOR LOOPHOLES IN THE ADA? A LOOK AT THE RESPONSIBILITY OF SUCCESSIVE OWNERS FOR PROPERTIES BUILT IN VIOLATION OF THE ADA <i>M. Renee Potter</i>	309

CALIFORNIA WESTERN LAW REVIEW

VOLUME 49

SPRING 2013

NUMBER 2

BOARD OF EDITORS

*Editor in Chief
Law Review*

REGINA BAGDASARIAN

*Executive Editor
Law Review*

RICHARD L. MAFRICA

*Executive Lead Articles Editor
Law Review*

KILEY A. SCHAUMLEFFEL

*Executive Notes and Comments Editor
Law Review*

SAMUEL J. MORRIS

*Executive Director
Notes and Comments*

NICOLE D. ALLEN

*Editor in Chief
International Law Journal*

PAUL R. SPENCER

*Executive Editor
International Law Journal*

HEATHER L. CARMODY

*Executive Lead Articles Editor
International Law Journal*

CHONG HYUN PAIK

*Executive Notes and Comments Editor
International Law Journal*

MATTHEW H. SPRINGMEYER

ASSOCIATE EDITORS

CASSANDRA E. ABBOTT
WHITNEY R. BLACKHURST
NADIA K. CALDWELL-
HOFFMANN
ANTHONY J. CATENA
VICTORIA L. CHINSEE
CHANTE F. COLEMAN

ELIKA DEGHAN
HANNAH J. ENGHOLM
JORDAN T. FURROW
ADAM J. HEPBURN
KHANH T. HUYNH
COLLEEN E. LAMBERT
TESSA R. LESSNER

CAROLYN A. MUSH
LINDA R. PRAAST
ALAN R. SHEPARD
VERONIKA SNOBLOVA
ALLEXANDERIA E.
VERDIAN

ASSOCIATE WRITERS

CHRISTINA A. ALKIRE
CHRISTIAN W. BARTON
ALYN B. BEAUREGARD
CASSANDRA C. BORJON
ERIN A. CAMPBELL
MATTHEW A. CAPPEL
VALERIE M. CHAMBERLAIN
MICHAEL E. COSGROVE
JON M. COWLES
ASHLEY L. DUDLEY
DANIEL C. EDWARDS
KRISTINA A. FRETWELL
COREY C. GARRARD

GREGORY J. GIANONI
TOMER GUTMAN
DANIEL J. HILTON
STEPHAN A. HOOVER
KIRSTIN S. JARSTAD
ANDREW J. KOPER
BEN A. MACHIDA
MELISSA M. MACK
TAMARA L. MARTIN
LINDA A. McDONALD
NICHOLAS P. MOUTON
RACHAEL A. NEAL
ANTHONY B. PARKER

ANGELA M. PORTER
MARGIE RENE POTTER
JULIA D. SCHNEIDER
JAKE W. SCHULTE
SUSAN M. SINDELAR
JACOB T. SPAID
SARA J. STANINGER
LIAM VAVASOUR
DANIEL P. WASHLE
CHARLES F. WHITMAN
KENDRA J. WOODS

FACULTY ADVISORS

PROFESSOR ROBERTA K. THYFAULT
PROFESSOR GLENN C. SMITH

PUBLICATION ADMINISTRATOR

LANA L. KIZILARSLAN

©2013 by California Western School of Law. All rights reserved. Printed in the United States of America. ISSN 0008-1639. Cite as 49 CAL. W. L. REV. __ (2012-2013).

The views expressed in the *Review* are those of the authors and are not those of California Western School of Law or the editors.

The *California Western Law Review* is published twice a year by the students at California Western School of Law. An annual subscription is \$20.00 per volume. A foreign subscription is \$25.00. Single issues of our previous and current volumes are available at the *Review*. Please contact the *Review* to determine the price for these issues.

CALIFORNIA WESTERN LAW REVIEW

California Western School of Law
225 Cedar Street San Diego, CA 92101
(619) 525-1477
<http://www.cwsl.edu/journals>
email: lawreview@cwsl.edu

Subscriptions are automatically renewed unless notice of cancellation is received prior to August 15. All notifications of change of address should include old and new addresses, with zip code.

Volumes one through forty-four are available as single issues or bound from our subscription agent, William S. Hein, 1285 Main Street, Buffalo, NY 14209. Back issues are also available in image-based format at <http://heinonline.org>. Contact Hein for prices. Microfiche is also available from Hein.

The *Review* honors claims for 3 months after the shipping date for domestic subscribers and 3 months after the shipping date for foreign subscribers.

The *Review* is available on Westlaw, Lexis-Nexis, and HeinOnline.

Citations conform in relevant part to *The Bluebook: A Uniform System of Citation* (19th ed. 2010).

PATRONS

LIFETIME PATRONS

ELLIOT FEUERSTEIN	<i>San Diego, California</i>
CHARLES G. JOHNSON.....	<i>Ewing, Johnson & Graves Professional Law Corp. El Centro, California</i>
RENEE F. LAFFER	<i>Port Washington, New York</i>
ELVI J. OLESEN	<i>Richard I. Singer Law Offices San Diego, California</i>
GEORGE J. OTLOWSKI, JR.....	<i>Perth Amboy, New Jersey</i>

PATRONS

MR. AND MRS. GEORGE M. BARTLETT	<i>Rancho Santa Fe, California</i>
MARC P. BOURET.....	<i>Lafayette, California</i>
JAMES P. CLARK.....	<i>San Diego, California</i>
ROBERT N. COHEN.....	<i>Weinstein, Kaplan & Cohen Garden City, New York</i>
STANTON W. DAVIES, II.....	<i>Newport Beach, California</i>
ANGELO G. GARUBO.....	<i>Millington, New Jersey</i>
RONALD P. GOLDMAN.....	<i>Tiburon, California</i>
HONORABLE MICHAEL S. GOODMAN.....	<i>San Diego, California</i>
RUSSELL J. KIRK	<i>Ketchum, Idaho</i>
HONORABLE MICHELLE LEAVITT.....	<i>Las Vegas, Nevada</i>
CRAIG R. MCCLELLAN.....	<i>McClellan and Associates San Diego, California</i>
MIKE MCPHERSON.....	<i>Vista, California</i>
DALE J. MONTPELIER	<i>Knoxville, Tennessee</i>
RON RESCH	<i>Los Angeles, California</i>
MELVIN B. STEIN	<i>San Diego, California</i>
JAMES J. WARNER.....	<i>San Diego, California</i>
ANDREW H. WILENSKY.....	<i>San Diego, California</i>

Board of Trustees

RICHARD C. ATKINSON
President and Regent (Retired)
University of California System
Oakland, California

ROY MORROW BELL
Board Chair Emeritus
Senior Counsel
Troutman Sanders

HAN P. CHING
General Partner
Aloha Securities & Investment Company
Honolulu, Hawaii

CONSTANCE L. CLAPP
Vice Chair of the Board of Trustees
New York, New York

GEORGE N. GAFFORD
Board Chair Emeritus
Professor Emeritus
California Western School of Law

THE HONORABLE IRMA E. GONZALEZ
United States District Court Judge
San Diego, California

CHARLES R. GREBING
Wingert Grebing Brubaker & Goodwin
San Diego, California

KENNETH L. GREENMAN, JR.
Chairman of the Board of Trustees
Senior Partner
Greenman, Lacy, Klein, O'Harra & Heffron
Oceanside, California

THE HONORABLE JUDITH L. HALLER
*Justice of the California Court of Appeal,
Fourth District
San Diego, California*

J. RANDALL JONES
*Partner
Kemp, Jones & Coulthard
Las Vegas, Nevada*

JEFFREY D. LEWIN
*Partner
Sullivan, Hill, Lewin, Rez & Engel
San Diego, California*

THE HONORABLE WILLIAM D. LOWERY
*U.S. Congress (Retired)
Innovative Federal Strategies, LLC
Washington, D.C.*

MARK P. MANDELL
*Chief Executive Officer
Square One Development Corporation
La Jolla, California*

NANCY T. MARLIN, PH.D.
*Provost & Vice President for Academic Affairs
San Diego State University
San Diego, California*

JEFFREY R. NEWPORT
*Law Offices of Jeffrey R. Newport
Houston, Texas*

JOHN F. O'BRIEN
*Dean
New England School of Law
Boston, Massachusetts*

ROBERT K. SCOTT
*Law Offices of Robert K. Scott
Newport Beach, California*

EUGENE L. STEP
*Executive Vice President
President, Pharmaceutical Division (Retired)
Eli Lilly and Company
Rancho Santa Fe, California*

THE HONORABLE HOWARD B. WIENER
Justice of the California Court of Appeal (Retired)
San Diego, California

ARNOLD W. WINSTON
Deputy Court Administrator
San Diego Municipal Court
San Diego, California

CALIFORNIA WESTERN SCHOOL OF LAW
FACULTY AND ADMINISTRATION 2012-2013

Niels B. Schaumann, J.D., *President and Dean*
William J. Aceves, M.A., J.D., M.A., LL.M., *Associate Dean for Academic Affairs;*
Professor of Law
Phyllis Castle Marion, M.A., J.D., *Associate Dean for Library and Information*
Resources; Professor of Law
Laura M. Padilla, J.D., *Associate Dean for Administration; Professor of Law*

FULL-TIME FACULTY

David W. Austin, J.D., *Legal Writing Professor*
Thomas D. Barton, Ph.D., J.D., *Louis & Hermione Brown Professor of Law;*
Director, Louis M. Brown Program in Preventive Law; and Coordinator, National
Center for Preventive Law
Michal R. Belknap, M.A., Ph.D., J.D., *Justice Earl Warren Professor of Law;*
Chair, J.D./Ph.D. Dual Degree Program in History
Laurence A. Benner, J.D., *Professor of Law; Managing Director, Criminal Justice*
Programs
Lisa M. Black, J.D., *Legal Writing Professor*
Robert A. Bohrer, J.D., LL.M., *Professor of Law*
Janet M. Bowermaster, J.D., *Professor of Law*
Justin P. Brooks, J.D., LL.M., *Executive Director, Institute for Criminal Defense*
Advocacy; Institute Professor; Director, LL.M. in Trial Advocacy; and Project
Director, California Innocence Project
Arthur W. Campbell, J.D., LL.M., *Professor of Law*
Allison D. Cato, J.D., *Legal Writing Professor*
Susan A. Channick, J.D., *Professor of Law*
Mario G. Conte, M.A., J.D., *Distinguished Practitioner and Special Administrative*
Assistant to the Dean
James M. Cooper, LL.B., LL.M., *Assistant Dean for Mission Development;*
Institute Professor; Director, International Studies Program
Barbara J. Cox, J.D., *Clara Shortridge Foltz Professor of Law*
Robert DeKoven, J.D., *Legal Writing Professor*
Michael H. Dessent, J.D., *Professor of Law; Dean Emeritus*
Scott B. Ehrlich, J.D., LL.M., *Professor of Law; Chair, J.D./M.B.A. Dual Degree*
Program
Floralynn Einesman, J.D., *Professor of Law*
Kathryn F. Fehrman, J.D., *Legal Writing Professor*
Jessica K. Fink, J.D., *Associate Professor of Law*
Richard J. Finkmore, J.D., *Professor of Law*
Paul J. Gudel, M.A., J.D., *Professor of Law*
Ruth M. Hargrove, J.D., *Legal Writing Professor*
Marilyn J. Ireland, J.D., *Professor of Law*
Andrea L. Johnson, J.D., *Professor of Law; Director, Telecommunications and In-*
tellectual Property Law Center
Nancy S. Kim, J.D., LL.M., *Associate Professor of Law*
Kenneth S. Klein, J.D., *Associate Professor of Law*
Bryan A. Liang, M.D., Ph.D., J.D., *E. Donald Shapiro Professor of Law; Executive*
Director, Institute of Health Law Studies
William C. Lynch, LL.B., LL.M., LL.D., *Professor of Law*
Linda H. Morton, J.D., *Professor of Law*
John E. Noyes, J.D., *Roger J. Traynor Professor of Law*

Joanna K. Sax, J.D., Ph.D., *Associate Professor of Law*
Jacquelyn H. Slotkin, M.A., Ph.D., J.D., *Professor of Law; Director, LL.M. and M.C.L. Programs for Lawyers*
Glenn C. Smith, J.D., LL.M., *Professor of Law; Chair, J.D./Ph.D. Dual Degree Program in Political Science, Law Review/International Law Journal Advisor*
Steven R. Smith, M.A., J.D., *Dean Emeritus, Professor of Law*
Donald J. Smythe, Ph.D., J.D., *Professor of Law*
Jan Stiglitz, J.D., LL.M., *Professor of Law; Co-Director California Innocence Project*
Roberta K. Thyfault, J.D., *Legal Writing Professor, Law Review/International Law Journal Advisor*
Janet Weinstein, J.D., *Professor of Law; Director, Clinical Internship Program; Chair, J.D./M.S.W. Dual Degree Program*
Mark I. Weinstein, J.D., *Professor of Law*
Daniel B. Yeager, J.D., LL.M., *Professor of Law*
Michael Yu, J.D., LL.M., *Associate Professor of Law*

VISITING FACULTY AND OTHER APPOINTMENTS

Timothy M. Casey, J.D., *Visiting Professor, Director, STEPPS Program*
Robert F. Seibel, J.D., *Visiting Professor, City University of New York School of Law*
Judge James F. Stiven, J.D., *Jurist in Residence, U.S. Magistrate Judge for the Southern District of California (Retired)*

ADJUNCT FACULTY

William M. Aul, M.B.A., J.D.	Theresa M. Filicia, J.D.
Brandon Baker, J.D.	Erica Gardner, J.D.
Elizabeth Barros, J.D.	Susan Garrett, J.D.
Anne Bautista, J.D.	Marian L. Gaston, J.D.
Duane Bennett, J.D.	Richard Gates, J.D.
Matthew Binninger, J.D.	Jayshree Gerken, J.D.
Matthew C. Braner, J.D.	Gary Gibson, J.D.
Todd Bulich, J.D.	Aisling Gilliland, J.D.
Kathleen B. Cannon, J.D.	Jennifer Gilman, J.D.
Christina Cassisa, J.D.	Barbara A. Glennan, J.D., M.L.S.
Aimee Caso, J.D.	Joseph Green, J.D.
Kasha Castillo, J.D.	Kristina Hancock, J.D.
Solomon Chang, J.D.	Richard D. Hendlin, J.D.
Katherine Clark, J.D.	Kurt Hermansen, J.D.
James E. Clevenger, J.D.	James F. Holtz, J.D.
Zuzana Colaprete, J.D.	Valerie Garcia Hong, J.D.
Anthony E. Colombo, Jr., J.D.	E. James Jeffries, J.D.
Jason Conge, J.D.	Malana Jones, J.D.
Maria Dersey Conroy, J.D.	Josh Karton, J.D.
Michael Crowley, J.D.	Ian Kipnes, J.D.
Tracy Dietrich, J.D.	Shannon Kitten, J.D.
Deborah Dixon, J.D.	Dennis Klein, J.D.
Debra Dupree, J.D.	Don S. Kovacic, J.D.
William E. Dysart, J.D.	Michele Kumaus, J.D.
James K. Eckmann, J.D., LL.B.	Laura Lamb, J.D.
Dina Feldman-Scarr, J.D.	Daniel G. Lamborn, J.D.

Drew Lautemann, J.D.
Christopher M. Lawson, J.D.
Clarice J. Letizia, J.D.
Yvette Lopez-Cooper, J.D.
Jan Maiden, J.D.
Brian Maienschein, J.D.
Tilisha Martin, J.D.
Peter Mazza, J.D.
Ramona McCarthy, J.D.
Jessica McHarrie, J.D.
Amy L. Moberly, J.D.
John M. Morris, J.D.
Robin Munro, J.D.
Art Neill, J.D.
Rebecca A. Nieman, J.D.
Ramona Noursamadi, J.D.
Udoka Nwanna, J.D.
Ricardo Ochoa, J.D.
Richard Page, J.D.
Paul Parisi, J.D.
Michelle Park, J.D.
Jo Pastore, J.D.
Brian Pease, J.D.
Mary Pendleton, J.D.
Laura Pennelle, J.D.
Robert P. Pizzuto, J.D.
Fred Plevin, J.D.
Michael Popkins, J.D.
Earl Pott, J.D.
Grant Puleo, J.D.

Dan Rawlins, J.D.
Randy Rechs, J.D.
Gregg F. Relyea, J.D.
Robert Rexrode, J.D.
Jeffrey Robin, J.D.
Stephen R. Robinson, J.D.
George (Jody) Root Jr., J.D.
Lee R. Rydalch, J.D.
Shannon Lynne Sebeckis, J.D.
Terry Schmidt
Dennis Sharp, J.D.
David Silldorf, J.D.
Alex Simpson, J.D.
Lorenda Stern, J.D.
Theresa Stevenson, J.D.
Gael Strack, J.D.
Robert F. Teaff, J.D.
Melissa A. Tralla, J.D.
The Honorable Robert Trentacosta, J.D.
Sheila M. Trexler, J.D.
Alidad Vakili, J.D.
Nancy L. Vaughan, J.D.
Lilia S. Velasquez, J.D.
Robert A. Waller, Jr., J.D.
Daniel Watman, J.D.
Bobbi Ann Weaver, J.D.
Bradley Weinreb, J.D.
Lisa Weinreb, J.D.
Lewis A. Wenzell, J.D.

ADMINISTRATIVE DEPARTMENT HEADS

Lori K. Boyle, MSW, *Director for Development and Alumni Relations*
Ruth A. Briscoe, *Clinical Internship Program Administrator*
Jolie L. Cartier, C.F.M., *Executive Director of Facilities Management*
Ruth Goulding, *Director of the Business Office, Controller*
Pam Duffy, *Vice President of Finance and Chief Financial Officer*
Crystal L. Hengel, *Executive Director of the Swortwood Bookstore*
Traci Howard, M.A., *Assistant Dean of Admissions*
Bill Kahler, *Director, Financial Aid*
Lana Kizilarlan, *Publication Administrator, Law Review/International Law Journal*
Courtney Miklusk, J.D., *Assistant Dean for Career Services*
Mary Lou Mitchell, *Executive Director of Information Technology*
Sandra E. Moreau, *Executive Assistant to the Associate Deans*
Richard S. Podgorski, *Vice President, Institutional Advancement*
Kathleen Seibel, J.D., *Assistant Dean for Student and Diversity Services*
Marilyn Scheininger, M.B.A., J.D., *Assistant Dean for Academic Achievement*
G. Diane Shragg, *Registrar*
Joyce Stallworth, *Director, Faculty Support Services*
Pam Tait, *Program Administrator, Institute of Health Law Studies*
Rikki Ueda, J.D., SPHR, *Vice President of Human Resources*

