

Northern Illinois University Law Review

Volume 29 | Issue 1

Article 5

11-1-2008

Vol. 29, no. 1, Fall 2008: Table of Contents

Northern Illinois University Law Review

Follow this and additional works at: <https://huskiecommons.lib.niu.edu/niulr>



Part of the [Law Commons](#)

Recommended Citation

Northern Illinois University Law Review (2008) "Vol. 29, no. 1, Fall 2008: Table of Contents," *Northern Illinois University Law Review*. Vol. 29: Iss. 1, Article 5.

Available at: <https://huskiecommons.lib.niu.edu/niulr/vol29/iss1/5>

This Other/Newsletter is brought to you for free and open access by the College of Law at Huskie Commons. It has been accepted for inclusion in Northern Illinois University Law Review by an authorized editor of Huskie Commons. For more information, please contact jschumacher@niu.edu.

Northern Illinois University Law Review

Volume 29

Fall 2008

Number 1

ARTICLES

The Torturing Debate on Torture

Dr. Mohammed Saif-Alden Wattad..... 1

The War on Terrorism generated a correlation between terrorism and torture. This article analyzes the basic premises of the torture debate by addressing the following issues: (1) defining torture; (2) punishing torturers; (3) justifying, excusing, or pardoning torturers; and (4) conducting legal interrogation. The article criticizes existing law on the torture debate for its lack of conceptuality and coherency, thus arguing that the articulation of the existing definition of torture has been politically motivated. The article offers a conceptual understanding of the torture phenomenon as premised on five conceptual distinctions: (1) superior versus inferior, (2) active versus passive, (3) theatricality versus secrecy, (4) fear versus security, and (5) pleasure versus suffering. This definition aims at analyzing the torture phenomenon in the abstract, out of context. Furthermore, the article suggests that torture does not bear on the constitutive elements of guilt, and that torture involves the classic types of conduct, with which we are familiar, of other domestic crimes of violence against the body or the person. Torture represents the overriding motivation of the torturers, thus reflecting the degree of dangerousness upon which they are acting. Such dangerousness is a relevant aggravating factor at the sentencing stage, which the prosecution is required to prove by a preponderance of the evidence. Moreover, the article targets five taboos that recur in the torture debate, aiming thereby to refute or uphold them. These are: (1) the illusive nature of the ticking-bomb enigma, (2) the unjustifiable grounds of the prohibition against torture, (3) the inexcusable torturers, (4) compassion toward torturers, and (5) the administrative aspects of a reasonable interrogation. Finally, the article conveys the message that the nature and basic character of the prohibition against torture can be summarized in two words: "Human Dignity."

War & [Emotional] Peace: Death in Iraq and the Need to Constitutionalize Speech-Based IIED Claims Beyond *Hustler Magazine v. Falwell*

Clay Calvert..... 51

The protracted and ongoing war in Iraq has spawned several lawsuits in the United States based upon the tort theory of intentional infliction of emotional distress. This article focuses in depth on one of those recent cases, Read v. Lifeweaver, L.L.C., filed in federal court in Tennessee in April 2008. Using Read to illustrate its points, the article argues that the same constitutional safeguards extended by the United States Supreme Court in 1988 in Hustler Magazine v. Falwell against IIED claims filed by public figures should apply in cases like Read where the plaintiffs are private individuals outraged by a political message with which they strenuously disagree. Applying those safeguards to the facts in Read would, the article asserts, protect the antiwar speech at issue in that case.

Spoilation of Electronically Stored Information, Good Faith, and Rule 37(e)

Andrew Hebl..... 79

The Federal Rules of Civil Procedure were amended effective December 1, 2006 to address concerns about discovery of electronically stored information. One of those amendments, Rule 37(e), created a safe harbor for parties who destroy relevant information as a result of the good faith, routine operation of their electronic storage systems. The rule recognizes the enhanced difficulty of preserving relevant information in the electronic context due to the automatic operation of electronic storage systems and the necessary deletion and modification of such systems' contents from time to time due to storage constraints and other technological limitations. The rule's good-faith requirement protects parties and addresses their concerns by precluding sanctions where conduct is not reckless or intentional, and applies after a duty to preserve relevant evidence has arisen. This article is the first to consider how courts have applied the rule since its adoption. In evaluating courts' performance, the article concludes that the rule has been misapplied and, in effect, rendered superfluous in that courts have continued to impose sanctions for insufficiently culpable conduct, or alternatively, have essentially ignored the rule by holding parties to a strict-liability standard. The end result is that problems created by electronically stored information in the destruction of evidence context have been left unaddressed. The article attempts to remedy this situation by proposing a framework for the proper application of Rule 37(e).

While the Government Fiddled Around, the Big Easy Drowned:
How the Posse Comitatus Act Became the Government’s Alibi for
the Hurricane Katrina Disaster

Candidus Dougherty 117

This article analyzes how the government’s blame of the Posse Comitatus Act (PCA) for its late response to the Hurricane Katrina disaster was misplaced. In Part II, the author discusses the history of the Posse Comitatus Act, including a summary of some of its many judicial and congressional expansions. In Part III, the author applies the PCA to the Hurricane Katrina disaster to show that, under its proper application, the PCA does, in fact, permit the lawful use of the military for humanitarian purposes. Based on this analysis, the article concludes that we should focus our efforts less on the Posse Comitatus Act and more on fixing the real problem behind the delayed rescue of the New Orleanians.

COMMENTS

An Argument for a Return to *Plessy v. Ferguson*: Why Illinois Should
Reconsider the Doctrine of “Separate but Equal” Public Schools

Rick Guzman 149

This comment analyzes the steady erosion of the 1954 landmark Brown v. Board of Education case. Specifically, it argues that the millions of poor and overwhelmingly minority school children who are attending 99% single-race schools might actually have access to better teachers and more adequate educational funding under the long-abandoned principle that “separate” schools must be “equal,” by some measure, than such students fare under today’s watered-down interpretation of the Brown case. Illinois, which ranks dead last in school-funding equality as measured by disparity in per pupil expenditures, is examined in depth. The comment provides extensive statistical analysis and comparisons which highlight the vastness of the chasm that separates black and white and the rich and poor in this nation. An overview of constitutional education and equal protection jurisprudence is provided beginning with Brown and extending through the 2007 case Parents Involved in Community Schools v. Seattle School District No. 1, which provided a glimmer of hope for diversifying de facto segregated schools, despite the shockingly oversimplified tenor of the plurality opinion.

The Urgent Reawakening of the Assyrian Question in an Emerging Iraqi Federalism: The Self-Determination of the Assyrian People

Paul A. Isaac209

This article introduces the contemporary significance of the Assyrian Question—the longstanding inquiry over the rights of a small religious and ethnic minority in Iraq. Recently, Assyrians have been violently targeted and disproportionately driven from postwar Iraq in massive numbers, threatening to obliterate their presence from their ancestral homeland forever. Addressing their legal rights, the author argues that Assyrians are an indigenous people under international law and are, therefore, entitled to the full exercise of their political, social, and cultural self-determination. The article surveys the international law of self-determination alongside provisions of Iraqi law that have been created to protect Assyrians. Briefly examining how autonomy-based solutions have been applied as legitimate remedies to self-determination rights, the author argues that some form of heightened self-governance for the Assyrian people would be appropriate under the circumstances, and would be consistent with international and Iraqi law. Some heightened form of self-administration is then further defended on the grounds that it can promote democracy, protect a vulnerable population, and enhance economic equity.