Northern Illinois University Law Review

Volume 24 | Issue 1 Article 6

11-1-2003

Vol. 24, no. 1, Fall 2003: Table of Contents

Northern Illinois University Law Review

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Law Review

Volume 24 Fall 2003 Number 1

ARTICLES

Gambling with Terrorism and U.S. Military Readiness: Time to Ban Video Gambling Devices on U.S. Military Bases and Facilities?
John Warren Kindt 1

This article examines the effect that video gambling devices (VGDs) on US military bases have on military readiness in the 21st century's "Age of Terrorism." The harmful effects of gambling on military personnel outweigh any potential benefits. However, this conclusion is not clear from the information upon which military analysts and researchers rely. Upon examining the harmful effects that gambling has on military readiness, issues arise regarding the potential biases of the informational sources that study the impact of gambling. A review of these informational sources reveals that many sources have close associations with the gambling industry including the industry's financial leverage. One conclusion of this analysis is that the U.S. Armed Forces should reinstitute the historical ban on VGDs on U.S. bases and other facilities due to the costs of training military personnel, addressing related suicides, and ensuring peak "military readiness." A second recommendation is that before military analysts and researchers rely on various sources of gambling information, they should determine whether those sources have ever received direct or indirect financial assistance from pro-gambling interests. By the 21st century, pro-gambling interests had become so financially ingrained in the traditional sources of gambling information that military analyst and researchers necessarily needed to rely on information from academics and researchers who declined to accept any honoraria, consultant fees, or research grants from pro-gambling or other special interests.

Contributory or Comparative: Which is the Optimal Negligence Rule?
Christopher J. Robinette and Paul G. Sherland 41

In this article, the authors examine whether contributory or some form of comparative negligence is the superior rule based on the goals of tort law. The authors conclude pure comparative negligence is the preferable rule. From a compensation perspective, pure comparative negligence compensates the most tort victims. From a corrective justice perspective, pure comparative negligence, unlike the other rules, requires tortfeasors to correct their wrongs in all cases. Finally, the authors use statistical analyses to determine if any of the rules has a stronger deterrent effect than the others. Based on claims data for automobile accidents in the

various jurisdictions, the authors conclude there is no statistically significant difference in the deterrent effect created by any of the rules.

Killing the Fatted Calf: Managed Care Liability in a Post-*Pegram* World

Karene M. Boos, B.S P.T., J.D. and Eric J. Boos M.A., Ph.D., J.D., L.L.M. 63

Over one hundred million Americans receive their health care benefits under some kind of managed care plan. At the heart of every managed care plan is an emphasis on cost containment. The courts traditionally protected the proprietary economic interests of managed care by holding that claims against managed care organizations and plan directors were preempted under the Employee Retirement Income Security Act (ERISA). This was done as a means of facilitating a better health care delivery system for Americans and in spite of the number of patients who suffered poor health consequences as a result of decisions by managed care insurers to deny requested benefits. However, by holding that "mixed eligibility decisions" by medical directors are not preempted by ERISA, and that claims against managed care plans for the denial of benefits should proceed under state malpractice law, the United States Supreme Court in Pegram v. Herdrich *may have paved the way to reverse that trend. For* Pegram's *full effect, states will either have to reconsider premising malpractice on the traditional patient-physician relationship, or take a more novel approach like Wisconsin and require that medical directors be licensed physicians who must carry medical malpractice insurance.*

COMMENTS

In Defense of Federalism: The Need for a Federal Institutional Defender of State Interests

Kory A. Atkinson 93

In Ring v. Arizona, *536 U.S. 584 (2002), the United States Supreme Court struck down the state of Arizona's death penalty procedure as violative of the Sixth Amendment's right to trial by jury. The* Ring *case is noteworthy because the Supreme Court upheld the identical procedure under the same constitutional provision twelve years earlier in* Walton v. Arizona, *497 U.S. 639 (1990). The* Ring *case raises a serious constitutional issue because the high Court reaffirmed its decision upholding Arizona's death penalty procedure twice during those twelve years. The issue is this: what recourse does the state of Arizona have against arbitrary and unconstitutional conduct by the Supreme Court? The brief answer is that the state of Arizona has no constitutional recourse to redress its constitutional injury. Furthermore, neither Congress nor the president has a practical and effective means addressing their constitutional grievances with the federal courts. The author offers two constitutional amendments to cure this constitutional conundrum: (1) the repeal of the Seventeenth Amendment; and (2) a two-thirds congressional override of federal judicial constitutional decisions.*

The 2002 Supreme Court Decisions: Did They Leave Enough of *Apprendi* to Effectively Protect Criminal Defendants?
Charlotte LeClercq 117

This comment explores the true impact of the 2000 landmark decision, Apprendi v. New Jersey, *in which the United States Supreme Court determined that any fact that increases a criminal defendant's sentence beyond the statutory maximum has to be submitted to a jury and proven beyond a reasonable doubt. At the time, the decision appeared to be a triumph for the procedural due process rights of defendants. However, the opinion of the majority, as well as those of the concurrence and dissents, left the actual effect of the decision subject to considerable debate among courts and commentators. In 2002 the Supreme Court decided three cases that addressed some of these issues, and illustrated that the Court has failed to find a definite, unified principle to effectively protect the procedural due process rights of defendants. This comment explores those decisions and then argues that the Court should overrule* Apprendi *in favor of an alternative that will more effectively protect the rights of defendants, such as requiring aggravating factors to be proven beyond a reasonable doubt at sentencing.*