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Publish or Perish: Judging an Article By Its Cover Revisited¹

LEONARD B. MANDELL*

I. INTRODUCTION

Law professors and law students have one major goal in common: they want to have their law review articles published. For professors, the challenging world of promotion and tenure means getting their articles in print, i.e., publish or perish. For students, publication of their articles may open several doors: an editorial position on their law review, a judicial clerkship, perhaps even a law professor position — possibly replacing a former professor who perished before publishing. In any event, it dresses up a résumé!

The key to opening a law review editor's door is simple: a catchy title. Remember, law review students decide which articles to accept for publication, and no one actually reads the entire article. They want an article that sounds interesting; the title is the key. It should be clever, cute, witty, funny, or sexy. It may contain double entendres, plays on words, rhymes, metaphors, even alliterations. In short, it must be creative; a boring title may never make it past the first editor viewing it and may end up in the circular file. However, an interesting opening may sail through the ranks to publication heaven. Alas, it is time once again for a light-hearted review of some of the best titles of law review articles that passed through the editorial gates and survived this year.

II. A FEW EXAMPLES

Titles are often too serious, too long, and too confusing. You should strive to avoid complication — *Amathia and Denial of "In the Home" in Bowers v. Hardwick and Shahar v. Bowers: Objective Correlatives and The*

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1. See Leonard B. Mandell, *Publish or Perish: Judging an Article By Its Cover*, 15 N. ILL. U. L. REV. 373 (1995).

*Bacchae as Tools for Analyzing Privacy and Intimacy.*² What? Perhaps you prefer multi-syllabic words — *Policy Distortion and Democratic Debilitation: Comparative Illumination of the Countermajoritarian Difficulty.*³ That is certainly a mouthful of confusion! Or try this on for size — *A Constitutional Charge and a Comparative Vision to Substantially Expand and Subject Matter Specialize the Federal Judiciary: A Preliminary Blueprint for Remodeling Our National Houses of Justice and Establishing a Separate System of Federal Criminal Courts.*⁴ Why read the article? The title tells me more than what I ever wanted to know about federalism.

On the lighter side, clever titles are filling law reviews around the country. For example, the title *Taking AdvANTAGE of Joe CAMEL's and MARLBORO Man's Rights is UnKOOL and MERITs Constitutional Protection*⁵ is clever and cute — someone is bound to read it. *Why Annie Can't Get Her Gun: A Feminist Perspective on the Second Amendment*⁶ or *In God We Trust; All Others Who Enter This Store Are Subject to Surveillance*⁷ — these articles sound like fun! Or, for a whimsical view on representing oneself — *The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After Faretta.*⁸

A play on words is always appealing — *Cyberia: The Chilling of Online Free Speech by the Communications Decency Act; Equal Protection*

2. *Amathia and Denial of "In the Home" in Bowers v. Hardwick and Shahar v. Bowers: Objective Correlatives and The Bacchae as Tools for Analyzing Privacy and Intimacy*, 44 U. Kan. L. Rev. 263 (1996) (author's name deleted to avoid lawsuit).

3. *Policy Distortion and Democratic Debilitation: Comparative Illumination of the Countermajoritarian Difficulty*, 94 Mich. L. Rev. 245 (1995) (see note above for author's name).

4. *A Constitutional Charge and a Comparative Vision to Substantially Expand and Subject Matter Specialize the Federal Judiciary: A Preliminary Blueprint for Remodeling Our National Houses of Justice and Establishing a Separate System of Federal Criminal Courts*, 37 Wm. & Mary L. Rev. 535 (1996) (see note 2 for author's name).

5. Maria J. Johnson, Note, *Taking AdvANTAGE of Joe CAMEL's and MARLBORO Man's Rights is UnKOOL and MERITs Constitutional Protection: Penn Advertising, Inc. v. Mayor of Baltimore*, 63 F.3d 1318 (4th Cir. 1995), 21 U. Dayton L. Rev. 489 (1996).

6. Inge Anna Larish, *Why Annie Can't Get Her Gun: A Feminist Perspective on the Second Amendment*, 1996 U. Ill. L. Rev. 467.

7. Karen A. Springer, *In God We Trust; All Others Who Enter This Store Are Subject to Surveillance*, 48 Fed. Comm. L.J. 187 (1995).

8. John F. Decker, *The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After Faretta*, 6 Seton Hall Const. L.J. 483 (1996).

9. Michael S. Wichman, Comment, *Cyberia: The Chilling of Online Free Speech by the Communications Decency Act*, 3 UCLA Ent. L. Rev. 427 (1996).

Held Hostage: Ransoming the Constitutionality of the Hostage Taking Act;¹⁰ *Coughing Up the Cash: Should Medicaid Provide for Independent State Recovery Against Third-Party Tortfeasors Such as the Tobacco Industry?*;¹¹ *If at First You Don't Succeed, Trial and Trial Again: The Demise of the Double Jeopardy Clause Within the Context of Capital Punishment*;¹² and *Gone to Pot: Student Athletes' Fourth Amendment Rights After Vernonia School District 47J v. Acton, 115 S. Ct. 2386 (1995)*.¹³ Altering a well-known phrase leads to — *If You Can't Stand the Heat, Get Out of the Drug Business: Thermal Imagers, Emerging Technologies, and the Fourth Amendment*.¹⁴ These articles are attractive and should be good reading.

Double entendres also work very well — *Wrong Turns: A Critique of the Supreme Court's Right to Travel Cases*;¹⁵ *Aggressive Panhandling Legislation and Free Speech Claims: Begging for Trouble*;¹⁶ *Garbage In, Garbage Out: The Seventh Circuit Misuses the Commerce Clause to Trash Wisconsin's Recycling Law*.¹⁷ Also, rhymes can be enticing — *The Stress, the Press, the Test, and the Mess with the Lani Guinier Smear: A Proposal for Executive Confirmation Reform*.¹⁸ A little Latin used properly can jazz up a title — *Capital Punishment: Is There Any Habeas Left in this*

10. Victor C. Romero, *Equal Protection Held Hostage: Ransoming the Constitutionality of the Hostage Taking Act*, 91 Nw. U. L. Rev. 573 (1997).

11. Michael K. Mahoney, *Coughing Up the Cash: Should Medicaid Provide for Independent State Recovery Against Third-Party Tortfeasors Such as the Tobacco Industry?*, 24 B.C. Env'tl. Aff. L. Rev. 233 (1996).

12. Patrick L. Edgerton, Note, *If at First You Don't Succeed, Trial and Trial Again: The Demise of the Double Jeopardy Clause Within the Context of Capital Punishment* (Schizo v. Farley, 114 S. Ct. 783 (1994)), 16 N. Ill. U. L. Rev. 175 (1995).

13. Carla E. Laszewski, Note, *Gone to Pot: Student Athletes' Fourth Amendment Rights After Vernonia Sch. Dist. 47J v. Acton, 115 S. Ct. 2386 (1995)*, 40 St. Louis U. L.J. (1996).

14. Jonathan Todd Laba, Comment, *If You Can't Stand the Heat, Get Out of the Drug Business: Thermal Imagers, Emerging Technologies, and the Fourth Amendment*, 84 Cal. L. Rev. 1437 (1996).

15. Gregory B. Hartch, Comment, *Wrong Turns: A Critique of the Supreme Court's Right to Travel Cases*, 21 Wm. Mitchell L. Rev. 457 (1995).

16. Charles Mitchell, Note, *Aggressive Panhandling Legislation and Free Speech Claims: Begging for Trouble*, 39 N.Y.L. Sch. L. Rev. 697 (1994).

17. David R. Teece, Note, *Garbage In, Garbage Out: The Seventh Circuit Misuses the Commerce Clause to Trash Wisconsin's Recycling Law*, 15 J. L. & Comm. 677 (1996).

18. Krista Helfferich, *The Stress, the Press, the Test, and the Mess with the Lani Guinier Smear: A Proposal for Executive Confirmation Reform*, 28 Loy. L.A. L. Rev. 1139 (1995).

*Corpus?*¹⁹ And from *Minnesota v. Dickerson*,²⁰ the “plain feel” search case — *Minnesota v. Dickerson: What You Feel is What You Get, With the Magic Words*.²¹

III. CASE NAMES

Using the names of the parties in a well-known case can be the charm you need. For example, *Lemon v. Kurtzman*²² yielded *School Choice Through Vouchers: Drawing Constitutional Lemonade from the Lemon Test*,²³ *Squeezing the Juice from Lemon: Toward a Consistent Test for the Establishment Clause*,²⁴ and *Establishment Clause Jurisprudence: The Souring of Lemon and the Search for a New Test*.²⁵ Perhaps your article discusses the *Terry*²⁶ case — *Searches Woven From Terry Cloth: How the Plain Feel Doctrine Plus Terry Equals Pretextual Search*.²⁷ Maybe your article refers to the *Katz*²⁸ case — *Has Robinson Killed the Katz?: The Eleventh Circuit Concludes That Warrantless Thermal Surveillance of a Home Does Not Constitute a Search Under the Fourth Amendment*.²⁹ Or, suppose your article involves Governor Romer of Colorado — *Romer Wasn't Built in a Day: The Subtle Transformation in Judicial Argument Over Gay Rights*.³⁰ Cases in which a party is named “Rock” are almost

19. *Capital Punishment: Is There Any Habeas Left in this Corpus?*, Panel Discussion (Commentary by Ronald J. Tabak), 27 Loy. U. Chi. L.J. 523 (1996).

20. 508 U.S. 366 (1993).

21. Tracey A. Chriske, *Minnesota v. Dickerson: What You Feel is What You Get, With the Magic Words*, 22 N. Ky. L. Rev. 811 (1995).

22. 403 U.S. 602 (1971).

23. Jo Ann Bodemer, *School Choice Through Vouchers: Drawing Constitutional Lemonade from the Lemon Test*, 71 St. John's L. Rev. 273 (1996).

24. Carole F. Kagan, *Squeezing the Juice from Lemon: Toward a Consistent Test for the Establishment Clause*, 22 N. Ky. L. Rev. 621 (1995).

25. Kristin M. Engstrom, *Establishment Clause Jurisprudence: The Souring of Lemon and the Search for a New Test*, 27 Pac. L.J. 121 (1995).

26. *Terry v. Ohio*, 392 U.S. 1 (1968).

27. John A. Cecere, *Searches Woven From Terry Cloth: How the Plain Feel Doctrine Plus Terry Equals Pretextual Search*, 36 B.C. L. Rev. 125 (1994).

28. *Katz v. United States*, 389 U.S. 347 (1967).

29. Robert M. Graff, Note, *Has Robinson Killed the Katz?: The Eleventh Circuit Concludes That Warrantless Thermal Surveillance of a Home Does Not Constitute a Search Under the Fourth Amendment*, 51 U. Miami L. Rev. 511 (1997).

30. Andrew M. Jacobs, *Romer Wasn't Built in a Day: The Subtle Transformation in Judicial Argument Over Gay Rights*, 1996 Wis. L. Rev. 893.

too obvious — *Stephens v. Miller: Placing Rape Shield Statutes Between Rock and a Hard Place*.³¹

IV. THE ARTS

Songs, movie names, literary titles, and other media provide a wealth of themes rich with ideas for successful titles. Musical allusion can be helpful in attracting an editor's eye and ear. For example, *Message in a Bottle: The United States Supreme Court's Decision in Vernonia School District 47J v. Acton*,³² *California Dreamin': The Myth of State Preemption of Local Firearm Regulation*,³³ *Check-out Time at the Hotel California: "The Last Resort of Constitutional Arguments" and Proposition 187 Considered*,³⁴ *Changing the Marital Rape Exemption: I am Chattel(!); Hear Me Roar*,³⁵ *The Heat Is On: The Warrantless Use of Infrared Surveillance to Detect Indoor Marijuana Cultivation*,³⁶ and *What's Guilt (or Deterrence) Got To Do With It?: The Death Penalty, Ritual, and Mimetic Violence*.³⁷

31. Richard W. Miller, *Stephens v. Miller: Placing Rape Shield Statutes Between Rock and a Hard Place*, 27 U. Tol. L. Rev. 217 (1995).

32. Denise E. Joubert, *Message in a Bottle: The United States Supreme Court's Decision in Vernonia Sch. Dist. 47J v. Acton*, 56 La. L. Rev. 959 (1996). See also Leslie G. Peters, *Message in a Bottle: Vernonia Sch. Dist. 47J v. Acton*, 29 CREIGHTON L. REV. 861 (1996); THE POLICE, *Message in a Bottle*, on REGGATTA DE BLANC (A&M Records 1979).

33. Eric Gorovitz, *California Dreamin': The Myth of State Preemption of Local Firearm Regulation*, 30 U.S.F. L. Rev. 395 (1996). See also THE MAMAS & THE PAPAS, *California Dreamin'*, on THE MAMAS & THE PAPAS (Dunhill Records 1966).

34. John R. Bunker, Note, *Check-out Time at the Hotel California: "The Last Resort of Constitutional Arguments" and Proposition 187 Considered*, 11 St. John's J. Legal Comment 137 (1995). See also THE EAGLES, *Hotel California*, on HOTEL CALIFORNIA (Asylum Records 1977).

35. Emily R. Brown, Note, *Changing the Marital Rape Exemption: I am Chattel(!); Hear Me Roar*, 18 Am. J. Trial Advoc. 657 (1995). See also HELEN REDDY, *I Am Woman*, on "STAND UP AND BE COUNTED" SOUNDTRACK (Capitol Records 1972).

36. Tracy M. White, *The Heat Is On: The Warrantless Use of Infrared Surveillance to Detect Indoor Marijuana Cultivation*, 27 Ariz. St. L.J. 295 (1995). See also GLENN FREY, *The Heat Is On*, on "BEVERLY HILLS COP" SOUNDTRACK (MCA Records 1983).

37. Donald L. Beschle, *What's Guilt (or Deterrence) Got To Do With It?: The Death Penalty, Ritual, and Mimetic Violence*, 38 Wm. & Mary L. Rev. 487 (1997). See also TINA TURNER, *What's Love Got To Do With It?*, on PRIVATE DANCER (Capitol Records 1984).

Movie titles gave life to these articles — *Lex, Lies, & Videotape*,³⁸ *Do or Die: Does Dead Man Walking Run?*,³⁹ and *Beauty and the Beast: Physical Appearance Discrimination in American Criminal Trials*.⁴⁰

Literary references also sparked a winning tone in *Yossarian is Back, the Ultimate Catch-22: What To Do When the Statute of Limitations Has Run on Lesser Offenses*.⁴¹ Mythological references can be a gold mine, such as *Achilles Fuming, Odysseus Stewing, and Hamlet Brooding: On the Story of the Murder/Manslaughter Distinction*,⁴² *Prometheus Unbound: Accepting a Mythless Concept of Civil In Rem Forfeiture With Double Jeopardy Protection*,⁴³ and *Ulysses at the Mast: Democracy, Freedom, and the Sirens' Song of the Seventeenth Amendment*.⁴⁴

V. SPORTS

The world of sports may yield ideas for witty titles. For example, from California's "three strikes" law we find: *Defining the Strike Zone — An Analysis of the Classification of Prior Convictions Under the Federal "Three Strikes and You're Out" Scheme*,⁴⁵ *California's Three Strikes Law:*

38. Gregory T. Jones, *Lex, Lies & Videotape*, 18 U. Ark. Little Rock L.J. 613 (1996). See also Jon Mills, *Sex, Lies, and Genetic Testing: What Are Your Rights to Privacy in Florida?*, 48 FLA. L. REV. 813 (1996); SEX, LIES & VIDEOTAPE (Miramax 1989).

39. Symposium, *Do or Die: Does Dead Man Walking Run?*, 30 U.S.F. L. Rev. 1143 (1996). See also Sister Helen Prejean, *Dead Man Walking: A Sharing of the Journey*, 3 GEO. J. ON FIGHTING POVERTY 69 (1995); A.B.A. Panel Discussion: *Dead Man Walking Without Due Process? A Discussion of the Anti-Terrorism and Effective Death Penalty Act of 1996*, 23 N.Y.U. REV. L. & SOC. CHANGE 163 (1997); DEAD MAN WALKING (Polygram 1996).

40. David L. Wiley, Comment, *Beauty and the Beast: Physical Appearance Discrimination in American Criminal Trials*, 27 St. Mary's L.J. 193 (1995). See also BEAUTY AND THE BEAST (Disney 1991).

41. Chris L. Kleppin, *Yossarian is Back, the Ultimate Catch-22: What To Do When the Statute of Limitations Has Run on Lesser Offenses*, 8 St. Thomas L. Rev. 229 (1995). See also JOSEPH HELLER, CATCH-22 (1961).

42. Norman J. Finkel, *Achilles Fuming, Odysseus Stewing, and Hamlet Brooding: On the Story of the Murder/Manslaughter Distinction*, 74 Neb. L. Rev. 742 (1995).

43. Amy D. Ronner, *Prometheus Unbound: Accepting a Mythless Concept of Civil In Rem Forfeiture With Double Jeopardy Protection*, 44 Buff. L. Rev. 655 (1996).

44. Jay S. Bybee, *Ulysses at the Mast: Democracy, Freedom, and the Sirens' Song of the Seventeenth Amendment*, 91 Nw. U. L. Rev. 500 (1997).

45. R. Daniel O'Connor, Note, *Defining the Strike Zone — An Analysis of the Classification of Prior Convictions Under the Federal "Three Strikes and You're Out" Scheme*, 36 B.C. L. Rev. 847 (1995).

Should a Juvenile Adjudication Be a Ball or Strike?;⁴⁶ and *A Swing and a Miss: California's Three Strikes Law*.⁴⁷

VI. SEX

Sexual references can both entice and excite editors and readers. For example, one can't go wrong with *Public Exposure of the Female Breast: Obscene and Immoral or Free and Equal?*⁴⁸ People may check out this article just for the pictures. Add technology and you have *Virtual Prostitution: New Technologies and the World's Oldest Profession*.⁴⁹ Also, add a little television reference from *Star Trek*⁵⁰ and you have *Obscenity Prosecutions in Cyberspace: The Miller Test Cannot "Go Where No [Porn] Has Gone Before."*⁵¹ I can envision Jean-Luc Picard⁵² reading this one!

Alas, enough examples for now. I wish you many publications, and remember, it's all in the title.

46. Lise Forquer, Comment, *California's Three Strikes Law: Should a Juvenile Adjudication Be a Ball or Strike?*, 32 San Diego L. Rev. 1297 (1995).

47. Christine Markel, Comment, *A Swing and a Miss: California's Three Strikes Law*, 17 Whittier L. Rev. 651 (1996).

48. Helen Punders, *Public Exposure of the Female Breast: Obscene and Immoral or Free and Equal?*, 14 In Pub. Interest 1 (1994-95).

49. David Cardiff, Note, *Virtual Prostitution: New Technologies and the World's Oldest Profession*, 18 Hastings Comm. & Ent. L.J. 869 (1996).

50. *Star Trek* (NBC television series 1966-69, created by Gene Roddenberry).

51. J. Todd Metcalf, Note, *Obscenity Prosecutions in Cyberspace: The Miller Test Cannot "Go Where No [Porn] Has Gone Before,"* 74 Wash. U. L.Q. 485 (1996).

52. Character from *Star Trek: The Next Generation* (Syndicated by Paramount Television 1987-94, created by Gene Roddenberry).

