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Law Review

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Articles

- National Black Law Students Association Midwest Region 255
Second Annual Midwest Recruitment and Retention Conference: Focus on Retention — Strategies that Work

Articles and Proceedings

These Proceedings are a compilation of ideas and articles presented at the 1991 Midwest Region BLSA Recruitment and Retention Conference, held at the Northern Illinois University College of Law. The focus of this year's Conference was retention, and topics ranged from pre-law summer programs to minority clerkship programs; panelists ranged from students, to faculty members, to members of the practicing bar. These Proceedings reflect the shared goal of all those who participated in the Conference — the goal of increased diversity in the legal profession.

- Diminishing Marginal Utility of Income and Progressive Taxation: A Critique of *The Uneasy Case* 373

Mark S. Stein

A recurring issue in law, economics and politics is how progressive the tax system should be. In The Uneasy Case for Progressive Taxation, a famous article of forty years ago, the authors pronounced themselves unconvinced by arguments for progressive taxation. In this article, Mark Stein contends that The Uneasy Case's uneasiness is based on a faulty analysis of whether income has diminishing marginal utility.

- Discriminatory Regulation of Trial Publicity: A Caveat for the Bar 399

Joel H. Swift

In Gentile v. State Bar of Nevada the United States Supreme Court declared unconstitutional a widely adopted professional regulation covering attorney discussion of

pending criminal cases. The Court's conclusion was based in large part on a perceived risk of discriminatory enforcement against defense counsel. This article demonstrates that the Court's concern about discriminatory enforcement is supported by the empirical evidence. Extensive studies of disclosures in criminal cases demonstrate that an attorney trial publicity problem exists, and is substantially one of improper prosecutorial publicity. Nevertheless, the attention of the organized bar and its enforcement of disciplinary rules on trial publicity have focused almost exclusively on criminal defense attorneys, and have manifested an excessively deferential attitude toward prosecutorial publicity.

Essay

Current Challenges to Free Expression: A New Age of Repression?

Geoffrey R. Stone..... 425

In this essay, Dean Stone describes three examples of recent challenges to the principle of free expression. Addressing such diverse challenges as Jerry Falwell's dispute with Hustler Magazine and the University of Michigan's prohibition of "hate speech," Stone suggests that there may be dawning a new age of repression. In the final analysis, though, Stone is unable to conclude such a new age is upon us. The challenges may represent a last-ditch effort to forestall the virtually complete abolition of governmentally-enforced standards of decency and civility in public discourse.

Casenotes

Harmful Error: *Arizona v. Fulminante* and the Expansion of the Harmless-Error Rule

Shawn O. Miller..... 435

In Arizona v. Fulminante, the United States Supreme Court held that coerced confessions that are erroneously admitted at trial are now subject to the harmless-error rule. The Court's holding is a radical departure from precedent. Consequently, this note examines this precedent and the Fulminante decision. The author concludes that Fulminante has created inconsistency within the area of law dealing with coerced confessions, increased the possibility of unfair trials, and narrowed defendants' due process rights.

California v. Hodari D.: The Demise of the Reasonable Person Test in Fourth Amendment Analysis

Patrick T. Costello..... 463

This note examines the United Supreme Court decision which reexamined the point at which a police-citizen encounter becomes a seizure under the Fourth Amendment. The Court concluded that a police-citizen encounter becomes a seizure only when the citizen yields to the show of police authority. The author contends that the Court's definition of a seizure alters, if not disposes of, the former definition, which defined seizure as the point at which a reasonable person, faced with a show of authority, no longer feels free to leave.

Edmonson v. Leesville Concrete Co.: Reasoned or Result-Oriented Jurisprudence?

Frederick V. Olson..... 497

This note examines the United States Supreme Court decision finding a private litigant's use of peremptory challenges to exclude jurors on account of race in a civil case constituted "state action" and violated the excluded jurors' equal protection rights. The author examines the Court's decision and concludes that the finding of "state action" was not based on reasoned jurisprudence.