End Matter
Volume 13 of the Hofstra Law Review will consist of three issues. Due to increased printing and mailing costs, the price of individual issues will be seven dollars.

HOFSTRA LAW REVIEW is published three times a year for $20 per year by the Hofstra Law Review Association, Hofstra School of Law, Hempstead, New York 11550. Application To Mail At Second-Class Postage Rates is Pending At Hempstead, New York with an additional mailing office at Atlanta, Georgia. POSTMASTER: Send address changes to HOFSTRA LAW REVIEW, Hofstra School of Law, Hempstead, New York 11550.

The Review is pleased to consider unsolicited manuscripts for publication. Manuscripts should be addressed to Articles Editors, Hofstra Law Review, Hofstra University School of Law, Hempstead, New York 11550. Unsolicited manuscripts will not be returned except upon specific request at time of submission.

Published three times a year by the Hofstra Law Review Association. The current subscription rate is twenty dollars per volume. Individual issues are available at seven dollars per copy. Subscription renewals will be automatic unless notice to the contrary is received. All communications should be addressed to: Business Manager, Hofstra Law Review Association, Hofstra University School of Law, Hempstead, New York 11550.

INDEX

HOFSTRA UNIVERSITY SCHOOL OF LAW

-ADMINISTRATIVE OFFICERS-

Eric J. Schmertz, B.A., J.D., Dean and Edward F. Carlow Distinguished Professor of Labor Law
Stuart Rabinowitz, B.A., J.D., Vice Dean and Professor of Law
Robert L. Douglas, B.S., J.D., Assistant Dean and Special Professor of Law
Eugene M. Wypyski, LL.B., M.L.S., Law Librarian and Professor of Law
Gerard E. Giannattasio, A.B., M.A., M.S. in L.S., J.D., Assistant Director of the Law Library
Ruth Carter, B.A., M.L.S., Catalog Librarian
Deborah Goldstein Cinque, B.A., M.L.S., Acquisitions Librarian
Shelley B. Frumberg, B.S., M.L.S., Reader Services/Circulation Librarian
Daniel L. May, B.A., J.D., M.L.S., Reference Librarian
Mena Sieber, B.S., M.A., M.L.S., Documents/Microform Librarian
Hugh R. Christenson, B.A., Director of Placement
Diane Schwartzberg, Placement Assistant
Charlotte Z. Hoffer, B.S., M.S., Law School Registrar
Etta Fafarman, Admissions Officer
Elizabeth Prestigiacomo, Assistant to the Dean

FACULTY

M. Patricia Adamski, B.A., J.D., Associate Professor of Law
Burton C. Agata, B.A., J.D., LL.M., Max Schmertz Distinguished Professor of Law
Wendell B. Alcorn, Jr., Special Professor of Law
Freda F. Bein, B.A., J.D., Associate Professor of Law
Mark A. Buckstein, B.S., J.D., Special Professor of Law
Judd Burstein, B.A., M.A., J.D., Special Professor of Law
Robert A. Bush, B.A., J.D., Assistant Professor of Law
Linda K. Champlin, B.A., LL.B., Professor of Law
Hon. Howard I. Cohen, B.S., M.A., LL.B., Special Professor of Law
Douglas L. Colbert, B.A., J.D., Assistant Clinical Professor of Law
Mitchell Cooper, B.S., J.D., LL.M., Special Professor of Law
Philip J. Curtin, B.S., LL.B., Special Professor of Law
David A. Diamond, A.B., LL.B., LL.M., Associate Professor of Law
Janet L. Dolgin, B.A., M.A., Ph.D., J.D., Assistant Professor of Law
Mark C. Flavin, B.A., J.D., Special Professor of Law
Monroe H. Freedman, A.B., LL.B., LL.M., Professor of Law
Leon Friedman, A.B., LL.B., Professor of Law
Mitchell B. Gans, B.A., J.D., Associate Professor of Law
James A. Geraghty, B.A., J.D., LL.M., Special Professor of Law
William R. Ginsberg, B.A., J.D., Professor of Law
Dwight L. Greene, B.A., J.D., Associate Professor of Law
John DeWitt Gregory, B.A., J.D., Professor of Law
Mark L. Goldstein, B.S., M.B.A., J.D., Special Professor of Law
James E. Hickey, Jr., B.S., J.D., Ph.D., Associate Professor of Law
Wayne L. Horvitz, A.B., M.S., Distinguished Visiting Professor of Law
Bernard E. Jacob, B.A., J.D., Professor of Law
Lawrence Joseph, B.A., M.A., J.D., Associate Professor of Law
David K. Kadane, B.A., LL.B., Harry H. Rains Distinguished Professor of Law
Samuel M. Kaynard, B.A., J.D., LL.M., Special Professor of Law
Lawrence W. Kessler, B.A., J.D., Professor of Law
Gilbert Klaperman, B.A., M.A., D.H.L., D.D., J.D., Special Professor of Law
Eric Lane, B.A., M.A., J.D., LL.M., Associate Professor of Law
V. Yvonne Lewis, B.S., J.D., Assistant Clinical Professor of Law
Malcolm D. MacDonald, B.A., LL.B., Distinguished Visiting Professor of Law
Patrick L. McCloskey, B.A., J.D., Special Professor of Law
Malachy T. Mahon, B.A., J.D., Alexander M. Bickel Distinguished Professor of Law
Lewis Mandel, A.B., J.D., LL.M., Special Professor of Law
Jerrold Mehlman, B.A., LL.B., Special Professor of Law
Richard K. Neumann, Jr., B.A., J.D., LL.M., Assistant Clinical Professor of Law/ Director of Legal Writing
Eric D. Offner, B.B.A., J.D., Special Professor of Law
Tobias Pieniek, B.A., J.D., Special Professor of Law
Daniel Q. Posin, B.A., M.A., J.D., LL.M., Professor of Law
Hon. George C. Pratt, B.A., LL.B., Distinguished Visiting Professor of Law
Hon. C. Raymond Radigan, B.A., J.D., Special Professor of Law
John J. Regan, B.A., M.A., J.D., LL.M., J.S.D., Professor of Law
Alan N. Resnick, B.S., J.D., LL.M., Benjamin Weintraub Distinguished Professor of Law
Frederick Arthur Ross, B.A., LL.B., Special Professor of Law
Kenneth G. Rothstein, A.B., J.D., Assistant Clinical Professor of Law
John F. Scully, B.S., M.S., Ph.D., Special Professor of Law
Stuart A. Shorenstein, B.A., J.D., Special Professor of Law
Ronald H. Silverman, B.A., J.D., Professor of Law
Norman H. Stein, B.S., J.D., Assistant Professor of Law/Director of Clinical Programs
Aaron D. Twerski, B.S., J.D., Siben and Siben Distinguished Professor of Law
Lorna Veraldi, B.A., M.A., J.D., Special Professor of Law
Robert A. Weiner, B.A., J.D., Special Professor of Law
Peter C. Williams, B.A., J.D., Ph.D., Special Professor of Law
Alyson K. Adler, B.A., J.D., Legal Writing Instructor
Lisa M. Aisner, B.A., J.D., Legal Writing Instructor
George B. Axelrod, B.A., J.D., Legal Writing Instructor
Peter Diamond, B.A., J.D., Legal Writing Instructor
Robin S. Einbinder, A.B., J.D., Legal Writing Instructor
Mary T. Rogan, B.S., J.D., Legal Writing Instructor
AUTHOR INDEX OF CONTRIBUTED ARTICLES

ABRAMS, GARY S. — The Civil RICO Controversy Reaches the Supreme Court .................................................. 147


ALLISON, GARY D. — Imprudent Power Construction Projects: The Malaise of Traditional Public Utility Policies .................... 507

AUERBACH, NEIL Z. — A Transactional Approach to Lease Analysis 309

CALLEROS, CHARLES R. — Reconciling The Goals of Federalism with the Policy of Title VII: Subject-Matter Jurisdiction in Judicial Enforcement of EEOC Conciliation Agreements ..................... 257

CHAMPLIN, LINDA & ALAN SCHWARZ — Political Question Doctrine and Allocation of the Foreign Affairs Power ...................... 215


GARY, RICHARD D. & EDGAR M. ROACH, JR. — The Proper Regulatory Treatment of Investment in Cancelled Utility Plants .......... 469

GOELZER, DANIEL L. — Introduction: Symposium on Insider Trading .............................................................................. 1

GRAY, CHARLES D. & PAUL RODGERS — State Commission Treatment of Nuclear Plant Cancellation Costs ......................... 443

MACEY, JONATHAN R. — From Fairness to Contract: The New Direction of the Rules Against Insider Trading ......................... 9

PHILLIPS, RICHARD M. & ROBERT J. ZUTZ — The Insider Trading Doctrine: A Need for Legislative Repair ......................... 65

ROACH, JR., EDGAR M. & RICHARD D. GARY — The Proper Regulatory Treatment of Investment in Cancelled Utility Plants .......... 469
RODGERS, PAUL & CHARLES D. GRAY — State Commission Treatment of Nuclear Plant Cancellation Costs ........................................ 443

SCHWARZ, ALAN & LINDA CHAMPLIN — Political Question Doctrine and Allocation of the Foreign Affairs Power ......................... 215

ZUTZ, ROBERT J. & RICHARD M. PHILLIPS — The Insider Trading Doctrine: A Need for Legislative Repair ................................. 65

**TITLE INDEX OF CONTRIBUTED ARTICLES**

THE CIVIL RICO CONTROVERSY REACHES THE SUPREME COURT. Gary S. Abrams .......................................................... 147

FROM FAIRNESS TO CONTRACT: THE NEW DIRECTION OF THE RULES AGAINST INSIDER TRADING. Jonathan R. Macey ............... 9

IMPRUDENT POWER CONSTRUCTION PROJECTS: THE MALaise OF TRADITIONAL PUBLIC UTILITY POLICIES. Gary D. Allison ............ 507

INSIDER TRADING AND INVESTMENT ANALYSTS: AN ECONOMIC ANALYSIS OF DIRKS v. SECURITIES AND EXCHANGE COMMISSION. Daniel R. Fischel ...................................................... 127

THE INSIDER TRADING DOCTRINE: A NEED FOR LEGISLATIVE REPAIR. Richard M. Phillips & Robert J. Zutz ................................. 65

INTRODUCTION: SYMPOSIUM ON INSIDER TRADING. Daniel L. Goelzer 1

MISAPPROPRIATION: A GENERAL THEORY OF LIABILITY FOR TRADING ON NONPUBLIC INFORMATION. Barbara B. Aldave ................ 101

POLITICAL QUESTION DOCTRINE AND ALLOCATION OF THE FOREIGN AFFAIRS POWER. Linda Champlin & Alan Schwarz .................. 215

THE PROPER REGULATORY TREATMENT OF INVESTMENT IN CANCELLED UTILITY PLANTS. Richard D. Gary & Edgar M. Roach, Jr. .... 469

RECONCILING THE GOALS OF FEDERALISM WITH THE POLICY OF TITLE VII: SUBJECT-MATTER JURISDICTION IN JUDICIAL ENFORCEMENT OF EEOC CONCILIATION AGREEMENTS. Charles R. Calleros .................. 257

STATE COMMISSION TREATMENT OF NUCLEAR PLANT CANCELLATION COSTS. Paul Rodgers & Charles D. Gray ................................. 443

A TRANSACTIONAL APPROACH TO LEASE ANALYSIS. Neil Z. Auerbach 309
TITLE INDEX OF NOTES

DOMESTIC VIOLENCE AND CUSTODY LITIGATION: THE NEED FOR STATUTORY REFORM ........................................ 407

THE EQUAL ACCESS ACT: A HAVEN FOR HIGH SCHOOL “HATE GROUPS”? .................................................. 589

GRANDPARENTS VERSUS THE STATE: A CONSTITUTIONAL RIGHT TO CUSTODY ........................................... 375

THE PRIVACY PLIGHT OF PUBLIC EMPLOYEES ................. 189

WHO CONTROLS THE ATTORNEY-CLIENT PRIVILEGE IN BANKRUPTCY? 549
ATTORNEY-CLIENT PRIVILEGE

Bankruptcy
Wrongful act exception to the privilege includes communications about prospective fraudulent transfers or preferences 554
Since the Bankruptcy Code does not address whether the trustee in bankruptcy has power to waive or assert the debtor's attorney-client privilege, the issue is decided as a matter of federal common law 554-56
Relying upon DR 4-101(C)(4) of the Code of Professional Responsibility to support the trustee's power to control the corporate debtor's attorney-client privilege renders the privilege meaningless 572-74

Commodity Futures Trading Commission
v. Weintraub
The Supreme Court held that the attorney-client privilege in a chapter 7 corporate liquidation case passes to the bankruptcy trustee 550-51, 557, 566-72
Lower courts should narrowly construe the Weintraub decision as binding only in chapter 7 corporate liquidation cases 575-76

Corporate Clients
A corporation may exercise its attorney-client privilege only through its agents 552-53

Purpose
The purpose of the attorney-client privilege is to encourage uninhibited communication between client and attorney 551-52
The scope of the attorney-client privilege is restricted to communications dealing with wrongful acts already committed 553-54

See Bankruptcy this index

BANKRUPTCY

Attorney-Client Privilege
Several courts have mischaracterized the attorney-client privilege in bankruptcy as a form of "property" which passes to the trustee as part of the debtor's bankruptcy estate 557-66, 583
There is no logical support for the conclusion that the attorney-client privilege was designed to benefit a bankruptcy trustee rather than a corporate client 560-61
The fact that most of the reported privilege cases involve "property rights" is irrelevant to determining whether the privilege is property of the estate 561
If the attorney-client privilege is deemed property of the estate as a matter of law, the debtor's ability to make a fresh start will be thwarted 562-63
Labelling the attorney-client privilege property of the estate creates inequities among the various debtors under the Bankruptcy Code 565-66
In a chapter 7 corporate liquidation case, the trustee controls the debtor's attorney-client privilege under the theory that the trustee is the representative of the estate 566-72
Whether or not to vest the attorney-client privilege in the trustee should not be determined under state corporate law 574-75
Close corporations in bankruptcy should be treated as individual debtors with respect to attorney-client privilege 581-82
Passing the attorney-client privilege from an individual to a bankruptcy trustee would have a significant chilling effect on an individual's communications with his or her attorney 582-84
The attorney-client privilege should vest with the individual debtor in bankruptcy 582-84
A bankruptcy trustee should assert or waive the corporate debtor's privilege
only when it is in the best interest of the corporate debtor 584-85
It is essential that courts distinguish between pre-petition and post-petition communications 585-86
The debtor should retain the attorney-client privilege as to post-petition communications 585-86

Commodity Futures Trading Commission \textit{v.} Weintraub
The Weintraub based models may be used to develop a system of different rules for different classes of debtors in the determination of who controls the attorney-client privilege in bankruptcy 578-82

\textit{Ex parte Fuller}
Applying the Supreme Court's holding in Fuller would allow the trustee in all chapters and circumstances to procure most, if not all, of desired documentary information 576-78

See Attorney-Client Privilege this index

\section*{CIVIL RIGHTS}

\subsection*{EEOC Conciliation Agreements Under Title VII}
Title VII implicitly authorizes the EEOC to negotiate conciliation agreements and to enforce them when there is a breach 257-58
An action to enforce an EEOC conciliation agreement does not raise a federal question 259-60
Procedures afforded to the EEOC under Title VII with respect to executing and enforcing conciliation agreements 260-64
Neither section 1331 of Title 28 nor section 706(f)(3) of Title VII vests the district courts with the full extent of federal judicial power 264-67
Federal right of action in which the respondent's obligations are defined without reference to federal law 270-75
Title VII contains no federal right of action or remedy for breach of a conciliation agreement 275-76
Enforcement of conciliation agreements by state courts under state principles of contract law 276-80
Federal courts do not have jurisdiction over actions brought to enforce concil-
iation agreements that incorporate substantive provisions of Title VII 280-81

Allowing federal court jurisdiction over actions to enforce conciliation agreements may undermine important federal interests 285-88

Legislative history of Title VII with respect to its federal jurisdictional grant 290-95

Interests of federalism are best protected by strict interpretation of section 706(f)(3) and liberal construction of Title VII’s express remedial provisions 295-97

Federal court jurisdiction over EEOC conciliation agreements where federal common law creates a cause of action for the enforcement of such agreements 297-301

Congressional authorization to create federal common law cannot be inferred from Title VII 302-04

Congress did not intend to confer subject-matter jurisdiction over actions to enforce EEOC conciliation agreements 302-04

The basis of federal common law in an action to enforce an EEOC conciliation agreement 304-06

Federal Forum
Section 1331 of Title 28 must be interpreted with judicial administration and concerns of federalism taken into consideration 267-70, 283-85

Comparing the statutory language of section 706(f)(3) of Title VII to section 1331 of Title 28 in providing a federal forum 289-90

CONSTITUTIONAL LAW

Equal Access Act
The Act may have expanded the freedoms of speech and assembly to allow student “hate groups” to meet in public secondary schools 589-93, 612-14

Statutory analysis and legislative history of the Act as to a school’s authority to restrict access to student groups whose meetings would be disruptive 593-96

The Supreme Court’s application of the “material and substantial interference” test to authorize a school to restrict student exercise of free speech 597-98

Under the Act, the possibility of violence or lesser forms of physical disruption by other students would allow school authorities to prohibit a “hate group” from convening 599

“Material and substantial interference” test should be construed broadly to restrict the psychological disturbance caused by student “hate groups” 600-02

A few courts have allowed schools to restrict student expression where only non-physical disturbance might result 600-01

“Hate groups” may be denied access under the Act on the theory that their mere presence is inflammatory if the concept of defamation is modified 602-03

The Act expanded the rights of student groups to meet in schools by broadening the concept of limited open forum 603-08

Under the Act, a factual showing that the school forum is generally open is no longer required 603-08

The Act extends protection to radical student groups to meet in schools 608-11

Radical student group meetings are forms of expression that impact far more dangerously on students than the right of individual students to hear or read a radical speech 611

Political Question Doctrine
Judicial hands-off policy is primarily achieved through the political question doctrine, increasingly applied to the foreign relations power 215-19, 239-40

Political question doctrine, invoked in foreign affairs allocation disputes, compromises the value of legitimacy 217-19

The doctrine is applicable only where judicial protection of a coordinate branch decision is indicated 215-19, 242-43

Value of creating finality is more important than the constitutionality of a co-

http://scholarlycommons.law.hofstra.edu/hlr/vol13/iss3/6
ordinate branch decision 215-19, 242-43

Lack of clear standards and the need to attribute finality to coordinate branch decisions are consistently articulated by the Court as the two factors creating a political question 219-31

The “lack of standards” cases are merit determinations of constitutionality, not instances of non-justiciability or assumptions of constitutionality 219, 224-31, 235-36, 239

Finality is a basis for finding a political question while absence of standards should not be 219-24, 237-39, 242-46

The finality value embraces the concept that the political course taken, even if unconstitutional, is preferable to change 221, 233, 238-39

The Supreme Court has never based its decision that a given question was political on the existence of clear textual language denying judicial review over the matter 222-34, 240

“Lack of criteria for court resolution” is the sole basis for invoking the doctrine in a purely domestic affairs controversy 224-31

Clear political question dismissals relating exclusively to domestic matters are claims arising under the guarantee clause 226-29, 239

Political question resolution is distinct from non-justiciability 231-39

In a true political question, the Court assumes, rather than determines, the validity of the political action 232-34, 237-39

In the foreign affairs realm, the Court, in upholding the action, is rendering a merit decision that the action is not wrongful 240-42

An allocation dispute in foreign affairs cannot be a true political question 244-50

An allocation dispute in foreign affairs should be resolved by merit determination 244-50

In an allocation dispute in foreign relations, political question doctrine is only useful where careful examination of the usual sources of constitutional-ism yields no answers 250-55

Privacy Rights of Public Employees

Public sector employees have been suspended or terminated for their off-duty behavior in contravention of the Supreme Court’s characterization of privacy as a fundamental right 189-91, 197-201

The evolution of Supreme Court doctrine in recognizing a fundamental right to privacy 191-97

The right to privacy can be abridged only by state action that serves a compelling or substantial state interest 191-97

Supreme Court privacy doctrine provides a constitutionally protected freedom of intimate association, including heterosexual associations existing outside marriage 195-97

Several lower courts have recognized that the constitutional privacy right protects police officers from departmental sanctions brought against them for non-marital intimate associations 202-04

An appropriate judicial test to determine whether an employee’s off-duty conduct is constitutionally protected 204-10

Requiring the government to demonstrate a compelling or significant state interest may justify disciplinary action 204-10

Public employers’ attempts to condition employment upon a waiver of the privacy right are likely to be unsuccessful 210-12

FAMILY LAW

Domestic Violence in the Context of Custody Litigation

The legal system’s slow recognition of the relevance of domestic violence in custody disputes necessitates statutory reform 407-10, 441

Judicial tolerance of wife abuse has led to decisions allowing violent men to have custody of their children 413-16
The threat of a custody suit is often used by the batterer to keep a woman in a violent relationship or to extract economic concessions from her. Battered woman's allegations of abuse and her lifestyle can be used against her in protracted custody litigation. Joint custody can be imposed on unwilling parties. States that adhere to the best interests of the child standard often exclude evidence of spouse abuse. Florida was the first state to require courts to consider evidence of spouse abuse as evidence of detriment to a child. Alaska's custody statute gives consideration of marital violence only in joint custody cases. In Williams v. Williams, a mother was permitted to introduce evidence of a brutal beating inflicted upon her by the child's father outside of the child's presence. Custody statutes should be drafted to admit evidence of domestic violence in all cases. Courts should not award joint custody in cases involving domestic violence. Imposing moving restrictions on custodial parents is inappropriate in cases involving domestic violence. The batterer's access to his children must yield to the battered wife's need for safety. Mediation is inappropriate in a case involving spouse abuse. A statutory presumption of detriment to a child arising from spouse abuse will decrease harassment and increase fairness in domestic dispute resolution.

Grandparents' Custody Rights
Under New York law, grandparents have no preferential right to custody of their grandchildren. The Supreme Court has, in certain circumstances, constitutionally protected extended family relationships. The Supreme Court has placed emphasis on familial commitment and the relationship between custodian and child. The liberty interest of unrelated foster parents and adoptive parents has been recognized by the Court. State's denial of grandparents' right to custody contradicts the established right of grandparents to visit their grandchildren. State's lack of protection for grandparents is inconsistent with the Supreme Court's extension of the liberty interest beyond the nuclear family.

In re James M.
The California Court of Appeals upheld a father's custody of his children although he murdered their mother.

In re Peter L.
The New York Court of Appeals held that members of a child's extended family had no special nonconstitutional right to custody.

Parental Right to Custody
The Supreme Court has long upheld the fundamental right of parents to raise their children pursuant to their own beliefs. The Supreme Court has afforded procedural due process protection to individuals whose parental status is threatened. The state may not intervene in the parent-child relationship absent a strong countervailing interest.

Spouse Abuse
Abuse of mothers can be considered a form of child abuse. Spouse abuse causes emotional trauma in children and exposure to risk of physical injury. Family violence results in future patterns of violence by affected children. Since spouse abuse may increase after separation or divorce, courts should order supervised visitation.

Standards in Custody Litigation
History of United States custody law reflects deference to paternal authority. Application of a "gender neutral" cus-
tody standard has a discriminatory impact on women 412-13

Uniform Child Custody Jurisdiction Act
The jurisdictional requirements of the Act may jeopardize an abused woman's safety 432-34
The Act's emergency jurisdiction provision should explicitly address the domestic violence situation 434
The Act should not require disclosure of the battered woman's address 434-35

INSIDER TRADING
Benefits
Investors may benefit from insider trading because it gives managers increased incentives to produce valuable information 131-33
Insider trading is beneficial to investors by providing an additional method for communicating information 131-33
Firms' failure to prohibit trading by insiders suggests that the practice is beneficial 134-45

Business Property Theory
The Supreme Court's requirement that plaintiffs show actual manipulation or deception to prevail under Rule 10b-5 evidences its shift from the fairness approach toward the business property theory 24
The business property theory was first espoused in Chiarella v. United States 26-29
The right to prohibit another from trading on the basis of inside information stems from the notion that information is a form of property interest 27

Chiarella v. United States
No conviction for insider trading will be upheld where the government cannot point to a particular party to whom the trader owes a specific legal duty 26-29
The Supreme Court recognized that insider trading really deals with concerns about the proper use of valuable privately owned information 29
Insider trading liability is predicated on a breach of fiduciary duty to the corporation and its shareholders by a corporate insider 67
Rule 10b-5 is violated where one commits fraud in failing to disclose material nonpublic information which one was under a duty to disclose 102-03
Misappropriation theory indicated in the Justices' opinions 111-14
Chief Justice Burger's dissenting opinion 114-17

Constructive Insider Theory
The concept of the constructive or "temporary" insider imposes a fiduciary duty on professionals who are temporarily employed by the corporation 93-95

Damages
In order to achieve optimal enforcement of insider trading rules, penalties in excess of actual damages may be desirable 54-55
The party damaged by insider trading is the owner of the misappropriated information 54-56
Amount of damages will depend on the nature of the owner's business and the subject matter of the stolen information 54-56

Dirks v. SEC
The Court in Dirks failed to provide a satisfactory means for determining when a party can legitimately expect to have a legally cognizable property right in information 37-39
The fiduciary duty test was reaffirmed regardless of whether the information came from outside market sources or from internal sources of the corporation 67-68
Dirks limited insider trading liability to corporate insiders and tippees who personally benefitted from the insider's disclosure 81-84
The decision ignores principles of economics 127-30

Disclose or Abstain Doctrine
Adopted in SEC v. Texas Gulf Sulphur, the doctrine requires disclosure of material inside information or, alternatively, abstention from trading 18
The disclose or abstain doctrine cannot
be reconciled with the fiduciary duty theory 56-58

Economic Analysis
Insider trading may be an efficient compensation scheme because it tends to reduce agency costs 134

Enforcement
Firms should bear the enforcement costs of the insider trading rules 58-63
Private remedies may provide the optimal level of deterrence 61-63

Equal Access to Information
The equal access approach to insider trading ignores the costs of obtaining information 18-19

Fiduciary Duty
Early insider trading cases used Rule 10b-5 to impose a fiduciary duty of disclosure on corporate insiders with respect to minority shareholders 73-74
An insider or his tippee is liable for insider trading only where there is a preexisting fiduciary duty to the other transacting party 102-07
Fiduciary duties should be viewed as standard form contractual terms that govern agency relationships 130-32, 138
Insider trading may be consistent with a corporate manager's fiduciary duty to increase shareholders' wealth 130-33
Cases of nonconsensual insider trading warrant an interpretation of fiduciary duty so as to prohibit the practice 135-36, 137
No violation of fiduciary duty occurs if the insider's actions are consistent with the contractual terms that govern the firm's promotion of maximizing its value ex ante 138-40

Insider Trading Sanctions Act of 1984
ITSA was enacted by Congress as a deterrent to insider trading 2-3
ITSA permits the SEC to seek penalty payments of up to three times the amount of profit gained or loss avoided as a result of insider trading 60,70
ITSA helps compensate for the disparity between the expected benefit and the expected penalty for engaging in insider trading 60-61

The SEC has strongly resisted efforts to incorporate a statutory definition of prohibited trading into the Act 86

Investment Analysts
Selective dissemination of information to investment analysts is preferable to public disclosure 140-42
Investors hire investment analysts in the pursuit of abnormally positive portfolio returns 143-44
Imposition of insider trading rules on analysts is costly for the corporation and the analyst 144-45
Traditional notions of unfairness that contemplate unequal access are inapplicable since all investors can purchase superior product information by hiring an analyst 145-46

Legislative History
Insider trading doctrine is almost entirely born from judicial development based on the general proscriptions of the antifraud provisions of section 10(b) and Rule 10b-5 of the 1934 Act 71-73

Legislative Reform
Any statutory revision of the insider trading doctrine should avoid codification of the possession standard or the misappropriation theory 97-99
Statutory reform should be directed at prohibiting trading based upon unfair informational advantages 99-100

Misappropriation Theory
Misappropriation theory is premised on the breach of duty that occurs when an employee converts to his own use confidential information entrusted to him in the course of his employment 86-93
The misappropriation theory is misfocused insofar as it protects employers rather than investors 91-92
Misappropriation theory provides a rationale for a violation of Rule 10b-5 by outsiders 102, 111-24
The misappropriation of confidential information by one to whom it was entrusted is fraudulent conduct 117-21
One who misappropriates confidential information and uses it in his securities...
trading causes economic harm to the investing company 120-21

Misappropriation theory justifies the imposition of sanctions such as disgorgement, injunctions, civil fines and criminal penalties 122-25

Options Market
Prior to the Insider Trading Sanctions Act of 1984, the options market provided a substantial low-risk opportunity for illegal profit-taking by persons with advance knowledge of mergers and tender offers 2
Section 20(d) of the Securities Exchange Act was amended to bring corporate insiders who trade in options on the basis of material insider information within the prohibitions of Rule 10b-5 110-11

Policy Considerations
Insider trading negatively affects the role of public investors and market professionals in the national economy 2-3
Insider trading affects public confidence by undermining expectations of fairness and honesty 3
No fairness argument exists for prohibiting insider trading 137-38

Possession Theory
The courts and the SEC were able to include outsider's conduct within the scope of Rule 10b-5 under a broader theory based on the mere possession of material, nonpublic information 74-78

Private Sector
Individual private entities should resolve the issues of access to confidential information and protection against improper disclosure 3-5

Proper Subject of the Contract Test
The proper subject of the contract test embraces the profit motive and the ability of firms to contract to ensure that socially useful information reaches the market while confidential information remains confidential 39-41
The inquiry under the proper subject of contract test is whether the information disclosed by a tippee could properly be the subject of a contract between the tippee and his employer 39-41

The proper subject of the contract test entirely eliminates the distinctions between insiders and outsiders 41
Applying the proper subject of contract test to the facts of SEC v. Texas Gulf Sulphur 42-47

Property Rights in Information
Privileged corporate information is a valuable asset in the nature of a property interest 11
The Supreme Court has recently shifted its focus in applying insider trading rules from notions of fairness to "property rights" 12
The corporation that produces nonpublic information has a property right in such information 27-33, 39
Insider trading rules inhibit the creation of valuable information by forcing the insider to share his property with the market before trading 30-32
Insiders should be allowed to trade if the property right in valuable information is not allocated to the firm 137

Rule 10b-5
The earliest and primary goal of Rule 10b-5 was the promotion of fairness and equity between trading parties where one party had superior information 13-15
Justifying insider trading rules on the basis of fairness is fallacious 16-17

Rule 14e-3
Rule 14e-3 imposes a duty to abstain from trading solely on the basis of knowing possession of material, nonpublic information relating to tender offers 95-96
Rule 14e-3 appears to transgress the SEC's rulemaking authority 96

Santa Fe Industries v. Green
A breach of fiduciary duty or internal corporate mismanagement, absent actual fraud, does not constitute a violation of Rule 10b-5 23-24

Scienter Requirement
In Ernst & Ernst v. Hochfelder, the Supreme Court held that negligence would not sustain a violation of Rule 10b-5 but rather a showing of manip-
ulation or deception was required 22-23

SEC v. Texas Gulf Sulphur Co.
The Second Circuit embraced the fairness concept as the proper theoretical basis for assigning liability under Rule 10b-5 17

Securities & Exchange Commission
Although the elimination of insider trading abuses has been a long established goal, the SEC has only recently increased its enforcement responsibilities 1

Standing Under Rule 10b-5
The party to whom the fiduciary duty is owed ironically lacks standing to sue for violations of Rule 10b-5 48
Outsiders to whom no duty is owed have standing but lack a basis for recovery 48
The party to whom a fiduciary duty is owed should have the private right of action under Rule 10b-5 50-51
Under a business property theory, the proper plaintiffs are the owners of the privileged stolen information who should be the exclusive private parties entitled to bring suit 51-53

Tippee Liability
The Supreme Court has seriously limited the ability of the SEC and the courts to apply the insider trading doctrine to persons who are not corporate insiders and do not otherwise owe a fiduciary duty to the corporation and its shareholders 65-71,78-85
A tippee's trading is actionable only where the tippee knew that the information was material, nonpublic and disclosed in breach of the insider's fiduciary duty to the corporation and its shareholders 78-82
The Supreme Court's theory of tippee liability does not bar trading by all outsiders who come into possession of inside information 109-10
Whether or not the disclosing insider received a personal benefit is inapposite to determining the propriety of tipping information 139-40

PUBLIC UTILITIES REGULATION

Anti-CWIP Statutes
Prohibits utility from including in its rate base the costs of raising construction funds 458-61
Anti-CWIP statutes do not bar cost recovery as a matter of law 460-61

Average Cost Pricing
Utility regulation limits the total revenues a utility company can receive to historically computed average costs 509-11
Historic average cost pricing rarely leads to rates which equal the company's marginal costs of service 509-11

Decisions Subject to a Determination of Prudence
The decision to build is often presumed prudent if a siting board had issued a certificate to construct 477-80
Decisions to delay and subsequently resume construction are prudent where management acts in response to revised demand forecasts 480-82
The decision to cancel will be deemed prudent if the utility acted reasonably from the time of the initial decision to build through cancellation 482-84
The decision to cancel will be deemed prudent so long as the decision was not delayed so as to incur unnecessary costs 482-84

Diversification
Regulators created disincentives for utility company diversification to effectuate reinvestment in their own utility operations 517-19
Electric utilities should be encouraged to diversify into related businesses 543-44

Exclusive Service Area Franchises
To prevent competition and insure stability, utility regulators often grant exclusive area franchises 513
Traditional exclusive franchises should be abolished in order to foster intrafuel competition 537-38

History of Public Utility Industry
From the end of World War II until
1973, public utilities enjoyed a period of declining costs, increasing demands and the goodwill of investors, ratepayers and politicians 519-21

The oil shortages of the early 1970's caused utilities to suffer rising construction costs, decreasing electricity demand and declining public image 521-23

Current competitive conditions within world energy markets are contributing to the emergence of four major trends in the electric utility sector 525-28

Marginal Opportunity Cost Rate Standard
Marginal opportunity cost is a more appropriate standard for determining utility rates than historic average cost pricing 528-33
Rates based on marginal opportunity costs will help the foremost public utility policy goal of providing an appropriate level of utility service while using the most appropriate technology available 533-36
Marginal opportunity cost rate standard will help utilities make more appropriate construction decisions 533-36
Customers will pay the competitive value of the electricity they use under a marginal opportunity cost standard 533-36

Multiple Review of Construction Decisions
Periodic review of new utility construction decisions is necessary 540-43

New Construction Approvals
Once a certificate of public convenience and necessity is granted for new construction, the state regards itself as estopped from challenging the utility's rate base 517

Prudent Investment Test
Prudent investment test should be applied in determining whether any costs of a cancelled plant can be recovered 469-70
Recovery of operating expenditures and investments in a plant should be disallowed only when unreasonably incurred 472-73
The prudent investment test properly evaluates the decision-making process rather than the final result 472-77
Under the prudent investment test, management decisions are assessed on the basis of facts known at the time, not on hindsight 475-76

Public Finance Returns
Investors in regulated utility companies are limited to returns similar to those generally received from low risk investments 511-12

Public Utility Policy
The traditional framework for present public utility policy was constructed from six regulatory building blocks 507-09
Present public utility policy is functionally incompatible with economic and technological realities 528-47

Rate Determination
Rate determination is a two-step process 447-49
Generally, a regulatory commission selects a recent test year by which to examine costs, revenues and the rate base 448-49
Rate base is the crucial variable for purposes of allocating nuclear plant cancellation costs 449

Recovery of Cancellation Costs
Some combination of the prudent investment test and the used and useful test is generally employed to determine whether a utility should recover cancellation costs from ratepayers 449-50
Options available to commissions in allocating the burden of cancellation costs for ratemaking purposes 450-52
Most states permit recovery of some or all of the cancellation costs 452-53
The decision to permit cost recovery is based on an equitable balancing of investor and ratepayer interests 453-57
Factors taken into account in the balancing of investor and ratepayer interests 453-57
There is some reliance by state courts and commissions on general regulatory language in state regulatory schemes as the basis for denying cost recovery 461-67
Where a utility collects costs by indirect recovery, it can subvert restrictive
statutory schemes 465-67
Public utilities should be entitled to recover all prudently incurred costs associated with a cancelled plant through ratemaking 470-72, 475, 486, 491
Quantification of costs resulting from imprudent acts 484-86
No avoidable expenditures after an imprudent decision to continue construction should be recoverable except for shut down costs 485-86
Denying full cost recovery of a utility's prudent investment in a cancelled plant creates economic disincentives 486-89
Full recovery of prudently incurred cancellation costs should be permitted through the amortization of those costs 491-95
Some regulators have apportioned the burden of cancelled plant costs between utility investors and ratepayers as a justification for denying a return on the unrecovered costs 502-03
Regulators improperly deny return of plant cancellation costs on the grounds that investors control the company management 503-04
The traditional business rationale is an inappropriate basis to deny recovery of a utility's unamortized cancellation costs 504-05
Regulatory Commissions
State and federal regulatory commissions are faced with various options in allocating the costs associated with the recent magnitude of cancelled nuclear power plants 443-45
The primary duty of regulatory commissions is to ensure adequate service to the public at minimum cost while providing a reasonable return for investors 446
Authorized powers of regulatory commissions 446-52
Service to All Requirement
The requirement of service to all who demand it has been expanded beyond its original purpose of non-discrimination in the provision of essential services 513-17
The service to all requirement has been expanded into complex cross-subsidy systems designed to further economic development and social welfare 513-17
The service to all requirement should be redefined to give utility companies the discretion to refuse to expand their facilities 539-40

Used and Useful Test
When used to deny recovery of prudent costs, the used and useful test produces unnecessarily harsh results 495-502
The test is often erroneously used to deny a rate of return on unamortized cancellation costs 498-502

SECURITIES LAW
See Insider Trading this index

TAX

Tax Treatment of Leases
Most courts apply an economic substance test to determine the tax treatment of leases 310-12
When properly applied, the economic substance test correctly identifies the tax owner of the leased property 312-13
Repeal of the new finance lease rules is necessary 313, 372-73
A transactional approach to lease analysis is preferable 313-14, 333-38
Revisions in the Internal Revenue Code altered the consequences of the lease versus purchase decision 314-16
Internal Revenue Code requirements for rent deductions, ACRS and investment tax credit affecting the decision to lease or buy 316-18
Guidelines set forth for determining when a commercial equipment lease will be treated as a conditional sale 318-20
The subjective intent test should not be used to determine the tax consequences of leasing transactions
Fixed price purchase option shifts part of the risk of residual value fluctuation away from the lessor yet does not affect the anticipated residual value of the asset 327-28

Nominal purchase options transfer the entire risk of residual value fluctuation to the lessee 328

Residual value risk remains with the lessor with fair value purchase options 328-29

Courts and the IRS are split as to the proper treatment of fixed price purchase options above a nominal price and dual-character lease payments 329-31

Asymmetrical standards contained in the tax law for lease analysis 331-37

A lease containing a residual guarantee clause should cause the transaction to be treated as a sale unless the clause compensates the lessor for excessive depreciation without a reciprocal benefit to the lessee for residual value appreciation 339-44

Internal Revenue Service's guidelines for leveraged equipment lease terms 345

A lease entitling the lessee to possess the leased asset for substantially all of the asset's useful life is properly cast as a sale 345

The economic substance of the transaction should be the determining factor in labelling the transaction either a lease or a sale 345-48

A lease violates the residual value requirement only if the lease term exceeded a specified percentage of the asset's useful life and the present value of the residual fell below the specified percentage of the original cost 345-48

Limited use property locks the lessor into reletting or selling the property to the lessee 348-51

Bargain renewal options may be characterized as a sale for tax purposes 351-52

A lease with a renewal option is characterized as a sale where the aggregate lease term is excessive in relation to the property's useful life 351-53

If the burden of depreciable loss shifts to the lessee, the transaction should be characterized as a sale 353-61

A lease provision requiring the return of an asset of equal value shields the lessor entirely from depreciable loss warranting characterization of the transaction as a sale 354-57

A lease clause requiring preservation and replacement of the leased property entitles the lessor to a depreciation deduction if the clause is construed to permit the lessee to return property of lesser value 357-59

Lease provisions requiring improvements to property shield the lessor from the risk of depreciable loss 360-61

Factors such as maintenance, repairs, insurance, expenses and the allocation of condemnation proceeds are inapposite to determining sale or lease status 361-63

In Frank Lyon Company v. United States, the Supreme Court held that the form of the transaction adopted by the parties should govern if the lessor retains the true attributes of the traditional lessor status 363-66

TEFRA repealed the 1981 safe harbor leasing provisions and introduced new finance lease rules 366-67

Congress did not move fully toward an economic substance test in TEFRA 367-68

The economic substance test distinguishes leases from sales and prevents taxpayers from electing deductions by merely switching the labels of the transaction 368-69

Congress should change the tax law so as to achieve competitive neutrality 368-73

Congress should restore the economic substance test to lease analysis 368-73
TABLE OF CASES

Abrams v. Public Service Commission ........................................ 474-75
Alabama Public Service Commission v. Southern Bell Telephone & Telegraph Co. .................. 472-73
Alexander Grant & Co. v. Tiffany Industries, Inc. .......... 168-70
American National Bank & Trust Co., Harco, Inc. v. .................. 148, 170-71
American Well Works Co. v. Layne & Bowling Co. .. 268,269,281,282,283,286
Ames, Smyth v. ........................................................................ 495
Anderson, May v. ................................................................. 383-84
Andrews, Frasca v. ............................................................... 600-01
Andres, Citibank v. ............................................................... 566, 561-62,
Anker, Trachtman v. ................................................................. 600-01
Armstrong v. Manzo ............................................................... 384
Baird, Eisenstadt v. ................................................................. 193-94, 209
Baker v. Carr .................. 220-22, 223,224,228-31
Baker, Washington Gas & Light Co. v. ................. 500-01
Bankers Life & Casualty Co., Superintendent of Insurance v. ........ 118
Bankers Trust Co. v. Rhoades ............................................ 161, 164,167-70
Bartasavick v. Mitchell ......................................................... 416
Bayer v. Kinzler .................................................................. 611
Becken, Karp v. ................................................................. 598
Bender v. Williamsport Area School District .................. 604-07, 609
Bennett v. Berg ................................................................. 169
Benton v. Commissioner ..................................................... 322-24
Berg, Bennett v. ................................................................. 169
Blue Chip Stamps v. Manor Drug Stores .................. 48-49,51,55
Board of Education, Brandon v. ........................................... 608
Board of Education, Vail v. .................................................. 610
Board of Education, Pickering v. ................................. 211,212
Board of Regents, Keyshian v. ............................................ 210-11
Brandon v. Board of Education ............................................. 608
Brant, SEC v. ................................................................. 90-91,98-99
Brophy v. Cities Service Co. ................................................. 107
Burnside v. Byars ............................................................... 598
Butner v. United States ....................................................... 569,
Byars, Burnside v. ............................................................... 598
Calderay, Topoles v. ............................................................. 274
Carnegie Free Library, Hollenbaugh v. ................. 190,200-02,204,205-06,212
Carr, Baker v. ................................................................. 220-22,223,224,228-31
Carter, Goldwater v. ......................................................... 236-37,
Chancellor, Wilson v. .......................................................... 610,613
Chesapeake & Ohio Railway, Moore v. ................. 282-83
Chiarella v. United States ..................................................... 5,6,11,
City of Appleton, Lawrence University ..................... 203-04,207,209-10,212
Citibank v. Andros ............................................................. 556, 561-62,
Citizens Service Co., Brophy v. ........................................... 107
Citizens Action Coalition v. Northern Indiana Public Service Co. .................... 300
City of Alton, McNally v. ..................................................... 322-24
City of Balch Springs, Texas ................................................ 324-25
City of Cleveland, Moore v. .................................................. 389-90,393
Clearfield Trust Co. v. United States ........ 563,564,572
Commissioner, Benton v. ..................................................... 322-24
Commissioner, Estate of Franklin v. ...................... 362
Commissioner, Estate of Starr v. ........................................... 349-50
Commissioner, Hilton v. ....................................................... 363
Commissioner, Northwest Acceptance Corp. v. ........ 324-25
Commodity Futures Trading Commission v. Weintraub .. 550,551,556,565,
Connecticut, Griswold v. ..................................................... 192-95,
Cook v. Hudson ................................................................. 197,202
Dean Witter Reynolds, Inc., O'Connor & Associates v. .... 87-89
Des Moines Independent Community School District, Tinker v. ...... 597-600,
Dirks v. SEC ................................................................. 5,6,11-12,33-42,47-48,
Dodg v. Ramsb ................................................................. 598-99
Dolch v. United California Bank ............................................. 274

http://scholarlycommons.law.hofstra.edu/hlr/vol13/iss3/6
**INDEX**

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duquesne Light Co., Pennsylvania Public Utility Commission v.</td>
<td>497-98</td>
</tr>
<tr>
<td>Eldridge, Mathews v.</td>
<td>397,398,399,402</td>
</tr>
<tr>
<td>Elfrandt v. Russell</td>
<td>210-11</td>
</tr>
<tr>
<td>Eliseu, T.B. Harms Co. v.</td>
<td>273-74</td>
</tr>
<tr>
<td>Ernst &amp; Ernst v. Hochfelder</td>
<td>20,22-24</td>
</tr>
<tr>
<td>Estate of Franklin v. Commissioner</td>
<td>362</td>
</tr>
<tr>
<td>Ex parte Fuller</td>
<td>349-50</td>
</tr>
<tr>
<td>First National Bank, Gully v.</td>
<td>269</td>
</tr>
<tr>
<td>Ford, Mimkon v.</td>
<td>395</td>
</tr>
<tr>
<td>Foster, Layton v.</td>
<td>395-96</td>
</tr>
<tr>
<td>Frank Lyon Co. v. United States</td>
<td>363-66</td>
</tr>
<tr>
<td>Frasca v. Andrews</td>
<td>600-01</td>
</tr>
<tr>
<td>Frederick, Lines v.</td>
<td>562,563,564</td>
</tr>
<tr>
<td>Furman v. Cirrito</td>
<td>163-64,168</td>
</tr>
<tr>
<td>Georgia Power Co. v. Sanders</td>
<td>300-01</td>
</tr>
<tr>
<td>Georgia, Stanley v.</td>
<td>193</td>
</tr>
<tr>
<td>Goldwater v. Carter</td>
<td>236-37,</td>
</tr>
<tr>
<td>Green, Santa Fe Industries v.</td>
<td>20,</td>
</tr>
<tr>
<td>Griswold v. Connecticut</td>
<td>192-95, 197,202</td>
</tr>
<tr>
<td>Gully v. First National Bank</td>
<td>269</td>
</tr>
<tr>
<td>Hale v. Hale</td>
<td>436</td>
</tr>
<tr>
<td>Hale, Minkon v.</td>
<td>436</td>
</tr>
<tr>
<td>Haroco, Inc. v. American National Bank &amp; Trust Co.</td>
<td>148, 170-71</td>
</tr>
<tr>
<td>Hill v. Lewis</td>
<td>599</td>
</tr>
<tr>
<td>Hilton v. Commissioner</td>
<td>363</td>
</tr>
<tr>
<td>Hochfelder, Ernst &amp; Ernst v.</td>
<td>20,22-24</td>
</tr>
<tr>
<td>Hollenbaugh v. Carnegie Free Library</td>
<td>190,200-02,204,205-06,212</td>
</tr>
<tr>
<td>Hudson, Cook v.</td>
<td>601-02</td>
</tr>
<tr>
<td>Illinois, Stanley v.</td>
<td>384</td>
</tr>
<tr>
<td>Imrex Co., Sedima, S.P.R.L. v.</td>
<td>148,</td>
</tr>
<tr>
<td>In re Amjoe, Inc.</td>
<td>559-61,563</td>
</tr>
<tr>
<td>In re Atlantic City Electric Co.</td>
<td>482</td>
</tr>
<tr>
<td>In re Boston Edison Co.</td>
<td>454-55,485</td>
</tr>
<tr>
<td>In re Cady, Roberts &amp; Co.</td>
<td>18,74-75,</td>
</tr>
<tr>
<td>In re Carolina Power &amp; Light Co.</td>
<td>456</td>
</tr>
<tr>
<td>In re Central Illinois Light Co.</td>
<td>481-82,483-84</td>
</tr>
<tr>
<td>In re Central Maine Power Co.</td>
<td>462-63</td>
</tr>
<tr>
<td>In re Cline</td>
<td>433-34</td>
</tr>
<tr>
<td>In re Commonwealth Electric Co.</td>
<td>455-56</td>
</tr>
<tr>
<td>In re Detroit Edison Co.</td>
<td>480-81</td>
</tr>
<tr>
<td>In re Houston Lighting &amp; Power Co.</td>
<td>484-85</td>
</tr>
<tr>
<td>In re Hy-Gain Electronics Corp.</td>
<td>561</td>
</tr>
<tr>
<td>In re Idaho Power Co.</td>
<td>479-80,484</td>
</tr>
<tr>
<td>In re Investment Bankers</td>
<td>563-65,</td>
</tr>
<tr>
<td>In re James M.</td>
<td>413-15,416</td>
</tr>
<tr>
<td>In re Long Island Lighting Co.</td>
<td>482-83,485-86</td>
</tr>
<tr>
<td>In re Marriage of Day</td>
<td>423</td>
</tr>
<tr>
<td>In re Marriage of Weidner</td>
<td>432,436</td>
</tr>
<tr>
<td>In re National Trade Corp.</td>
<td>563</td>
</tr>
<tr>
<td>In re O.P.M. Leasing Services, Inc.</td>
<td>556,568,574-75</td>
</tr>
<tr>
<td>In re Pacific Power &amp; Light Co.</td>
<td>461-62</td>
</tr>
<tr>
<td>In re Peter L.</td>
<td>375-78,387,397-98,</td>
</tr>
<tr>
<td>In re Public Service Co.</td>
<td>458-59</td>
</tr>
<tr>
<td>In re Rochester Gas &amp; Electric Corp.</td>
<td>457,478-79</td>
</tr>
<tr>
<td>In re Sarah H.</td>
<td>415-16</td>
</tr>
<tr>
<td>In re Silvio de Lindegg Ocean Developments of America</td>
<td>581</td>
</tr>
<tr>
<td>In re Union Electric Co.</td>
<td>459-60</td>
</tr>
<tr>
<td>In re United Illuminating Co.</td>
<td>479</td>
</tr>
<tr>
<td>In re Virginia Electric &amp; Power Co.</td>
<td>482</td>
</tr>
<tr>
<td>Investors Management Co.</td>
<td>76-77</td>
</tr>
<tr>
<td>Kansas City Title &amp; Trust Co., Smith v.</td>
<td>269,270,281-84,286,288,298</td>
</tr>
<tr>
<td>Kardon v. National Gypsum Co.</td>
<td>73,75</td>
</tr>
<tr>
<td>Karp v. Becken</td>
<td>598</td>
</tr>
<tr>
<td>Keyishian v. Board of Regents</td>
<td>210-11</td>
</tr>
<tr>
<td>Kimbell Foods, Inc., United States v.</td>
<td>300</td>
</tr>
<tr>
<td>Kinzler, Bayer v.</td>
<td>611</td>
</tr>
<tr>
<td>Kramer, Santosky v.</td>
<td>401</td>
</tr>
<tr>
<td>Lawrence University Bicentennial Commission v. City of Appleton</td>
<td>609-10</td>
</tr>
<tr>
<td>Layne &amp; Bowler Co., American Well Works Co. v.</td>
<td>268,269,270-73,</td>
</tr>
<tr>
<td>Layton v. Foster</td>
<td>395-96</td>
</tr>
<tr>
<td>Lewis, Hill v.</td>
<td>599</td>
</tr>
<tr>
<td>Lincoln Mills, Textile Workers v.</td>
<td>302-04</td>
</tr>
<tr>
<td>Lines v. Frederick</td>
<td>562,563,564</td>
</tr>
<tr>
<td>Little Lake Misere Land Co., United States v.</td>
<td>300</td>
</tr>
<tr>
<td>Lubbock Civil Liberties Union v. Lub-</td>
<td></td>
</tr>
</tbody>
</table>
bock Independent School District

Lubbock Independent School District, Lubbock Civil Liberties Union v. .................................................. 608-09

Lund, SEC v. ................................................. 93-94

Manor Drug Stores, Blue Chip Stamps v. ................................................. 48-49, 51, 55

Manzo, Armstrong v. ................................................. 384

Marcus, Rivera v. ................................................. 392-93

Massachusetts, Prince v. ................................................. 382, 384-85, 388

Materia, SEC v. ................................................. 88-89

Mathews v. Eldridge . 397, 398, 399, 402

May v. Anderson ................................................. 383-84

Meyer v. Nebraska ................................................. 381

Miller, Coleman v. 221, 222-25, 228, 235

Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission ................................................. 473

Mitchell, Bartasavic v. ................................................. 416

Moore v. Chesapeake & Ohio Railway ................................................. 282-83

Moore v. City of East Cleveland ................................................. 389-90, 393

Morgan Stanley Inc., Moss v. . 50-51, ................................................. 92

Moss v. Morgan Stanley Inc. . 50-51, ................................................. 92

Mussella, SEC v. ................................................. 89

National Gypsum Co., Kardon v. ................................................. 73-75

Nebraska, Meyer v. ................................................. 381

Newman, United States v. ................................................. 56-57, ...

North Muskegon Police Department, Briggs v. . 203-04, 207, 209-10, 212

Northern Indiana Public Service Co., Citizens Action Coalition v. ................................................. 463-65

Northwest Acceptance Corp. v. Commissioner ................................................. 324-25

O'Connor & Associates v. Dean Witter Reynolds, Inc. ................................................. 87-89

Office of Consumers' Counsel v. Public Utilities Commission ................................................. 466, 496

Olmstead v. United States ................................................. 192

Oregon, Pacific States Telephone & Telegraph Co., v. ................................................. 226-28

Organization of Foster Families For Equality & Reform, Smith v. ................................................. 390

Pacific States Telephone & Telegraph Co. v. Oregon ................................................. 226-28

Panitz, Zucker v. ................................................. 610-11

Pennsylvania Public Utility Commission ................................................. v. Duquesne Light Co. ................................................. 497-98

Pickering v. Board of Education ................................................. 211, ................................................. 212

Pierce v. Society of Sisters ................................................. 381-82, 388

Price, Smith v. ................................................. 202, 206, 211-12

Prince v. Massachusetts ................................................. 382, ................................................. 384-85, 388

Public Service Commission, Abrams v. ................................................. 474-75

Public Service Commission, Missouri ex rel. Southwestern Bell Telephone Co. v. ................................................. 473

Public Service Commission, State ex rel. Union Electric Co. v. ................................................. 460-61

Public Service Commission, Wisconsin Telephone Co. v. ................................................. 476

Public Utilities Commission, Office of Consumers' Counsel v. ................................................. 466, 496

Public Utilities Commission, West Ohio Gas Co. v. ................................................. 475

Quillioin v. Walcott ................................................. 391

Rambis, Dodd v. ................................................. 598-99

Redhail, Zablocki v. ................................................. 195-96

Reynolds v. Sims ................................................. 231

Rhoades, Bankers Trust Co. v. ................................................. 161, ................................................. 164, 167-70

Rivera v. Marcus ................................................. 392-93

Rochelle, Segal v. ................................................. 562, 563

Roe v. Wade ................................................. 194-95, 199

Russell, Elfrandt v. ................................................. 210-11

Russello v. United States ................................................. 172

Sanders, Georgia Power Co. v. ................................................. 300-01

Santa Fe Industries v. Green ................................................. 20, ................................................. 23-24, 91

Santosky v. Kramer ................................................. 401

SEC v. Brant ................................................. 90-91, 98-99


SEC v. Lund ................................................. 93-94

SEC v. Materia ................................................. 88-89

SEC v. Musella ................................................. 89

SEC v. Texas Gulf Sulphur Co. ................................................. 12, 17-21, 26, 43-48, 51-53, 55-56, 57, 75, 76

Sedima, S.P.R.L. v. Imrex Co. ................................................. 148, 159-60, 164-68, 170-82, 184-85, 187

Segal v. Rochelle ................................................. 562, 563

Semayne's Case ................................................. 191

Shwago v. Spradlin ................................................. 190, 198-99, 202, 204-05, 207, 209, 212

Sims, Reynolds v. ................................................. 231
INDEX

Smith v. Kansas City Title & Trust Co. 269,270,281-84,286,288,298
Smith v. Organization of Foster Families For Equality & Reform 390
Smith v. Price 202,206,211-12
Smyth v. Ames 495
Society of Sisters, Pierce v. 381-82,

Southern Bell Telephone & Telegraph Co., Alabama Public Service Commission v. 472-73
Speed v. Transamerica Corp. 11-12, 13-17,18,73-74,75
Spradlin, Shwago v. 190,198-99,202, 204-05,207,209,212
Stanley v. Georgia 193
Stanley v. Illinois 384
State ex rel. Union Electric Co. v. Public Service Commission 460-61
Superintendent of Insurance v. Bankers Life & Casualty Co. 118
T.B. Harms Co. v. Eliscu 273-74
Texas Gulf Sulphur Co., SEC v. 12, 17-21,26,43-48, 51-53,55-56,57,75,76
Textile Workers v. Lincoln Mills 302-04
Tiffany Industries, Inc., Alexander Grant & Co. v. 168-70
Tinker v. Des Moines Independent Community School District 597-600,608
Topolos v. Caldeaway 274
Trachtman v. Anker 600-01
Transamerica Corp., Speed v. 11-12, 13-17,18,73-74,75
Turkette, United States v. 171
United California Bank, Dolch v. 274
United States, Butner v. 569, 570-71,572,575,579-80
United States, Chiarella v. 5,6,11, 24-29,35,36,39-40,42, 46,47,48,50-51,54-55,56-57, 62,63,66-71,73,77-81,84-86,88, 90,95-97,100,101-16,121,124,130

United States, Clearfield Trust Co. v. 300
United States, Frank Lyon Co. v. 363-66
United States v. Kimball Foods, Inc. 300
United States v. Little Lake Misere Land Co. 300
United States, Olmstead v. 192
United States, Russello v. 172
United States v. Turkette 171
Vail v. Board of Education 610
Vincent, Widmar v. 604-05
Wade, Roe v. 194-95,199
Walcott, Quilloin v. 391
Walton v. Morgan Stanley & Co. 93-94
Washington Gas & Light Co. v. Baker 500-01
Weintraub, Commodity Futures Trading Commission v. 500,551, 556,565,567-70,571-72,575-76, 578,579-80,584-85,586
Weiss v. Wiener 354-57
West Ohio Gas Co. v. Public Utilities Commission 475
Widmar v. Vincent 604-05
Wiener, Weiss v. 354-57
Williams v. Williams 429-30
Williams, Williams v. 429-30
Williams, Williams v. 440
Williams v. Williams 440
Williamsport Area School District, Bender v. 604-07,609
Wilson v. Chancellor 610,613
Wisconsin Telephone Co. v. Public Service Commission 476
Wisconsin v. Yoder 382-83
Yoder, Wisconsin v. 382-83
Zablocki v. Redhail 195-96
Zucker v. Panitz 610-11
DARBY

THE "FIRST" COMPANY

• FIRST to use offset printing
• FIRST to use photo composition
• FIRST to use computers for galley correction accuracy
• FIRST and only to have "Accu-Type" composition—It's fantastic!
• FIRST to use perfect binding
• FIRST and only to provide editor's day at printer's plant
• FIRST and only to use web offset for law review printing

Being "FIRST" has helped us be the "BEST"—The best service, quality & price in America. Being "BEST" has helped us become number "ONE"—The largest printer of college law reviews in the world. If you want the "BEST" give the "FIRST" company a call—Darby Printing Company.

"FIRST"

IN

QUALITY—SERVICE—PRICE

Darby Printing Company • 715 W. Whitehall St., S.W. • Atlanta, Georgia 30310
Telephone (404) 755-4521 — (800) 241-5292
If you practice criminal law

The CRIMINAL LAW REPORTER

BNA's all-in-one-place, authoritative information service that

- alerts you to all major changes in criminal law
- cuts down on your reading load
- saves you time for the actual practice of law

BNA's CRIMINAL LAW REPORTER covers everything in the fast-changing criminal law field from interpretation and application of existing criminal law as reflected in the opinions and proceedings of courts at every level . . . to formulation of new legislation . . . to unconventional (and controversial) proposals for approaches to crime and the criminal.

Here's what you'll receive every week with The CRIMINAL LAW REPORTER:

- a crisply written review and analysis of the latest criminal law developments
- Supreme Court proceedings, arguments, actions, and filings
- decisions and proceedings of federal courts of appeals, and district courts — as well as the principal courts of all the states
- a roundup of notable actions in Congress and state legislatures
- digests of reports and recommendations of commissions, associations, committees, the bar, and the press
- full text of all opinions of the U.S. Supreme Court in criminal cases, and of significant federal legislation
- cumulative indexes every six weeks — and a final index for the six-month period covered by the Reporter volume

You get all that and a whole lot more (along with a sturdy filing and reference binder) when you get The CRIMINAL LAW REPORTER.

For additional information and subscription rates, please contact:

THE BUREAU OF NATIONAL AFFAIRS, INC.
1231 25th Street, N.W., Washington, D.C. 20037
Telephone: 202—452-4500
WHEN IS WESTLAW BETTER?
EVERY TIME YOU USE INSTA-CITE.

HERE'S PROOF:

<table>
<thead>
<tr>
<th>Case</th>
<th>DAYS UNTIL CASE REVERSAL INFORMATION ADDED</th>
<th>AVAILABLE ON INSTA-CITE</th>
<th>ON AUTO-CITE</th>
</tr>
</thead>
<tbody>
<tr>
<td>459 A. 2d 338</td>
<td>30 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>460 F. Supp. 203</td>
<td>60 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>677 P. 2d 554</td>
<td>90 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>463 A. 2d 963</td>
<td>120 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td>629 S.W. 2d 240</td>
<td>150 days</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>180 days</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Isn't it time you discovered all the advantages of WESTLAW? Call your West Sales Representative or call 1-800-328-9352 (or 612-228-2973)

WITH INSTA-CITE YOU ARE WEEKS AHEAD OF THE COMPETITION.

West Publishing Company/50 West Kellogg Blvd./P.O. Box 64526/St. Paul, MN/55164-0526