

VERMONT LAW REVIEW

VOLUME 18 NUMBER 1

FALL 1993

TRIBUTES

JUDGE ALBERT W. COFFRIN
The Honorable James S. Holden

JUDGE ALBERT W. COFFRIN
Philip H. Hoff

JUDGE EDWARD J. COSTELLO
The Honorable Frederic W. Allen

(no abstracts available)

ARTICLE

ADEQUACY IN EDUCATION:
AN ANALYSIS OF THE CONSTITUTIONAL STANDARD IN VERMONT
John Nelson

In the early 1990's over 30 states were involved in lawsuits regarding school funding. Parties used their state Constitutions as a basis for challenging the existing funding inadequacies in public schools across the nation. John Nelson's article takes a textual, historical and comparative approach to analyze Vermont's Constitutional provisions regarding education. Nelson's aim is to determine what the Vermont Constitution requires when it comes to educating the youth of Vermont.

ESSAY

PRAGMATISM AND THE PROMISE OF ADJUDICATION
William Shutkin

Shutkin's essay reflects on the Adjudicatory Processes after his federal clerkship here in Vermont. Shutkin discusses and rejects certain theoretical explanations of the Adjudicatory Process, such as the descriptive approach, the normative approach and formalism, because they fail to describe the nature of everyday adjudication. As an alternative, Shutkin argues that the Adjudicatory Process should be viewed through a pragmatic lens. To support his view that pragmatism is a superior theoretical framework from which to view adjudications, Shutkin explores two District Court cases and the Supreme Court case *Herrera v. Collins* that speak to the value of a pragmatic approach to adjudication.

THE JONATHAN B. CHASE PAPER

A SUGGESTED INTERPRETATION OF VERMONT'S DR 7-104(A)(1): THE EMPLOYMENT ATTORNEY'S PERSPECTIVE ON CONTACTING EMPLOYEES OF AN ADVERSE BUSINESS ORGANIZATION

Catherine Schaefer

Schaefer's article explores the ambiguous meaning of "party" within the definition of Vermont DR 7-104(A)(A), regarding communication with represented parties. Schaefer focuses her exploration on the question, whether a business organization, rather than an individual, fits under the definition of party. To answer this question, the article looks to the purposes of the Ethical Rules and possible conflicts between an attorney's obligations under Rule 11. The paper concludes by recommending one of four approaches used by US courts to regulate contact with current employees.

NOTES

INDIAN GAMING REGULATORY ACT: A FORUM FOR CONFLICT AMONG THE PLENARY POWER OF CONGRESS, TRIBAL SOVEREIGNTY AND THE ELEVENTH AMENDMENT

Eric Jones

Jones analyzes cases involving the Indian Gaming Regulatory Act (IGRA). It argues that recent decisions have taken the teeth out of the IGRA and has also frustrated the Congressional purpose behind the act. The note explores the history of Native American gambling efforts before the IGRA and then launches into a discussion of the IGRA's policies, legislative history and selected textual provisions. Jones analyzes the recent case law surrounding the IGRA and exposes the inconsistencies in the decisions, as well as how the decisions have failed to fulfill the congressional intent of the IGRA. The discussion also incorporates the tension between the IGRA and Eleventh Amendment sovereignty issues before suggesting that the IGRA, as interpreted by the courts, has frustrated nation, state and tribal relations.

THE HAITIAN REFUGEE CRISIS AND US IMMIGRATION LAW: THE EXTRATERRITORIAL SCOPE OF 243(H) OF THE IMMIGRATION AND NATIONALITY ACT

Bridgette Hickey

During the Haitian Refugee crisis the U.S. government declared thousands of Haitian refugees as economic refugees rather than political ones. The U.S. Coast Guard was eventually ordered to guide Haitian boats back to Cuba; a policy that was challenged in light of section 243 of the Immigration and Nationality Act. As various challenges to this policy circulated through the courts, the question focused on the extraterritorial application of section 243 of the INA. Specifically, whether it applied to refugees interdicted outside of US waters. Hickey's note concludes that section 243 does apply outside of U.S. waters and therefore the Coast Guard's actions are in violation of federal law. In reaching this conclusion Hickey examines the history of United States-Haitian relations, the enactment of section 243 and corresponding legislation, as well as the decisions reached in the federal courts regarding U.S. policy. The note provides an in depth analysis of *Haitian Refugee Center v. Baker* and *Haitian Centers Council v. McNary*.

GENDER BIAS AGAINST FATHERS IN CUSTODY? THE IMPORTANT DIFFERENCE BETWEEN OUTCOME AND PROCESS

Leslie Caldwell

Caldwell's article exposes the possibility that men are biased against in Vermont child custody suits. Caldwell's discussion is set against the backdrop of the Vermont Task Force on Gender Bias in the Legal System