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ABA Day provides a chance for bar leaders to lobby lawmakers on critical legal issues.

Opening Statements
Lawsuits mount as Cubs fans denied a view cry foul over renovation plans for Wrigley Field.

Golden State attorney puts a gig gift to good use on YouTube, draws coverage, clients—and a few critics.

10 questions for the D.C. lawyer who coordinated an extensive pro bono effort on behalf of Holocaust victims.

Wearable devices offer a treasure trove of information for evidence in the courtroom.

Short takes and fast facts on the law.

Cartoon of the month: Check out last month’s contest winner and try crafting a caption for the current cartoon.

Docket
NATIONAL PULSE Kentucky tests new assessment tool to determine whether to keep defendants behind bars.

NATIONAL PULSE State copyright law gives musicians performance rights, puts broadcasters on notice.

SUPREME COURT REPORT High court to review cases addressing same-sex marriage from four states.

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ETHICS Cyber liability insurance is an increasingly popular and almost necessary choice for law firms.

WORDS Legalistic labels: Are they a bad habit or a sometimes necessary approach?

Your ABA/Midyear Meeting Report
The ABA House takes on domestic violence, executions.

'Stand your ground' laws draw opposition.

Leadership slate displays diversity in action.

Pact aims to bolster the rule of law in Sri Lanka.

Panel debates how to weigh threatening online posts.

Experts explore the line between spanking and abuse.

A human rights storm could hit the extractives sector.

Members’ involvement is key when lobbying legislators.

Obiter Dicta
Wine collectors broke laws, paid price; will bottles be 'decanted' down the drain?

Precedents
Nazi war criminal Adolf Eichmann goes on trial in Israel.

Business of Law

INCUBATORS Brooklyn Law School prof helps Europe’s startup community with a network of law school clinics.

LAW SCRIBBLER When law firms offer free services, it generates business too.

TECHSHOW Keynote speaker warns of the threat posed by automation—without human input.

LAW BY THE NUMBERS 2014 turned out to be a lucrative year for law firms.

LEGAL SERVICES Offender monitoring comes to your local smartphone.

KENNEDY ON TECH Making legal services a product can make sense.
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The Interplay Between Free Speech Rights and Union Self-Governance: The Free Speech Rights of Elected Union Officers Under Title I of the LMRDA
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Personal Electronic Devices in the Workplace: Balancing Interests in a BYOD World
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Expanding the Integration Mandate to Employment: The Push to Apply the Principles of the ADA and the Olmstead Decision to Disability Employment Services
Brittany S. Mitchell
Exploitation Creep and the Unmaking of Human Trafficking Law  
Janie A. Chuang

The U.S. government and influential NGOs have been promoting a greatly expanded legal and policy understanding of the problem of human trafficking, recasting (1) forced labor as trafficking, and (2) trafficking as "modern-day slavery." The aggregate effect is a doctrinally problematic "exploitation creep." For strong legal and policy reasons, anti-trafficking efforts should target structural vulnerability to trafficking through strengthened labor frameworks. On the same grounds the article contests initiatives to confute human trafficking with slavery and to address trafficking primarily under an ex post crime-control paradigm focused on perpetrator accountability and victim protection.

Groundwork for International Law  
Anthony D'Amato

Referring to many fundamental facets of international law, and utilizing general systems theory as a heuristic, this article offers a comprehensive account of how international law is formed and structured, and why it has generally succeeded in the peaceful resolution of interstate cases and controversies.

Agora: Reflections on Anthony D'Amato's "Groundwork for International Law"  
Send back the Lifeboats: Confronting the Project of Saving International Law  
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Fear of Commitment
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Changing Partners
Our list of 2014's most notable and intriguing lateral moves.

An Rx for Lateral Headache
BY WILLIAM HENDERSON
AND CHRISTOPHER ZORN
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A New Cuba?
BY CARLYN KOLKER
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Don't Light Up the Cigars Yet
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Sports law has grown from the niche practice of a few firms to a much bigger franchise. Who's involved and what they're doing.

CORRECTIONS

In the Actavis / Allergan item in "Big Deals" (January), Latham & Watkins partner Cary Hyden was misidentified. He chairs the firm's Orange County corporate practice, not its firmwide corporate practice. In addition, the item should have noted that partner Karen Silverman advised on antitrust issues.

"Hold the Coffee" (December 2014) incorrectly identified Meyers Fox as one of the law firms representing plaintiffs in a class action against Target Corp. The firm is not counsel in the matter.
# THE Bar Examiner

## Volume 84 | Number 1 | March 2015

A publication of the National Conference of Bar Examiners

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DO WE HAVE A QUORUM?: ANTICIPATING AGENCY VACANCIES AND THE PROSPECT FOR JUDICIAL REMEDY

The nomination and confirmation process has crept to a halt in the contemporary hyper-partisan political atmosphere, where minority party blockage of presidential nominees has become a routine practice. Now more than ever, federal regulatory commissions are forced to operate with protracted vacancies, oftentimes without even a quorum of commissioners and the attendant ability to take discretionary action. Prior scholarship has identified the manifold difficulties created by vacancies, including loss of efficiency, disparate political representation within the commission, and, sometimes, complete inaction at the policymaking level. As the Supreme Court’s 2013 decision in Arizona v. Inter Tribal Council of Arizona highlights, these symptoms are exacerbated when vacancies drop agency membership to less than a quorum of its board. Yet multi-member commissions are not powerless to prevent vacancy-induced standstills. This Note explores the various ways agencies anticipate losing quorum, ex ante, the judicial remedies available when those mechanisms fail, ex post, and examines both in a case study of the Election Assistance Committee in its ongoing litigation against the states of Arizona and Kansas in Kobach v. EAC. The Note concludes with a summary of potential solutions to agency inaction and prescribes best practices moving forward.

A BROKEN CLOCK: FIXING NEW YORK’S SPEEDY TRIAL STATUTE

New York City’s criminal courts, and those in the Bronx especially, are in crisis. Following the institution of “Broken Windows” policing in the mid-nineties, New York City courts have been flooded with misdemeanor cases, preventing the timely administration of justice. The outsized delay that now regularly accompanies misdemeanor cases in the New York City criminal justice system creates grave consequences for defendants and for society as a whole. This Note argues that a major source of the delay in the adjudication of misdemeanors is New York’s speedy trial statute, CPL 30.30, and the New York Court of Appeals’ decisions interpreting it. In contrast to the statutory approach of the federal government and other states, New York calculates speedy trial time from the prosecution’s declaration of trial readiness rather than from when the defendant’s case is actually heard. As a result, the speedy trial clock is often stalled for months while the defendant awaits trial. This Note suggests that by adopting a true speedy trial rule and excluding routine court congestion as a permissible source of delay, while also reviving the constitutional right for misdemeanor cases, the promise of speedy trials can be restored to New York’s criminal courts.
DRONE REGULATIONS AND FOURTH AMENDMENT RIGHTS: THE INTERACTION OF STATE DRONE STATUTES AND THE REASONABLE EXPECTATION OF PRIVACY

Current federal case law allows warrantless observation of property from manned aerial vehicles if they are in publicly navigable airspace. The increasing domestic use of unmanned aerial vehicles, colloquially known as “drones,” and the Federal Aviation Administration’s (FAA) efforts to develop regulations to integrate them into national airspace implicate sensitive constitutional privacy issues. In response, several states are enacting or have already enacted statutes to regulate drone use. This Note discusses how state drone statutes may inform the Supreme Court’s interpretation of the Fourth Amendment and its protection against unreasonable searches by drones — specifically, whether state drone statutes may influence the Court’s current understanding of the “reasonable expectation of privacy” when it is inevitably applied in warrantless drone surveillance cases.

First, this Note reviews Fourth Amendment jurisprudence regarding surveillance technologies and searches. It then provides a survey of state drone statutes currently in effect, their purposes, and their practical effects on the use of drones by the government and private parties. Next, this Note discusses how state drone statutes may interact with Fourth Amendment jurisprudence and inform the Supreme Court’s understanding of reasonable expectations of privacy in the context of drones. As drone technology develops, state statutes can influence and reflect social norms and expectations regarding drone use and the type of information discoverable by drones, while creating a source of protection for privacy interests that is independent of the Fourth Amendment. Furthermore, policy arguments made during the development of state drone statutes may legitimate people’s expectations of privacy against drones. Ultimately, this Note predicts that state drone statutes will likely influence the Court’s jurisprudence on the reasonable expectation of privacy, whether explicitly or implicitly, as drones develop technologically and are regulated.

SUNLIGHT IS THE BEST DISINFECTANT: PUBLIC DISCLOSURE OF ELECTORAL ADVOCACY IN UNION MEMBER COMMUNICATIONS

In 1948, the Supreme Court held in United States v. CIO that the statutory ban on direct union spending in federal elections could not be applied to electoral advocacy by leaders of an organization directed at the members of that same organization. As a result, federal and state laws now generally exempt such internal communications from the definition of “expenditure” under campaign finance laws. But in its landmark 2010 decision Citizens United v. FEC, the Supreme Court declared the ban on direct corporate campaign spending itself unconstitutional. The Federal Election Commission soon thereafter announced that the ruling would also apply to unions. There is now no doubt that an organization such as a union or a corporation may directly spend money on electoral advocacy. Given this framework, this Note argues that internal communications between the leaders of an organization — in particular, a union — and its members that directly advocate for or against the election of a particular candidate can and should be subject to mandated public disclosure.
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What's New in European Arbitration?

Stephan Wilske, Isabelle Michou,
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Landscape-Level Mitigation

HEADNOTE ♦ An encompassing, region-wide compensatory restoration model, as opposed to localized, ad hoc projects aimed at alleviating impacts, would improve environmental outcomes, speed up regulatory review, and streamline the work of both developers and government alike.

By Alessandra Lehmen
Juchem Advocacia

With a SIDEBAR by Robert Bendick of The Nature Conservancy

Sustainability U

HEADNOTE ♦ Campus environmental initiatives spur investments and student involvement, but often are undertaken in the face of uncertain ecological, financial, and educational impacts. As guidance, institutions should look to federal program evaluation and grant management.

By Stephanie Lavey and Warren Lavey
Praemus Hudson Engineering/University of Illinois

The Crisis Upon Us

HEADNOTE ♦ Carbon dioxide pollution is about more than air temperature. Resultant ocean acidification menaces not just marine plants and animals, but the entire biosphere. The evidence shows that this quiet change in chemistry poses an immediate threat to humanity and the planet.

By Mark Spalding
The Ocean Foundation

With a SIDEBAR by Libby Jewett of NOAA

TESTIMONY | A Superfund Lawyer’s History

By Fred Light
St. Thomas University School of Law

HEADNOTE ♦ I was there when the statutory language was written that the Supreme Court cited in an important environmental decision last year, and I have had an unseen role in its implementation.
THE BRIEF

THE DEBATE | How the Media (Plus Scientists and Lawyers) Grapple With Uncertainty

HEADNOTE: Environmental law can be described as public policy based on science that more often than not is uncertain. Whether evaluating exposure to air or water pollutants or hazardous waste at a Superfund site, policymakers must grapple with uncertainty. In terms of recent policy debates, climate change, hydraulic fracturing, and environmental justice are all areas where uncertainty rules the day. The public is informed about these issues largely by the media, which convey the decisions and positions of scientists, lawmakers, lawyers, regulators, the judiciary, and NGOs, to the public, via reporting in daily newspapers, magazines, radio and TV, and increasingly the internet. But within each of these groups, journalists regard and communicate scientific uncertainty differently.

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