

AALS Section on Law & Interpretation Newsletter

Midyear 2018

Note from the Chair

Dear colleagues:

I am very pleased that many of you answered the call to revive the Section on Law and Interpretation. I know that you share my view that questions of interpretation are central to legal education, practice, and theory. I am pleased to report that the Section has 221 registered members, and so we should be able to maintain a strong presence in coming years. I look forward to seeing you at our AALS program on Corpus Analysis, which is co-sponsored by the Section on Legislation. Meantime, I know that you will greatly appreciate this first edition of the Section newsletter prepared by Karen Petroski. Karen has set a high standard, but we have a strong basis on which to build an intellectually vibrant Section.

Best,
Jay

Note from the Chair-elect

Section members,

I've prepared this newsletter along the lines I proposed to the executive committee earlier in 2018 after our section election. Starting on page 2, the newsletter collects law-review articles published through May 2018 that (in my understanding) have to do with our section focus. I've been thinking about an effort like this for a while and hoped to see how it worked in this forum. If you have feedback on this approach or any other ideas for content you'd like to see in the newsletter, please contact me with your thoughts and suggestions.

Karen Petroski
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Reminder: calls for papers for section panels at January 2019 AALS meeting

The *Law & Interpretation* Section is organizing a panel on **Corpus Linguistics: The Quest for Objective Interpretation**. Justice Thomas Lee (of the Utah Supreme Court) will be the panel keynote speaker. Proposals in the form of 2000- to 2500-word-long (15-minute) papers are due to Jay Mootz (jmootz@pacific.edu) by July 31, 2018. Selected presenters will be notified by August 31, 2018.

The Section on *Legislation & Law of the Political Process* is organizing a panel on **21st-Century Textualism**. Proposals in the form of two- to three-page extended abstracts are due to Evan Zoldan (evan.zoldan@utoledo.edu) by July 31, 2018. Selected participants will be notified by September 1, 2018.

If you are interested but missed the full CFP for either of these panels, you can find them on the AALS website, or feel free to contact Karen Petroski for a copy.

Current section officers

Chair

Francis J. Mootz III, Univ. of the Pacific

Chair-elect

Karen Petroski, Saint Louis Univ.

Executive board

Andrea Coles-Bjerre, Univ. of Oregon
Clark D. Cunningham, Georgia State Univ.
Ryan D. Doerfler, Univ. of Pennsylvania
Stanley Fish, Cardozo School of Law
Richard Heppner, Duquesne Univ.

Law review midyear roundup

Introduction (from Karen P.)

This list is based on my review of law-review tables of contents (through May 2018) for pieces addressing legal interpretation and/or the legal treatment of discourse. It includes articles, notes, comments, and book reviews. I sorted entries into categories to help you find what interests you more quickly, but some pieces fall between categories, so you might need to look in more than one place. Within categories, I've listed pieces alphabetically by author surname. When a piece's title does not make its focus self-explanatory, I have included a brief explanation. I welcome ideas for category addition or deletion. Please forgive (and let me know about) any omissions or misjudgments.

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Constitutional interpretation & construction

(in general, including originalism)

Louis Fisher, *The Claim of Judicial Finality: Theory Undercut by Experience*, 16 U. N.H. L. Rev. 305 (Mar. 2018). Nonjudicial constitutional interpretation/construction.

Charles Fried, Book Review, *The Cunning of Reason: Michael Klarman's The Framers' Coup*, 116 Mich. L. Rev. 981 (Apr. 2018).

David Singh Grewal & Jedediah Purdy, Book Review, *The Original Theory of Constitutionalism*, Review of Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (2016), 127 Yale L.J. 664 (Jan. 2018).

Joseph Landau, *New Majoritarian Constitutionalism*, 103 Iowa L. Rev. 1033 (Mar. 2018).

Daniel J. Hulsebosch, *Being Seen Like a State: How Americans (and Britons) Built the Constitutional Infrastructure of a Developing Nation*, 59 Wm. & Mary L. Rev. 1239 (Mar. 2018).

Randy J. Kozel, *Precedent and Constitutional Structure*, 112 Nw. U. L. Rev. 789 (2018).

André Le Duc, *Originalism's Claims and Their Implications*, 70 Ark. L. Rev. 1007 (2018).

Santiago Legarre, *A New Natural Law Reading of the Constitution*, 78 La. L. Rev. 877 (Spr. 2018).

Sanford Levinson & Mark A. Graber, *The Constitutional Powers of Anti-Publican Presidents: Constitutional Interpretation in a Broken Constitutional Order*, 21 Chap. L. Rev. 133 (2018).

Jessica K. Lowe, Book Review, *Thank You, Mr. Madison*, 53 Tulsa L. Rev. 279 (Winter 2018).

Rev. of Jeremy D. Bailey, *James Madison and Constitutional Imperfection* (2015), and Michael J. Klarman, *The Framers' Coup* (2016).

Jake Linford, *Datamining the Meaning(s) of Progress*, 2017 BYU L. Rev. 1531 (Apr. 2018). Symposium.

Nelson Lund, Book Review, *Judicial Supremacy: Palladium of Liberty or Academic Paradox*, 33 Const. Comment. 45 (Winter 2018). Rev. of Martin H. Redish, *Judicial Review and the American Constitution: A Democratic Paradox* (2017).

Jonathan J. Marshfield, *The Amendment Effect*, 98 B.U. L. Rev. 55 (Jan. 2018). Interpretation & application.

John O. McGinnis & Michael B. Rappaport, *The Constitution and the Language of the Law*, 59 Wm. & Mary L. Rev. 1321 (Mar. 2018).

Thomas W. Merrill, *Interpreting an Unamendable Text*, 71 Vand. L. Rev. 547 (Mar. 2018).

Frank I. Michelman, Book Review, *Michael Klarman's Framers' Coup (and the News from Antifidelity)*, 33 Const. Comment. 109 (Winter 2018).

Eric J. Segall, *A Non-Originalist Separation of Powers*, 52 U. Rich. L. Rev. 591 (Mar. 2018).

Lawrence B. Solum, *Triangulating Public Meaning: Corpus Linguistics, Immersion, and the Constitutional Record*, 2017 BYU L. Rev. 1621 (Apr. 2018). Symposium; for other pieces, see next section & section on statutory interpretation (broadly).

Constitutional interpretation (particular provisions)

Peter Bauman, *"Waiting on Death": Nathan Dunlap and the Cruel Effect of Uncertainty*, 106 Geo. L.J. 871 (2018). Eighth Amendment.

Tyler Broker, *Free Speech Originalism*, 81 Alb. Rev. 45 (2017-18).

Perry Dane, *A Tale of Two Clauses: Search and Seizure, Establishment of Religion, and Constitutional Reason*, 26 Wm. & Mary B. Rts. J. 939 (May 2018).

John Greil, Note, *Second-Best Originalism and Regulatory Takings*, 41 Harv. J. L. & Pub. Pol'y 373 (Winter 2018).

Gary A. Lawson, *Take the Fifth...Please! The Original Insignificance of the Fifth Amendment's Due Process of Law Clause*, 2017 BYU L. Rev. 611 (Jan. 2018).

Jennifer L. Mascott, *Who Are "Officers of the United States"?*, 70 Stan. L. Rev. 443 (Feb. 2018).

Victoria Nourse, *Reclaiming the Constitutional Text from Originalism: The Case of Executive Power*, 106 Cal. L. Rev. 1 (Feb. 2018). Article II.

James Gray Pope, *Section 1 of the Thirteenth Amendment and the Badges and Incidents of Slavery*, 65 UCLA L. Rev. 426 (Mar. 2018).

Tuon M. Samahon, *Characterizing Power for Separation-of-Powers Purposes*, 52 U. Rich. L. Rev. 569 (Mar. 2018). Judicial power.

Lee J. Strang, *The Original Meaning of "Religion" in the First Amendment: A Test Case of Originalism's Utilization of Corpus Linguistics*, 2017 BYU L. Rev. 1683 (Apr. 2018).

Symposium; for other pieces, see previous section & section on statutory interpretation (broadly).

Constitutional interpretation (state constitutions)

Edward M. Mansfield & Conner L. Wasson, *Exploring the Original Meaning of Article I, Section 6 of the Iowa Constitution*, 66 Drake L. Rev. 147 (2018).

Robert S. Peck & Erwin Chemerinsky, *The Right to Trial by Jury as a Fundamental and Substantive Right and Other Civil-Trial Constitutional Protections*, 96 Or. L. Rev. 489 (2018). Symposium on Oregon constitution; also includes articles by Susan Marmaduke, W. Eugene Hallman, Travis Eiva.

Constance Van Kley, Comment, *Article V, Section 12 of the Montana Constitution:*

Restoring Meaning to a Forgotten Provision, 79 Mont. L. Rev. 115 (Winter 2018).

Linda M. Vanzi, Andrew G. Shultz, & Melanie B. Stambaugh, *State Constitutional Litigation in New Mexico: All Shield and No Sword*, 48 N.M. L. Rev. 302 (2018).

Statutory interpretation (broadly)

Josh Blackman, *Presidential Maladministration*, 2018 U. of Ill. L. Rev. 397 (Mar. 2018).

Interpretation in light of executive-branch actions.

Nicholas S. Bryner, *An Ecological Theory of Statutory Interpretation*, 54 Idaho Law Review 3 (Spr. 2018).

Ryan D. Doerfler, *High-Stakes Interpretation*, 116 Mich. L. Rev. 523 (Feb. 2018).

James Durling, Comment, *Diagramming Interpretation*, 35 Yale J. on Reg. 325 (Winter 2018). Sentence diagrams in judicial opinions.

Abbe R. Gluck & Richard A. Posner, *Statutory Interpretation on the Bench: A Survey of Forty-Two Judges on the Federal Courts of Appeals*, 131 Harv. L. Rev. 1298 (Mar. 2018).

Neal Goldfarb, *A Lawyer's Introduction to Meaning in the Framework of Corpus Linguistics*, 2017 BYU L. Rev. 1359 (Apr. 2018). Symposium.

Stefan Th. Gries & Brian G. Slocum, *Ordinary Meaning and Corpus Linguistics*, 2017 BYU L. Rev. 1417 (Apr. 2018). Symposium.

Hanjo Hamann & Friedemann Vogel, *Evidence-Based Jurisprudence Meets Legal Linguistic—Unlikely Blends Made in Germany*, 2017 BYU L. Rev. 1473 (Apr. 2018). Symposium; issue also includes comment on this piece by Mark C. Suchman.

Carissa Byrne Hessick, *Corpus Linguistics and the Criminal Law*, 2017 BYU L. Rev. 1503 (Apr. 2018). Symposium.

Meredith A. Holland, Note, *The Ambiguous Ambiguity Inquiry: Seeking to Clarify Judicial Determinations of Clarity Versus Ambiguity in Statutory Interpretation*, 93 Notre Dame L. Rev. 1371 (2018).

Anita S. Krishnakumar, *Textualism and Statutory Precedents*, 104 Va. L. Rev. 157 (Apr. 2018).

Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 Yale L.J. 788 (Feb. 2018).

Paul G. Mahoney, Note, *Canons of Construction for Dysfunctional Statutes: A Comment*, 75 Wash. & Lee L. Rev. Online 277 (Apr. 2018).

Noah Marks & Jessica Ranucci, *The Implied Assertion Doctrine Applied to Legislative History*, 21 Lewis & Clark L. Rev. 1135 (2018).

Jennifer L. Mascott, *The Dictionary as a Specialized Corpus*, 2017 BYU L. Rev. 1557 (Apr. 2018). Symposium; piece also addresses constitutional interpretation.

Thomas W. Merrill, et al. (Federalist Society panel discussion), *Text Over Intent and the Demise of Legislative History*, 43 U. of Dayton L. Rev. 103 (Winter 2018).

Victoria Nourse, Comment, *Underwrites, Overrides, and Recovered Precedents*, 104 Va. L. Rev. Online 89 (Apr. 2018).

Farah Peterson, *Interpretation as Statecraft: Chancellor Kent and the Collaborative Era of American Statutory Interpretation*, 77 Md. L. Rev. 712 (2018).

James C. Phillips & Jesse Egbert, *Advancing Law and Corpus Linguistics: Importing Principles and Practices from Survey and Content Analysis Methodologies to Improve Corpus Design and Analysis*, 2017 BYU L. Rev. 1589 (Apr. 2018). Symposium; issue also includes comment on this piece by Edward Finegan.

Ira C. Robbins, *"And/Or" and the Proper Use of Legal Language*, 77 Md. L. Rev. 311 (2018).

Lawrence B. Solum & Tammy Gales, *Corpus Linguistics as a Tool in Legal Interpretation*, 2017 BYU L. Rev. 1311 (Apr. 2018). Symposium.

Amul R. Thapar & Benjamin Beaton, Book Review, *The Pragmatism of Interpretation: A Review of Richard A. Posner, The Federal Judiciary*, 116 Mich. L. Rev. 819 (Apr. 2018).

Christian Turner, *Submarine Statutes*, 55 Harv. J. on Leg. 185 (Winter 2018).

Statutory interpretation (specific canons & doctrines, including *Chevron*)

Benjamin M. Flowers, *An Essay Concerning Some Problems with the Constitutional-Doubt Canon*, 74 Wash. & Lee L. Rev. Online 248 (Feb. 2018).

Shannon M. Grammel, Note, *Chevron Meets the Categorical Approach*, 70 Stan. L. Rev. 921 (Mar. 2018).

Neal A. Hoopes, Note, *Chevron's Pure Questions: Searching for Meaning in Ambiguity*, 2017 BYU L. Rev. 663 (Jan. 2018).

Kristin E. Oglesby, Comment, *Granting Chevron Deference to IRS Revenue Rulings: The Charitable Thing to Do*, 78 La. L. Rev. 631 (Spr. 2018).

Julie Rose O'Sullivan, *The Extraterritorial Application of Federal Criminal Statutes: Analytical Roadmap, Normative Conclusions, and a Plea to Congress for Direction*, 106 Geo. L.J. 1021 (Apr. 2018).

Catherine A. Sharkey, *Cutting in on the Chevron Two-Step*, 86 Fordham L. Rev. 2359 (Apr. 2018).

Philip Dane Warren, Comment, *The Impact of Weakening Chevron Deference on Environmental Deregulation*, 117 Colum. L. Rev. Online 62 (Feb. 2018).

William Yeatman, Note, *An Empirical Defense of Auer Step Zero*, 106 Geo. L.J. 515 (Jan. 2018).

Statutory interpretation (particular statutes)

William R. Baude, *Is Qualified Immunity Unlawful?*, 106 Calif. L. Rev. 45 (Feb. 2018). Section 1983.

Shaun M. Bennett, Note, *Whistling Loud and Clear: Applying Chevron to Subsection 21F of Dodd-Frank*, 75 Wash. & Lee L. Rev. Online 518 (2018).

David Gray Carlson, *The Federal Law of Property: The Case of Inheritance Disclaimers and Tenancy by the Entirety*, 75 Wash. & Lee L. Rev. 3 (2018). "Property" in various federal statutes.

Stephen W. Carman, Note, *More Cheese for the Rats: Tax Court and Congress Give Big Win to Whistleblowers with Broad Definition of "Proceeds"*, 83 Miss. L. Rev. 156 (Winter 2018).

Michael J. Cole, *Interpreting the Congressional Review Act: Why the Courts Should Assert Judicial Review, Narrowly Construe "Substantially the Same," and Decline to Defer to Agencies Under Chevron*, 70 Admin. L. Rev. 53 (Winter 2018).

John C. Dehn, *Why a President Cannot Authorize the Military to Violate (Most of) the Law of War*, 59 Wm. & Mary L. Rev. 813 (2018). Uniform Code of Military Justice.

Michael T. Flannery, *Social Security, Divorce, and the Scope of Federal Preemption*, 66 Buff. L. Rev. 1 (Jan. 2018). Social Security Act.

Alexander Hall, Comment, *Whistling Different Tunes: A Comparative Look at the Future of Whistleblowers Under Dodd-Frank*, 86 UMKC L. Rev. 681 (Winter 2018).

Thomas J. Horton, *Rediscovering Antitrust's Lost Values*, 16 U. N.H. L. Rev. 179 (Mar. 2018). Legislative history of antitrust statutes.

Sheldon A. Evans, *Punishing Criminals for Their Conduct: A Return to Reason for the Armed Career Criminal Act*, 70 Okla. L. Rev. 623 (Spr. 2018).

Daniel J. Hemel, *The Living Anti-Injunction Act*, 104 Va. L. Rev. Online 74 (Mar. 2018).

Melissa B. Jacoby & Edward J. Janger, *Tracing Equity: Realizing and Allocating Value in Chapter 11*, 96 Tex. L. Rev. 673 (2018). UCC Article 9 & Bankruptcy Code.

Gregory N. Mandel, *Institutional Fracture in Intellectual Property Law: The Supreme Court Versus Congress*, 102 Minn. L. Rev. 803 (2017).

Gideon Mark, *The Yates Memorandum and Cartel Enforcement*, 51 UC Davis L. Rev. Online 95 (Apr. 2018). Sherman Act.

Brandon Matsnev, Comment, *Code Speak: Constitutional Avoidance on the First Amendment Encryption Question*, 90 Temp. L. Rev. 305 (2018). All Writs Act.

Yaffa A. Meeran, Note, *As Justice So Requires: Making the Case for a Limited Reading of § 230 of the Communications Decency Act*, 86 Geo. Wash. L. Rev. 257 (2018).

Gabriel A. Mendoza, Note, *Obstruction and Circumvention: President Obama's Interpretation of International Doctrine to Overcome an Obstinate Congress*, 27 S. Cal. Interdis. L.J. 379 (Winter 2018).

Justin Sevier, *Evidentiary Trapdoors*, 103 Iowa L. Rev. 1155 (Mar. 2018). Federal Rules of Evidence.

Lawmaking process

Michael J. Gerhardt, *Dissent in the Senate*, 127 Yale L.J. Forum 728 (Jan. 2018).

David A. Bateman, Book Review, *Majority Tyranny*, 53 Tulsa L. Rev. 179 (Winter 2018). Rev. of Louis Fisher, *Congress: Protecting Individual Rights* (2016), and Anna Harvey, *A Mere Machine: The Supreme Court, Congress, and American Democracy* (2013).

Sande Buhai, *Statutory Damages: Drafting and Interpreting*, 66 U. Kan. L. Rev. 523 (Feb. 2018).

Brian D. Feinstein, *Congress in the Administrative State*, 95 Wash. U. L. Rev. 1187 (2018).

Paul J. Larkin, Jr., *Reawakening the Congressional Review Act*, 41 Harv. J. L. & Pub. Pol'y 187 (Winter 2018).

Jonathan Manes, *Secret Law*, 106 Geo. L.J. 803 (2018). Executive-branch lawmaking.

Edward L. Rubin, *Statutory Design as Policy Analysis*, 55 Harv. J. on Legis. 143 (Winter 2018).

Christopher J. Walker, Book Review, *Restoring Congress's Role in the Modern Administrative State*, 116 Mich. L. Rev. 1101 (Apr. 2018). Rev. of Josh Chafetz, *Congress's Constitution: Legislative Authority and the Separation of Powers* (2017).

Alec Webley, *Seeing Through a Preamble, Darkly: Administrative Verbosity in an Age of Populism and "Fake News,"* 70 Admin. L. Rev. 1 (Winter 2018).

Contract & will interpretation

Alexander A. Boni-Saentz, *Distributive Justice and Donative Intent*, 65 UCLA L. Rev. 324 (Mar. 2018).

Kevin Buchanan, Note, *Underinsured Motorist Coverage Offsets: Plainly Stated or Inherently Ambiguous?*, 83 Mo. L. Rev. 129 (Winter 2018).

Jens Dammann, *Flytraps, Scarecrows, and the Transparency Paradox: The Case for Redesigning the Law on Vague Boilerplate Contracts*, 2018 U. Ill. L. Rev. 185 (2018).

James Gibson, *Boilerplate's False Dichotomy*, 106 Geo. L.J. 249 (Jan. 2018).

David Horton, *Arbitration About Arbitration*, 70 Stan. L. Rev. 363 (Feb. 2018).

Matthew Jennejohn, *The Architecture of Contract Innovation*, 59 B.C. L. Rev. 71 (2018).

Reid Kress Weisbord & David Horton, *Boilerplate and Default Rules in Wills Law: An*

Empirical Analysis, 103 Iowa L. Rev. 663 (Jan. 2018).

Intellectual property

Jeremy W. Bock, *Behavioral Claim Construction*, 102 Minn. L. Rev. 1273 (2018).

Robert Brauneis, *Parodies, Photocopies, Recusals and Alternate Copyright Histories: The Two Deadlocked Supreme Court Fair Use Cases*, 68 Syracuse L. Rev. 7 (2018). Symposium on forgotten IP cases; also includes pieces by Samuel F. Ernst, Amelia Smith, Jessica Kieser, Bruce E. Boyden, and Zvi S. Rosen.

Joseph P. Fishman, *Music as a Matter of Law*, 131 Harvard Law Review 1861 (May 2018). Legal treatment of musical works.

Peyton E. Miller, Comment, *Good Artists Borrow; Great Artists Steal: How the Fair Use Doctrine Can Bring Harmony to the Federal Circuits on Digital Music Sampling*, 96 N.C. L. Rev. 1085 (May 2018).

Andres Sawicki, *The Central Claiming Renaissance*, 103 Cornell L. Rev. 645 (2018). Patent interpretation/construction.

David E. Shipley, *A Transformative Use Taxonomy: Making Sense of the Transformative Use Standard*, 63 Wayne L. Rev. 267 (Winter 2018).

First Amendment

Guillaume J. Aime, Comment, *Navigating the Troubled Waters of the Public Forum: The Public Trust Doctrine as a Life Jacket*, 50 Ariz. St. L. Rev. 335 (Spr. 2018).

Ellen P. Aprill, *Amending the Johnson Amendment in the Age of Cheap Speech*, 2018 U. Ill. L. Rev. Online 1 (Jan. 2018).

Jack M. Balkin, Essay, *Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation*, 51 UC Davis L. Rev. 1149 (Feb. 2018).

Jane R. Bambauer, *Snake Oil Speech*, 93 Wash. L. Rev. 73 (2018).

Gerard V. Bradley, *Prolegomenon on Pornography*, 41 Harv. J. L. & Pub. Pol'y 447 (Spr. 2018). Symposium on pornography; also includes articles by David L. Tubbs & Jacqueline S. Smith.

Randall Morgan Briggs, Comment, *Criminalization of Cyberbullying: The Constitutionality of Creating an Online Neverland for Children under a Tinker-Bell Analysis*, 78 La. L. Rev. 1059 (Spr. 2018).

Clay Calvert, *Reconsidering Incitement, Tinker, and the Heckler's Veto on College Campuses: Richard Spencer and the Charlottesville Factor*, 112 Nw. U. L. Rev. Online 108 (Jan. 2018).

Clay Calvert, *Beyond Headlines & Holdings: Exploring Some Less Obvious Ramifications of the Supreme Court's 2017 Free-Speech Rulings*, 26 Wm. & Mary Bill Rts. J. 899 (May 2018).

Danielle Keats Citron, *Extremist Speech, Compelled Conformity, and Censorship Creep*, 93 Notre Dame L. Rev. 1035 (2018).

Dan T. Coenen, *Free Speech and Generally Applicable Laws: A New Doctrinal Synthesis*, 103 Iowa L. Rev. 435 (Mar. 2018).

Daniel Cutler, Note, *Not Today, Satan: Re-Examining Viewpoint Discrimination in the Limited Public Forum*, 26 Wm. & Mary Bill Rts. J. 1241 (May 2018).

Matthew A. De Stasio, Comment, *A Municipal Speech Claim Against Body Camera Video Restrictions*, 166 U. Pa. L. Rev. 961 (Mar. 2018).

Maura Douglas, Comment, *Finding Viewpoint Neutrality in Our Constitutional Constellation*, 20 U. of Pa. J. Const. L. 727 (2018).

Marc Edelman, *Standing to Kneel: Analyzing NFL Players' Freedom to Protest During the Playing of the U.S. National Anthem*, 86 Ford. L. Rev. Online 1 (2018).

Tabatha Abu El-Haj, Essay, *Networking the Party: First Amendment Rights and the Pursuit of Responsive Party Government*, 118 Colum. L. Rev. 1225 (2018).

Richard A. Epstein, *A Common Law for the First Amendment*, 41 Harv. J. L. & Pub. Pol'y 1 (Winter 2018). Symposium; also includes articles by Marci A. Hamilton, Suzanne B. Goldberg.

David L. Faigman, *Freedom of Speech Remains Superior to All Other Alternatives*, 45 Hastings Const. L.Q. 225 (Winter 2018). Free speech issue; also includes pieces by Ronald K.L. Collins, Joseph Russomanno, Robert Corn-Revere, and Katlyn E. DeBoer.

Mark Goldfeder, *Stop Defending Discrimination: Anti-Boycott, Divestment, and Sanctions Statutes Are Fully Constitutional*, 50 Texas Tech L. Rev. 207 (Winter 2018).

Michael Kagan, *The Public Defender's Pin: Untangling Free Speech Regulation in the Courtroom*, 112 Nw. U. L. Rev. 1245 (2018).

Leslie Kendrick, *Use Your Words: On the Speech in Freedom of Speech*, 116 Mich. L. Rev. 667 (Mar. 2018).

Kate Kolnick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 Harv. L. Rev. 1598 (Apr. 2018).

Christina Koningisor, *The De Facto Reporter's Privilege*, 127 Yale L.J. 1176 (Mar. 2018).

John Loranger, *The First Amendment & Current State-Level Legislative Repression*, 21 CUNY L. Rev. 19 (Winter 2018).

Patrick Miller, Note, *University Regulation of Student Speech: In Search of a Unified Mode of Analysis*, 116 Mich. L. Rev. 1317 (May 2018).

Setsuo Miyazawa, *Hate Speech Laws in Japan in Comparative Perspectives*, 45 Hastings Const. L.Q. 451 (Spr. 2018). Symposium on hate speech laws in Japan; also includes articles by Craig Martin, Hiroshi Fukurai & Alice Yang, Rory K. Little, and Junko Kotani.

Brian C. Murchison, *The Visibility Value of the First Amendment*, 26 Wm. & Mary Bill Rts. J. 995 (May 2018).

Note, *Section 230 as First Amendment Rule*, 131 Harv. L. Rev. 2027 (May 2018).

Shannon M. Roesler, *Evaluating Corporate Speech About Science*, 106 Geo. L.J. 447 (Apr. 2018).

Courtlyn G. Roser-Jones, *Reconciling Agency Fee Doctrine, the First Amendment, and the Modern Public Sector Union*, 112 Nw. U. L. Rev. 597 (2018).

Catherine J. Ross, *Incredible Lies*, 89 U. Colo. L. Rev. 377 (Spr. 2018). Symposium on *United States v. Alvarez*; also includes pieces by Helen Norton, Christine E. Wells, Mark Spottswood, David S. Han, Alan K. Chen & Justin Marceau, and Gregory Klass.

Benjamin I. Sachs, *Agency Fees and the First Amendment*, 131 Harv. L. Rev. 1046 (Feb. 2018).

David M. Shapiro, *Commentary, Guns, Speech, and Charlottesville: The Semiotics of Semiautomatics*, 106 Geo. L.J. Online (2017).

Megan L. Shaw, Note, *When the Fourth Estate's Well Runs Dry*, 83 Brook. L. Rev. 701 (Winter 2018).

Mark Strasser, Pickering, Garcetti, and Academic Freedom, 83 Brook. L. Rev. 579 (Winter 2018).

Aaron Tang, Response, *Whose Money Is It Anyway: Have We Been Wrong About Agency Fees All Along?*, 131 Harv. L. Rev. Forum 154 (Mar. 2018).

Eugene Temchenko, Note, *A First Amendment Right to Corrupt Your Politician*, 103 Cornell L. Rev. 465 (2018).

Eric Tirschwell & Alla Lefkowitz, *Prohibiting Guns at Public Demonstrations: Debunking First and Second Amendment Myths After Charlottesville*, 65 UCLA L. Rev. Discourse 172 (2018).

Alexander Tseis, *Categorizing Student Speech*, 102 Minn. L. Rev. 1147 (2018).

Sonja R. West, *Favoring the Press*, 106 Cal. L. Rev. 91 (Feb. 2018).

**Judicial, courtroom, & police speech
(including interpretation of precedent)**

Jeffrey Bellin, *The Silence Penalty*, 103 Iowa L. Rev. 395 (Jan. 2018). Criminal defendant testimony.

Aaron-Andrew P. Bruhl & Adam Feldman, *Separating Amicus Wheat from Chaff*, 106 Geo. L.J. Online 135 (2018).

Thomas F. Burke & Lief H. Carter, Book Review, *The Hand in the Brew: Judges and Their Communities*, 53 Tulsa L. Rev. 213 (Winter 2018). Rev. of Paul W. Kahn, *Making the Case: The Art of the Judicial Opinion* (2016), and Douglas E. Edlin, *Common Law Judging: Subjectivity, Impartiality, and the Making of Law* (2016).

Paul D. Clement, Book Review, *Scalia Being Scalia*, 41 Harv. J. L. & Pub. Pol'y 631 (Spr. 2018). Rev. of Antonin Scalia, *Scalia Speaks: Reflections on Law, Faith, and Life Well Lived* (2017).

Sarah P. Cressey, Comment, *Overawed and Overwhelmed: Juvenile Miranda Incomprehension*, 70 Me. L. Rev. 87 (2018).

Shawn E. Fields, *Is It Bad Law to Believe a Politician? Campaign Speech and Discriminatory Intent*, 52 U. Rich. L. Rev. 273 (Jan. 2018).

Caleb J. Fountain, *Silence and Remorselessness*, 81 Alb. L. Rev. 267 (2017-18). Criminal defendants' silence and expressions of remorse.

Ben Grunwald, *Strategic Publication*, 92 Tulane L. Rev. 745 (Apr. 2018). Publication of appellate decisions.

Paul R. Gugliuzza & Mark A. Lemley, *Can a Court Change the Law By Saying Nothing?*, 71 Vand. L. Rev. 765 (Apr. 2018). Federal Circuit precedent.

Jason Iuliano, *The Supreme Court's Noble Lie*, 51 UC Davis L. Rev. 911 (Feb. 2018). Judicial discourse.

Adam J. Kolber, *Supreme Judicial Bullshit*, 50 Ariz. St. L. Rev. 141 (Spr. 2018).

Kathleen A. Macfarlane, Book Review, *Posner Tackles the Pro Se Prisoner Problem: A Book Review of Reforming the Federal Judiciary*, 83 Mo. L. Rev. 113 (Winter 2018).

Cathren Page, *Stranger than Fiction: How Lawyers Can Accurately and Realistically Tell a Story by Using Fiction Writers' Techniques That Make Fiction Seem More Realistic than Reality*, 78 La. L. Rev. 907 (Spr. 2018).

Glen Staszewski, Book Review, *Precedent and Disagreement*, 116 Mich. L. Rev. 1019 (Apr. 2018). Rev. of Randy Kozel, *Settled Versus Right: A Theory of Precedent* (2017).

Adam Steinman, *Nonmajority Opinions and Biconditional Rules*, 128 Yale L.J. Forum 1 (Mar. 2018). Interpretation/application of precedent.

Nat Stern, *Judicial Candidates' Right to Lie*, 77 Md. L. Rev. 774 (2018).

Barry Sullivan, *The Power of Imagination: Diversity and the Education of Lawyers and Judges*, 51 UC Davis L. Rev. 1105 (Feb. 2018).

Elizabeth Thornburg, *Twitter and the #So-Called Judge*, 71 SMU L. Rev. 249 (Winter 2018).

Tung Yin, *National Security Lies*, 55 Hous. L. Rev. 729 (Spr. 2018). Speech of executive branch officials.

Miscellaneous

Omri Ben-Zvi & Eden Sarid, *Legal Scholarship as Spectacular Failure*, 30 Yale J. L. & Human. 1 (Winter 2018).

Judy M. Cornett, *Hillbilly Atticus*, 69 Ala. L. Rev. 561 (2018). Symposium on *The Legacy of To Kill a Mockingbird*; also includes pieces by Richard H. McAdams, Rob Atkinson, Wayne Flynt.

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