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Introduction

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INTRODUCTION

Welcome to the first issue of Volume 37 of the New Mexico Law Review. We hope that you will find the articles contained in this issue both informative and interesting.

Our first issue begins with an article written by Richard Albert, The Constitutional Imbalance. This article examines the role of the modern American judiciary and argues that the judiciary, contrary to the Federalist Founders' view, is in fact not the least dangerous branch. The author discusses several constitutional devices that could be used to restore the American judiciary to its more modest role, the role envisioned by the Founders. The next article, Informed Consent for All! No Exceptions., written by Douglas Andrew Grimm, takes a critical look at informed consent in both the treatment context and the research context. The author concludes that, because there is a greater potential for harm in the research context, there must be greater protections afforded the research subject.

The third article in our first issue is Banishment as Cultural Justice in Contemporary Tribal Systems, by Patrice H. Kunesh. In her article, the author explores the origins of tribal authority to impose banishment sanctions and examines several cases dealing with banishment under the Indian Civil Rights Act. The author concludes that a new judicial construct is needed to address tribal banishment actions and suggests that such a construct be based on comity of nations principles. Next follows If It Walks Like a Duck and Quacks Like a Duck, Shouldn't It Be a Duck?: How a “Functional” Approach Ameliorates the Discontinuity Between the “Primary Significance” Tests for Genericness and Secondary Meaning, by Vanessa Bowman Pierce. In this article about trademark law, the author explores the tests for when a trademark is merely descriptive or when it is, or has become generic. The author suggests that a new approach, one based on function, should be applied to determine whether a mark should be afforded protection. Such an approach, argues the author, would harmonize the discontinuity that exists between the designation of a mark as merely descriptive or generic.

Our first issue closes with Criminal Performances: Film, Autobiography, and Confession, authored by Jessica Silbey. This article compares filmed confessions with other forms of autobiographical genres and examines several filmed confessions. The article argues that filmed confessions, while a valuable form of evidence, are susceptible to manufacture or invention. The author concludes that the criminal justice system’s emphasis on filmed confessions is, therefore, misplaced.

We hope that you enjoy this first issue of Volume 37 of the New Mexico Law Review.