

INDEX

ABSTENTION.

Regulation of intrastate telecommunications—Pre-emption—Exceptional cases under Younger doctrine.—This case—which involves both federal- and state-court claims that Telecommunications Act of 1996 pre-empts intrastate regulation of long distance calls transported via Internet—does not fall within any of three classes of exceptional cases for which abstention is appropriate under doctrine of *Younger v. Harris*, 401 U. S. 37. *Sprint Communications, Inc. v. Jacobs*, p. 69.

AIRLINES. See **Immunity from Suit.**

ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996. See **Habeas Corpus.**

APPEALS.

Order on merits—Unresolved attorney's fees ruling.—Respondents' appeal from District Court's order on merits was untimely despite pendency of an attorney's fees ruling, even though respondents' entitlement to those fees was based, partly, on parties' collective-bargaining agreement. *Ray Haluch Gravel Co. v. Central Pension Fund of Operating Engineers and Participating Employers*, p. 177.

ASSISTANCE OF COUNSEL. See **Constitutional Law, III; Habeas Corpus.**

ATTORNEY'S FEES. See **Appeals; Bankruptcy.**

AVIATION AND TRANSPORTATION SECURITY ACT. See **Immunity from Suit.**

BANKRUPTCY.

Homestead exemption—Chapter 7 trustee's attorney's fees.—Bankruptcy Court exceeded limits of its authority under 11 U. S. C. § 105(a) and its inherent powers when it ordered petitioner Law's \$75,000 homestead exemption to be made available to pay attorney's fees that Chapter 7 trustee Siegel incurred as a result of Law's misconduct. *Law v. Siegel*, p. 415.

BURDEN OF PERSUASION. See **Patents.**

CALIFORNIA. See **Jurisdiction.**

CIVIL PROCEDURE. See **Venue**.

CIVIL RIGHTS ACT OF 1871. See **Qualified Immunity from Suit**.

CLASS ACTION FAIRNESS ACT OF 2005.

Suit by Mississippi as sole plaintiff—Mass action.—A suit filed by Mississippi as sole plaintiff, though it includes a claim for restitution based on injuries suffered by State's citizens, does not constitute a "mass action" under Act, 28 U.S.C. § 1332(d)(11)(B)(i), which requires mass actions to involve monetary claims brought by 100 or more persons who propose to try those claims jointly as named plaintiffs. *Mississippi ex rel. Hood v. AU Optronics Corp.*, p. 161.

CLASS ACTIONS. See **Class Action Fairness Act of 2005; Securities Law**.

COLLECTIVE BARGAINING AGREEMENTS. See **Appeals; Labor Law**.

COMPENSATION FOR TIME SPENT DONNING AND DOFFING PROTECTIVE GEAR. See **Labor Law**.

COMPULSORY SELF-INCRIMINATION. See **Constitutional Law, II**.

CONSTITUTIONAL LAW. See also **Qualified Immunity from Suit**.

I. Due Process.

Personal jurisdiction—"Minimal contacts."—Petitioner, a Georgia police officer who searched respondents and seized their cash at a Georgia airport, did not create "minimal contacts" necessary to connect himself to forum State of Nevada, where respondents resided; thus, Federal District Court there lacked personal jurisdiction over him in respondents' damages suit. *Walden v. Fiore*, p. 277.

II. Privilege Against Self-incrimination.

Lack of requisite mental state defense—Rebuttal evidence—Court-ordered psychiatric examination.—Rule of *Buchanan v. Kentucky*, 483 U.S. 402—which provides that where a defense expert testifies that a criminal defendant lacked requisite mental state to commit an offense, prosecution may present psychiatric evidence in rebuttal—permitted prosecution in this case to offer evidence from a court-ordered psychiatric examination not agreed to by defendant. *Kansas v. Cheever*, p. 87.

III. Right to Counsel.

Ineffective assistance—Mistake of law—Prejudice.—Counsel's mistake of law—unreasonable failure to understand resources that state law made available to petitioner, which caused counsel to employ an expert that he himself deemed inadequate—amounts to deficient performance under *Strickland v. Washington*, 466 U.S. 668; state court should consider on

CONSTITUTIONAL LAW—Continued.

remand whether counsel's performance was prejudicial. *Hinton v. Alabama*, p. 263.

IV. Searches and Seizures.

Warrantless consent searches—Jointly occupied premises—Lawful removal of objecting cotenant.—Exception to permissible warrantless consent searches of jointly occupied premises that arises when one of occupants present objects to search, *Georgia v. Randolph*, 547 U.S. 103, does not apply where cotenant's consent to search premises was provided well after police had lawfully removed objecting cotenant from premises. *Fernandez v. California*, p. 292.

CONTRACTORS AND SUBCONTRACTORS. See **Sarbanes-Oxley Act of 2002**.

CONTROLLED SUBSTANCES ACT. See **Criminal Law**, 2, 3.

COURT OF FEDERAL CLAIMS. See **Federal Courts**.

CREDITORS AND DEBTORS. See **Bankruptcy**.

CRIMINAL FORFEITURES. See **Criminal Law**, 3.

CRIMINAL LAW. See also **Constitutional Law**, II, III, IV; **Habeas Corpus**.

1. *“Military installation”—Criminal reentry following ban.*—For purposes of 18 U.S.C. § 1382, which makes it a crime to reenter a “military . . . installation” after having been ordered not to do so “by any officer or person in command,” a “military . . . installation” encompasses a commanding officer's area of responsibility, which, in this case, includes highways and public protest area of Vandenberg Air Force Base. *United States v. Apel*, p. 359.

2. *Penalty enhancement for drug distribution—Drug use a but-for cause of victim's death or injury.*—At least where use of drug distributed by defendant is not an independently sufficient cause of victim's death or serious bodily injury, a defendant cannot be liable for penalty enhancement under 21 U.S.C. § 841(b)(1)(C) unless such use is a but-for cause of death or injury. *Burrage v. United States*, p. 204.

3. *Pretrial seizure of indicted defendant's assets—Grand jury determination of probable cause.*—When challenging legality of a pretrial seizure of assets under 21 U.S.C. § 853(e)(1), a criminal defendant who has been indicted is not constitutionally entitled to contest a grand jury's determination of probable cause to believe defendant committed crimes charged. *Kaley v. United States*, p. 320.

CRIMINAL TRESPASSING. See **Criminal Law**, 1.

DEBTORS AND CREDITORS. See **Bankruptcy.**

DECLARATORY JUDGMENTS. See **Patents.**

DEFAMATION. See **Immunity from Suit.**

DISABILITY BENEFITS. See **Employee Retirement Income Security Act of 1974.**

DONNING AND DOFFING PROTECTIVE GEAR. See **Labor Law.**

DRUG TRAFFICKING. See **Criminal Law, 2, 3.**

EFFECTIVE ASSISTANCE OF COUNSEL. See **Constitutional Law, III; Habeas Corpus.**

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Disability plan—Suit for benefits—Contractual limitations period.—Respondent Wal-Mart's Group Long Term Disability Plan's contractual limitations provision—which requires participants seeking benefits to file suit under § 502(a)(1)(B) of ERISA within three years from time “proof of loss” is due—is enforceable, since plan's limitations period is not unreasonably short and since no controlling statute prevents plan's provision from taking effect. *Heimeshoff v. Hartford Life & Accident Ins. Co.*, p. 99.

EMPLOYERS AND EMPLOYEES. See **Labor; Sarbanes-Oxley Act of 2002.**

ENHANCEMENT OF SENTENCES. See **Criminal Law, 2.**

ENTRY AND SEARCH OF HOME. See **Constitutional Law, I.**

EXPERT WITNESSES. See **Constitutional Law, II.**

FAIR LABOR STANDARDS ACT OF 1938. See **Labor Law.**

FEDERAL COURTS. See also **Appeals; Jurisdiction; Taxes; Venue.**

Court of Federal Claims—Suit for interest on tax overpayment—Tucker Act.—Judgment is vacated, and case is remanded for Sixth Circuit to decide in first instance whether jurisdiction over Ford's suit for interest on a tax overpayment properly lies in Court of Federal Claims pursuant to Tucker Act. *Ford Motor Co. v. United States*, p. 28.

FEDERAL-STATE RELATIONS. See **Abstention; Securities Law.**

FIFTH AMENDMENT. See **Constitutional Law, II.**

FINALITY OF JUDGMENTS. See **Appeals.**

FORFEITURE OF ASSETS. See **Criminal Law, 3.**

FORUM-SELECTION CLAUSES. See **Venue.**

FOURTEENTH AMENDMENT. See **Constitutional Law, IV; Qualified Immunity from Suit.**

FOURTH AMENDMENT. See **Constitutional Law, IV; Qualified Immunity from Suit.**

GRAND-JURY PROCEEDINGS. See **Criminal Law, 3.**

HABEAS CORPUS.

Ineffective assistance of counsel claim—State-court factual findings—“Doubly deferential” standard of review.—Sixth Circuit failed to apply “doubly deferential” standard of review required when a state prisoner seeks to set aside a sentence due to ineffective assistance of counsel during plea bargaining when it refused to credit a Michigan state court’s reasonable factual finding and assumed that counsel was ineffective where record was silent. *Burt v. Titlow*, p. 12.

IMMUNITY FROM SUIT.

Aviation and Transportation Security Act—Airline’s immunity from defamation suit for reporting suspicious behavior.—In this defamation action, Air Wisconsin Airlines Corp. was entitled, as a matter of law, to immunity under Act, 49 U.S.C. § 44901 *et seq.*, which exempts from civil liability airlines and their employees who report suspicious behavior to Transportation Security Administration, provided that their statements to TSA are not materially false. *Air Wisconsin Airlines Corp. v. Hooper*, p. 237.

INEFFECTIVE ASSISTANCE OF COUNSEL. See **Constitutional Law, III; Habeas Corpus.**

JURISDICTION. See also **Abstention; Appeals; Federal Courts; Taxes.**

Personal jurisdiction—California suit for injuries outside United States.—Petitioner Daimler AG is not amenable to suit in California for injuries allegedly caused by conduct of its subsidiary Mercedes-Benz Argentina that took place entirely outside United States. *Daimler AG v. Bauman*, p. 117.

LABOR LAW.

Fair Labor Standards Act of 1938—Compensation—Donning and doffing protective gear—Collective bargaining.—Time that petitioners spend donning and doffing their protective gear is not compensable by operation of 29 U.S.C. § 203(o), a provision of Act that allows parties to collectively bargain, as parties did here, over whether “time spent in changing clothes . . . at the beginning or end of each workday” must be compensated. *Sandifer v. United States Steel Corp.*, p. 220.

MASS ACTIONS. See **Class Action Fairness Act of 2005.**

MILITARY BASES. See **Criminal Law, 1.**

MINIMUM-CONTACTS STANDARD. See **Constitutional Law, I.**

MISSISSIPPI. See **Class Action Fairness Act of 2005.**

PATENTS.

Declaratory judgment of noninfringement—Burden of persuasion.—When a licensee seeks a declaratory judgment against a patentee that its products do not infringe licensed patent, patentee bears burden of persuasion on issue of infringement. *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, p. 191.

PERSONAL JURISDICTION. See **Constitutional Law, I; Jurisdiction.**

PRE-EMPTION OF STATE LAW. See **Abstention; Securities Law.**

PRETRIAL SEIZURES. See **Criminal Law, 3.**

PRIVATE COMPANIES. See **Sarbanes-Oxley Act of 2002.**

PROBABLE-CAUSE DETERMINATIONS. See **Criminal Law, 3.**

PROTECTIVE GEAR DONNING AND DOFFING. See **Labor Law.**

PROTESTS. See **Criminal Law, 1.**

PUBLIC EASEMENTS. See **Criminal Law, 1.**

QUALIFIED IMMUNITY FROM SUIT.

Warrantless police entry—Pursuit of fleeing misdemeanor suspect.—Ninth Circuit erred in finding that Officer Stanton was not entitled to qualified immunity, where Stanton was not “plainly incompetent,” *Malley v. Briggs*, 475 U. S. 335, 341, in light of existing precedent when he made a warrantless entry into respondent’s yard while pursuing a fleeing misdemeanor suspect. *Stanton v. Sims*, p. 3.

SARBANES-OXLEY ACT OF 2002.

Whistleblower protection—Employees of privately held contractors and subcontractors.—Act’s whistleblower protection provision, 18 U. S. C. § 1514A, shields employees of privately held contractors and subcontractors who perform work for a public company, such as a mutual fund. *Lawson v. FMR LLC*, p. 429.

SEARCHES AND SEIZURES. See **Constitutional Law, IV; Qualified Immunity from Suit.**

SECURITIES LAW.

Securities Litigation Uniform Standards Act of 1998—State-law class actions—Purchase or sale of uncovered securities.—Act—which prohibits

SECURITIES LAW—Continued.

plaintiffs from bringing state-law-based securities class actions alleging “a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security,” 15 U.S.C. § 78bb(f)(1)—does not extend to state-law class actions involving purchase or sale of uncovered securities. *Chadbourne & Parke LLP v. Troice*, p. 377.

SELF-INCRIMINATION. See **Constitutional Law**, II.

SENTENCE ENHANCEMENT. See **Criminal Law**, 2.

SIXTH AMENDMENT. See **Constitutional Law**, III.

TAXES. See also **Federal Courts**.

District court jurisdiction—Partnership tax shelter—Tax underpayment penalties.—District Court had jurisdiction in this partnership-level proceeding to determine whether penalty for tax underpayments attributable to valuation misstatements, see 26 U.S.C. § 6662(b)(3), is applicable to an underpayment resulting from a basis-inflating transaction subsequently disregarded for lack of economic substance; penalty is applicable to tax underpayments in this case. *United States v. Woods*, p. 31.

TELECOMMUNICATIONS ACT OF 1996. See **Abstention**.

TRANSPORTATION. See **Immunity from Suit**.

TRESPASSING. See **Criminal Law**, 1.

TUCKER ACT. See **Federal Courts**.

VENUE.

Forum-selection clause—Motion to transfer.—A forum-selection clause may be enforced by a motion to transfer under 28 U.S.C. § 1404(a); when a defendant files a § 1404(a) motion, a district court should transfer case unless extraordinary circumstances unrelated to convenience of parties clearly disfavor a transfer. *Atlantic Marine Constr. Co. v. United States Dist. Court for Western Dist. of Tex.*, p. 49.

WARRANTLESS SEARCHES. See **Constitutional Law**, IV.

WHISTLEBLOWERS. See **Sarbanes-Oxley Act of 2002**.

WORDS AND PHRASES.

“[M]ilitary . . . installation.” 18 U.S.C. § 1382. *United States v. Apel*, p. 359.

“100 or more persons.” Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(11)(B)(i). *Mississippi ex rel. Hood v. AU Optronics Corp.*, p. 161.