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### The Law on Christmas

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## THE LAW ON CHRISTMAS

*Daniel A. Crane*†

As every jurist knows, there is a vast body of law *about* Christmas. For instance, every municipal bureaucrat knows that it's quite alright to display the Holy Child *en crèche* so long as He's adequately trivialized by "Santa's sleigh; a live 40-foot Christmas tree strung with lights; statues of carolers in old-fashioned dress; candy-striped poles; a 'talking' wishing well; a large banner proclaiming 'SEASONS GREETINGS'; a miniature 'village' with several houses and a church; and various 'cut-out' figures, including those of a clown, a dancing elephant, a robot, and a teddy bear."<sup>1</sup> There are cases about dangerous Christmas ornaments,<sup>2</sup> whether Christmas trees are "crops" or "realty,"<sup>3</sup> and exonerating a criminal defendant who sold whisky not for profit but only to allow someone else to celebrate the season by making eggnog.<sup>4</sup> For all of the doubters, there is even an Ohio Municipal Court decision holding that a person who produced a "'Certificate of Birth' for one Santa Claus born at the North Pole December 25th in the year 383 A.D. to Mr. Claus and Holly Noel with Dr. Snowflake attending" did not violate a state statute prohibiting persons from bearing state identification cards with fictitious names.<sup>5</sup> What can we say? The Buckeyes have taken the "don't spoil it" thing to heart.

But I digress. The point is that everyone knows that there are thousands upon thousands of cases *about* Christmas but, to date, no one has taken it upon himself to study the cases decided *on Christmas Day*. Why, you ask? Never mind that. Because no one has done it, it's something to be done.<sup>6</sup> And now I have. Yes indeed. I have meticulously catalogued *every single* published judicial decision in American history rendered on December 25.<sup>7</sup> In this pathbreaking article, I provide an empirical assessment, both quantitative and qualitative, of those cases.

The remainder of this Article proceeds as follows. Part I provides the quantitative assessment. Basically, I just add up the numbers. (For those not wishing to read Part I, the answer is 107). Part II provides the qualitative assessment. Basically, I just report random things about the cases (although there is a point in the end). The Article then concludes, none too soon.

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† Frederick Paul Furth, Sr. Professor of Law, University of Michigan. No reindeer were harmed in the writing of this Article.

<sup>1</sup> *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 596 (1989).

<sup>2</sup> *Parke v. Dollar Tree, Inc.*, 155 A.D. 3d 1489 (2017).

<sup>3</sup> *Ranier Nat. Bank v. Security State Bank*, 59 Wash. App. 161 (1990).

<sup>4</sup> *Jolly v. State*, 53 Tex. Crim. 484 (1908).

<sup>5</sup> *State v. Hayes*, 119 Ohio Misc. 2d 124 (2002).

<sup>6</sup> As Sir Edmund Hillary answered when asked why he climbed Mount Everest, "because it was there."

<sup>7</sup> Or, at least those appearing in the Westlaw database—you don't imagine that I did any real work for this, do you?

## I. QUANTITATIVE ASSESSMENT: COUNTING THE REINDEER

We litigious Americans keep our courts busy. On a normal business day, state and federal judges typically issue between 600 and 1000 published decisions. On weekends, the stream becomes a trickle, but doesn't dry up. Holidays are not immune from the bustle of judicial business. July 4 sees periodic exercises of judicial independence and January 1 sees an unsteady flow of inebriated judgments. St. Valentine weeps at the hundreds of divorce decisions released on February 14.

But not on Christmas. Peace on earth and goodwill to men may be observed only in the breach, but the courts seem oblivious. In most years, the Christmas docket is as barren as Whoville after the Grinch's visit. Here is an extraordinary fact: In the near century between 1891 and 1986 (hereinafter "A Hundred Years of Solitude"), not a single federal decision was reported on December 25!

But this Article wouldn't be interesting and important<sup>8</sup> if there were *no* judicial activity on Christmas Day. And there is! Over the two hundred plus centuries of recorded federal and state judicial opinions, judgments have come down 107 times on Christmas—14 times in federal court and 93 times in state court. What's up with that?

There is an answer: Connecticut is up with that. Of the 93 state court decisions rendered on Christmas, 58 of them—that's 62% for you math mavens--have been rendered by Connecticut courts. Connecticut has just one percent of the national population, so something must be rotten in the State of Nutmeg. Now, before our empiricists declare an obvious reporting anomaly, let's consider the evidence that there is something naughty, not nice, in that preppy little corner of New England. If Connecticut's transgression were some reporting anomaly, you would expect the cases to be lumped in a single court in a single year. But they're not! The Connecticut Christmas decisions were released in batches in the years 1979, 1984, 1990, 2001, 2007, 2012, 2018, some from the Supreme Court and some from the Appellate Court. The gaps between these events are 5, 6, 6, 5, and 6 years. Numerologists will note a pattern not dissimilar to the Fibonacci sequence. Santa is due to deliver Connecticut Christmas judgments again in 2024.

What other significant patterns can be observed in the data? One might try to finger the declining religiosity of the twentieth century, but judicial quills were striking Christmas parchment already in the nineteenth century. In the first reported Christmas decision in 1840, the Kentucky Court of Appeals held a civil defendant in a trespass case didn't have to post bail,<sup>9</sup> surely a great relief to many elves and reindeer. The Kentucky Court of Appeals was back at it four times on Christmas Day 1841, and then again in 1850 and 1872. In the meantime, the Iowa Supreme Court broke the festive spirit by ordering a foreclosure on Christmas Day 1860,<sup>10</sup> followed within three decades by the Maine Supreme Court's yuletide decree that a husband is liable for his wife's unauthorized shopping sprees—news far worse than a lump of coal in the stocking.<sup>11</sup> And, in 1894, the Ohio Supreme Court took advantage of the holiday to explain that a city is not liable to a traveler for personal injuries caused by the falling of a billboard belonging to a citizen, constructed in a substantial manner, but blown over by an extraordinary wind.<sup>12</sup> Could that breezy opinion not have waited until Boxing Day?

Important empirical studies have a way of turning up illuminating side observations, and this one is no exception. What can we learn about the relative characters of soldiers and judges?

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<sup>8</sup> Objection, assumes facts not in evidence.

<sup>9</sup> *Bridle v. Vest*, 1 B. Mon. 173, 40 Ky. 173 (1840).

<sup>10</sup> *Mullin v. Bloomer*, 11 Iowa 360 (1860).

<sup>11</sup> *Baker v. Carter*, 83 Me. 132 (1890).

<sup>12</sup> *Village of Oak Harbor v. Kallager*, 52 Ohio St. 18333 (1894).

It seems that soldiers are more peaceable than judges. During the First World War, the combatants declared a Christmas Truce. No dealing in death on Christmas! But America's imminent entry into that bloody fray did not stop the New York Supreme Court, Appellate Division, Second Department from using the occasion of December 25, 1916 to permit a creditor to sue a cemetery.<sup>13</sup> Perhaps the court had not heard of bad karma?

I could go on (but not for long—I'm running out of material). The point is that judges sometimes rule on Christmas. So there's the answer to the question no was asking.

## II. QUALITATIVE ASSESSMENT: IF YOU WERE A REINDEER, WOULD YOU BE DONNER OR BLITZEN?

Christmas may be "the most wonderful time of the year," but that's no guarantee that decisions rendered on Christmas Day will bring holiday cheer. To the contrary, in our exhaustive analysis of those 107 heterodox decisions, we discern less of the wise men, and more of the wicked King Herod. We have already spoken of decisions foreclosing Blackacre, dunning cemeteries, and tagging husbands with their wives' shopping sprees, but those cases are but the tip of the North Polar iceberg. We would be remiss not to note that courts have observed the Nativity with even lesser degrees of festive charity.

Consider a Connecticut Supreme Court decision rendered on December 25, 2012, holding that just because someone is a joint account holder doesn't mean that they're incapable of embezzling from the account.<sup>14</sup> Surely only Ebenezer Scrooge could rule that it's theft to take one's own money. Or ruling that a construction project for a donut shop was an impermissible expansion of a preexisting nonconforming use.<sup>15</sup> Taking away donuts on Christmas. Really?! And only someone with a heart two sizes too small could have authored *Zirinsky v. Carnegie Hill Capital Asset Management*<sup>16</sup> ordering the removal of children's playground equipment as exceeding an easement. Did you hear what I heard? Ordering a playground removed *on Christmas*. You're a mean one, Mr. Grinch!

Christmas brings out not only the cruel, but also the unsavory. Even if we could be sure that the children were nestled all snug in their beds while visions of sugar-plums danced in their heads and were *not* reading this Article, I would feel constrained not to report on decisions concerning intimate relations among adopted relatives,<sup>17</sup> police officer testimony about exotic dancer obscenity,<sup>18</sup> or graphically describing the defendant's naughty bits.<sup>19</sup> Or about mothers stealing from their children,<sup>20</sup> unneighborly disputes over driveways,<sup>21</sup> or the brokenness of marriages.<sup>22</sup> Any one of those would be enough to assure me a Blue Christmas. And that's all before we come to deliberate indifference to a prisoner's medical needs,<sup>23</sup> possession of sawed-

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<sup>13</sup> *Gilleran v. Springfiled, L.I., Cemetery Soc.*, 176 A.D. 168, 162 N.Y.S. 701 (1916).

<sup>14</sup> *State v. Lavigne*, 139 Conn. 592 (2012).

<sup>15</sup> *Woodbury Donuts, LLC v. Zoning Bd. of Appeals of Town of Woodbury*, 139 Conn. App. 748 (2012).

<sup>16</sup> 139 Conn. App. 706 (2012).

<sup>17</sup> *State v. George B.*, 258 Conn. 779 (2001).

<sup>18</sup> *State v. Heinz*, 3 Conn. App. 80 (1984).

<sup>19</sup> *Edward M. v. Commissioner of Correction*, 186 Conn. App. 754 (2018).

<sup>20</sup> *Masse v. Perez*, 139 Conn. App. 794 (2012).

<sup>21</sup> *Cirinna v. Kosciuszkiwicz*, 139 Conn. App. 913 (2012).

<sup>22</sup> *Wittman v. Krafick*, 67 Conn. App. 415 (2001).

<sup>23</sup> *Scott v. Hougas*, 2018 WL 10322305 (C.D. Ill. 2018).

off shotguns,<sup>24</sup> bankruptcies,<sup>25</sup> drunk driving,<sup>26</sup> domestic violence,<sup>27</sup> asbestos disease,<sup>28</sup> termination of parental rights,<sup>29</sup> insanity,<sup>30</sup> perjury,<sup>31</sup> drug dealing,<sup>32</sup> assault,<sup>33</sup> rape,<sup>34</sup> arson,<sup>35</sup> robbery,<sup>36</sup> and murder.<sup>37</sup>

Quite frankly, there is little joy to the world in reading that selection of judicial business that—Lord knows why—happens to be handed down on Christmas. One suspects, with gloom, that the world is just an icky place, dirtier than a stable manger. Take a random selection of judicial business on any given day, and you’re likely to encounter the same desolation. It’s little wonder that Charlie Brown says that “Christmas is coming, but I’m not happy” or that Lucy Van Pelt gets depressed every December. The world remains the same wretched place, and the strings of light just show it more clearly. That’s what our qualitative assessment seems unhappily to confirm.

But then why bother with Christmas at all? Maybe because a baby was born to bring hope, and without hope, we perish. And lest we end this sorry Article failing to find any hope in Christmas Day judicial decrees, I bring to your attention *The Prinz Georg*, decided in the United States District Court for the Eastern District of Louisiana on December 25, 1884.<sup>38</sup> A group of Italian immigrants set sail from Palermo to New Orleans. Between Gibraltar and Bermuda, the ship encountered stormy weather which destroyed many of the ship’s provisions. The ship had to put up in Bermuda for repairs and reprovisioning. Through negligence, the captain failed to procure adequate provisions. The passengers were on short rations from Bermuda to Philadelphia, where the captain again failed to secure adequate provisions for the voyage on to New Orleans. There, the émigrés brought suit pursuant to the federal Passenger Act of 1882, which allowed a three-dollar per diem for short rations. Over the captain’s feeble excuses, the federal court dutifully awarded each of the émigrés \$60, or about \$1,745 in today’s dollars.

Let’s not call it a Christmas present. Justice is giving every person their due, not making them a gift. But maybe, in the midst of all the ickiness, we can afford a little smile for those strangers and aliens among us who stepped off the boat and found themselves greeted by the equal protection of the laws. So you see, not all is calm and bright, but hope there is on Christmas.

## CONCLUSION

This Article has done something that no one would have any good reason to do, and in the process lowered the average level of happiness in the world. Or maybe the sorrow was always just there, buried in the stacks, and the falling of a little light could brighten things up a smidgen.

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<sup>24</sup> *U.S. v. Williams*, 132 F.3d 1456 (5<sup>th</sup> Cir. 1997).

<sup>25</sup> *In re Fosness*, 1987 WL 86466 (D. Minn. 1987).

<sup>26</sup> *Cannizzaro v. Marinyak*, 139 Conn. App. 808 (2012).

<sup>27</sup> *Metro North Owners, LLC v. Thorpe*, 870 N.Y.S.2d 768 (2008).

<sup>28</sup> *Hartford Acc. And Indem. Co. v. Ace American Reinsurance Co.*, 284 Conn. 744 (2007).

<sup>29</sup> *In re Kachainy C.*, 67 Conn. App. 401 (2001); *In re Alexander C.*, 67 Conn. App. 417 (2001).

<sup>30</sup> *In re Meyrose*, 30 Ohio Law Abs. 651 (1939).

<sup>31</sup> *Kelly v. Dearington*, 23 Conn. App. 657 (1990).

<sup>32</sup> *State v. Cavanaugh*, 23 Conn. App. 667 (1990).

<sup>33</sup> *State v. Lash*, 23 Conn. App. 663 (1990).

<sup>34</sup> *State v. Secore*, 194 Conn. 692 (1984).

<sup>35</sup> *Sekou v. Warden*, 216 Conn. 678 (1990).

<sup>36</sup> *State v. Batties*, 1991 WL 284160 (Ohio Ct. App. 1991).

<sup>37</sup> *State v. Conde*, 67 Conn. App. 474 (2001); *State v. Chicano*, 216 Conn. 699 (1990).

<sup>38</sup> 23 F. 906 (1884).

This is a Fancy Law Review Article, so I'll have to leave the morals to the reader. To sum it all up, a Happy Christmas to all, and to all a good night.