

SMU Law Review

Volume 67 | Issue 1

Article 1

January 2014

Front Matter

Recommended Citation Front Matter, 67 SMU L. REV. i (2014)

https://scholar.smu.edu/smulr/vol67/iss1/1

This Front Matter is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit http://digitalrepository.smu.edu.

SMU Law Review

Volume 67	
-----------	--

WINTER 2014

1

© 2014 by Southern Methodist University

TABLE OF CONTENTS

ARTICLES

Unteachable: <i>Shelby County</i> , Canonical Apostasies, and A Way Forward for the	
Voting Rights Act	3
Will the Income-Based Repayment Program Enable Law Schools to Continue to Provide "Harvard-Style"	
Legal Education?Gregory Crespi	51
Empiricism, Experimentalism, and Conditional Theory Victoria Nourse Gregory Shaffer	141
Casenotes	
Patent Law—System Claim Patent-Eligibility After Accenture Global Services, GmbH v. Guidewire Software, Inc	18 7
International Child Abduction—Second Circuit Finds Federal Right of Action for Visitation Rights Under Federal Law Implementing the Hague Convention on Civil Aspects of	
International Child Abduction Farsheed Fozouni	195
Immigration Law—Ninth Circuit Decision Allows for Aliens to be Penalized for	
Exercising Their Right to Appeal Kelli Gavin	203
The Fourth Amendment—Are Mobile Phones Now Governmental Tracking Devices?James M. Lucas	211

Qualified Immunity and Privacy–The Fifth	
Circuit Finds that Students Have no	
Clearly Established Right to Confidentiality	
in their Sexual Orientation Michael Sheetz	219

Editorial and business offices: *SMU Law Review*, Southern Methodist University Dedman School of Law, Dallas, Texas 75275. Telephone: (214) 768-2594. Printed by Joe Christensen, Inc., Lincoln, Nebraska 68521.

Periodicals postage paid at Dallas, Texas, and at additional mailing offices.

Citations conform with *The Bluebook: A Uniform System of Citation* (19th ed. 2010) and the *Texas Rules of Form* (12th ed. 2010).

The SMU Law Review (ISSN 1066-1271) is published four times a year, (1) Winter, (2) Spring, (3) Summer, and (4) Fall, by the SMU Law Review Association, Storey Hall, Dallas, Texas 75275. Domestic subscription price, \$42.00 per year. Foreign subscription price, \$49.00 per year. Single copies: Regular issues, \$18.00, Survey issue, \$24.00. Add 8.25% tax on single issue orders within the state of Texas. Tax exempt institutions must include copy of exemption certificate with order. An additional charge will be made for postage and handling of each order of single copies. Prior issues (vols. 1-60) available from William S. Hein & Co., 1285 Main St., Buffalo, New York 14209. Volumes 61-64 are available from SMU Law Review, Southern Methodist University Dedman School of Law, Dallas, Texas 75275.

SMU Law Review

WINTER 2014

Member. National Conference of Law Reviews

SMU LAW REVIEW ASSOCIATION 2013-2014 BOARD OF EDITORS

PRESIDENT HEATHER COGHLAN

SMU LAW REVIEW EDITOR-IN-CHIEF LANCE WYATT

JOURNAL OF AIR LAW & COMMERCE EDITOR-IN-CHIEF JACOUI BOGUCKI

SMU LAW REVIEW MANAGING EDITOR PHONG TRAN

JOURNAL OF AIR LAW & COMMERCE MANAGING EDITOR LAURA ARBEITER

SMU ASSOCIATE MANAGING EDITORS ASHTON BARRINEAU LINDSEY HOVLAND

VOLUME 67

LEAD ARTICLES EDITORS NATHAN LEE ROUZHNA NAYERI PHILLIP SANDERS

JALC ASSOCIATE MANAGING EDITORS ELIZABETH GRIFFIN MATTHEW MORAN

CLARKE STAVINOHA

MARK STEADMAN

NATHAN THOMPSON

JERRY TICE

1

LAUREN CHRISTY CHELSEA CLARK RYAN FRYE BLAIR GREEN SARAH HONEYCUTT

ARTICLES EDITORS ZUNNY LOSOYA BRYAN PARRISH SAMUEL PINKSTON BAINE SELLERS ROSS STAINE

BRANDON BELLOWS

SMU COMMENT **EDITORS RENEÉ HUNTER** NICHOLAS LOW CYNTHIA WEBER ASSOCIATE TEXAS SURVEY EDITORS JAMES BEDOTTO KATIE CRISTINA

JALC COMMENT **EDITORS** BLAKE FEIKEMA MICHELLE NORTHCUTT

CORPORATE COUNSEL SYMPOSIUM EDITORS JESSICA GREENWALD BROOKE PANNO

AIR LAW SYMPOSIUM EDITOR JASON GLENNON

ASSOCIATE SYMPOSIUM EDITOR KIMBERLY FALGOUT

SYMPOSIUM CLE **EDITORS** JUN LI JOSHUA TYLER SHELTON

ADMINISTRATIVE MANAGING EDITORS CHRIS LAMBERT WILLIAM TRAN

TECHNOLOGY **EDITORS** SEAN MCBEATH CHAD STOKER

EXECUTIVE EDITOR CHRISTINA GIGLIOTTI

SMU FACULTY ADVISORS THOMAS WM. MAYO ANTHONY J. COLANGELO JALC FACULTY ADVISOR GREGORY S. CRESPI

SMU ADMINISTRATIVE ASSISTANT DONNAISE BALDWIN

JALC ADMINISTRATIVE ASSISTANT LISA BROWNING

THE SMU LAW REVIEW ASSOCIATION PUBLISHES BOTH THE SMU LAW REVIEW AND THE JOURNAL OF AIR LAW AND COMMERCE.

KYLE PARK

TEXAS SURVEY EDITOR

VOLUME 67

Winter 2014

THE SMU LAW REVIEW ASSOCIATION 2013-2014 STAFF EDITORS

John Adams	John P. Atkins	JILLIAN BEYTHAN
Anna Booth	Samuel Bragg	Amanda Brett
Aaron Chibli	Allison Childs	Bryan Clegg
CC COPELAND	Cody Cravens	ASHLEY DEWEESE
Nhi Dinh	Erik Fountain	Farsheed Fozouni
Kelli Gavin	Allyson Gault	NICOLE HAGET
Eric Hedlund	Seth Jaskoviak	Fahad Juneja
Christopher Knight	Clinton Kuykendall	Meagan Lanier
Scott R. Larso	Emily Leezer	Emily Lehmberg
Robert J. Levinski	Neal Lober	James M. Lucas
Huy Ly	John McGregor	Heather McKinney
Bryan McKown	Andria Rae Minyard	Joshua Pelfrey
Catherine Peterman	Jessica Phillips	Alex Poor
Seth Rasmussen	Amy Rauch	CHEYENNE ROGERS
Michael Sheetz	Jennifer Smiley	Cassie Suttle
Kelsey Taylor	Peter Thompson	J. BRYAN WHITE
Kyle Zunker		

1

SOUTHERN METHODIST UNIVERSITY DEDMAN SCHOOL OF LAW

OFFICERS OF THE UNIVERSITY

R. Gerald Turner, President Paul W. Ludden, Provost and Vice President for Academic Affairs Thomas E. Barry, Vice President for Executive Affairs Brad E. Cheves, Vice President for Development and External Affairs Chris Regis, Vice President for Business and Finance Paul J. Ward, Vice President for Legal Affairs and Government Relations, General Counsel, and Secretary Lori S. White, Vice President for Student Affairs Michael A. Condon, University Treasurer DEDMAN SCHOOL OF LAW FACULTY AND ADMINISTRATIVE STAFF Julia P. Forrestor, B.S.E.E., J.D., Dean ad interim and Professor of Law John S. Lowe, B.A., LL.B., Senior Associate Dean for Academic Affairs and George W. Hutchison Chair in Energy Law Nathan Cortez, B.A., J.D., Associate Dean for Research and Associate Professor Law Gail M. Daly, B.A., M.A., J.D., Associate Dean for Library and Technology and Associate Professor of Law Ruth A. Cross, B.A., J.D., Associate Dean for Administration, Director of Legal Research, Writing and Advocacy Program and Senior Lecturer in Law Lynn Switzer Bozalis, B.A., J.D., Associate Dean for Development and Alumni Affairs Martin L. Camp, B.A., J.D., Assistant Dean for Student Affairs Karen C. Sargent, B.B.A., J.D., Assistant Dean and Executive Director for Career Services Jill Nikirk, B.A., J.D., Assistant Dean for Admissions Rebecca Garza Greenan, B.S., B.A., M.Ed., J.D., Director of Public Service Program and Director of Academic Skills Assistance Program Roland C. Webb, B.S., M.B.A., Director of Financial Services Lynn McVicker Dempsey, B.B.A., Director of External Relations Kristy Offenburger, Director, Communications and Marketing Linda A. Hale, B.A., J.D., Director of Career Services Stephen B. Yeager, B.B.A., J.D., Director of Career Services J. Mark McWatters, B.B.A., M.B.A., J.D., LL.M., LL.M., Director of Graduate Programs Becca Lickteig, B.A., J.D., Director of Admissions Laura Amberson, B.S., Registrar FACULTY John B. Attanasio, B.A., J.D., LL.M., Dipl. in Law, Judge William Hawley Atwell Chair of Constitutional Law, Professor of Law and Former Dean Roy R. Anderson, B.A., J.D., LL.M., Vinson & Elkins Distinguished Teaching Fellow and Professor of Law Maureen N. Armour, B.A., M.S.W., J.D., Co-Director of Civil Clinic and Associate Professor of Law Lackland H. Bloom, Jr., B.A., J.D., Professor of Law William J. Bridge, B.S.F.S., J.D., Associate Professor of Law Alan R. Bromberg, B.A., J.D., University Distinguished Professor of Law Cheryl Nelson Butler, B.A., J.D., Assistant Professor of Law Regis W. Campfield, B.B.A., LL.B., Professor Emeritus of Law and Marilyn Jeanne Johnson Distinguished Law Faculty Fellow Emeritus Beverly M. Carl, B.S.L., J.D., LL.M., Professor Emerita of Law Michaela E. Cashen, B.A., J.D., Senior Lecturer in Law

Eric Cedillo, B.S., J.D., Coordinator, Consumer Advocacy Project

Anthony J. Colangelo, B.A., J.D., LL.M., J.S.D., Associate Professor of Law

Nathan Cortez, B.A., J.D., Associate Dean for Research and Associate Professor of Law

Gregory S. Crespi, B.S., M.S., Ph.D., J.D., Professor of Law

Ruth A. Cross, B.A., J.D., Associate Dean for Administration; Director of Legal Research, Writing, and Advocacy Program; and Senior Lecturer in Law

- Gail M. Daly, B.A., M.A., J.D., Associate Dean for Library and Technology, Director of the Underwood Law Library, and Associate Professor of Law
- David E. DePianto, B.A, J.D., Ph.D., Assistant Professor of Law William V. Dorsaneo III, B.A., J.D., Chief Justice John and Lena Hickman Distinguished Faculty Fellow and Professor of Law
- Beverly C. Duréus, B.A., J.D., Th.M., Senior Lecturer in Law
- Linda S. Eads, B.A., J.D., Associate Provost and Associate Professor of Law
- Julia P. Forrester, B.S.E.E., J.D., Dean ad interim and Professor of Law
- Jeffrey M. Gaba, B.A., J.D., M.P.H., Professor of Law
- Christopher H. Hanna, B.S., J.D., LL.M. (in Taxation), Altshuler University Distinguished Teaching Professor and Professor of Law
- Patricia S. Heard, B.A., J.D., Senior Lecturer in Law JoAnn A. Hubbard, B.S., J.D., Senior Lecturer in Law
- Christopher M. Jenks, B.S., J.D., LL.M., LL.M. (with distinction), Director of the Criminal Justice Clinic and Assistant Professor of Law
- Larry Jones, B.B.A., J.D., LL.M., Director of Federal Tax Clinic and Small Business Clinic
- Jeffrey Kahn, B.A., M.Phil., D.Phil., J.D., Associate Professor of Law
- Ndiva Kofele-Kale, B.A., M.A., Ph.D., J.D., University Distinguished Professor and Professor of Law
- Henry J. Lischer Jr., B.B.A., J.D., LL.M. (in Taxation), Professor Emeritus of Law
- John S. Lowe, B.A., LL.B., Senior Associate Dean for Academic Affairs and George W. Hutchison Professor of Energy Law
- George A. Martinez, B.A., M.A., J.D., Professor of Law
- Thomas Wm. Mayo, B.A., J.D., Altshuler University Distinguished Teaching Professor and Associate Professor of LawOrly Sulami Mazur, B.B.A., M.P.A. (summa cum laude), J.D. (Order of the Coif), LL.M., Assistant Professor of Law
- Joseph W. McKnight, B.A., B.A., B.C.L., M.A., LL.M., Larry and Jane Harlan Faculty Fellow and Professor of Law
- Charles J. Morris, B.A., LL.B., Professor Emeritus of Law
- Frederick C. Moss, A.B., J.D., LL.M., Professor Emeritus of Law
- John J. Mylan, B.S., J.D., LL.M. (in Taxation), Professor Emeritus of Law
- Xuan-Thao Nguyen, B.A., J.D., Professor of Law
- Joseph Jude Norton, A.B., LL.B., LL.M, S.J.D., D.Phil., Distinguished Faculty Fellow in Financial Institutions, Professor of Law and James L. Walsh Distinguished Faculty Fellow
- Victoria Palacios, J.D., Associate Professor of Law
- Kenneth L. Penegar, A.B., J.D., LL.M., Professor Emeritus of Law
- Roark M. Reed, B.S., B.A., J.D., Professor Emeritus of Law
- W. Keith Robinson, B.S., J.D., Assistant Professor of Law
- C. Paul Rogers III, B.A., J.D., LL.M., Professor of Law and former Dean
- Meghan Ryan, A.B., J.D., Assistant Professor of Law
- Eliot Shavin, B.A., J.D., Supervising Attorney, Civil Clinic
- Ellen K. Solender, A.B., J.D., Professor Emerita of Law
- Mary B. Spector, B.A., J.D., Co-Director of Civil Clinic, Director of Consumer Law Project, and Associate Professor of Law Walter W. Steele Jr., LL.B., Professor Emeritus of Law
- Marc I. Steinberg, A.B., J.D., LL.M., Rupert and Lillian Radford Chair in Law
- Heather Stobaugh, B.A., M.A., J.D., Lecturer in Law
- Joshua C. Tate, B.A., M.A., M.Phil. J.D., Ph.D., Associate Professor of Law
- David O. Taylor, B.S., J.D., Assistant Professor of Law
- Elizabeth G. Thornburg, B.A., J.D., Professor of Law
- Sarah Tran, B.S., J.D., Assistant Professor of Law
- Jenia Iontcheva Turner, B.A., J.D., Professor of Law
- Jonni Walls, B.A., J.D., Lecturer in Law
- Jessica Dixon Weaver, B.A., J.D., Assistant Professor of Law
- Harvey Wingo, B.A., M.A., J.D., Vinson & Elkins Distinguished Teaching Fellow Emeritus and Professor Emeritus of Law
- Peter Winship, B.A., LL.B., LL.M., James Cleo Thompson Sr. Professor of Law

ADVISORY BOARD

Harvie Branscomb, Jr. Branscomb P.C. Corpus Christi, Texas

Alan R. Bromberg Professor of Law Southern Methodist University Dedman School of Law

Gregory S. Crespi Professor of Law Southern Methodist University Dedman School of Law

> Craig T. Enoch Winstead P.C. Austin, Texas

Ernest E. Figari, Jr. Figari & Davenport Dallas, Texas Deborah G. Hankinson Hankinson Levinger LLP Dallas, Texas

The Honorable Nathan L. Hecht Supreme Court of Texas Austin, Texas

The Honorable Patrick E. Higginbotham United States Court of Appeals Fifth Judicial Circuit

> Thomas Wm. Mayo Associate Professor of Law Southern Methodist University Dedman School of Law

> R. Gerald Turner President Southern Methodist University



Articles

.

