# SMU Law Review

**Volume 72**

**Spring 2019**

**Number 2**

© 2019 by Southern Methodist University

## Table of Contents

### Tributes to Maureen Armour

- **Professor Maureen Armour** .................. *Jennifer M. Collins* 217
- **Maureen Armour** .......................... *Jane J. Boyle* 219
- **Maureen Tribute** .......................... *Michael Foreman* 221
- **In Honor of a Lifetime of Justice Work** .......... *William Holston* 223
- **Notes from the Basement** .......................... *Mary B. Spector* 225
- **Professor Maureen Noble Armour:**
  - The Last Lawyer in Town .................. *Jake Torres* 229
- **Tribute to Professor Maureen Armour:**
  - A Teacher’s Teacher ..................... *Jessica Dixon Weaver* 231

### Articles

- **Article III, Judicial Restraint, and**
  - This Supreme Court .................. *Joseph S. Diedrich* 235

- **Delay, Deny, Wait Till They Die:**
  - Balancing Veterans’ Rights and
  - Non-Adversarial Procedures in the
  - VA Disability Benefits System ............ *Hugh B. McClean* 277

### Casenotes

- **“Show Me the Affidavit”—**
  - Ambiguity Persists in the Application
  - of the Common Law Right of Access
  - to Pre-Indictment Records .................. *Nathaniel Hopkins* 319

- **Good Faith Concurrent Trademark Use:**
  - How the Ninth Circuit Took a Step in
  - the Right Direction for Broad
  - Protection in a Digital Time ............. *Dominic Riella* 327
Liable for Libel?—The Texas Supreme Court’s Opinion on Opinions and Implications ................. Griffin S. Rubin 335

“Hashing” in the Cloud: The Private Search Defense is Active and Potent .................................. Tri Truong 343

Tribal Sovereignty and Online Gaming: Fantasy Sports Offer Tribes What Other Games Do Not .................... Cody Wilson 351
SOUTHERN METHODIST UNIVERSITY DEDMAN
SCHOOL OF LAW

OFFICERS OF THE UNIVERSITY
R. Gerald Turner, President
Steven C. Currall, Provost and Vice President for Academic Affairs
Harold W. Stanley, Vice President for Executive Affairs
Brad E. Cheves, Vice President for Development and External Affairs
Christine C. Regis, Vice President for Business and Finance
Paul J. Ward, Vice President for Legal Affairs and Government Relations, General Counsel, and Secretary
Kenechukwu (K.C.) Mmeje, Vice President for Student Affairs
Rakesh Dahiya, Chief Investment Officer and University Treasurer

DEDMAN SCHOOL OF LAW
FACULTY AND ADMINISTRATIVE STAFF

Jennifer Collins, B.A., J.D. Judge James Noel Dean and Professor of Law
Jeffrey M. Gaba, B.A., J.D., M.P.H., Senior Associate Dean for Academic Affairs and M.D. Anderson Foundation Endowed Professor in Health Law
Nathan Cortez, B.A., J.D., Associate Dean for Research, Adelfa Botello Callejo Endowed Professor of Law in Leadership and Latino Studies, and Gerald J. Ford Research Fellow
Mary B. Spector, B.A., J.D., Associate Dean for Clinics, Co-Director of the Civil Clinic, Director of Consumer Advocacy Project, and Professor of Law
Greg Ivy, B.B.A., M.A., J.D., Associate Dean for Library & Technology, Underwood Law Library
Martin L. Camp, B.A., J.D., Assistant Dean for Graduate and International Programs
Becca Henley, B.A., J.D., Assistant Dean for Administration
Jill Nikirk, B.A., J.D., Assistant Dean for Admissions
Karen C. Sargent, B.B.A., J.D., Assistant Dean and Executive Director for Career Services
Stephen B. Yeager, B.B.A., J.D., Assistant Dean for Student Affairs
Anne G. Beard, Director of Development
Laura G. Burstein, B.A., J.D., Director of Public Service and Director of Academic Success
Lynn McVicker Dempsey, B.B.A., Director of External Relations
Erica Fadel, Director of Career Services
Natalie Thompson Greco, Director of Programs and Operations, Tsai Center for Law, Science, and Innovation
Kristy Offenburger, Director of Communications and Marketing
Michelle A. Ray, Director of Admissions
Rey Rodriguez, B.B.A., J.D., Director of Career Services and Diversity and Inclusion Initiatives
Abby N. Ruth, B.S., J.D., Director of Alumni Relations
Jerchel Anderson, E.M.B.A., Director of Financial Services
Laura Amberson, B.S., Registrar

FACULTY
Roy R. Anderson, B.A., J.D., LL.M., Vinson & Elkins Distinguished Teaching Fellow and Professor of Law
Hillel J. Bavli, B.A., J.D., LL.M., M.A., Ph.D., Assistant Professor of Law
Maureen N. Armour, B.A., M.S.W., J.D., Professor Emeritus of Law
Misty Birdsong, B.A., J.D., Adjunct Professor of Legal Research, Writing, and Advocacy
Lackland H. Bloom, Jr., B.A., J.D., Larry and Jane Harlan Senior Research Fellow and Professor of Law
Chanté Brantley, B.S., M.S.S.W., J.D., Director of the VanSickle Family Law Clinic and Assistant Clinical Professor
William J. Bridge, B.S.F.S., J.D., Professor Emeritus of Law
Brook Busbee, B.A.S., J.D., Adjunct Clinical Professor of Law, Criminal Justice Clinic
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 Emeritus of Law
Dale Carpenter, B.A., J.D., Judge William Hawley Atwell Chair of Constitutional Law and Professor of Law
Michaela E. Cashen, B.A., J.D., Clinical Professor of Legal Research, Writing and Advocacy
Eric Cedillo, B.S., J.D., Adjunct Clinical Professor of Law, Consumer Advocacy Project
David J. Cho, B.A., J.D., Adjunct Clinical Professor of Law, Trademark Clinic
Anthony J. Colangelo, B.A., J.D., LL.M., J.S.D., Gerald J. Ford Research Fellow and Professor of Law
James W. Coleman, B.A., J.D., Associate Professor of Law
Jennifer Collins, B.A., J.D., Judge James Noel Dean and Professor of Law
Nathan Cortez, B.A., J.D., Associate Dean for Research and Adelfa Botello Callejo Endowed Professor of Law in Leadership and Latino Studies
Gregory S. Crespi, B.S., M.S., Ph.D., J.D., Homer R. Mitchell Endowed Professor of Law in Commercial and Insurance Law, and Professor of Law
Ruth A. Cross, B.A., J.D., Director of Legal Research, Writing, and Advocacy Program and Senior Lecturer in Law
Gail Daly, B.A., M.A., J.D., Professor Emeritus 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., D. Min., Clinical Professor of Legal Research, Writing, and Advocacy
Linda S. Eads, B.A., J.D., Professor Emeritus of Law
Julia P. Forrester, B.S.E.E., J.D., Professor of Law
Jeffrey M. Gaba, B.A., J.D., M.P.H., Senior Associate Dean for Academic Affairs, M.D. Anderson Foundation Endowed Professor in Health Law, and Professor of Law
Grant M. Hayden, B.A., M.A., J.D., Professor of Law
Patricia S. Heard, B.A., J.D., Clinical Professor of Legal Research, Writing and Advocacy
JoAnn A. Hubbard, B.S., J.D., Clinical Professor of Legal Research, Writing and Advocacy
Marc Hubbard, B.S., J.D., Adjunct Clinical Professor of Law, Patent Clinic
Lolita Buckner Inniss, A.B., J.D., LL.M., Ph.D. Professor of Law
Greg Ivy, B.B.A., M.A., J.D., Associate Dean for Library & Technology, Underwood Law Library and Senior Lecturer
Christopher M. Jenks, B.S., J.D., LL.M., LL.M., Ph.D. Candidate, Director of the Criminal Justice Clinic and Associate Professor of Law
Larry Jones, B.B.A., J.D., LL.M., Adjunct Clinical Professor of Law, Federal Tax Clinic
Jeffrey Kahn, B.A., M.Phil., D.Phil., J.D., Gerald J. Ford Research Fellow and Professor of Law
Ndiva Kofele-Kale, B.A., M.A., J.D., Ph.D., Professor Emeritus of Law
Julie Lesser, B.A., J.D., Adjunct Clinical Professor of Law, Innocence Clinic
Henry J. Lischer, Jr., B.B.A., J.D., LL.M. (in Taxation), Professor Emeritus of Law
John S. Lowe, B.A., LL.B., George W. Hutchinson Chair in Energy Law and Professor of Law
George A. Martinez, B.A., M.A., J.D., Professor of Law
Thomas Wm. Mayo, B.A., J.D., Alshuler University Distinguished Teaching Professor and Professor of Law
Orly Sulami Mazur, B.B.A., M.P.A., J.D., LL.M. (Taxation), Assistant Professor of Law
Michael McCollum, LL.B., Adjunct Clinical Professor of Law, Criminal Justice Clinic
Pamela R. Metzger, B.A., J.D., Director of the Deason Family Criminal Law Reform Center 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
Natalie Nanasi, B.A., J.D., Director of the Judge Elmo B. Hunter Legal Center for Victims of Crimes Against Women and Assistant Professor of Law
Distinguished Faculty Fellow and Professor in Financial Institutions Law
Victoria Palacios, J.D., Professor Emeritus of Law
Kenneth L. Peneger, A.B., J.D., LL.M., Professor Emeritus of Law
W. Keith Robinson, B.S., J.D., Co-Director of the Tsai Center for Law, Science and
Innovation and Associate Professor of Law
C. Paul Rogers III, B.A., J.D., LL.M., Marilyn Jeanne Johnson Distinguished Faculty
Fellow, Professor of Law, and Former Dean
Meghan Ryan, A.B., J.D., Gerald J. Ford Research Fellow and Professor of Law
Eliot Shavin, B.A., J.D., Adjunct Clinical Professor of Law, Civil Clinic
Mary B. Spector, B.A., J.D., Associate Dean for Clinics, Director of the Civil Clinic,
Director of Consumer Advocacy Project, and 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 and
Professor of Law
Heather L. Stobaugh, B.A., M.A., J.D., Clinical Professor of Legal Research, Writing
and Advocacy
Diane M. Sumoski, B.A., J.D., Director of the W.W. Caruth, Jr. Child Advocacy
Clinic, Director of the W.W. Caruth, Jr. Institute for Children’s Rights, and Lecturer
in Law
Joshua C. Tate, B.A., M.A., M.Phil. J.D., Ph.D., Professor of Law
David O. Taylor, B.S., J.D., Co-Director of the Tsai Center for Law, Science and
Innovation and Associate Professor of Law
Walther Theiss, A.B., M.B.A., J.D., Adjunct Clinical Professor of Law, Small Business
Clinic
Elizabeth G. Thornburg, B.A., J.D., Richard R. Lee Endowed Professor, Altshuler
University Distinguished Teaching Professor, and Professor of Law
Jenia Iontcheva Turner, B.A., J.D., Amy Abboud Ware Centennial Professor in
Criminal Law
Jonni Walls, B.A., J.D., Clinical Professor of Legal Research, Writing and Advocacy
Jessica Dixon Weaver, B.A., J.D., Associate 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., J.S.D. Candidate, James Cleo Thompson, Sr., Law
School Endowed Professor and Professor of Law
Advisory Board

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

Deborah G. Hankinson
Hankinson Levinger LLP
Dallas, Texas

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

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

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

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

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

Ernest E. Figari, Jr.
Figari & Davenport
Dallas, Texas

R. Gerald Turner
President
Southern Methodist University