



---

January 2019

## Front Matter

---

### Recommended Citation

*Front Matter*, 72 SMU L. REV. i (2019)

<https://scholar.smu.edu/smulr/vol72/iss2/1>

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 72

SPRING 2019

NUMBER 2

---

---

© 2019 by Southern Methodist University

## TABLE OF CONTENTS

### TRIBUTES TO MAUREEN ARMOUR

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

### ARTICLES

Article III, Judicial Restraint, and This Supreme Court .....	<i>Joseph S. Diedrich</i>	235
Delay, Deny, Wait Till They Die: Balancing Veterans' Rights and Non-Adversarial Procedures in the VA Disability Benefits System .....	<i>Hugh B. McClean</i>	277

### CASENOTES

"Show Me the Affidavit"— Ambiguity Persists in the Application of the Common Law Right of Access to Pre-Indictment Records .....	<i>Nathaniel Hopkins</i>	319
Good Faith Concurrent Trademark Use: How the Ninth Circuit Took a Step in the Right Direction for Broad Protection in a Digital Time .....	<i>Dominic Riella</i>	327

Liable for Libel?—The Texas Supreme Court’s Opinion on Opinions and Implications .....	<i>Griffin S. Rubin</i>	335
“Hashing” in the Cloud: The Private Search Defense is Active and Potent .....	<i>Tri Truong</i>	343
Tribal Sovereignty and Online Gaming: Fantasy Sports Offer Tribes What Other Games Do Not .....	<i>Cody Wilson</i>	351

---

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 (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, volumes 1-69, are available from: William S. Hein & Co.; 2350 North Forest Road; Getzville, NY 14068. Volumes 70-71 are available from: *SMU Law Review*; Southern Methodist University; Dedman School of Law; P.O. Box 750116; Dallas, TX 75275-0116.

**POSTMASTER:** Send address changes to: *SMU Law Review*; Southern Methodist University; Dedman School of Law; P.O. Box 750116; Dallas, TX 75275-0116.

Editorial and business offices: *SMU Law Review*; Southern Methodist University; Dedman School of Law; P.O. Box 750116; Dallas, TX 75275-0116. Office: 214.768.2061 or 214.768.2570. 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* (20th ed. 2015) and *Texas Rules of Form* (14th ed. 2018), and *MoUS* (14th ed. 2018).

# SMU Law Review

---

VOLUME 72

SPRING 2019

NUMBER 2

---

*Member, National Conference of Law Reviews*

---

## THE SMU LAW REVIEW ASSOCIATION 2018–2019 BOARD OF EDITORS

### *President*

STACY REEVES GULLEDGE

*SMU Law Review  
Editor-in-Chief*  
KELSEY FLORES

*Texas Survey Editor-in-Chief*  
AUSTIN BRAKEBILL

*Journal of Air Law & Commerce  
Editor-in-Chief*  
ALEC SCHLINKERT

*SMU Law Review  
Managing Editor*  
KYLE MASON

*Texas Survey Associate  
Managing Editors*  
KLAYTON HILAND  
JAKE WINSLETT

*Journal of Air Law & Commerce  
Managing Editor*  
JEFFREY ALLCORN

*SMU Associate Managing Editors*  
RICHARD COCHRANE  
LARA KAKISH  
JUAN FELIPE VELASQUEZ

*Online Executive Editor*  
EMILY NASH

*JALC Associate Managing Editors*  
KATIE MANWORREN  
CAROLINE REED

*Lead Articles Editors*  
ALYSE CICIO  
BETHANY ECHOLS  
MACKENZIE FITZGERALD  
BRIAN LONG  
JONATHAN PETREE

*Administrative Managing  
Editor*  
MADELEINE GIESE

*Casenote & Comment Editors*  
TAMMIE BEASSIE BANKO  
BROOKE HAUGLID  
ALICIA PITTS  
LUKE STREIBER  
JENNIFER WILT

RACHEL ABOUKHAIR  
VICTORIA BAHRAMI  
CLAIRE BURDETTE  
DEVAN DAL COL  
TESS DENNIS

*Articles Editors*  
ROBIN FEATHERSTON  
JACKSON LONG  
MERRITT OWENS  
ADRIENNE ROBERTS  
CHANDLER ROGNES

EMILY SEMON  
DANIEL SEPULVEDA  
LAURA LINDSAY TATUM  
JOSEPH THELEN  
HUNTER WINSAUER

*Air Law Symposium Editor*  
TIMOTHY DOYLE

*Symposium CLE Editors*  
ELLEN HEIGHTEN  
AMY STEURER

*Corporate Counsel  
Symposium Editors*  
ANNA KATHERINE BONNET  
LAUREN MARKS

*Air Law  
Associate Symposium Editor*  
CHELSEA TILL

*Journal of Air Law & Commerce  
Faculty Advisor*  
GREGORY S. CRESPI

*SMU Law Review  
Faculty Advisors*  
THOMAS WM. MAYO  
ANTHONY J. COLANGELO

*Journal of Air Law & Commerce  
Administrative Assistant*  
LISA BROWNING

*SMU Law Review  
Administrative Assistant*  
TALIBRA FERGUSON

---

MEMBER, NATIONAL CONFERENCE OF LAW REVIEWS

---

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

# SMU Law Review

---

VOLUME 72

SPRING 2019

NUMBER 2

---

## THE SMU LAW REVIEW ASSOCIATION 2018-2019 STAFF

MADISON BERTRAND  
HAYDEN H. BROWN  
THOMAS CAMPBELL  
DANIELLE CANFIELD  
STEPHEN CHANCE  
PEARL CHOI  
SETH CLEARY  
ANDREA DELORIMIER  
JASMINE DILUCCI  
ZACHARY FAIRCLOTH  
SOPHIE FRANKS  
CODY GACKLE  
MADISON GAFFORD  
CHRISTOPHER GAMBINI  
SHAQUILLE GRANT  
ROWDY HAACK  
WILLIAM HAMILTON  
BRIDGET HAMWAY  
NATHANIEL HOPKINS  
DARIN HUGGINS  
KAYLEE KNOWLTON  
JOANN MAZUCH  
JET MCGUIRE  
LANDON MIGNARDI  
SEAN MINORINI

AUSTIN RYAN MUSSER  
TAYLOR NIFONG  
LUKE OHNMEIS  
PETER "ALEX" PAEZ  
JOSHUA PARISI  
TYLER PETTY  
ANDREA REED  
EMILY RHINE  
DOMINIC RIELLA  
GRIFFIN RUBIN  
AMIR SABOORIAN  
JANE MORGAN SCOTT  
JENNIFER SIEGEL  
JOHN SIVILS  
EMILY SMITH  
SARAH SMITH  
JAY SPRING  
AMANDA STICKNEY  
THOMAS TASSIN  
ANDREA TRAUT  
TRI TRUONG  
SEAN VALENTINE  
JOSHUA VASQUEZ  
CODY WILSON  
SARA ZOGLMAN

## 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*

Joanna L. Grossman, B.A., J.D., *Ellen K. Solender Endowed Chair in Women and the Law and Professor of Law*

Christopher H. Hanna, B.S., J.D., LL.M. (in Taxation), *Alan D. Feld Endowed Professor of Law, Altshuler University Distinguished Teaching Professor, 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. Hutchison 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., *Altshuler 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*

Joseph Jude Norton, A.B., LL.B., LL.M., S.J.D., D.Phil., LL.D., LL.D., *James L. Walsh Distinguished Faculty Fellow and Professor in Financial Institutions Law*  
Victoria Palacios, J.D., *Professor Emeritus of Law*  
Kenneth L. Penegar, 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