TABLE OF CONTENTS

ARTICLES

Fixing the War Powers Resolution in the Age of Predator Drones and Cyber-Warfare ................... Alexander Chanock 453

Directive 2008/101 and Air Transport—A Regulatory Scheme Beyond the Limits of the Effects Doctrine ........... Jason N. Glennon 479

Applying the Fourth Amendment’s National-Security Exception to Airport Security and the TSA............. R. Gregory Israelsen 501

Airfreight: Regulatory Environment Encourages or Imposes Price Coordination? ........................ Dr. Steven Truxal 541 Siri Harris

COMMENTS

Floating Toward a Sky Near You: Unmanned Aircraft Systems and the Implications of the FAA Modernization and Reform Act of 2012 ..... Brandon Bellows 585

The TSA’s New PreCheck Is Beginning to Look a Lot Like CAPPS II: The Privacy Implications of Reviving the Tenets of the Failed Predecessor .............. Katie Cristina 617

Commercializing Space: Intellectual Property Concerns with Space Act Agreements ........ Bryan Parrish 651
The *Journal of Air Law and Commerce* (ISSN 0021-8642) is published four times a year, (1) Winter, (2) Spring, (3) Summer, and (4) Fall, by the SMU Law Review Association. Subscription rates are $43.00 per year, domestic, and $50.00 per year, foreign. Single issues are available at $16.00 per copy. Add 8.25% tax on all single issue orders within the State of Texas. Tax exempt institutions must include a copy of their exemption certificate with orders. An additional charge will be made for postage and handling. Periodicals postage paid at Dallas, Texas, and at additional mailing offices. Prior issues (vols. 1-75) available from William S. Hein & Co., 2350 North Forest Road, Getzville, New York 14068. Volumes 76-78 are available from the *Journal of Air Law and Commerce*, Southern Methodist University School of Law, P.O. Box 750116, Dallas, Texas 75275. POSTMASTER: Send address changes to *Journal of Air Law and Commerce*, School of Law, Southern Methodist University, P.O. Box 750116, Dallas, Texas 75275. Printed by Joe Christensen, Inc., P.O. Box 81269, Lincoln, Nebraska 68501.

Citations conform with *The Bluebook: A Uniform System of Citation* (19th ed. 2010) and *Texas Rules of Form* (12th ed. 2010). Please note that due to the justification of the articles, citations to internet sources may contain an additional space between double back slashes.

Please address all manuscripts to the Editor in Chief, *Journal of Air Law and Commerce*, Southern Methodist University School of Law, P.O. Box 750116, Dallas, Texas 75275. Submitted manuscripts should be triple-spaced on letter-size paper. Footnotes rather than endnotes should be used and should also be triple-spaced. Word processing capabilities and requirements are available on request. A brief autobiographical statement should accompany the submission. Unsolicited manuscripts will not be returned unless return postage or a stamped, self-addressed envelope is enclosed.

Replacement copies are sent to subscribers upon prompt notification of non-receipt or defective copies. Subscriptions are renewed automatically upon expiration unless the subscriber sends timely notice of termination. All notifications of change of address should include old address, including zip code, and new address, including zip code. Please notify one month in advance to ensure prompt delivery.

Address inquiries to the *Journal of Air Law and Commerce*, Southern Methodist University School of Law, P.O. Box 750116, Dallas, Texas 75275.

Published quarterly by the SMU Law Review Association.

© Copyright 2013 by the Southern Methodist University Dedman School of Law.
ADVISORY BOARD

Gary W. Allen
Attorney at Law
Williamsburg, VA

Dr. P. Nikolai Ehlers
Ehlers, Ehlers & Partners
Munich, Germany

Elizabeth Mireya Freidenberg
Freidenberg, Freidenberg & Lifsic
Buenos Aires, Argentina

Eileen M. Gleimer
Crowell & Moring, LLP
Washington, DC

Eugene Jericho
Attorney at Law
Dallas, TX

H. Norman Kinzy
SettlePou, P.C.
Dallas, TX

Paul B. Larsen
Georgetown University
Law Center
Washington, DC

Robert Lawson
Quadrant Chambers, Quadrant House
London, England

Andreas F. Lowenfeld
Professor of Law
New York University School of Law
New York, NY

Allan I. Mendelsohn
Sher & Blackwell
Washington, DC

Dr. Pablo M.J. Mendes de Leon
Director, Int'l Institute of Air & Space Law
University of Leiden
The Netherlands

Dr. Michael Milde
Director Emeritus
Institute of Air & Space Law
McGill University
Montreal, Canada

Marc S. Moller
Kreindler & Kreindler
New York, NY

John J. Nance
Aviation Author & Attorney at Law
Roche Harbor, WA

David T. Norton
Shackelford, Melton & McKinley, LLP
Dallas, TX

John F. Pritchard
Holland & Knight
New York, NY

Mark R. Shaw
Associate General Counsel
Southwest Airlines
Dallas, TX

Charles H. Smith
Smith & Moore, P.L.L.C.
Dallas, TX

Charles A. Tarpley
Attorney at Law
Dallas, TX

William E. Thoms
Professor Emeritus of Law
Upper Great Plains Transportation Institute
Little Falls, MN

Windle Turley
Turley Law Firm
Dallas, TX

William R. Wyatt
Sheppard, Mullin, Richter & Hampton,
L.L.P.
New York, NY
SMU Law Review

SMU LAW REVIEW ASSOCIATION
2012 – 2013 BOARD OF EDITORS

President
JORDAN CAMPBELL

Journal of Air Law & Commerce
Editor-in-Chief
DALE FRESCH

SMU Law Review
Editor-in-Chief
KELLY KLINSEISEN

Journal of Air Law & Commerce
Managing Editor
JANE CHERRY

Texas Survey Editor
JUSTIN WHEELER

Associate Texas Survey Editors
LAUREL BREWER
JOHN CARSE

JALC Assoc. Managing Editors
ANN FRITSCH
JENNIFER STATON

Lead Articles Editors
MICHAEL BUSCHER
COLE DAVIS
ROXANNE JETT

Articles Editors
ANDREA FITZGERALD
PARKER GRAHAM
OLGA GURTMOVA
MATTHEW HEAPE

Executive Editor
ANDREW LAIRD

JALC Comment Editors
TIM BERGQUIST
HEIDI WILLERS

SMU Comment Editors
ERIN CROSBY
DAMIEN REYNOLDS

Air Law
Symposium Editor
JARRETT WATKINS

Administrative Managing Editors
FAWAZ BHAM
MORGAN GRISSUM
LINDSEY MARSH

Corporate Counsel
Symposium Editor
COLBY MCKENZIE

Assoc. Symposium Editor
TARYN DUSEK

Assoc. Symposium Editor
ALYN HURLEY

Journal of Air Law and Commerce
Faculty Advisor
GREGORY S. CRESPI

Symposium Technology Editors
SCOTT COURTNEY
ADRIENNE LEWIS

SMU Law Review Faculty Advisor
THOMAS WM. MAYO
ANTHONY J. COLANGELO
JOSHUA C. TATE

Journal of Air Law and Commerce
Administrative Assistant
LISA BROWNING

SMU Law Review
Administrative Assistant
DONNAISE BALDWIN

Member, National Conference of Law Reviews

SMU Law Review

Volume 78  Summer 2013  Number 3

SMU Law Review Association
2013 – 2014 Board of Editors

President
Heather Coghlan

Journal of Air Law & Commerce
Editor-in-Chief
Jacqui Bogucki

SMU Law Review
Editor-in-Chief
Lance Wyatt

Journal of Air Law & Commerce
Managing Editor
Laura Arbeiter

Texas Survey Editor
Brandon Bellows

Associate Texas Survey Editors
James Bedotto
Katie Cristina

JALC Associate Managing Editors
Elizabeth Griffin
Matthew Moran

Lead Articles Editors
Nathan Lee
Rouzeha Nayeri
Phillip Sanders

Articles Editors
Zunny Losoya
Bryan Parrish
Samuel Pinkston
Baine Sellers

SMU Associate Managing Editors
Ashton Barrineau
Lindsey Hoyland

Associate Managing Editors
Ross Staine
Clarke Stavinoha
Donald Steadman
Nathan Thompson
Jerry Tice

Lauren Christy
Chelsea Clarke
Ryan Frye
Blair Green
Sarah Honeycutt

SMU Comment Editors
Renee Hunter
Nicolas Low
Cynthia Weber

JALC Comment Editors
Blake Feikema
Michelle Northcutt

Executive Editor
Christina Gigliotti

Air Law Symposium
Editors
Jason Glennon
Kimberly Falgout

Administrative Managing
Editors
Chris Lambert
William Tran

Corporate Counsel Symposium
Editors
Jessica Greenwald
Brooke Panno
Kyle Park

Symposium CLE Editors
Jun Li
Joshua Tyler Shelton

Journal of Air Law and Commerce
Faculty Advisor
Gregory S. Crespi

SMU Law Review Faculty Advisor
Thomas Wm. Mayo
Anthony J. Golangelo
Joshua C. Tate

Journal of Air Law and Commerce
Administrative Assistant
Lisa Browning

SMU Law Review
Administrative Assistant
Donnaise Baldwin

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
The SMU Law Review Association Proudly Announces Its 2013-2014 Staff

<table>
<thead>
<tr>
<th>John Adams</th>
<th>Emily Leezer</th>
</tr>
</thead>
<tbody>
<tr>
<td>John P. Atkins</td>
<td>Emily Lehmberg</td>
</tr>
<tr>
<td>Jillian Beythan</td>
<td>Neal Lober</td>
</tr>
<tr>
<td>Anna Booth</td>
<td>James M. Lucas</td>
</tr>
<tr>
<td>Samuel Bragg</td>
<td>Huy Ly</td>
</tr>
<tr>
<td>Amanda Brett</td>
<td>John McGregor</td>
</tr>
<tr>
<td>Aaron Chibli</td>
<td>Heather McKinney</td>
</tr>
<tr>
<td>Allison Childs</td>
<td>Bryan McKown</td>
</tr>
<tr>
<td>Bryan Clegg</td>
<td>Andria Rae Minyard</td>
</tr>
<tr>
<td>CC Copeland</td>
<td>Joshua Pelfrey</td>
</tr>
<tr>
<td>Cody Cravens</td>
<td>Catherine Peterman</td>
</tr>
<tr>
<td>Jaime DeWees</td>
<td>Jessica Phillips</td>
</tr>
<tr>
<td>Ashley Deweese</td>
<td>Alex Poor</td>
</tr>
<tr>
<td>Nhi Dinh</td>
<td>Seth Rasmussen</td>
</tr>
<tr>
<td>Erik Fountain</td>
<td>Amy Rauch</td>
</tr>
<tr>
<td>Farsheed Fozouni</td>
<td>Cheyenne Rogers</td>
</tr>
<tr>
<td>Kelli Gavin</td>
<td>Michael Sheetz</td>
</tr>
<tr>
<td>Nicole Haget</td>
<td>Jennifer Smiley</td>
</tr>
<tr>
<td>Eric Hedlund</td>
<td>Cassie Suttle</td>
</tr>
<tr>
<td>Seth Jaskoviak</td>
<td>Kelsey Taylor</td>
</tr>
<tr>
<td>Fahad Juneja</td>
<td>Peter Thompson</td>
</tr>
<tr>
<td>Christopher Knight</td>
<td>J. Bryan White</td>
</tr>
<tr>
<td>Clinton Kuykendall</td>
<td>Allyson Yates</td>
</tr>
<tr>
<td>Meagan Lanier</td>
<td>Kyle Zunker</td>
</tr>
<tr>
<td>Scott R. Larson</td>
<td></td>
</tr>
</tbody>
</table>
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 of 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
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
Regis W. Campfield, B.B.A., LL.B., Professor Emeritus of Law and Marilyn Jeanne Johnson Distinguished Law Faculty Fellow Emeritus
Beaverly 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. DiPianto, 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., 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
Ndini 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 Law
Orly 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-Thai Nguyen, B.A., J.D., Professor of Law
Joseph G. Norton, B.A., 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
Articles