

NEVADA LAW JOURNAL

Volume 12

Summer 2012

Number 3

TRIBUTE

Saluting Judge Philip Pro's Quarter Century of Nevada District Service

Carl Tobias..... 511

SYMPOSIUM:

THE WORST SUPREME COURT CASE EVER?

The Worst Supreme Court Case Ever? Identifying, Assessing, and Exploring Low Moments of the High Court

Jeffrey W. Stempel 516

Naim v. Naim

Richard Delgado 525

Terrace v. Thompson and the Legacy of Manifest Destiny

Jean Stefancic 532

Carnival Cruise Lines, Inc. v. Shute: The Titanic of Worst Decisions

Linda S. Mullenix 549

Contract Law Walks the Plank: *Carnival Cruise Lines, Inc. v. Shute*

Charles L. Knapp 553

Bush v. Gore: The Worst (or at least second-to-the-worst) Supreme Court Decision Ever

Mark S. Brodin 563

Ashcroft v. Iqbal: Contempt for Rules, Statutes, the Constitution, and Elemental Fairness

Steve Subrin 571

Hustler v. Falwell: Worst Case in the History of the World, Maybe the Universe

John M. Kang 582

Lassiter v. Department of Social Services: Why Is It Such a Lousy Case?

Brooke D. Coleman 591

On Teaching Conflicts and Why I Dislike *Allstate Insurance Co. v. Hague*

Thomas O. Main 600

Setting Us Up for Disaster: The Supreme Court's Decision in *Terry v. Ohio*

Thomas B. McAfee 609

Ricci v. DeStefano: Diluting Disparate Impact and Redefining Disparate Treatment

Ann C. McGinley 626

<i>Lynch</i> and the Lunacy of Secularized Religion Frederick Mark Gedicks	640
<i>Nigro v. United States</i> : The Most <i>Disingenuous</i> Supreme Court Opinion, Ever A. Christopher Bryant	650
<i>Globe Refining Co. v. Landa Cotton Oil Co.</i> and the Dark Side of Reputation Larry T. Garvin	659
Blackmun (and Scalia) at the Bat: The Court's Separation-of-Powers Strike Out in <i>Freytag</i> Tuan Samahon	691
Tending to Potted Plants: The Professional Identity Vacuum in <i>Garcetti v. Ceballos</i> Jeffrey W. Stempel	703

ARTICLES

Circumstance and Strategy: Jointly Authored Supreme Court Opinions Laura Krugman Ray	727
Stare Decisis in the Inferior Courts of the United States Joseph W. Mead	787
Importing the Flawless Girl Kit Johnson	831

NOTE

Health Care Exchanges: How the Government Can Use Market Forces to Fix the Health Care System Bracken H. Longhurst	868
--	-----

NEVADA LAW JOURNAL

Published by the
William S. Boyd School of Law
University of Nevada, Las Vegas

BOARD OF EDITORS

Editor-in-Chief
TIM MOTT

Managing Editor
CAYLA WITTY

Articles Editors
FLORESTO CABIAS
RYAN HENRY
BRACKEN LONGHURST
ASHLEY NIKKEL
ROBERT OPDYKE
JONATHAN WINN

Lead Articles Editor
KAMMI RENCHER

Symposium Editor
MICHAEL GIANELLONI

Notes Editors
BRIAN L. BLAYLOCK
ERIN ELLIOTT

Nevada Law Editors
NECHOLE GARCIA
JUSTIN SHIROFF

Business Editor
CHARLES GIANELLONI

SENIOR STAFF

CHRISTIAN BALDUCCI
CHELSEY BOSWORTH
CHRISTOPHER CONNELL
JENNIFER DELCARMEN

RYAN JOHNSON
YAN XIONG (MICHAEL) LI
SEAN MCDONALD
MARISSA PENSABENE

MICHAEL ROCHE
MEREDITH STILL
CRISTEN THAYER
DANIELLE WOODRUM

STAFF

TRAVIS AKIN
RICHARD A. ANDREWS
COLBY BALKENBUSH
JOSEPH BOWEN
ERIC CARSON
THOMAS L. CHITTUM, III
JAMIE K. COMBS
CAMERON DAW
JASON L. DEFOREST

KELLI DEVANEY
SABRINA DOLSON
AARON K. HAAR
WILLIAM HABDAS
RAMIR HERNANDEZ
AMANDA IRELAND
KENDRA KISLING
DANIELA LABOUNTY
PATRICK MCDONNELL

ALAN MILLER
EMILY NAVASCA
MICHELLE NEWMAN
BRYAN SCHWARTZ
COLIN SEALE
BRANDON SENDALL
ALAN R. SMITH
MATTHEW VANTUSKO
JASON WALLACE

FACULTY GOVERNING BOARD

PROFESSOR RACHEL J. ANDERSON
PROFESSOR THOMAS B. MCAFFEE
PROFESSOR NGAI PINDELL
PROFESSOR NANCY B. RAPOPORT
PROFESSOR ELAINE SHOBNEN

**William S. Boyd School of Law—Faculty and Administration for
2011-2012**

ADMINISTRATIVE OFFICERS

John V. White, Dean, William S. Boyd School of Law
Frank Durand, Dean for Student Advancement
Francis J. Mootz, Associate Dean for Academic Affairs and Faculty Development
Christine Smith, Associate Dean for Administration and Student Affairs

LAW FACULTY

Rachel J. Anderson, J.D., University of California, Berkeley School of Law,
Associate Professor of Law
Ian C. Bartrum, LL.M., Yale Law School; J.D., Vermont Law School, *Associate
Professor of Law*
Peter Brandon Bayer, LL.M., Harvard Law School; J.D., New York University Law
School, *Lawyering Process Professor of Law*
Linda L. Berger, J.D., Case Western Reserve University, *Professor of Law*
Mary E. Berkheiser, J.D., University of Arizona, James E. Rogers College of Law,
Director of Clinical Programs, Professor of Law
Bret C. Birdsong, J.D., University of California, Hastings College of Law, *Professor
of Law*
Christopher L. Blakesley, J.S.D., Columbia University School of Law; LL.M.,
Columbia University School of Law; J.D., University of Utah Law School,
Cobeaga Law Firm Professor of Law
Richard L. Brown, J.D., Indiana University School of Law, *Professor of Law
(Emeritus)*
Honorable Jay S. Bybee, J.D., Brigham Young University, J. Reuben Clark Law
School, *Senior Fellow in Constitutional Law*
Ann Cammett, J.D., City University of New York School of Law, *Associate
Professor of Law*
Jennifer Carr, J.D., University of Nevada, Las Vegas, William S. Boyd School of
Law, *Director of the Academic Success Program*
Robert I. Correales, LL.M., Georgetown University; J.D., University of Kansas
School of Law, *Associate Professor of Law*
Linda Edwards, J.D., University of Tennessee College of Law, E.L. Cord Foundation
Professor of Law
Ruben J. Garcia, LL.M., University of Wisconsin Law School; J.D., University of
California, Los Angeles, School of Law, *Professor of Law*
Martin Geer, LL.M., Columbia Law School; J.D., Wayne State University Law
School, *Director of Externship Program*
Sara Gordon, J.D., University of Arizona, James E. Rogers College of Law,
Lawyering Process Professor of Law
Douglas Grant, J.D., University of Colorado, *Professor of Law (Emeritus)*
Lynne Henderson, J.D., Stanford Law School, *Professor of Law (Emerita)*
Lori D. Johnson, J.D., Northwestern University School of Law, *Lawyering Process
Professor of Law*
Michael Kagan, J.D., University of Michigan Law School, *Associate Professor of
Law*
Kay P. Kindred, J.D., Columbia University School of Law, *Ralph Denton Professor
of Law*
Katherine R. Kruse, J.D., University of Wisconsin Law School, *Professor of Law*
Mary LaFrance, J.D., Duke University School of Law, *IGT Professor of Law*

Sylvia Lazos, J.D., University of Michigan School of Law, *Justice Myron Leavitt Professor of Law*

Elizabeth L. MacDowell, J.D., University of California, Berkeley School of Law, *Associate Professor of Law*

Honorable Bruce A. Markell, J.D., University of California, Davis School of Law, *Senior Fellow in Bankruptcy and Commercial Law*

Fatma Marouf, J.D., Harvard Law School, *Associate Professor of Law*

Thomas B. McAfee, J.D., University of Utah, S.J. Quinney College of Law, *William S. Boyd Professor of Law*

Ann C. McGinley, J.D., University of Pennsylvania Law School, *William S. Boyd Professor of Law*

Francis J. Mootz III, J.D., Duke University School of Law, *William S. Boyd Professor of Law and Associate Dean for Academic Affairs and Faculty Development*

Richard J. Morgan, J.D., University of California, Los Angeles School of Law (*Dean Emeritus*)

Rebecca Nathanson, Ph.D, University of California, Santa Barbara, *James E. Rogers Professor of Education and Law*

Raymond W. Patterson, J.D., Benjamin N. Cardozo School of Law, *Associate Director of the Saltman Center for Conflict Resolution*

Ngai L. Pindell, J.D., Harvard Law School, *Professor of Law*

Terrill Pollman, J.D., University of Arizona, James E. Rogers College of Law, *Director of the Lawyering Process Program and Professor of Law*

Jeanne Price, J.D., University of Texas, *Director of the Wiener-Rogers Law Library and Associate Professor of Law*

Nancy B. Rapoport, J.D., Stanford Law School, *Gordon Silver Professor of Law*

Addie C. Rolnick, J.D., University of California, Los Angeles School of Law, *Associate Professor of Law*

Keith A. Rowley, J.D., University of Texas School of Law, *William S. Boyd Professor of Law*

Rebecca Scharf, J.D., Harvard Law School, *Lawyering Process Professor*

Elaine Shoben, J.D., University of California, Hastings College of Law, *Judge Jack and Lulu Lehman Professor of Law*

Jeffrey W. Stempel, J.D., Yale Law School, *Doris S. and Theodore B. Lee Professor of Law*

Jean Sternlight, J.D., Harvard Law School, *Director of the Saltman Center for Conflict Resolution and Michael and Sonja Saltman Professor of Law*

David Tanenhaus, Ph.D, University of Chicago, *James E. Rogers Professor of History and Law*

Stacey Tovino, J.D., University of Houston Law Center, *Professor of Law*

Anne Traum, J.D., University of California, Hastings College of Law, *Associate Professor of Law*

Marketa Trimble, J.S.D., Stanford Law School, *Associate Professor of Law*

John V. White, J.D., Yale Law School, *Dean and Professor of Law*

Jean M. Whitney, J.D., William Mitchell College of Law, *Associate Director of the Lawyering Process Program and Lawyering Process Professor of Law*

ADJUNCT & VISITING LAW FACULTY

Lisa B. Bingham, J.D., University of Connecticut, *Visiting Professor of Law*

Matthew J. Christian, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law

Douglas M. Edwards, J.D., University of San Francisco School of Law

Robert D. Faiss, J.D., American University, Washington College of Law
John Forry, J.D., Harvard Law School
Franny Forsman, J.D., Notre Dame Law School
Dean J. Gould, J.D., Wayne State University
Stanley C. Hunterton, J.D., Syracuse University College of Law
Michelle Juan, J.D., University of San Diego Law School
Francine Lipman, LL.M., NYU School of Law; J.D., University of California, Davis
School of Law, *Visiting Professor of Law*
Bruce Markell, J.D., University of California, Davis School of Law
Mike K. Nakagawa, J.D., University of California, Davis School of Law
Stanford B. Owen, J.D., Stanford Law School
Tom Pitaro, J.D., University of California, Los Angeles School of Law
Richard A. Rawson, J.D., University of Nevada, Las Vegas, William S. Boyd School
of Law
Jennifer Roberts, J.D., University of Utah College of Law
David P. Schwartz, J.D., Brooklyn Law School
Frank P. Sullivan, J.D., DePaul University
Mark Tratos, J.D., Lewis and Clark Law School