

# NEVADA LAW JOURNAL

Volume 21

Fall 2020

Number 1

## ARTICLES

Reversing the Decriminalization of Sexual Violence Lisa Avalos .....	1
Secret Algorithms, IP Rights, and the Public Interest Meghan J. Ryan .....	61
Pardoning Dogs Sarah Schindler .....	117
Implicit Disability Bias Disinterred by Zombie Factors in Social Security Disability Determinations Frank Griffin .....	161
A Contemporary Approach to Ride-Through, <i>Ipsa Facto</i> Clauses, and the Nondefaulting Debtor Lawrence Ponoroff .....	209
Calming Down and Waking Up: An Empirical Study of the Effects of Mindfulness Training on Law Students Charity Scott & Paul Verhaeghen .....	277
Digging into Algorithms: Legal Ethics and Legal Access Carla L. Reyes & Jeff Ward .....	325

## NOTES

Convenience or Confidentiality: Nevada's Digital Data Laws in the Age of Always-Listening Devices E. Sebastian Cate-Cribari .....	379
A (Cruel and) Unusual Decision: Questions Raised for the Fifth Circuit Moving Forward from <i>Gibson v. Collier</i> J. Gregory Cloward .....	405

# NEVADA LAW JOURNAL

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

---

## BOARD OF EDITORS

### Editor-in-Chief

JOHN MCCORMICK-HUHN

### Executive Managing Editors

TAYLER BINGHAM

KATRINA WEIL

### Executive Editors

JOSEPH ADAMIAK

SEBASTIAN CATE-CRIBARI

ELIZABETH DAVENPORT

### Lead Articles Editor

GREG CLOWARD

### Symposium Editor

GILLIAN BLOCK

### Forum Editor

BRITNI TANENBAUM

### Articles Editors

DALLAS ANSELMO

SKYLAR ARAKAWA-  
PAMPHILON

JEFFREY GARRETT

MCKAY HOLLEY

BRITTNEY LEHTINEN

ERIKA SMOLYAR

ALEXIS TAITEL

### Business Editor

PAIGE SILVA

### Nevada Law Editors

DYLAN LAWTER

ANYA LESTER

### Notes Editors

CHRISTOPHER GONZALEZ

MELISSA YEGHIAZARIAN

## SENIOR STAFF

ALFA ALEMAYEHU

JULIA ARMENDARIZ

JOHN BAYS

GABRIELLE BOLIQU

ANDREW BROWN

RILEY COGGINS

TRISHA DELOS SANTOS

MICHAEL DESMOND

SALMA GRANICH

MANUEL GURULE

NICHOLAS HAGENKORD

MICHAEL HOLTHUS

AMELIA MALLETT

ALEXANDRA MATLOFF

PETYA PUCCI

MISHA RAY

KATRINA STARK

JOSE TAFOYA

AARIEL WILLIAMS

AUSTIN WOOD

## JUNIOR STAFF

WENDY ANTEBI

MIA BACHER

BRADY BATHKE

ELI BERGIDA

CONNOR BODIN

BRENDON N. BRANDÃO

TANNER CASTRO

MADELEINE COLES

KELSEY DELOZIER

CECILIA DIAZ

MAGGIE ANN DIFEDERICO

SAMANTHA GOETT

RACHAEL T. GONZALES

KILEY HARRISON

NINA HEBIBOVICH

LUIS MONTANEZ JUAREZ

YOOSUN JUN

VICTOR KANG

ALINA KRAUFF

ALLISON MANN

ALEXANDRA MATEO

MICHAEL MCGRADY

JOSHUA NELSON

CHAPMAN NOAM

JORGE "COCO" PADILLA

HOLLY PARR

CRISTINA PHIPPS

JESSICA PHIPPS

DIANNA SAUCEDA-CHIRINOS

ASHLEY SCHOBERT

JULIA STANDISH

GREER SULLIVAN

THERESA THIBEAU

KRISTIN WILDE

SULLIVAN WINESETT

## FACULTY GOVERNING BOARD

PROFESSOR BENJAMIN EDWARDS

PROFESSOR DAVID MCCLURE

PROFESSOR KEITH ROWLEY

PROFESSOR JOHN WHITE

### Editorial Office

4505 S. Maryland Parkway, Las Vegas, NV 89154-1003

TEL: 702.895.2435 • FAX: 702.895.2321

**William S. Boyd School of Law, UNLV**  
**Faculty and Administration for 2020-2021**

**ADMINISTRATION**

Daniel W. Hamilton, *Dean, Richard J. Morgan Professor of Law*  
Rachael Adair, *Assistant Dean of Career Development*  
Ian Bartrum, *Associate Dean for Faculty Development and Research; Professor of Law*  
Angie Doran, *Assistant Dean of Finance*  
Frank D. Durand, *Associate Dean for Student Affairs*  
Sara Gordon, *Associate Dean for Academic Affairs; Professor of Law*  
Joan Howarth, *Interim Associate Dean for Experiential Legal Education*  
Christine Smith, *Associate Dean for Public Service, Compliance, and Administration*  
Brian Wall, *Assistant Dean of Admissions and Financial Aid*

**LAW FACULTY**

Rachel J. Anderson, J.D., University of California, Berkeley, School of Law, *Professor of Law*  
Ian C. Bartrum, LL.M., Yale Law School; J.D., Vermont Law School, *Associate Dean for Faculty Development and Research; Professor of Law*  
Mary Beth Beazley, J.D., University of Notre Dame Law School, *Professor of Law*  
Bret C. Birdsong, J.D., University of California, Hastings College of the Law, *Professor of Law*  
Stewart Chang, J.D., Georgetown University Law Center, *Professor of Law*  
Frank Rudy Cooper, J.D., Duke Law School, *Director, Program on Race, Gender, and Policing; William S. Boyd Professor of Law*  
Robert I. Corrales, LL.M., Georgetown University Law Center; J.D., University of Kansas School of Law, *Professor of Law*  
Benjamin Edwards, J.D., Columbia Law School, *Associate Professor of Law*  
Ruben J. Garcia, LL.M., University of Wisconsin Law School; J.D., University of California, Los Angeles, School of Law, *Co-Director, UNLV Workplace Law Program; Professor of Law*  
Sara Gordon, J.D., University of Arizona College of Law, *Associate Dean for Academic Affairs, Professor of Law*  
Leslie C. Griffin, M.A., M. Phil., Ph.D., Yale University, J.D., Stanford Law School, *William S. Boyd Professor of Law*  
Daniel W. Hamilton, Ph.D., Harvard University; J.D., George Washington University, *Dean, Richard J. Morgan Professor of Law*  
Eve Hanan, J.D., University of Michigan Law School, *Co-Director, Misdemeanor Clinic; Associate Professor of Law*  
Joan Howarth, J.D., University of Southern California, *Interim Associate Dean for Experiential Legal Education; Distinguished Visiting Professor*  
Lori D. Johnson, J.D., Northwestern University School of Law, *Associate Professor of Law*  
Michael Kagan, J.D., University of Michigan Law School, *Director, UNLV Immigration Clinic; Joyce Mack Professor of Law*  
Kay P. Kindred, J.D., Columbia University School of Law, *Professor of Law*  
Mary LaFrance, J.D., Duke University School of Law, *IGT Professor of Intellectual Property Law*  
Sylvia Lazos, J.D., University of Michigan Law School, *Justice Myron Leavitt Professor of Law*  
Francine J. Lipman, LL.M., New York University School of Law; J.D., University of California, Davis, School of Law, *William S. Boyd Professor of Law*  
Sydney Lisy, J.D., Valparaiso University, *Director of the Academic Success Program; Assistant Professor in Residence*  
Elizabeth L. MacDowell, J.D., University of California, Berkeley, School of Law, *Director, Family Justice Clinic; Professor of Law*  
Thomas O. Main, J.D., Northeastern University School of Law, *William S. Boyd Professor of Law*  
Ann C. McGinley, J.D., University of Pennsylvania Law School, *William S. Boyd Professor of Law*  
Rebecca Nathanson, Ph.D., University of California, Santa Barbara, *Director of Education Advocacy Clinic and Kids' Court School; James E. Rogers Professor of Education and Law*

Dawn Nielsen, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law,  
*Director of Externships; Assistant Professor in Residence*

Lydia Nussbaum, J.D., University of Maryland Francis King Carey School of Law, *Director,  
Mediation Clinic; Director, Saltman Center for Conflict Resolution; Professor of Law*

David Orentlicher, J.D., Harvard Law School, M.D., Harvard Medical School, *Co-Director,  
UNLV Health Law Program; Judge Jack and Lulu Lehman Professor of Law*

Ngai Pindell, J.D., Harvard Law School, *International Gaming Institute Professor of Law;*

Jeanne Frazier Price, J.D., University of Texas School of Law, *Professor of Law; Director,  
Wiener-Rogers Law Library*

Nancy B. Rapoport, J.D., Stanford Law School, *Garman Turner Gordon Professor of Law;  
Affiliate Professor of Law and Ethics, Lee Business School*

Joe Regalia, J.D., University of Michigan Law School, *Associate Professor of Law*

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

Kathryn M. Stanchi, J.D., Boston University School of Law; *E.L. Cord 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, *Founding Director, Saltman Center for Conflict  
Resolution; Michael and Sonja Saltman Professor of Law*

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

Anne R. Traum, J.D., University of California, Hastings College of the Law, *Director,  
Appellate Clinic; Professor of Law*

Marketa Trimble, J.S.D. and J.S.M., Stanford Law School; JUDr., Ph.D., Law School of  
Charles University in Prague, *Samuel S. Lionel Professor of Intellectual Property Law*

John V. White, J.D., Yale Law School, *Ralph Denton Professor of Law*

#### **DISTINGUISHED FELLOW**

Anthony Cabot, J.D., Arizona State University, Sandra Day O'Connor College of Law,  
*Distinguished Fellow in Gaming Law*

Senator Harry Reid, J.D., George Washington University Law School, *Distinguished Fellow  
in Law and Policy*

Governor Brian Sandoval, J.D., The Ohio State University, Moritz College of Law,  
*Distinguished Fellow in Law and Leadership*

#### **EMERITI FACULTY**

Peter Brandon Bayer, LL.M., Harvard Law School; J.D., New York University School of  
Law, *Emeritus Professor of Law*

Linda L. Berger, J.D., Case Western Reserve University School of Law, *Emerita Professor  
of Law*

Mary E. Berkheiser, J.D., University of Arizona College of Law, *Emerita Professor of Law*

Christopher L. Blakesley, J.S.D., and LL.M., Columbia University School of Law; J.D.,  
University of Utah College of Law, *Emeritus Professor of Law*

Richard L. Brown, J.D., Indiana University, *Emeritus Professor of Law*

Linda Edwards, J.D., University of Tennessee College of Law, *Emerita Professor of Law*

Douglas Grant, J.D., University of Colorado School of Law, *Emeritus Professor of Law*

Lynne Henderson, J.D., Stanford Law School, *Emerita Professor of Law*

Thomas B. McAfee, J.D., University of Utah College of Law, *Emeritus Professor of Law*

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

Terrill Pollman, J.D., University of Arizona College of Law, *Emerita Professor of Law*

Elaine Shoben, J.D., University of California, Hastings College of the Law, *Emerita  
Professor of Law*

Jean M. Whitney, J.D., William Mitchell College of Law, *Emerita Professor of Law*

#### **LIBRARY FACULTY**

Youngwoo Ban, J.D., Oklahoma City University School of Law, M.L.I.S., University of  
Arizona, *Research Librarian and Assistant Professor*

David McClure, J.D., University of Nebraska College of Law; M.S.I.S., University of Texas,  
*Associate Director and Associate Professor*

Jim Rich, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law, *Research Librarian and Assistant Professor*  
Victoria Tokar, J.D., Loyola Law School, *Research Librarian and Assistant Professor*

#### SENIOR FELLOWS

Nancy Brune, Ph.D., Yale University, Kenny Guinn Center for Policy Priorities, Nevada, *Senior Fellow*  
Honorable Jay S. Bybee, J.D., Brigham Young University Law School, *Senior Fellow in Constitutional Law*  
Frank Fritz, J.D., Columbia University School of Law, *Senior Fellow*  
Patricia Mulroy, M.A., University of Nevada, Las Vegas *Senior Fellow, Practitioner in Residence Saltman Center for Conflict Resolution*

#### SALTMAN SENIOR SCHOLARS

Hal Abramson, LL.M., Harvard Law School; J.D., Syracuse University College of Law  
Lisa Blomgren Amsler, J.D., University of Connecticut School of Law

#### ADJUNCT FACULTY

Jeanette Barrick, J.D., William S. Boyd School of Law  
Jennifer Carleton, J.D., University of Wisconsin Law School  
Patrick Chapin, J.D., Capital University School of Law  
Uri Clinton, J.D., Gonzaga University School of Law; MBA, Vanderbilt University  
Christy Craig, J.D., California Western School of Law  
Honorable Jennifer Dorsey, J.D., Pepperdine University School of Law  
Seth Floyd, J.D., William S. Boyd School of Law  
Osvaldo Fumo, J.D., Whittier Law School  
Maxim Gakh, J.D., The Ohio State University; M.P.H., Johns Hopkins University  
Greg Gemignani, J.D., University of Wisconsin Law School  
John Harney, J.D., University of Wisconsin Law School  
Becky Harris, LL.M., University of Nevada, Las Vegas; J.D., Brigham Young University; J.D., Reuben Clark Law School  
C. Stanley Hunterton, J.D., Syracuse University College of Law  
Terry Johnson, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law  
Marc Kligman, J.D., Tulane University School of Law  
John Lambrose, J.D., University of Idaho College of Law  
Eleissa Lavelle, LL.M., Pepperdine University School of Law; J.D., University of Utah College of Law  
Erin McMullen, J.D., California Western School of Law  
Samuel McMullen, J.D., Georgetown University  
Joanna Myers, J.D., William S. Boyd School of Law  
Honorable Mike K. Nakagawa, J.D., University of California, Davis, School of Law  
Heidi Ojeda, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law  
Stanford B. Owen, J.D., Stanford Law School  
Peter Sadowski, J.D., St. Louis University School of Law  
David Sandino, J.D., Santa Clara University School of Law  
Bryan Schwartz, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law  
David G. Schwartz, Ph.D. History, UCLA; B.A. and M.A., University of Pennsylvania  
David P. Schwartz, J.D., Brooklyn Law School  
Howard Siegel, J.D., Syracuse University, College of Law  
Rene Valladares, LL.M., University of Miami School of Law; J.D., University of Florida School of Law  
Honorable Gregg Zive, J.D., University of Notre Dame Law School