

NEVADA LAW JOURNAL

Volume 21

Spring 2021

Number 2

ARTICLES

Autonomous Business Reality Carla L. Reyes	437
Tax Incentives for Green Burial Victoria J. Haneman	491
The Vanishing Core of Judicial Independence Evan C. Zoldan	531
Cruelty Was the Point: Theories of Recovery for Family Separation and Detention Abuses Sarah Rogerson	583
Digital Fidelity and Friction Ellen P. Goodman	623
(Un)Wicked Analytical Frameworks and the Cry for Identity Leslie Patrice Culver	655
Artificial Intelligence and Access to the Patent System W. Keith Robinson	729
Continuous Burdens of Proof Mark Spottswood	779

NOTE

Giving Qualified Immunity Teeth: A Congressional Approach to Fixing Qualified Immunity Tayler Bingham	835
---	-----

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