ARTICLES

Patents, Validity Challenges, and Private Ordering:
A New Dispensation for the Easy-Challenge Era
Rob Merges ................................................................. 263

Political Polarization: Psychological Explanations and
Potential Solutions
Jennifer K. Robbennolt ..................................................... 323

Antitrust Has Forgotten Its Coase
John M. Yun ........................................................................ 367

Continuing Principled Sentencing Reform and Winding Back
Mass Incarceration Against the Backdrop of America’s Surge
in Violent Crime
Mirko Bagaric, Jennifer Svilar & Brienna Bagaric ............... 411

Health of Nations: Preventing a Post-Pandemic Emerging
Markets Debt Crisis
Lev E. Breydo ................................................................. 463

The Case for a CDA Section 230 Notice-and-Takedown Duty
Michael L. Rustad & Thomas H. Koenig ..................... 533

NOTES

150 Years On: Common Sense Updates to the Mining Law of 1872
to Address Our Changing Climate
Jake Ward-Herzik ............................................................ 621

Preventing a (Replication) Crisis in the Courtroom
Kaitlin McCormick-Huhn ............................................... 643
# NEVADA LAW JOURNAL
Published by the
William S. Boyd School of Law
University of Nevada, Las Vegas

## BOARD OF EDITORS
**Editor-in-Chief**
KAITLIN MCCORMICK-HUHN

**Executive Managing Editors**
SAMUEL HOLT

MADISON WEDDESPoon

**Executive Editors**
KATELYN GOLDER

MOLLY MARIAS

CAITLAN MCMASTERS

---

### Lead Articles Editor
ALIX GOLDSTEIN

### Symposium Editor
ALYSSA WILLIAMS

### Forum Editor
TALI FREY

### Articles Editors
Kaleb Bailey

Jaden Braunagel

Valarie Kuschel

Jessica Recarey-Valezuela

Alyssa Rogan

Terra Shepard

Winnie Wu

### Notes Editors
Roland Jay Brunner

Brenna Irving

### Nevada Law Editors
Robert “RJ” Lemus

Sarah Voehl

### Business Editor
Brandon Rusk

---

### SENIOR STAFF
Kassandra Acosta

Michael Goutsaliouk

Kalin Olson

Anna Dreibelbis-Colquitt

Anne-Greyson Long

Adam Pond

Nazo Demirdjian

Servando Martinez

Courtney Sinagra

Colleen Freedman

Candace Mays

Kim Strauss

---

### JUNIOR STAFF
Camille Bayard

Kathryn James

Kiana Parkes

Savanna Biene

Emily Kunz

Sam Pope

Rachel Blum

Tzu-Wen “Wendy” Lin

Alexander Provan

John Bolliger

Brittany Lyons

Benjamin Reber

Isabel Causey

Genell Maggiacomo

Davit Sargsian

Shannon Chao

Chase Christensen

D’Aina Scott

Joseph Coronel

Jordan Marchello

Giacomo Silvestri

Colin Meenk

Juanita Torres

Servando Martinez

Jonathan Urban

Kathleen Zhang

---

### FACULTY GOVERNING BOARD
Professor Jeffrey StempeL

Professor Joe Regalia

Professor Keith A. Rowley

---

### Editorial Office
4505 S. Maryland Parkway, Las Vegas, NV 89154 • TEL: 702.895.2435 • FAX: 702.895.2321
William S. Boyd School of Law, UNLV
Faculty and Administration for 2022-2023

ADMINISTRATION
Leah Chan Grinvald, Dean; Richard J. Morgan Professor of Law
Rachel Adair, Assistant Dean of Career Development
Eve Hanan, Associate Dean for Faculty Development and Research; Co-Director, Misdemeanor Clinic; Associate Professor of Law
Cameron Lue-Sang, Assistant Dean of Admissions and Financial Aid
Lydia Nussbaum, Associate Dean for Experiential Legal Education; Director, Mediation Clinic and Saltman Center for Conflict Resolution; Professor of Law
Jeanne Frazier Price, Associate Dean for Academic Affairs; Louis Wiener, Jr. Law Library Professor of Law; Director, Wiener-Rogers Law Library
Juanita V. Saucedo, Assistant Dean for Business and Finance
Brian Wall, Associate Dean for Student Affairs

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, 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. Correales, LL.M., Georgetown University Law Center; J.D., University of Kansas School of Law, Professor of Law
Benjamin Edwards, J.D., Columbia Law School, Director, Public Policy Clinic; 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
Leslie C. Griffin, M.A., M. Phil., Ph.D., Yale University, J.D., Stanford Law School, William S. Boyd Professor of Law
Eve Hanan, J.D., University of Michigan Law School, Associate Dean for Faculty Development and Research; Co-Director, Misdemeanor Clinic, Associate Professor of Law
Joan Howarth, J.D., University of Southern California, Distinguished Visiting Professor, Dean Emerita, Michigan State University College of Law
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
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, Co-Director, UNLV Workplace Law Program; William S. Boyd Professor of Law
Rebecca Nathanson, Ph.D., University of California, Santa Barbara, Director, 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, Associate Dean for Experiential Education; Director, Mediation Clinic and Saltman Center for Conflict Resolution; Professor of Law
David Orentlicher, J.D., Harvard Law School, M.D., Harvard Medical School, Director, UNLV Health Law Program; Judge Jack and Lula Lehman Professor of Law
Jeanne Frazier Price, J.D., University of Texas School of Law, Associate Dean for Academic Affairs; Louis Wiener, Jr. Law Library 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 Business Law and Ethics, Lee Business School
Joe Regalia, J.D., University of Michigan Law School, Associate Professor of Law
Addie C. Rolnick, J.D., University of California, Los Angeles, School of Law, Faculty Director, Indian Nations Gaming and Governance Program; Associate Director, Program on Race, Gender & Policing; San Manuel Band of Indians 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 Stermlight, J.D., Harvard Law School, Founding Director, Salzman Center for Conflict Resolution; Michael and Sonja Salzman Professor of Law
David Tanenhaus, Ph.D., University of Chicago, James E. Rogers Professor of History and Law
Marketa Trimbale, 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
Brian Wall, J.D., William & Mary Law School, Ph.D., University of Edinburgh, Associate Dean for Student Affairs

**Distinguished Fellows**
Anthony Cabot, J.D., Arizona State University, Sandra Day O'Connor College of Law, Distinguished Fellow in Gaming Law
Jennifer Carleton, J.D., University of Wisconsin Law School, Distinguished Fellow
Justice Michael Cherry, J.D. Washington University School of Law, Distinguished Fellow
Senator Harry Reid (In Memoriam), J.D., George Washington University Law School, Distinguished Fellow in Law and Policy
John Tashuda III, J.D., Cornell Law School, Distinguished Fellow

**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 James E. Rogers 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
Frank D. Durand, J.D. Stanford Law School, Associate Dean Emeritus
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
Lynee Henderson, J.D., Stanford Law School, Emerita Professor of Law
Thomas B. McAffee, 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, Emeritus Professor of Law
Elaine Shoben, J.D., University of California, Hastings College of the Law, Emerita Professor of Law
Christine Smith, M.S. with Distinction in Educational Leadership, Northern Arizona University, Associate Dean Emerita
Anne Traum, J.D., University of California, Hastings College of the Law, Emerita Professor of Law
Jean M. Whitney, J.D., William Mitchell College of Law, Emeritus 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
Justin Iverson, J.D., Savannah Law School, M.L.S., Emporia State University, Research Librarian and Assistant Professor
Lena Rieke, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law, M.L.I.S., University of Washington, Research Librarian and Assistant Professor
Andy Tang, M.L.I.S., Rutgers, Systems and Technical Services Librarian

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 FELLOWS
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

VISITING LAW FACULTY
Maryam Ahranjani, LL.M., University of Pennsylvania Law School, J.D, American University Washington College of Law
Kristin Gerdy Kyle, J.D., Brigham Young University, Distinguished Visiting Professor of Lawyering Process
Joshua Kastenberg, LL.M., Georgetown University Law Center, J.D. Marquette University
David McClure, J.D., University of Nebraska College of Law
Alex Ruskell, J.D., University of Texas School of Law

VISITING FACULTY
Jeanette “Jae” Barrick, J.D., University of Nevada, Las Vegas William S. Boyd School of Law
Connor Cain, J.D., George Mason University
Jennifer Carr, J.D. University of Nevada, Las Vegas William S. Boyd School of Law
Patrick Chapin, J.D., Capital University Law School
Thomas Chittum, J.D., University of Nevada, Las Vegas William S. Boyd School of Law
Nell Christensen, J.D., University of Minnesota Law School
Margaret Crowley, J.D., University of California, Davis
Daron Dorsey, J.D., University of Nevada, Las Vegas William S. Boyd School of Law
The Honorable Jennifer Dorsey, J.D., Pepperdine University School of Law
Riana Durrett, J.D., University of Nevada, Las Vegas 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 R. Harney, J.D., University of Wisconsin Law School
Becky Harris, LL.M., University of Nevada, Las Vegas William S. Boyd School of Law; J.D., Brigham Young University, J. Reuben Clark Law School
Dalton Hooks, J.D., University of Nevada, Las Vegas William S. Boyd School of Law
Terry Johnson, J.D., University of Nevada, Las Vegas, William S. Boyd 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
Katie Lever, LL.B., University of Windsor
Joanna Myers, J.D., University of Nevada, Las Vegas William S. Boyd School of Law
The Honorable Mike K. Nakagawa, J.D., University of California, Davis, School of Law
Catherine O’Mara, J.D., University of California, Hastings College of the Law
Stanford B. Owen, J.D., Stanford Law School
Susan Pitz, J.D., University of Nevada, Las Vegas William S. Boyd School of Law
Richard Rawson, LL.M., University of Alabama School of Law; J.D., University of Nevada, Las Vegas William S. Boyd School of Law
Jennifer Roberts, J.D., University of Utah S.J. Quinney College of Law
Marisa Rodriguez, J.D., University of Nevada Las Vegas William S. Boyd School of Law
Peter Sadowski, J.D., St. Louis University School of Law
David Sandino, J.D., Santa Clara University School of Law
David P. Schwartz, J.D., Brooklyn Law School
Howard Siegel, J.D., Syracuse University College of Law
Roy Smolarz, J.D., Seton Hall Law School
Michael Stannard, J.D., University of Nevada, Las Vegas William S. Boyd School of Law
Charles Stanton, J.D., New York Law School
The Honorable Frank Sullivan, J.D., DePaul University School of Law
John Tahsuda III, J.D., Cornell Law School, Distinguished Fellow
Rene Valladares, LL.M., University of Miami School of Law, J.D., University of Florida School of Law
Jay Young, J.D., Brigham Young University J. Reuben Clark Law School
The Honorable Gregg Zive, J.D., Notre Dame Law School