

University of Michigan Journal of Law Reform

Volume 47

2014

Front Matter

Follow this and additional works at: <https://repository.law.umich.edu/mjlr>

Recommended Citation

Front Matter, 47 U. MICH. J. L. REFORM (2014).

Available at: <https://repository.law.umich.edu/mjlr/vol47/iss3/9>

This Front Matter is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

U N I V E R S I T Y O F M I C H I G A N

JOURNAL *of* LAW REFORM

VOLUME 47 • ISSUE 3

SPRING 2014

UNIVERSITY OF MICHIGAN
LAW SCHOOL
ANN ARBOR, MICHIGAN



Except where otherwise expressly provided, the author of each piece of scholarship in this issue has granted permission for copies of that scholarship to be made in whole or in part by nonprofit institutions for educational use, including distribution to students, provided that (i) copies are distributed at or below cost; (ii) copies identify the author, the *Journal*, the volume, the number of the first page, and the year of the publication; (iii) proper notice of copyright is affixed to each copy, attributing copyright to the author.

The *University of Michigan Journal of Law Reform* is published quarterly by students of the University of Michigan Law School. Printed by Joe Christensen, Inc., Lincoln, Nebraska 68521.

University of Michigan Journal of Law Reform
University of Michigan Law School
625 S. State Street
Ann Arbor, MI 48109-1215
jlr-business@umich.edu
<http://www.mjlr.org/>

PUBLICATION POLICY

The *Journal* seeks to improve the law and its administration by providing a forum for discussion that identifies contemporary issues for reform efforts, proposes concrete means to accomplish change, and evaluates the impact of law reform. As contributions to this discussion, the *Journal* also welcomes multidisciplinary and empirical work.

We encourage the submission of unsolicited manuscripts for publication via Scholastica or to jlr-submissions@umich.edu. Articles should generally conform to *The Bluebook: A Uniform System of Citation* (19th ed. 2010) and *The Chicago Manual of Style* (16th ed. 2010).

Views expressed in the *Journal* are those of the authors and not necessarily those of the editorial staff.

SUBSCRIPTIONS

The current subscription rate is \$40.00 domestic and \$45.00 foreign. All business inquiries should be made to JLR-Business@umich.edu. Subscribers should report the nonreceipt of copies within six months of the mailing date.

INDIVIDUAL AND BACK ISSUES

Copies of individual issues from the current volume can be obtained directly from the *Journal* for \$15.00 each.

Back issues in complete sets, volumes, or single issues can be obtained from William S. Hein & Co., Inc., 2350 North Forest Road, Getzville, New York 14068—Telephone (716) 882-2600. The *Journal* is also available on microfilm through ProQuest, 300 North Zeeb Road, Ann Arbor, Michigan 48106-1346—Telephone (800) 521-0600. Back issues are also available in PDF format through HeinOnline at <http://heinonline.org>.

INDEXES

The *Journal* is indexed in the Current Law Index, Index to Legal Periodicals, Legal Resource Index, and PAIS Bulletin.

ISSN 0033-1546

ERRATUM

In Issue 2 of Volume 47 of the *University of Michigan Journal of Law Reform*, Note author Anne McGinnis was erroneously identified as a May 2014 graduate of the University of Michigan Law School. Ms. McGinnis is in fact a December 2013 graduate of the Law School. The *Journal* regrets and apologizes for this error.

UNIVERSITY OF MICHIGAN

JOURNAL of LAW REFORM

Editorial Board

Volume 47 • 2013–2014

Editor-in-Chief

EMMA COX

Managing Editor

ANDREW TONELLI

Managing Executive Editor

EOIN CONNOLLY

Managing Articles Editor

REBECCA A. EDWALDS

Managing Notes Editor

CALI COPE-KASTEN

Executive Editors

A.J. DIXON

MICHAEL FARRELL

BRETT M. NOVICK

JOSHUA RONNEBAUM

TRISTRAM WOLF

Article Editors

JEREMY SPEAR GARSON

SHIRA E. GORDON

EMILY HIMES IVERSEN

DANIEL SCHAFFA

ANJUM UNWALA

Note Editors

EMILY BROWN

ANNE MCGINNIS

NICHOLAS PIETROPAOLO

CHRISTOPHER POPECKI

Managing Symposium Editor

BENJAMIN JAMES CLARK

Managing Development Editor

MARK GARIBYAN

Symposium Editors

TARA AMIN

JESSICA WALL

ROBERT L. WHITE

Comments Editors

HANS E. BIEBL

COLLEEN NICHOLSON

BRIAN D. STRAW

EDMUND W. APPLETON

MEEGAN BROOKS

JOSEPH P. CAMPBELL

CYNTHIA H. CHO

RICHARD COYLE

TAYLOR R. EVENSON

URSELA GROAT

Contributing Editors

BRENDA Y. HWANG

JEREMY KEENEY

DEREK W. KELLEY

KEVIN KELLY

PERRY MISKA, JR.

SEJIN PARK

JULIA B. REARDON

JAMES SANTIAGO

SARAH J. SHUBERT

LEVI J. SMITH

DANIEL VALENZA

ERIN E. WILK

SARA WINIK

Associate Editors

ABIGAIL EDWARDS

REBECCA EISENBREY

EMILY S. FABRE

JONATHAN FORMAN

COLLIN GANNON

JENNIFER GITTER

BLAKE HARRISON

CALLIE HELLER

MATTHEW JUSTICE

ERIKA G. KANEKO

PRIYAH KAUL

JASON KOO

EMMA LAWTON

STEPHEN W.M. MCINERNEY

KATHLEEN C. MCNEIL

DAVID M. MERRYMAN

M. JEANETTE PITTS

MICHAEL JAMES POWERS

CHAD D. RICHARDS

PATRICK L. RIEDER

COLLIN SCHEUERMANN

ALEXANDRA H. SCHIFFRIN

NATHAN R. SCHUUR

DANIEL D. SHIN

ASHLEY SIZEMORE

SARAH THOMPSON

ALISON K. TOIVOLA

MATTHEW K. TRAWICK

BRENDAN VANDOR

MARK C. VIERA

DANIEL WELLS

ERIN WHITNEY

Manager

JESSICA L. HANES

Editorial Assistants

CATHERINE T. LEGGIERI

BARBARA I. VIBBERT

UNIVERSITY OF MICHIGAN LAW SCHOOL

Spring 2014

Administrative Officers

MARY SUE COLEMAN, B.A., PH.D., *President of the University*
MARITHA E. POLLOCK, A.B., M.S.E., PH.D., *Provost and Executive Vice President for Academic Affairs*
MARK D. WEST, B.A., J.D., *Nippon Life Professor of Law, Dean*
DANIEL CRANE, B.A., J.D., *Frederick Paul Furth, Sr. Professor of Law,
Associate Dean for Faculty and Research*
MONICA R. HAKIMI, B.A., J.D., *Associate Dean for Academic Programming*
DAVID SANTACROCE, B.A., J.D., LL.M., *Associate Dean for Experiential Education*
DAVID H. BAUM, B.A., J.D., *Assistant Dean for Student Affairs*
SARAH C. ZEARFOSS, A.B., J.D., *Assistant Dean and Director of Admissions*
TODD BAILY, B.A., *Assistant Dean for Development and Alumni Relations*
ROOPAL R. SHAH, B.A., J.D., *Assistant Dean for International Affairs*
JEREMY BLOOM, B.A., J.D., *Assistant Dean for Financial Aid*

Professors Emeriti of Law

LAYMAN E. ALLEN, A.B., M.P.A., LL.B.	SALLYANNE PAYTON, B.A., LL.B.,
DAVID L. CHAMBERS, A.B., LL.B.,	<i>William W. Cook Professor of Law</i>
<i>Wade H. McCree, Jr. Collegiate Professor of Law</i>	JOHN W. REED, A.B., LL.B., LL.M.,
WHITMORE GRAY, A.B., J.D., LL.D.	JUR.Sc.D., LL.D.,
THOMAS A. GREEN, B.A., PH.D., J.D.,	<i>Thomas M. Cooley Professor of Law</i>
<i>John Philip Dawson Collegiate Professor of Law</i>	TERRANCE SANDALOW, A.B., J.D.,
JEROLD H. ISRAEL, B.B.A., LL.B.,	<i>Edson R. Sunderland Professor of Law</i>
<i>Alene and Allan F. Smith Professor of Law</i>	E. PHILIP SOPER, B.A., M.A., J.D., PH.D.,
JOHN H. JACKSON, B.A., J.D.,	<i>James V. Campbell Professor of Law</i>
<i>Hessel E. Yntema Professor of Law</i>	THEODORE J. ST. ANTOINE, A.B., J.D.,
CHARLES W. JOINER, A.B., J.D.	<i>James E. and Sarah A. Degan Professor of Law</i>
YALE KAMISAR, A.B., LL.B., LL.D.,	JOSEPH VINING, B.A., M.A., J.D.,
<i>Clarence Darrow Distinguished University Professor of Law</i>	<i>Harry Burns Hutchins Collegiate Professor of Law</i>
THOMAS E. KAUPER, A.B., J.D.,	LAWRENCE W. WAGGONER, B.B.A., J.D., D.PHIL.,
<i>Henry M. Butzel Professor of Law</i>	<i>Lewis M. Simes Professor of Law</i>
RICHARD O. LEMPERT, A.B., J.D., PH.D.,	PETER K. WESTEN, B.A., J.D.,
<i>Eric Stein Distinguished University Professor of Law and Sociology</i>	<i>Frank G. Millard Professor of Law</i>
	JAMES BOYD WHITE, A.B., A.M., LL.B.,
	<i>L. Hart Wright Collegiate Professor of Law</i>

Professors of Law

REUVEN S. AVI-YONAH, B.A., A.M., PH.D., J.D.,	BRUCE W. FRIER, B.A., PH.D.,
<i>Irwin I. Cohn Professor of Law</i>	<i>John and Teresa D'Arms Distinguished University Professor of Classics and Roman Law</i>
SAMUEL BAGENSTOS, B.A., J.D.	SAMUEL R. GROSS, A.B., J.D.,
MICHAEL S. BARR, B.A., M.PHIL., J.D.	<i>Thomas G. and Mabel Long Professor of Law</i>
LAURA N. BENY, B.A., M.A., J.D., PH.D.	MONICA R. HAKIMI, B.A., J.D.
EVAN H. CAMINKER,* B.A., J.D.	DANIEL HALBERSTAM, B.A., J.D.
<i>Branch Rickey Collegiate Professor of Law</i>	<i>Eric Stein Collegiate Professor of Law</i>
SHERMAN J. CLARK, B.S., J.D.	JAMES C. HATHAWAY, LL.B., LL.M., J.S.D.,
<i>Kirkland and Ellis Professor of Law</i>	<i>James E. and Sarah A. Degan Professor of Law</i>
EDWARD H. COOPER, A.B., LL.B.,	SCOTT HERSHOVITZ, A.B., M.A., D.PHIL., J.D.
<i>Thomas M. Cooley Professor of Law</i>	DONALD J. HERZOG, A.B., A.M., PH.D.,
DANIEL CRANE, B.A., J.D.	<i>Edson R. Sunderland Professor of Law</i>
<i>Frederick Paul Furth, Sr. Professor of Law</i>	JAMES HINES JR., B.A., M.A., PH.D.,
STEVEN P. CROLEY,* A.B., J.D., M.A., PH.D.	<i>L. Hart Wright Collegiate Professor of Law</i>
<i>Harry Burns Hutchins Collegiate Professor of Law</i>	NICHOLAS C. HOWSON, B.A., J.D.
ALICIA DAVIS, B.S., J.D., M.B.A.	DOUGLAS A. KAHN, B.A., J.D.,
REBECCA S. EISENBERG, B.A., J.D.,	<i>Paul G. Kauper Professor of Law</i>
<i>Robert and Barbara Luciano Professor of Law</i>	ELLEN D. KATZ, B.A., J.D.
PHOEBE C. ELLSWORTH,* A.B., PH.D.,	<i>Ralph W. Aigler Professor of Law</i>
<i>Frank Murphy Distinguished Professor of Law and Psychology</i>	VIKRAMADITYA S. KHANNA, B.C.A., LL.B., S.J.D.
RICHARD D. FRIEDMAN, B.A., J.D., D.PHIL.,	<i>William W. Cook Professor of Law</i>
<i>Alene and Allan F. Smith Professor of Law</i>	JAMES E. KRIER, B.S., J.D.,
	<i>Earl Warren DeLano Professor of Law</i>

JESSICA D. LITMAN, B.A., M.F.A., J.D.,

John F. Nickoll Professor of Law

KYLE D. LOGUE, B.A., J.D.,

*Wade H. and Dores M. McCree Collegiate
Professor of Law*

CATHARINE A. MACKINNON, B.A., J.D., Ph.D.,

Elizabeth A. Long Professor of Law

NINA A. MENDELSON, A.B., J.D.

Joseph L. Sax Collegiate Professor of Law

WILLIAM I. MILLER, B.A., Ph.D., J.D.,

Thomas G. Long Professor of Law

WILLIAM NOVAK, B.A., M.A., Ph.D.

Charles F. and Edith J. Clyne Professor of Law

JOHN A.E. POTTOW, A.B., J.D.

JAMES J. PRESCOTT, B.A., J.D., Ph.D.

EVE BRENSIKE PRIMUS, B.A., J.D.

RICHARD A. PRIMUS, A.B., D.Phil., J.D.

ADAM C. PRITCHARD, B.A., M.P.P., J.D.,

Frances and George Skestos Professor of Law

MARGARET JANE RADIN, A.B., M.F.A., J.D., LL.D.,

Henry King Ransom Professor of Law

STEVEN R. RATNER, A.B., M.A., J.D.,

Bruno Simma Collegiate Professor of Law

DONALD H. REGAN, A.B., LL.B., B.Phil., Ph.D.,

William W. Bishop, Jr. Collegiate Professor of Law

MATHIAS W. REIMANN, Dr.Iur., LL.M.,

Hessel E. Yntema Professor of Law

MARGO SCHLANGER, B.A., J.D.

CARL E. SCHNEIDER, A.B., J.D.,

Chauncey Stillman Professorship for Ethics,

Morality, and the Practice of Law

REBECCA J. SCOTT, A.B., M.Phil., Ph.D.,

Charles Gibson Distinguished University

Professor of History

GIL SEINFELD, A.B., J.D.

BRUNO SIMMA,* DOCTORATE OF LAW

SONJA B. STARR, A.B., J.D.

MARK D. WEST, B.A., J.D.,

Nippon Life Professor of Law

JAMES J. WHITE, B.A., J.D.,

Robert A. Sullivan Professor of Law

CHRISTINA B. WHITMAN, A.B., M.A., J.D.,

Francis A. Allen Collegiate Professor of Law

Assistant Professors of Law

KATE ANDRIAS, B.A., J.D.

NICHOLAS BAGLEY, B.A., J.D.

KRISTINA DAUGIRDAS, A.B., J.D.

GABRIEL MENDLOW, A.B., Ph.D., J.D.

JULIAN DAVIS MORTENSON, A.B., J.D.

VERONICA SANTAROSA, LL.B., B.A., M.A.,
LL.M., Ph.D.

Clinical Professors of Law

ALICIA ALVAREZ, B.A., J.D.

BRIDGETTE CARR, B.A., J.D.

DONALD N. DUQUETTE, B.A., J.D.

PHILIP M. FROST, B.A., J.D.

DAVID A. MORAN, B.S., B.A., M.A., M.S., J.D.

PAUL D. REINGOLD, B.A., J.D.

NICHOLAS J. RINE, B.A., J.D.

VIVEK SANKARAN, B.A., J.D.

DAVID A. SANTACROCE, B.A., J.D., LL.M.

SUELLYN SCARNECCHIA, B.A., J.D.

KIMBERLY A. THOMAS, B.S., J.D.

DANA THOMPSON, B.S., J.D.

FRANK E. VANDERVORT, B.A., J.D.

Clinical Assistant Professors of Law

EDWARD R. BECKER, B.A., J.D.

HOWARD BROMBERG, B.A., J.D., J.S.M.

DEBORAH BURAND, B.A., M.S.F.S., J.D.

DEBRA CHOPP, B.A., J.D.

PAUL H. FALON, B.A., M.A., J.D.

MARGARET HANNON, B.A., J.D.

MARK K. OSBECK, A.B., M.A., J.D.

TIMOTHY PINTO, B.A., J.D.

NANCY VETTORELLO, B.A., M.U.P., J.D.

BETH H. WILENSKY, B.A., J.D.

Affiliated LS&A Faculty

MARTHA JONES, B.A., J.D., M.A., M.Phil., Ph.D.

Public Service/Public Interest Faculty Fellows

DAVID UHLMANN, B.A., J.D.,

*Jeffrey F. Liss Faculty Development Professor
from Practice*

Adjunct Professors

RICHARD "ERIK" GORDON, B.A., J.D.

ROBERT HIRSHON, B.A., J.D.

Frank G. Millard Professor from Practice

JOAN L. LARSEN, B.A., J.D.

LEONARD NIEHOFF, A.B., J.D.

Adjunct Clinical Assistant Professors

NICOLE APPLEBERRY, A.B., J.D., LL.M.

MICHAEL BLOOM, B.A., J.D.

ELIZABETH CAMPBELL, B.A., J.D.

JOSHUA KAY, B.A., M.A., Ph.D., J.D.

BRYCE PILZ, B.S., J.D.

AMY SANKARAN, B.A., J.D.

JOURNAL *of* LAW REFORM

VOLUME 47 • ISSUE 3

SPRING 2014

CONTENTS

ARTICLES

- What Will It Take? Terrorism, Mass Murder,
Gang Violence, and Suicides: The American Way,
Or Do We Strive for a Better Way?
Katherine L. Record
Lawrence O. Gostin 555
- Retaining Color
Veronica Root 575
- Sentence Creep: Increasing Penalties in Michigan
and the Need for Sentencing Reform
Anne Yantus 645
- Futility of Exhaustion: Why *Brady* Claims Should
Trump Federal Exhaustion Requirements
Tiffany R. Murphy 697
- Special Kids, Special Parents, Special Education
Karen Syma Czapanskiy 733
- Making the Right Call for Confrontation
at Felony Sentencing
Shaakirrah R. Sanders 791

NOTES

- Invading the Realm of the Dead: Exploring the
(Im)propriety of Punitive Damage Awards Against Estates
Emily Himes Iversen 827
- The Two Faces of *Janus*: The Jurisprudential Past
and New Beginning of Rule 10b-5
John Patrick Clayton 853