

Michigan Law Review

Volume 116 | Issue 2

2017

Front Matter

Michigan Law Review

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



Part of the [Law Commons](#)

Recommended Citation

Michigan Law Review, *Front Matter*, 116 MICH. L. REV. (2017).

Available at: <https://repository.law.umich.edu/mlr/vol116/iss2/5>

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

MICHIGAN LAW REVIEW

Vol. 116, No. 2

November 2017

CONTENTS

ARTICLES

- RATIONING CRIMINAL JUSTICE. *Richard A. Bierschbach*
Stephanos Bibas 187
- ENTERPRISE WITHOUT ENTITIES *Andrew Verstein* 247

NOTES

- CORPUS LINGUISTICS: MISFIRE OR MORE AMMO
FOR THE ORDINARY-MEANING CANON? *John D. Ramer* 303
- UNDERSTANDING *NAUTILUS*'S REASONABLE-CERTAINTY
STANDARD: REQUIREMENTS FOR LINGUISTIC AND
PHYSICAL DEFINITENESS OF PATENT CLAIMS *Gary M. Fox* 329

Except where otherwise expressly provided, the author of each Article, Essay, and Note in this issue has granted permission for copies of that Article, Essay, or Note to be made for educational use, provided that (i) copies are distributed at or below cost; (ii) copies identify the author, the *Michigan Law Review*, the volume, the number of the first page, and the year of the publication; and (iii) proper notice of copyright is affixed to each copy, attributing copyright to the author.

Michigan Law Review (ISSN 0026-2234) is published in October, November, December, February, March, April, May, and June. Subscriptions: United States, \$60 per year in advance, eight numbers; Foreign, \$70. Editorial and Business Offices: University of Michigan Law Library, 801 Monroe St., Ann Arbor, Michigan 48109-1210; MLR-business@umich.edu (Business); 734/647-5817 (Fax). Website: <http://www.michiganlawreview.org>. Periodicals postage paid at Ann Arbor, Michigan and additional mailing offices. POSTMASTER: send address changes to University of Michigan Law Library, 801 Monroe St., Ann Arbor, Michigan 48109-1210.

Printed at Joe Christensen, Inc., Lincoln, Nebraska 68521.

Recent Volumes: Single Issues \$10, Book Review \$16, and Special Issues \$12, postpaid, at Editorial and Business Offices.

Volumes 1 through 112, as well as single issues in those volumes, are available in print and microform from William S. Hein & Co., Inc., 2350 North Forest Road, Getzville, New York 14068.

Because back stock of the *Review* is turned over to a dealer, back numbers are available to the *Review* for a short time only. We must therefore ask that subscribers report the nonreceipt of copies within six months of the mailing date.

We gladly consider unsolicited manuscripts for publication via Scholastica. Citations in manuscripts should follow the form prescribed in *The Bluebook: A Uniform System of Citation* (20th ed. 2015) and *The Chicago Manual of Style* (17th ed. 2017). Please see our website for submission instructions.

MICHIGAN LAW REVIEW ONLINE

The Online Companion of the *Michigan Law Review*

Call for Submissions

The editors of the *Michigan Law Review* invite essay submissions on current areas of legal thought and research for the *Michigan Law Review Online*.

Michigan Law Review Online publishes short articles and op-ed style pieces by academics, judges, practitioners, and law students, as well as timely responses to articles in the print journal of the *Michigan Law Review*. Our online companion quickly disseminates the legal community's initial impressions of important judicial decisions and legislative developments.

Michigan Law Review Online prefers submissions under 6,000 words inclusive of footnotes and can only very rarely accept longer pieces. Submissions should be written in a style accessible to a general audience of practitioners and policymakers. Pieces will be published on an expedited production schedule.

Visit *Michigan Law Review Online* at
www.michiganlawreview.org.

Please send questions and comments to the
Executive Online Editors at
mlr.online@umich.edu

The editors of the *Michigan Law Review*
are pleased to announce

2017 SURVEY OF BOOKS
RELATING TO THE LAW
published April 2017

The 2017 Survey presents reviews of law-related
books published in 2014, 2015, and 2016.

Please address inquiries to:

Michigan Law Review
University of Michigan Law School
Attn: Book Review Editors
625 S. State St.
Ann Arbor, MI 48109-1215

Visit our website at
www.michiganlawreview.org.

UNIVERSITY OF MICHIGAN LAW SCHOOL

Administrative Officers

Mark Schlissel, B.A., M.D., Ph.D., *President of the University*
Paul E. Courant, B.A., M.A., Ph.D., *Interim Provost and Executive Vice President for Academic Affairs*
Mark D. West, B.A., J.D., *Nippon Life Professor of Law, Dean*
Alicia Davis, B.S., M.B.A., J.D., *Professor of Law, Associate Dean for Strategic Initiatives*
Daniel Halberstam, B.A., J.D., *Eric Stein Collegiate Professor of Law, Associate Dean for Faculty and Research, Director of European Legal Studies Program*
David Santacroce, B.A., J.D., LL.M., *Clinical Professor of Law, Associate Dean for Experiential Education*
Gil Seinfeld, A.B., J.D., *Professor of Law, Associate Dean for Academic Programming*
Michael Dubin, B.S., M.A., *Assistant Dean for Development and Alumni Relations*
Theresa Kaiser-Jarvis, B.A., B.S.J., Ed.M, J.D., *Assistant Dean for International Affairs*
Ramji Kaul, B.A., J.D., *Assistant Dean for Career Planning*
Lindsey Stetson, B.A., J.D., *Assistant Dean for Financial Aid*
Sarah C. Zearfoss, A.B., J.D., *Senior Assistant Dean for Admissions, Financial Aid, and Career Planning*

Professors Emeriti of Law

Layman E. Allen, A.B., M.P.A., LL.B.
David L. Chambers, A.B., LL.B.,
Wade H. McCree, Jr. Collegiate Professor of Law
Edward H. Cooper, A.B., LL.B.,
Thomas M. Cooley Professor of Law
Donald N. Duquette, B.A., J.D.
Clinical Professor of Law
Philip M. Frost, B.A., J.D.
Clinical Professor of Law
Whitmore Gray, A.B., J.D., LL.D.
Thomas A. Green, B.A., Ph.D., J.D.,
John Philip Dawson Collegiate Professor of Law
Jerold H. Israel, B.B.A., LL.B.,
Alene and Allan F. Smith Professor of Law
Charles W. Joiner, A.B., J.D.
Douglas A. Kahn, B.A., J.D.,
Paul G. Kauper Professor of Law
Yale Kamisar, A.B., LL.B., LL.D.,
Clarence Darrow Distinguished University Professor of Law
Thomas E. Kauper, A.B., J.D.,
Henry M. Butzel Professor of Law
Richard O. Lempert, A.B., J.D., Ph.D.,
Eric Stein Distinguished University Professor of Law and Sociology

Sallyanne Payton, B.A., LL.B.,
William W. Cook Professor of Law
Margaret Jane Radin, A.B., M.F.A., J.D., LL.D.,
Henry King Ransom Professor of Law
John W. Reed, A.B., LL.B., LL.M., Jur.Sc.D., LL.D.,
Thomas M. Cooley Professor of Law
Terrance Sandalow, A.B., J.D.,
Edson R. Sunderland Professor of Law
E. Philip Soper, B.A., M.A., J.D., Ph.D.,
James V. Campbell Professor of Law
Theodore J. St. Antoine, A.B., J.D.,
James E. and Sarah A. Degan Professor of Law
Joseph Vining, B.A., M.A., J.D.,
Harry Burns Hutchins Collegiate Professor of Law
Lawrence W. Waggoner, B.B.A., J.D., D.Phil.,
Lewis M. Simes Professor of Law
Peter K. Westen, B.A., J.D.,
Frank G. Millard Professor of Law
James Boyd White, A.B., A.M., LL.B.,
L. Hart Wright Collegiate Professor of Law
James J. White, B.A., J.D.,
Robert A. Sullivan Professor of Law

Professors of Law

Reuven S. Avi-Yonah, B.A., A.M., Ph.D., J.D.,
Irwin I. Cohn Professor of Law
Samuel Bagenstos, B.A., J.D.
Frank G. Millard Professor of Law
Nicholas Bagley, B.A., J.D.
Michael S. Barr, B.A., M.Phil., J.D.
Roy F. and Jean Humphrey Proffitt Professor of Law
Laura N. Beny, B.A., M.A., J.D., Ph.D.
Evan H. Caminker, B.A., J.D.
Branch Rickey Collegiate Professor of Law
Sherman J. Clark, B.S., J.D.
Kirkland and Ellis Professor of Law
Daniel Crane, B.A., J.D.
Frederick Paul Furth, Sr. Professor of Law
Steven P. Croley, A.B., J.D., M.A., Ph.D.
Harry Burns Hutchins Collegiate Professor of Law
Kristina Daugirdas, A.B., J.D.
Rebecca S. Eisenberg, B.A., J.D.,
Robert and Barbara Luciano Professor of Law
Phoebe C. Ellsworth, A.B., Ph.D.,
Frank Murphy Distinguished Professor of Law and Psychology

Richard D. Friedman, B.A., J.D., D.Phil.,
Alene and Allan F. Smith Professor of Law
Bruce W. Frier, B.A., Ph.D.,
John and Teresa D'Arms Distinguished University Professor of Classics and Roman Law
Samuel R. Gross, A.B., J.D.,
Thomas G. and Mabel Long Professor of Law
Monica R. Hakimi, B.A., J.D.
Daniel Halberstam, B.A., J.D.
Eric Stein Collegiate Professor of Law
James C. Hathaway, LL.B., LL.M., J.S.D.,
James E. and Sarah A. Degan Professor of Law
Scott Hershovitz, A.B., M.A., D.Phil., J.D.
Donald J. Herzog, A.B., A.M., Ph.D.,
Edson R. Sunderland Professor of Law
James Hines Jr., B.A., M.A., Ph.D.,
L. Hart Wright Collegiate Professor of Law
Nicholas C. Howson, B.A., J.D.
Ellen D. Katz, B.A., J.D.
Ralph W. Aigler Professor of Law
Vikramaditya S. Khanna, B.C.A., LL.B., S.J.D.
William W. Cook Professor of Law
James E. Krier, B.S., J.D.,
Earl Warren DeLano Professor of Law

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
Julian Davis Mortenson, A.B., J.D.
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.
John Philip Dawson Collegiate Professor of Law
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.
*Theodore J. St. Antoine Collegiate Professor of
Law*

Adam C. Pritchard, B.A., M.P.P., J.D.
Frances and George Skestos 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.Jur., LL.M.,
Hessel E. Yntema Professor of Law
Veronica Santarosa, LL.B., B.A., M.A., LL.M., Ph.D
Margo Schlanger, B.A., J.D.
Henry M. Butzel Professor of Law
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*
Bruno Simma, Doctorate of Law
Sonja B. Starr, A.B., J.D.
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.
Maureen Carroll, B.S., J.D.
Nicolas Cornell, A.B, Ph.D., J.D.

Gabriel Mendlow, A.B., Ph.D., J.D.
W. Nicholson Price, II, A.B., J.D., Ph.D.
Gabriel Rauterberg, B.S., J.D.

Clinical Professors of Law

Alicia Alvarez, B.A., J.D.
Nicole Appleberry, A.B., J.D., LL.M.
Edward R. Becker, B.A., J.D.
Howard Bromberg, B.A., J.D., J.S.M.
Bridgette Carr, B.A., J.D.
Debra Chopp, B.A., J.D.
David A. Moran, B.S., B.A., M.A., M.S., J.D.
Mark K. Osbeck, A.B., M.A., J.D.

Paul D. Reingold, B.A., J.D.
Nicholas J. Rine, B.A., J.D.
Vivek Sankaran, B.A., J.D.
Suellen 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

Matthew Andres, B.A., J.D.
Patrick Barry, B.A., J.D., Ph.D.
Michael Bloom, B.A., J.D.
Elizabeth Campbell, B.A., J.D.
Paul H. Falon, B.A., M.A., J.D.
Steve Gray, B.A., J.D.
David Guenther, B.A., M.A., J.D.
Margaret Hannon, B.A., J.D.

Joshua Kay, B.A., M.A., Ph.D., J.D.
Sammy Mansour, B.A., J.D.
Timothy Pinto, B.A., J.D.
Amy Sankaran, B.A., J.D.
Imran Syed, A.B., J.D.
Nancy Vettorello, B.A., M.U.P., J.D.
Nancy Wang, B.S.E., J.D.
Beth H. Wilensky, B.A., J.D.

Professors from Practice

J. Phillip Adams, B.A., J.D., LL.M
Timothy L. Dickinson, B.A., J.D., LL.M.
Robert Hirshon, B.A., J.D.
*Frank G. Millard Professor from
Practice*
Barbara McQuade, B.A., J.D.

Leonard Niehoff, A.B., J.D.
David Uhlmann, B.A., J.D.,
*Jeffrey F. Liss Faculty Development Professor
from Practice, Director of Environmental Law and
Policy Program*

William W. Cook Global Law Professors

Susanne Baer, LL.M.
Paul Brand, B.A., M.A., D.Phil
Christine Chinkin, LL.B., LL.M., Ph.D.
John G. H. Hudson, M.A., D.Phil

Haw-Jin Kim, B.S., Dr. Jur., LL.M.
J. Christopher McCrudden, LL.B., LL.M., D.Phil
Anne Peters, LL.M.

MICHIGAN LAW REVIEW

Vol. 116, No. 2

November 2017

EDITORIAL BOARD

Editor-in-Chief

JOHN C. HE, *of California*

Managing Editor

EMERSON M. BURSIS, *of Pennsylvania*

Executive Articles Editor

PHILIP W. HAMMERSLEY, *of Michigan*

Articles Editors

GARY M. FOX, *of New Jersey*
ADAM R. KLEVEN, *of Michigan*
ERIC HUANG KOENIGSBERG, *of New York*
SHIRIN MAKHKAMOVA, *of New Jersey*
CAROLYN J. WELTMAN, *of Ohio*

Executive Editors

ALEXANDRA M. FEDORAK, *of Michigan*
ALLISON M. HIGHT, *of Ohio*
JAMES R.S. MESTICHELLI, *of Pennsylvania*
MARIA N. RICAURTE, *of Ohio*
EMMA F.E. SHOUCAIR, *of Pennsylvania*
Z. ZHENG, *of Indiana*

Executive Development Editor

JOHN TURQUET BRAVARD, *of Colorado*

Executive Production Editor

HELEN MARIE S. BERG, *of Michigan*

Contributing Editors

MORGAN S. AVENI, *of Alabama*
MICHAEL A. CHRYSOS, *of Ohio*
NATHAN T. FROST, *of New Jersey*
DANIEL K. HOFMAN, *of Michigan*
MICHAEL L. JESPERSEN, *of Wyoming*
RACHEL A. JUNE-GRABER, *of Oregon*
CAROLINE F. KOTILA, *of New York*
REED J. MCCALIB, *of Minnesota*
CONOR P. MCNAMARA, *of Illinois*
MATTHEW G. MILLER, *of Illinois*
CALEB L. NAGEL, *of Indiana*

Executive Notes Editor

MELISSA C. CASSEL, *of California*

Notes Editors

LAURA BETH COHEN, *of Michigan*
SALLY Z. GU, *of California*
PAUL A. HOVERSTEN, *of Colorado*
SAMANTHA JAFFE, *of California*
CHARLES D. STEWART, *of Ohio*

Book Review Editors

KATHRYN M. BROWN, *of Ohio*
AMANDA L. RAUH-BIERI, *of Michigan*

Executive Online Editors

MELODY E. ALVARADO LATINO, *of Washington*
KAMIE CASCHETTE, *of Nevada*
AMELIA K. HUCKINS, *of Mississippi*

Associate Editors

NADINE H. ABDALLAH, *of Michigan*
MICHAEL R. ABRAMS, *of Maryland*
HANNA T. ALI, *of North Carolina*
CHRISTIAN A. BASHI, *of Michigan*
MEGAN L. BROWN, *of Georgia*
JAMES D. COATSWORTH, *of Washington*
ABIGAIL E. DEHART, *of Michigan*
ARIANNA M. DEMAS, *of New York*
ALISON A. DOYLE, *of California*
ERIN EDGERTON, *of Michigan*
GAIL L. ENGMANN, *of Connecticut*
DOMINIC A. FARCHIONE III, *of Michigan*
KRISTIN L. FROEHLE, *of Indiana*
JOSHUA M. GOLDMAN, *of Massachusetts*
AVIV S. HALPERN, *of California*
CAROLINE H. HOWE, *of Massachusetts*
LORI J. INTERLICCHIO, *of New York*
HILLARY F. JOHN, *of Massachusetts*
LESLIE R. KAN, *of Nevada*
PATRICK KENNEDY, *of Massachusetts*
DREW S. KRAMER, *of New York*
ERICA L. LIGNELL, *of Michigan*
LISA LIMB, *of New York*
SHAY D. LONGTAIN, *of Colorado*
MAX LUBIN, *of New York*
JORGE E. MANCILLAS, *of Arizona*
SALVATORE M. MANCINA, *of Michigan*

DAVID J. PARK, *of Massachusetts*
ROSA PARMOSE, *of Italy*
ELIZABETH G. PETERKORT, *of Oregon*
ANDREW PODRYGULA, *of North Dakota*
JOHN D. RAMER, *of Michigan*
ADAM N. ROSENBERG, *of Minnesota*
MATTHEW E. SIERAWSKI, *of Michigan*
CHRIS STACKHOUSE, *of Minnesota*
ETHAN C. STERN, *of New York*
JENNY A. WHALEN-BALL, *of Michigan*

RYAN M. MAROSY, *of New Jersey*
PATRICK G. MAROUN, *of Massachusetts*
HUNTER MCWINN, *of Texas*
SARAH A. MEZERA, *of Wisconsin*
PATRICK MILLER, *of Nevada*
TRAVIS R. MILLER, *of Washington*
EMILY A. MINTON MATTONSON, *of Washington*
M DEVON MOORE, *of New Jersey*
JOSEPH D. MOSES, *of Michigan*
JAMILA A. ODEH, *of Michigan*
JUN HA PARK, *of California*
AKASH PATEL, *of Oklahoma*
NICHOLAS L. PERRY, *of Massachusetts*
STEPHEN M. REES, *of Illinois*
EVA RICHARDSON, *of Maryland*
CHRISTOPHER R. SCHWARTZ, *of Michigan*
MICHAEL S. SMITH, *of Illinois*
THOMAS J. STANDIFER, *of California*
HAILEY L. SUGGS, *of Texas*
MICAH I. TELEGEN, *of Massachusetts*
JONATHAN I. TIETZ, *of Ohio*
NEIL K. TIWARI, *of Alabama*
HINH D. TRAN, *of California*
EDNA R. TURAY, *of Virginia*
CAROLINA I. VELARDE, *of Panama*
ANNEMARIE C. YALDO, *of Michigan*

Manager

JESSICA L. PASQUALE

Editorial Assistants

JESSICA KEELER
CONNIE M. SWINDLE

