

Boston College Law Review

Volume 60
Issue 9 *Electronic Supplement*

Article 21

4-25-2019

Front Matter

Boston College Law Review
Boston College Law School

Follow this and additional works at: <https://lawdigitalcommons.bc.edu/bclr>

Recommended Citation

Boston College Law Review, *Front Matter*, 60 B.C.L. Rev. (2019), <https://lawdigitalcommons.bc.edu/bclr/vol60/iss9/21>

This Front Matter is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law Review by an authorized editor of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

BOSTON COLLEGE LAW REVIEW

Volume 60

2019

E. Supp.

ESSAYS

THE INTERDEPENDENT RELATIONSHIP OF A FREE PRESS AND AN
INDEPENDENT JUDICIARY IN A CONSTITUTIONAL DEMOCRACY
Robert J. Cordy I-1

THIRD-PARTY FUNDING IN INVESTMENT ARBITRATION:
MISAPPROPRIATION OF ACCESS TO JUSTICE RHETORIC BY
GLOBAL SPECULATIVE FINANCE
Tara Santosuosso & Randall Scarlett I-8

COMMENTS

ANNUAL SURVEY OF FEDERAL EN BANC AND OTHER SIGNIFICANT CASES

CATEGORIZING WAYNE’S WORLD: THE PUBLIC FORUM DOCTRINE
AND PUBLIC ACCESS CHANNELS
Michael Molstad II-1

SURVIVAL OF THE TRADEMARK LICENSE: *IN RE TEMPNOLOGY* AND
CONTRACT REJECTION IN BANKRUPTCY
Avery Minor II-17

IS TROLLING TRUMP A RIGHT OR A PRIVILEGE?: THE ERRONEOUS
FINDING IN *KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA
UNIVERSITY V. TRUMP*
Lauren Beausoleil II-31

DUTY OR NO DUTY? THAT IS THE QUESTION: THE SECOND
CIRCUIT REASSERTS THAT A VIOLATION OF ITEM 303’S DUTY
TO DISCLOSE CAN ESTABLISH LIABILITY UNDER SECTION 10(B)
Rebecca Rabinowitz II-47

“GOOD FAITH” TRADEMARK INFRINGEMENT: THE NINTH
CIRCUIT’S APPROACH TO THE *TEA ROSE-RECTANUS*
DOCTRINE
Roaya Tabibi II-65

THE EFFECT OF THE INTERNET ERA AND *SOUTH DAKOTA V.
WAYFAIR* ON THE UNITARY BUSINESS RULE
Phillip Popkin II-82

A TRAGEDY OF NOVELTY: IS FOR-CAUSE REMOVAL PROTECTION FOR THE CONSUMER FINANCIAL PROTECTION BUREAU’S SINGLE DIRECTOR A FATAL FLAW? <i>Logan Hovie</i>	II-100
WHEN THE SAME WORDS MEAN DIFFERENT THINGS: <i>VARJABEDIAN V. EMULEX CORP.</i> , AND THE REQUIREMENTS OF SECTION 14(E) OF THE EXCHANGE ACT <i>Isaac Lederman</i>	II-120
SIZE MATTERS: FORCE AND SIZE DISPARITY IN CASES OF AGGRAVATED SEXUAL ABUSE <i>Janine Hanrahan</i>	II-136
POLICING CYBERSPACE: THE UNCERTAIN FUTURE OF DATA PRIVACY AND SECURITY ENFORCEMENT IN THE WAKE OF <i>LABMD</i> <i>Julia Whall</i>	II-149
TO BE PHYSICALLY PRESENT OR NOT TO BE PHYSICALLY PRESENT: THE USE OF VIDEOCONFERENCES DURING FELONY PROCEEDINGS <i>Meaghan Annett</i>	II-165
ADA LITIGATION CANNOT REASONABLY ACCOMMODATE <i>PER SE</i> RULES <i>Meg Ziegler</i>	II-180
HEADS I WIN, TAILS YOU LOSE: THE “EXPENSE” OF A DE NOVO REVIEW OF USPTO DECISIONS <i>Sarah Murphy</i>	II-197
U.S. CITIZENS DETAINED AND DEPORTED? A TEST OF THE GREAT WRIT’S REACH IN PROTECTING DUE PROCESS RIGHTS IN REMOVAL PROCEEDINGS <i>Caroline Holliday</i>	II-217
HOUR LATE ON YOUR BAIL, SPEND THE WEEKEND IN JAIL: SUBSTANTIVE DUE PROCESS AND PRETRIAL DETENTION <i>Coleman Gay</i>	II-237
NARROWING IN ON THE PROBLEM: A COMPONENT-LEVEL ANALYSIS OF “HYBRID” MEDICAL DEVICES <i>Jillian Friedmann</i>	II-258
PUBLIC OR PRIVATE? THE SPLIT OVER FIRST AMENDMENT PROTECTION OF UNION SPEECH BY PUBLIC EMPLOYEES <i>Meredith McCaffrey</i>	II-274

THE NINTH CIRCUIT ENTERS THE CLASS CERTIFICATION FRAY:
SALI’S REJECTION OF EVIDENTIARY FORMALISM AND ITS
IMPLICATIONS
Jessica Bachetti..... II.-292

DIGGING DEEP: THE CLEAN WATER ACT’S APPLICABILITY TO
GROUNDWATER DISCHARGES
Justin Rheingold..... II.-311

A MEANINGFUL OPPORTUNITY FOR RELEASE: *GRAHAM* AND
MILLER APPLIED TO *DE FACTO* SENTENCES OF LIFE WITHOUT
PAROLE FOR JUVENILE OFFENDERS
Anton Tikhomirov II.-332

Boston College Law School publishes the *Boston College Law Review* (ISSN 0161-6587) eight times per year: in January, February, March, April, May, June, October, and November. In addition, the *Review* publishes an electronic supplement, the *E. Supp.*, once per year. Editorial and Business Offices: Boston College Law Review, 885 Centre Street, Newton Centre, Massachusetts 02459. Telephone: (617) 552-8557; email: bclr@bc.edu. Periodical-class postage paid at Boston, Massachusetts and additional mailing offices. POSTMASTER: Send address changes to Boston College Law Review, P.O. Box 465, Hanover, PA 17331.

Current subscription: \$70.00; single issues: \$10.00 (plus \$10.00 for foreign mailing for both).

Print issues from the current and previous years' volumes are available upon request. Back issues of volumes 1–53 may be obtained from William S. Hein & Co., Inc. Warehouse, 24 East Ferry St., Buffalo, New York 14209–1987, (716) 882–2600. (Back issues in electronic format are available at HeinOnline <http://heinonline.org/>). Please direct requests for issues from volume 54 onward to Sheridan Press, 450 Fame Avenue, Hanover, PA 17331, (717) 632–3535.

Address changes should be sent at least 45 days before the date of the issue with which it is to take effect. The post office will not forward copies unless subscribers provide extra postage. **Claims for missing issues will be honored for one year from the date of publication only.** Direct subscription queries, claims, and address changes to:

Boston College Law Review
P.O. Box 465
Hanover, PA 17331
(717) 632–3535 (ask for Subscriber Services)
Fax: (717) 633–8920
Email: pubsvctsp@sheridan.com

BOSTON COLLEGE LAW SCHOOL

ADMINISTRATION

WILLIAM P. LEAHY, S.J., B.A., M.A., M.Div., S.T.L., Ph.D., President
MICHAEL J. LOCHHEAD, B.S., M.B.A., Executive Vice President
DAVID QUIGLEY, M.A., Ph.D., Provost, Dean of Faculties
VINCENT D. ROUGEAU, A.B., J.D., Dean
DIANE RING, A.B., J.D., Associate Dean of Faculty
RENEE M. JONES, A.B., J.D., Associate Dean of Academics
MARIS ABBENE, B.A., J.D., Associate Dean of Students
FILIPPA MARULLO ANZALONE, A.B., M.S.L.S., J.D., Associate Dean for Library & Computing Services
JUDITH A. McMORROW, B.A./B.S., J.D., Associate Dean of Experiential Learning & Global Engagement
HEATHER HAYES, B.A., J.D., Interim Associate Dean for Finance & Administration
TRACEY WEST, B.A., J.D., Associate Dean for External Relations, Diversity & Inclusion
KAREN DOHERTY, Assistant Dean for Academic & Student Services
SHAWN McSHAY, B.A., Assistant Dean for Admissions & Financial Aid
JENNIFER PERRIGO, B.A., J.D., Interim Assistant Dean for Career Services
JOHN A. GORDON, B.S., J.D., Director of Law Review Publications

FULL-TIME FACULTY

ALEXIS ANDERSON, B.A., M.A., J.D., Associate
Clinical Professor of Law
FILIPPA MARULLO ANZALONE, A.B., M.S.L.S.,
J.D., Professor of Law
PAULO BARROZO, LL.B., M.Jur., Ph.D., LL.M.,
S.J.D., Associate Professor of Law
SHARON BECKMAN, A.B., J.D., Associate
Clinical Professor of Law
MARY SARAH BILDER, B.A., A.M., J.D., Ph.D.,
Founders Professor of Law
ROBERT M. BLOOM, B.S., J.D., Professor of Law
E. JOAN BLUM, A.B., J.D., Associate Professor of
Legal Reasoning, Research & Writing
CHERYL S. BLATT, B.A., J.D., Assistant Professor
of Legal Reasoning, Research & Writing
MARK S. BRODIN, B.A., J.D., Professor of Law
GEORGE D. BROWN, A.B., J.D., Robert Drinan,
S.J. Professor of Law
R. MICHAEL CASSIDY, B.A., J.D., Professor of
Law
MARY ANN CHIRBA, B.A., M.P.H., Sc.D., J.D.,
Professor of Legal Reasoning, Research &
Writing
JEFFREY M. COHEN, B.A., M.St., J.D., Assistant
Professor of Legal Reasoning, Research &
Writing
DANIEL R. COQUILLETTE, A.B., B.A., M.A.,
J.D., J. Donald Monan, S.J. Professor of Law
CLAIRE DONOHUE, B.S., J.D., M.S.W., LL.M.,
Assistant Clinical Professor of Law
DANIEL FARBMAN, A.B., J.D., Assistant
Professor of Law
SCOTT T. FITZGIBBON, B.A., J.D., B.C.L.,
Professor of Law
FRANK J. GARCIA, B.A., J.D., Professor of Law
KENT GREENFIELD, A.B., J.D., Professor of Law
HIBA HAFIZ, B.A., M.A., J.D., Ph.D., Assistant
Professor of Law
DEAN M. HASHIMOTO, A.B., M.S., M.P.H.,
M.D., J.D., Associate Professor of Law
FRANK R. HERRMANN, S.J., A.B., M.Div., J.D.,
Associate Professor of Law
INGRID M. HILLINGER, A.B., J.D., Professor of
Law
MARY HOLPER, B.A., J.D., Associate Clinical
Professor; Director, Immigration Clinic
KARI E. HONG, A.B., J.D., Assistant Professor of
Law
RENEE M. JONES, A.B., J.D., Professor of Law
DANIEL KANSTROOM, B.A., J.D., LL.M.,
Professor of Law
M. CATHLEEN KAVENY, A.B., M.A., J.D.,
P.Phil., Ph.D., Darald & Juliet Libby Professor
of Law
ELISABETH KELLER, B.A., M.A., J.D., Associate
Professor of Legal Reasoning, Research &
Writing
THOMAS C. KOHLER, B.A., J.D., LL.M.,
Professor of Law
JOSEPH P. LIU, B.A., J.D., LL.M., Professor of
Law
DANIEL LYONS, A.B., J.D., Associate Professor of
Law
RAY D. MADOFF, A.B., J.D., LL.M., Professor of
Law
PATRICIA A. McCOY, B.A., J.D., Liberty Mutual
Insurance Professor of Law
JUDITH A. McMORROW, B.A./B.S., J.D.,
Professor of Law
ALAN D. MINUSKIN, B.A., J.D., Associate
Clinical Professor of Law
SHU-YI OEI, A.B., M.T.S., J.D., Assistant Professor
of Law
DAVID OLSON, B.A., J.D., Associate Professor of
Law
LYNNISE E. PANTIN, B.A., J.D., Associate
Clinical Professor of Law
VLAD PERJU, LL.B., LL.M., S.J.D., Associate
Professor of Law
ZYGUMUNT J.B. PLATER, B.A., J.D., LL.M.,
S.J.D., Professor of Law
BRIAN J.M. QUINN, B.S.F.S., M.P.P., J.D., M.L.S.,
Associate Professor of Law
JAMES R. REPETTI, A.B., M.B.A., J.D., William J.
Kenealy, S.J. Professor of Law
DIANE RING, A.B., J.D., Professor of Law
VINCENT D. ROUGEAU, A.B., J.D., Dean &
Professor of Law
EVANGELINE SARDA, B.A., J.D., Associate
Clinical Professor of Law
FRANCINE SHERMAN, B.A., J.D., Associate
Clinical Professor, Director, Juvenile Rights
Advocacy Project
NATALYA SHNITSER, B.A., M.A., J.D., David &
Pamela Donohue Assistant Professor of Law
MARK SPIEGEL, A.B., J.D., Professor of Law
PAUL R. TREMBLAY, B.A., J.D., Clinical
Professor of Law
MAUREEN VAN NESTE, A.B., M.P.A., J.D.,
Assistant Professor of Legal Reasoning,
Research & Writing
CATHARINE WELLS, B.A., M.A., Ph.D., J.D.,
Professor of Law
RYAN WILLIAMS, B.A., J.D., Assistant Professor
of Law
DAVID A. WIRTH, A.B., A.M., J.D., Professor of
Law
ALFRED C. YEN, B.S., M.S., J.D., Professor of
Law
KATHARINE G. YOUNG, B.A., LL.B., S.J.D.,
L.L.M., Associate Professor of Law

BOSTON COLLEGE LAW REVIEW

Volume 60

2019

E. Supp.

Hunter Malasky
Vasundhara Prasad
Editors in Chief

Alexandre Bou-Rhodes
Alex Dilley
Brandon Ferrick
Amy-Lee Goodman
Executive Articles Editors

Hannah Esquenazi
Hale McAnulty
J.P. Christian Milde
Executive Notes Editors

Kayleigh McGlynn
Electronic Supplement Editor

Lauren Allen
Timothy Andrea
Mitchell Clough
Margaux Joselow
Managing Editors

John Gavin
Roman Ibragimov
Executive Comments Editors

Michael Koch
Kathryn Weston
Executive Senior Editor

Articles Editors

Samuel Ascanio
Emma Bolla
Virginia Calistro
Michael Casagrande
Jesse Coulon

Curtis Cranston
Samuel Dougherty
Leah Hengemuhle
Jennifer Jacobs
Stephanie Johnson
Lauren Koster

Thomas McLaughlin
Joseph Noreña
Jeremy Pepper
Jazmyn Reid
Lauren Stewart

Senior Editors

Alexis Berglund
Samantha Bhate
Molly Boyd
Christopher Crocker
Peter Diliberti
Natasha Dobrott
Hannah Dudley
Mariah Figlietti Vasquez
Abigail Garrahan
Rebecca Hayes

Elizabeth Johnson
Srish Khakurel
Meghan King
Garabed Koosherian
Brooke Kootman
Katherine Rosati
Kathryn Maass
Connor Macisaac
Morgan McDonald
Sean Patrick McGinley

Tyler Mills
Christina Min
Marcus Nemeth
Terence Olsen
Claudia Restrepo
Madeline Roe
Jason Sitomer
Emily B. Tate
Bryan Thompson
Julian Viksman

BOSTON COLLEGE LAW REVIEW

Volume 60

2019

E. Supp.

Staff Writers

Meaghan Annett
Kourosh Azin
Jessica Bachetti
Abigail Balfour
Kenneth Ballato
Lauren Beausoleil
Danel Brutti
Zhen Zhen Chen
Emma Coffey
Hannah Cohen
Michael Curran
Dashiell Davis
Ezra Dunkle-Polier
Christopher Durham
Eric Emerson
Caroline Enright
Michael Feblowitz
Lucas Follett
John Foster

Patricia McCoy
Faculty Advisor

Joan Shear
Library Liaison

Jillian Friedmann
Coleman Gay
Paul Goldsmith
Cody Goodwin
Janine Hanrahan
Caroline Hlliday
Logan Hovie
Eric Jepeal
Helen Kim
Milan Kumar
Isaac Lederman
Joyce Lee
Spencer Mathews
Emma McBride
Meredith McCaffrey
Audrey McQuade
Allison McTague
Max Meglio
Avery Minor

Daniel Lyons
Faculty Advisor

Nick Szydowski
Webmaster

John Gordon
Director, Law Review Publications

Michael Molstad
Sarah Murphy
Katherin Petrino
Phillip Popkin
Julia Prezioso
Jacqueline Price
Rebecca Rabinowitz
Justin Rheingold
David Romanow
Eric Schmid
Eric Sherman
Samantha Spellman
Roya Tabibi
Samuel Thomas
Anton Tikhomirov
Eliza Walker
Julia Whall
James Wozny
Meg Ziegler

David Olson
Faculty Advisor

Judy Yi
Publications Support

Unless otherwise expressly provided, the author or authors of each article in this volume granted permission for copies of that article to be made and used by educational and other nonprofit institutions, so long as (1) copies are distributed at or below cost; (2) the authorship and journal are identified therein; and (3) proper notice of copyright is set forth. Send any other reprint permission requests to permissions-gggroup@bc.edu.

Copyright © 2019 by Boston College Law School
This REVIEW is to be cited as B.C. L. REV. E. SUPP.