

Volume 68 | Issue 1

---

2017

## Volume 68 Issue 1 (2017)

Case Western Reserve University Law Review

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

---

### Recommended Citation

Case Western Reserve University Law Review, *Volume 68 Issue 1 (2017)*, 68(1) Case W. Res. L. Rev. Front Matter (2017)  
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol68/iss1/2>

This Front Matter is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

Case  
Western  
Reserve  
Law Review

Volume 68, Issue 1  
Fall 2017



SCHOOL OF LAW

---

CASE WESTERN RESERVE  
UNIVERSITY

© 2017 by Case Western Reserve Law Review

The Case Western Reserve Law Review (ISSN 0008-7262), formerly the Western Reserve Law Review, is published quarterly by the students of Case Western Reserve University School of Law. Postage paid at Cleveland, Ohio and at additional mailing offices. Editorial and business offices are located at Case Western Reserve University School of Law, 11075 East Boulevard, Cleveland, Ohio 44106. Contact the Review by e-mail: [lawreview@case.edu](mailto:lawreview@case.edu) or telephone: (216) 368-3312.

The Case Western Reserve Law Review published this issue in print and online in January 2018.

The submission of unsolicited manuscripts is invited.

Subscriptions are entered for the entire volume for \$34.00 per year (\$36.00 outside the United States). Single issues of the current and previous volumes are available from the Case Western Reserve Law Review for \$16.00 each, plus shipping and handling. To order, contact:

Case Western Reserve University School of Law  
Attn: Matthew Rish  
11075 East Boulevard  
Cleveland, Ohio 44106  
Phone: (216) 368-6350  
Facsimile: (216) 368-3285  
E-mail: [matthew.rish@case.edu](mailto:matthew.rish@case.edu)

Back issues from earlier volumes are available from William S. Hein & Co., Inc., 24 East Ferry Road, Buffalo, New York 14209, or online: [www.wshein.com/catalog/101440](http://www.wshein.com/catalog/101440). Back issues are also available in electronic format at [heinonline.org](http://heinonline.org).

Citations conform to *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass'n et al. eds., 20th ed. 2015). Style conforms generally to *The Chicago Manual of Style* (16th ed. 2010).

For all photocopy or republication requests, please contact Copyright Clearance Center, Inc. by mail: 222 Rosewood Drive, Danvers, Massachusetts 01923, by phone: (855) 239-3415, by fax: (978) 646-8600, by e-mail: [info@copyright.com](mailto:info@copyright.com), or online: [www.copyright.com](http://www.copyright.com).

# CASE WESTERN RESERVE LAW REVIEW

Volume 68

Fall 2017

Issue 1

*Editor in Chief*  
JAMES BEDELL

*Managing Editor*  
LEAH SLYDER

*Publisher*  
JAMES OLIVER

*Executive Notes Editor*  
STEPHANIE STAREK

*Executive Articles Editors*  
LIDIA MOWAD  
KATYLN PATTON

*Executive Symposium Editor*  
MICHAEL SILVERSTEIN

*Executive Contributing Editor*  
HOLGER SONNTAG

*Administrative Director*  
BRANDON WOJTASIK

BRIAN BARDWELL

*Contributing Editors*  
MORGAN HELGREEN

KRISTI WINNER

JANINE CERNY  
BRITTANY CHOJNOWSKI

*Senior Editors*  
OWEN DOHERTY  
ROBERT HARMS  
NICHOLAS HOLLAND

DANIEL SCHIAU  
DANIEL WOLFE

ROBERT BREETZ  
ANTHONY CALANNI  
CHRISTOPHER COLOMBO  
ELIZABETH CONNORS  
EMILY CUNNINGHAM  
ELLEN DENUM  
HUGH DOWELL

*Associate Editors*  
JOHN GARDNER  
ANNE HURST  
RACHEL IPPOLITO  
REBECCA KENDIS  
REBECCA LINDHORST  
BRANDI MILLER

SABRINA MORRIS  
PRISCILLA OKINE  
STEPHANIE SEXTON  
ANDY SHANOADA  
CAULEY SIMMONS  
LAUREN STUY  
HANNAH TUSCHMAN

*Faculty Advisor*  
JONATHAN ENTIN



CASE WESTERN RESERVE UNIVERSITY  
SCHOOL OF LAW FACULTY

*Administrative Officers*

*Deans*

JESSICA WILEN BERG, B.A., J.D., M.P.H.  
MICHAEL P. SCHARF, A.B., J.D.

*Associate Dean for Academic Affairs*

B. JESSIE HILL, A.B., J.D.

*Associate Dean for Experiential Education*

JUDITH P. LIPTON, B.S., M.S.S.W., J.D.

*Associate Dean of Institutional Diversity and Inclusiveness*

RUQAIJAH A. YEARBY, B.S., M.P.H., J.D.

*Associate Dean for Enrollment Planning and Strategic Initiatives*

ALYSON S. ALBER, B.S., J.D.

*Associate Dean for Student Services*

SARAH MCFARLANE POLLY, B.A., J.D.

*Assistant Dean of Admissions*

KELLI C. CURTIS, B.A., J.D.

*Assistant Dean of Career Development*

MARY BETH MOORE, B.A., J.D.

*Assistant Dean of Development and Alumni Relations*

JAMES M. PASCH, B.A., J.D.

## *Professors of Law*

JONATHAN H. ADLER, B.A., J.D.

*Johan Verheij Memorial Professor and Director, Center for Business Law and Regulation*

JESSICA WILEN BERG, B.A., J.D., M.P.H.

*Tom J.E. and Bette Lou Walker Professor; Professor of Bioethics and Public Health*

DAVID J. CARNEY, B.A., J.D.

JUSCELINO F. COLARES, LL.B., M.A., PH.D., J.D.

*Schott-van den Eynden Professor of Law; Professor of Political Science; and Associate Director, Frederick K. Cox International Law Center*

AVIDAN Y. COVER, B.A., J.D.

*Director, Institute for Global Security Law and Policy*

PETER M. GERHART, B.A., J.D.

JONATHAN C. GORDON, B.A., J.D.

*Associate Director, LL.M. Lawyering Skills Program*

RICHARD K. GORDON, B.A., J.D.

*Director of Financial Integrity Programs; Associate Director, Frederick K. Cox International Law Center*

MAUREEN GUIRGUIS (KENNY), B.A., J.D.

B. JESSIE HILL, A.B., J.D.

*Judge Ben C. Green Professor*

SHARONA HOFFMAN, B.A., J.D., LL.M., S.J.D.

*Edgar A. Hahn Professor; Professor of Bioethics; and Co-Director, Law-Medicine Center*

DANIEL A. JAFFE, B.A., J.D.

LEWIS R. KATZ, A.B., J.D.

*John C. Hutchins Professor and Director, Graduate Legal Studies*

CHARLES R. KORSMO, S.B., J.D.

JULIET P. KOSTRITSKY, A.B., J.D.

*Everett D. & Eugenia S. McCurdy Professor*

RAYMOND SHIH RAY KU, A.B., J.D.

*Director, Center for Cyberspace Law and Policy*

JUDITH P. LIPTON, B.S., M.S.S.W., J.D.

*Honorable Blanche E. Krupansky and Frank W. Vargo, Jr. Professor*

KEVIN C. McMUNIGAL, B.A., J.D.

LAURA E. MCNALLY-LEVINE, B.A., J.D.

*Co-Director, Milton A. Kramer Law Clinic Center*

MAXWELL J. MEHLMAN, B.A., J.D.  
*Distinguished University Professor and Arthur E. Petersilge Professor;  
Professor of Bioethics; and Co-Director, Law-Medicine Center*

KATHRYN S. MERCER, A.B., M.S.S.A., J.D., PH.D.

DALE A. NANCE, B.A., J.D., M.A.  
*John Homer Kapp Professor*

CRAIG ALLEN NARD, B.A., J.D., LL.M., J.S.D.  
*Galen J. Roush Professor and Director, Spangenberg Center for Law,  
Technology, and the Arts and the FUSION Certificate Program in Design,  
Innovation & IP Management*

AARON K. PERZANOWSKI, A.B., J.D.

ANDREW S. POLLIS, A.B., J.D.

CASSANDRA BURKE ROBERTSON, B.A., M.A., M.P.AFF., J.D.  
*John Deaver Drinko-BakerHostetler Professor and Director, Center for  
Professional Ethics*

MATTHEW J. ROSSMAN, B.A., J.D.  
*Co-Director, Milton A. Kramer Law Clinic Center*

MICHAEL P. SCHARF, A.B., J.D.  
*Joseph C. Hostetler-BakerHostetler Professor and Director, Frederick  
K. Cox International Law Center*

BARBARA R. SNYDER, B.A., J.D.  
*President of the University*

THEODORE L. STEINBERG, B.A., PH.D.  
*Adeline Barry Davee Distinguished Professor of History and Professor of Law*

ROBERT N. STRASSFELD, B.A., M.A., J.D.

MARTHA A. WOODMANSEE, B.A., M.A., PH.D.  
*Professor of English and Law*

RUQAIJAH A. YEARBY, B.S., M.P.H., J.D.  
*David L. Brennan Professor and Professor of Epidemiology and Biostatistics*



*Associate Professors of Law*

JOSEPH A. CUSTER, B.A., J.D., M.B.A., M.L.S.  
*Director, Law Library*

SHANNON E. FRENCH, B.A., PH.D.  
*Inamori Professor of Ethics; Associate Professor of Law; and Director,  
Inamori International Center for Ethics and Excellence*

BRIAN K. GRAN, B.A., J.D., PH.D.  
*Associate Professor of Sociology and Law*

KENNETH F. LEDFORD, B.A., J.D., M.A., PH.D.  
*Associate Professor of History and Law*

TIMOTHY WEBSTER, B.A., M.A., J.D., LL.M.  
*Director, Asian Legal Studies*

*Assistant Professors of Law*

JAIME BOUVIER, B.A., J.D.

AYESHA B. HARDAWAY, B.A., J.D.

JEAN M. MCQUILLAN, B.A., J.D.

JACK TURNER II, B.A., J.D.  
*Associate Director, Foreign Graduate LL.M. Program*

LISA M. WOOD, B.A., J.D.

*Senior Instructors in Law*

MICHAEL J. BENZA, B.A., M.A., J.D.

CAROL T. FOX, B.A., M.A., PH.D., J.D.

CARMEN NASO, B.A., J.D.

*Lecturers*

TIMOTHY J. DUFF, B.A., J.D.

BENJAMIN D. FALLER, B.A., J.D.

*Visiting Faculty*

ROBERT N. RAPP, B.A., J.D., M.B.A.

STEPHEN WILKS, B.A., LL.B., M.S.W., LL.M., PH.D.

*Professors Emeriti*

ARTHUR D. AUSTIN II, B.A., J.D.  
*Edgar A. Hahn Professor Emeritus*

RONALD J. COFFEY, A.B., LL.B., LL.M.

GEORGE W. DENT, JR., B.A., J.D., LL.M.  
*Schott-van den Eynden Professor Emeritus*

MELVYN R. DURCHSLAG, B.S., J.D.

JONATHAN L. ENTIN, A.B., J.D.  
*David L. Brennan Professor Emeritus of Law and Political Science*

LEON GABINET, PH.B., J.D.  
*Coleman P. Burke Professor Emeritus*

PAUL C. GIANNELLI, B.A., M.S.F.S., J.D., LL.M.  
*Distinguished University Professor and Albert J. Weatherhead III &  
Richard W. Weatherhead Professor Emeritus*

ERIK M. JENSEN, S.B., M.A., J.D.  
*Coleman P. Burke Professor Emeritus*

ROBERT P. LAWRY, B.A., J.D., DIP. LAW  
*Director Emeritus, Center for Professional Ethics*

WILBUR C. LEATHERBERRY, A.B., J.D.

KENNETH R. MARGOLIS, B.A., J.D.

JAMES W. MCELHANEY, A.B., LL.B.  
*Joseph C. Hostetler Professor Emeritus of Trial Practice and Advocacy*

LOUISE W. MCKINNEY, B.A., J.D.

SPENCER NETH, B.A., J.D., LL.M.

SIDNEY I. PICKER, JR., A.B., LL.B., LL.M.

MORRIS G. SHANKER, B.S.E.E., M.B.A., J.D.  
*John Homer Kapp Professor Emeritus*

CALVIN WILLIAM SHARPE, B.A., M.A., J.D.  
*Galen J. Roush Professor Emeritus*



TRIBUTE TO PROFESSOR

GEORGE W. DENT

*Randy E. Barnett* 1

*Jonathan L. Entin* 5

*Erik M. Jensen* 8

*Peter W. Wood* 15

ARTICLES

It's About Time: The Long Overdue Demise of Statutes of Repose in  
Latent Toxic Tort Litigation 20  
*Jean Macchiaroli Eggen*

Entrepreneurial Choice: Restoring a Relevant Antitrust Policy 58  
*Warren Grimes*

Student Dismissals from Professional Programs and the Constitution 94  
*Mark. P. Strasser*

The Heckler's Veto Today 156  
*R. George Wright*

NOTES

Trumping the First Amendment: Student-Driven Calls for Speech 186  
Restrictions on Public College Campuses  
*Katlyn Ayn Patton*

Navigating the Ascertainability Spectrum: Analyzing the Policy 210  
Rationales Behind the Various Ascertainability Standards as  
Applied Standards as Applied to Small-Value  
Consumer Class Actions  
*Stephanie Starek*

COMMENT

From Historical Cell-Site Location Information to IMSI-Catchers: Why 240  
Triggerfish Devices Do Not Trigger Fourth Amendment Protection  
*Kristi Winner*