1-1-2013

Cover

University of the Pacific, McGeorge School of Law

Follow this and additional works at: https://scholarlycommons.pacific.edu/mlr

Recommended Citation
University of the Pacific, McGeorge School of Law, Cover, 44 McGeorge L. Rev. (2014).
Available at: https://scholarlycommons.pacific.edu/mlr/vol44/iss1/1

This Front Matter is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.
FACULTY OF LAW

RAQUEL ALDANA, B.A., J.D.
Professor of Law
LEXIS M. ALLEN, B.A., J.D.
Adjunct Professor of Law
JUSTIN S. ALTMANN, B.S., J.D.
Adjunct Professor of Law
LOUIS J. ANAPOLSKY, B.A., J.D.
Adjunct Professor of Law
JOHN BALAZS, B.S., J.D.
Adjunct Professor of Law
RACHELLE BARBOUR, B.A., J.D.
Adjunct Professor of Law
KATHLEEN D. BENTON, B.A., J.D.
Adjunct Professor of Law
KAREN BETTENCOURT, B.A., J.D.
Adjunct Professor of Law
THADD  A. BLIZZARD, B.A., M.A., J.D., LL.M.
Judge, Sacramento County Superior Court
Adjunct Professor of Law
STEVEN A. BLOCK, B.A., J.D.
Adjunct Professor of Law
ANNE BLOOM, B.A., J.D., PH.D.
Professor of Law
SUKHDIP (SUKHI) BRAR, B.A., J.D.
Adjunct Professor of Law
BEN BRATMAN, B.A., J.D.
Visiting Professor of Law
CARY A. BRICKER, B.A., J.D.
Professor of Lawyering Skills
THOMAS D. BRIERTON, B.B.A., J.D.
Adjunct Professor of Law
MELISSA BROWN, B.A., J.D.
Lecturer in Law
ADRIENNE L. BRUNINGESS, B.A., J.D.
Professor of Lawyering Skills
Director, Capital Certificate Program
FATOU K. CAMARA, B.A., M.A., PH.D.
Visiting Professor of Law
GERALD M. CAPLAN, B.A., M.A., J.D.
Professor of Law
MARTIN D. CARR, B.A., J.D.
Adjunct Professor of Law
LINDA E. CARTER, B.A., J.D.
Director, Institute for Development of Legal Infrastructure
Professor of Law
MICHAEL COLATRELLA, B.A., J.D., LL.M.
Assistant Professor of Law
RAYMOND R. COLETTA, A.B., J.D.
Professor of Law
KEVIN R. CULHANE, B.A., J.D., J.S.M.
Judge, Sacramento Superior Court
Adjunct Professor of Law
OMAR M. DAIANI, B.A., J.D.
Professor of Law
Faculty Advisor, Global Business & Development Law Journal
WALTER DAHL, B.A., J.D.
Adjunct Professor of Law
JENNY DARLINGTON-PERSON, B.A., J.D.
Professor of Lawyering Skills
JULIE ANNE DAVIES, B.A., J.D.
Associate Dean for Academic Affairs
Professor of Law
HECTOR DE AVILA GONZALEZ, LL.B., LL.M.
Adjunct Professor of Law
ANTHONY DICE, B.S., J.D.
Adjunct Professor of Law
MATTHEW DOWNS, B.A., M.S.L.S., J.D., LL.M.
Assistant Dean, Library & Research Services, Graduate & International Programs
JENNIFER DUGGAN, B.A. J.D.
Adjunct Professor of Law
LAURA ENDERTON-SPEED, B.A., J.D.
Adjunct Professor of Law
GLENN A. FAIT, B.A., J.D.
Associate Dean, Director, Institute for Administrative Justice, Lecturer in Law
STEVEN H. FELDERSTEIN, B.A., J.D.
Adjunct Professor of Law
MARJORIE FLORESTAL, B.A., J.D.
Professor of Law
ERIC M. FOGEL, B.A., MA.
Visiting Professor of Law
GRETCHEN FRANZ, B.A., J.D.
Instructor, Global Lawyering Skills
Rex Frazier, B.A., M.P.P., J.D.
Adjunct Professor of Law
KATHLEEN T. FRIEDRICH, B.A., J.D.
Instructor, Global Lawyering Skills
Lecturer in Law
FRED A. GALVES, B.A., J.D.
Professor of Law
EMILY GARCIA UHRIG, B.A., J.D.
Associate Professor of Law
STEVEN M. GEVERCER, B.A., J.D.
Adjunct Professor of Law
FRANKLIN A. GEVURTZ, B.S., J.D.
Director, Institute for Global Business and Development
Distinguished Professor and Scholar
JENNIFER A. GIBSON, B.A., J.D.
Adjunct Professor of Law
J. NEIL GIELEGHEM, B.A., J.D.
Adjunct Professor of Law
LESLE GILOW JACOBS, B.A., J.D.
Director, Capitol Center for Government Law and Policy
Professor of Law
JOSHUA GOLKA, B.S., M.B.A., J.D.  
Adjunct Professor of Law

KIMBERLY GRANGER, B.A., J.D.  
Adjunct Professor of Law

SHAYE HARRINGTON, B.S., J.D.  
Adjunct Professor of Law

ROBERT A. HAWLEY, B.A., J.D., LL.M.  
Adjunct Professor of Law

KEITH HILL, B.A., J.D.  
Adjunct Professor of Law

PAUL HOWARD, B.A., J.D., M.L.S.  
Head of International Services/Librarian  
Adjunct Professor of Law

RICHARD H. HYDE, B.S., J.D.  
Adjunct Professor of Law

WILLIAM D. JEFFREY, B.A., J.D.  
Adjunct Professor of Law

RUTH JONES, A.B., J.D.  
Associate Dean for Scholarship  
Professor of Law

WARREN A. JONES, B.A., J.D.  
Professor of Law

CHARLES D. KELSO, A.B., J.D., LL.M., LL.D., J.S.D.  
Professor of Law

J. CLARK KELSO, B.A., J.D.  
Professor of Law

JUSTICE ANTHONY M. KENNEDY, A.B., LL.B.  
Adjunct Professor of Law  
Associate Justice, Supreme Court of the United States

KATHARINE KILLEEN, B.A., J.D.  
Adjunct Professor of Law

AMY LANDERS, B.F.A., J.D.  
Director, Intellectual Property Concentration  
Professor of Law

BRIAN K. LANDSBERG, B.A., J.D.  
Distinguished Professor and Scholar  
Professor of Law

DOROTHY S. LANDSBERG, B.A., J.D.  
Interim Director, Clinical Studies  
Lecturer in Law

R. STEVEN LAPHAM, B.A., J.D.  
Adjunct Professor of Law

ROBERT LAURIE, B.A., J.D.  
Adjunct Professor of Law

THOMAS J. LEACH, B.A., M.A.T., J.D.  
Director, Advocacy Certificate Program  
Professor of Law

COURTNEY G. LEE, B.A., J.D.  
Director, Academic Success  
Associate Professor of Lawyering Skills

JAMES L. LEET, A.B., J.D., LL.M.  
Adjunct Professor of Law

GINA LERA, B.A., J.D.  
Adjunct Professor of Law

LAWRENCE C. LEVINE, B.A., J.D.  
Professor of Law

STEVEN A. LEWIS, A.B., J.D.  
Adjunct Professor of Law

DREW LIEBERT, B.A., J.D.  
Adjunct Professor of Law

COURTNEY J. LINN, A.B., J.D.  
Adjunct Professor of Law

ALBERT C. LOCHER, B.A., J.D.  
Adjunct Professor of Law

HEATHER CLASH MACFARLANE, A.B., M.A., J.D.  
Instructor, Global Lawyering Skills  
Faculty Advisor for Certificate Program

C. EMMETT MAHLE, B.S., M.B.A., J.D.  
Adjunct Professor of Law

THOMAS O. MAIN, B.A., J.D.  
Professor of Law

MICHAEL P. MALLOY, B.A., J.D., Ph.D.  
Director, J.D. Certificate in International Legal Studies  
Distinguished Professor and Scholar

CHRISTINE MANOAKAS, B.A., J.D., LL.M.  
Director, Tax Concentration  
Professor of Law

CAITLIN MANOOGIAN, B.A., J.D.  
Adjunct Professor of Law

STEPHEN C. MCCAFFREY, B.A., J.D., Dr., Iur.  
Counselor, Institute for Sustainable Development  
Distinguished Professor and Scholar

MICHAEL McMANNUS, B.A., J.D.  
Judge, U.S. Bankruptcy Court, Eastern District of California  
Adjunct Professor of Law

GREGORY T. MEATH, B.A., J.D.  
Adjunct Professor of Law

DAVID W. MILLER, A.B., J.D.  
Professor Emeritus

MICHAEL S. MIRELES, B.S., J.D., LL.M.  
Associate Professor of Law

FRANCES DEAN MOOTZ, III, B.A., A.M., J.D.  
Dean  
Professor of Law

MAUREEN MORAN, B.A., J.D., M.L.I.S.  
Instructional Services & Legal Research Librarian  
Adjunct Professor of Law

FRED K. MORRISON, B.S., J.D.  
Justice, California Court of Appeal (retired)  
Adjunct Professor of Law

MARY-BETH MOYLAN, B.A., J.D.  
Director, Global Lawyering Skills  
Lecturer in Law

KIM J. MUELLER, B.A., J.D.  
Judge, U.S. District Court, Eastern District of California  
Adjunct Professor of Law

ROBERT E. MURPHY, B.A., J.D.  
Adjunct Professor of Law

JOHN E. B. MYERS, B.S., J.D.  
Professor of Law  
Distinguished Professor and Scholar

TIMOTHY E. NACCARATO, B.A., J.D.  
Principal Assistant Dean for Academic and Student Life  
Lecturer in Law

BLAKE C. NORDAHL, B.A., J.D.  
Instructor in Law
THOMAS J. NUSSBAUM, B.A., J.D.
Adjunct Professor of Law

ELIZABETH RINDSKOPF PARKER, B.A., J.D.
Professor of Law

ROBERT PARKER, B.A., J.D.
Field Placement

PAUL D. PATON, B.A., LL.B., M.PHIL.
J.S.M., J.S.D.
Professor of Law
Director, Ethics Across the Professions Initiative

DEBRA PETERSEN, B.A., J.D.
Adjunct Professor of Law

JOHN P. PEZONE, B.A., J.D.
Adjunct Professor of Law

WALTER J. PFEIL, PH.D.
Visiting Professor of Law

TIMOTHY PIGANELLI, A.A.S., B.S.
Adjunct Professor of Law

MICHAEL P. PINCHERTON, B.A., J.D.
Instructor, Global Lawyering Skills

JEFFREY E. PROSKE, B.A., J.D.
Instructor, Global Lawyering Skills

KIRUPA PUSHPARAJ, B.S., M.S., J.D.
Adjunct Professor of Law

BEN A. RICH, B.A., J.D., M.A., PH.D.
Adjunct Professor of Law

RONALD B. ROBIE, B.A., M.A., J.D.
Justice, Court of Appeal, Third Appellate District
Adjunct Professor of Law

CLAUDE D. ROHWER, A.B., J.D.
Professor Emeritus

C. ATHENA ROUSSOS, B.A., J.D.
Adjunct Professor of Law

WANDA HILL ROUZAN, B.A., J.D.
Adjunct Professor of Law

RACHAEL E. SALCIDO, B.A., J.D.
Associate Professor of Law
Faculty Advisor, McGeorge Law Review

RICHARD SCHICKELE, B.A., M.A., J.D.
Adjunct Professor of Law

SABINE SCHLEMMER-SCHULTE
L.E.D., LL.B., LL.M, DR., IUR., S.J.D., LL.M.
Associate Professor of Law

GLENDALEE SCULLY, B.A., J.D.
Adjunct Professor of Law

MONICA SHARUM, B.S., J.D., M.L.S.
Emerging Technologies Librarian

DAVID R. SHAW, B.A., J.D.
Adjunct Professor of Law

ERICH SHINERS, B.A., J.D.
Adjunct Professor of Law

JOHN CARY SIMS, A.B., J.D.
Sr. Editor, Journal of National Security Law and Policy
Professor of Law

ANTHONY M. SKROCKI, J.D., LL.M.
Professor Emeritus

BRIAN G. SLOCUM, B.A., J.D.
Professor of Law

JON A. SPERRING, B.A., J.D.
Adjunct Professor of Law

JOHN G. SPRANKLING, B.A., J.D., J.S.M.
Distinguished Professor and Scholar
Professor of Law

B.J. SUSICH, B.S., M.B.A., J.D.
Adjunct Professor of Law

MARY SWANSON, B.S., J.D.
Assistant Director, Institute for Administrative Justice
Lecturer in Law

JOSEPH E. TAYLOR, J.D., M.B.A.
Professor of Law

EDWARD H. TELFEYAN, B.A., J.D.
Professor of Lawyering Skills
Director, Moot Court Program

STEPHANIE THOMPSON, B.A., J.D.
Professor of Lawyering Skills
Assistant Director, Global Lawyering Skills

KATHRYN TOBIAS, B.A., M.R.P., J.D.
Adjunct Professor of Law

COLLEEN TRUDEN, B.A., J.D., LL.M.
Director, Field Placement

WINFRIED VAN DEN MUIJSENBERG, Dr. Jur.
Visiting Professor of Law

MICHAEL VITIELLO, B.A., J.D.
Distinguished Professor and Scholar
Director, Center for Advocacy and Dispute Resolution

FRANCIS S.L. (FRANK) WANG, B.S., J.D.
Visiting Professor of Law

GREGORY S. WEBER, A.B., J.D.
Professor of Law

PHILIP WILE, A.B., J.D.
Professor Emeritus

ANTHONY WILLIAMS, B.A., J.D.
Adjunct Professor of Law

JAMES WIRELL, B.A., M.C.S., LL.B., J.D., M.S.L.I.S.
Head of Access Services/Sr. Reference Librarian

DONALD WOLLETT, J.D.
Professor Emeritus

JARROD WONG, B.A., LL.M., J.D.
Associate Professor of Law

KOJO YELPAALA, B.L., LL.B., M.B.A., M.Sc., J.S.D.
Professor of Law

LAURA YOUNG, B.A., J.D.
Visiting Professor of Law
SYMPOSIUM
THE EVOLUTION OF JUSTICE ANTHONY M.
KENNEDY’S JURISPRUDENCE

Introduction
Elizabeth Rindskopf Parker .......................................................... iii

Justice Kennedy’s “Gay Agenda”: Romer, Lawrence, and the
Struggle for Marriage Equality
Lawrence C. Levine ....................................................................... 1

State Interests and the Duration of Abortion Rights
Randy Beck .................................................................................. 31

The Property Jurisprudence of Justice Kennedy
John G. Sprankling ..................................................................... 61

Justice Kennedy’s Use of Sources of the Original Meaning of
the Constitution
Gregory E. Maggs ........................................................................... 77

Justice Kennedy’s Jurisprudence on the First Amendment
Religion Clauses
R. Randall Kelso ........................................................................... 103

Justice Kennedy’s Free Speech Jurisprudence: A Quantitative
and Qualitative Analysis
Ashutosh Bhagwat and Matthew Struhar ................................. 167

There’s a Whole World Out There: Justice Kennedy’s Use of
International Sources
Stephen C. McCaffrey .................................................................. 201
Justice Kennedy’s Sixth Amendment Pragmatism
   Stephanos Bibas ................................................................. 211

The Evolution of Justice Kennedy’s Eighth Amendment Jurisprudence on Categorical Bars in Capital Cases
   Linda E. Carter ................................................................. 229

Kennedy and the Prisons—Moral Exhortation and Technical Fastidiousness
   Robert Weisberg ............................................................... 247
Note from the Chief Symposium Editor

Justice Anthony M. Kennedy was appointed to the United States Supreme Court in 1988. This publication celebrates Justice Kennedy’s twenty-fifth year on the nation’s highest court (and thirty-third on the bench). During this twenty-five year period, Justice Kennedy has taken part in many landmark opinions, which, for better or for worse, have shaped our country’s history and future. The McGeorge Law Review was pleased to host a symposium to discuss the many themes, ideas, and roots behind these opinions. The symposium was fortunate to have several of Justice Kennedy’s former law clerks and colleagues attend and contribute to the event. Through their presence, our audience gained insight into the deliberations Justice Kennedy undertook within his private chambers.

The articles in this issue were prompted by that symposium, entitled “The Evolution of Justice Anthony M. Kennedy’s Jurisprudence,” which took place at the University of the Pacific, McGeorge School of Law on April 6, 2012. It has been an honor to meet and work with all of the exceptional authors who contributed to this issue. On behalf of the McGeorge Law Review, I wish to express my deepest gratitude to these authors for their contribution to this issue and their patience and diligence during the editing process. The McGeorge Law Review would also like to especially thank McGeorge Professors Michael Vitiello and Clark Kelso for taking the lead on the symposium. Without their dedication and continued support, this symposium would not have been possible.

On behalf of the Volume 44 Board of Editors, we would like to thank our editors and staff for their continued hard work. We are also especially grateful to Pauline Rodriguez, who leads every issue to publication. Finally, we would like to thank McGeorge’s faculty and administration for their continued support of our journal, especially Professor Rachael Salcido and Associate Dean Julie Davies.

Jeff Dodd
Chief Symposium Editor
McGeorge Law Review, Volume 44