University of Miami Law Review

VOLUME 68 **WINTER 2014** **NUMBER 2**

2013-2014 EXECUTIVE BOARD

KELLY A. HEARD
Editor-in-Chief

ROSS CHAFFIN
Executive Editor

NATALIE HARRISON
Executive Editor

MATTHEW E. KOHEN
Senior Articles Editor

LOGAN HAINE-ROBERTS
Senior Notes & Comments Editor

JUAN CARLOS ZAMORA
Senior Notes & Comments Editor

ZACHARY D. LUDENS
Writing & Research Editor

CUSHLA E. TALBUT
Managing Editor

PAULINA VALANTY
Eleventh Circuit Editor

MCKILLOP ERLANDSON
Projects Editor

FREDDI MACK
Online Editor

ADAM FISCHER
Articles & Comments Editor

SAMANTHA HAWORTH
Articles & Comments Editor

LESLIE POLLACK
Articles & Comments Editor

BRENDAN RYAN
Articles & Comments Editor

ERYCA SCHIFFMAN
Articles & Comments Editor

BRIAN SCHMELKIN
Articles & Comments Editor

LACEY STUTZ
Articles & Comments Editor

BRYAN VEGA
Articles & Comments Editor

EDITORIAL BOARD

LEAH AARONSON
LINDSAY ADKIN
KARLA ALBITE
KELLY BALKIN
BETHANY BANDSTRA
BRITTANY BROOKS
CAITLIN BURKE
DANIEL BUTLER
STACY BYRD
KATHERINE CLEMENTE
MELISSA COATES
DAVID COULTER
DANIELLE COUPET
TREY DAHL
LISA EBENSTEIN
JENNA FELDMAN
ERIN FITZGERALD
CHRISTINA FLATAU
GREGORY FONTELA
BRITTANY FORD
VICTOR HANNA
ANTONIO M. HERNANDEZ, JR.
ALEXANDER HEYDEMANN
CHRISTINA HIMMEL
ADAM HOOCK
MICHAEL LEWENZ
LINDSEY MAULTASCH
ANAILI MEDINA
JORDAN MIMOUN
BENJAMIN MUSCHEL
KYLE OHLENSCHLAEGER
AMANDA PARRA
GABRIELA PIRANA
GINA RHODES
BERNADETTE SADEEK
ERIN SALES
ADRIENNE SCHEFFEY
JORDAN SHAW
SHEKIDA SMITH
SARA SOLANO
SCOTT SQUIRES
STEVEN SWARTZ
CRAIG TOMPKINS
ELIZABETH TRENARY
JOSHUA TRUPPMAN
DANA TURJMAN
MAXIMILIAN VISKI-HANKA
EAMON WELCH
DAVID WERNER
LEAH WESTON
ALYSSA WILLIAMS
JENNA WINCHESTER
DANIEL WOLFE
KATHRYN YANKOWSKI

FARAH BARQUERO
Administrative Assistant

UNIVERSITY OF MIAMI SCHOOL OF LAW

ADMINISTRATION

Donna E. Shalala, B.A., Ph.D., *President of the University*
Thomas J. LeBlanc, B.S., M.S., Ph.D., *Provost & Executive Vice President*
Patricia D. White, B.A., M.A., J.D., *Dean & Professor of Law*
Patrick O. Gudridge, A.B., J.D., *Vice Dean & Professor of Law*
Ileana Porras, B.A., M.Phil., J.D., *Associate Dean of Academic Affairs*
Raquel M. Matas, B.A., J.D., *Associate Dean for Administration and Counsel to the Dean*
Douglas K. Bischoff, A.B., J.D., LL.M., *Associate Dean for the Adjunct Faculty & Director of the Graduate Program in Real Property Development*
Georgina Angones, B.A., *Assistant Dean for Law Development and Alumni Relations*
Marcelyn Cox, B.A., J.D., *Assistant Dean, Career Development Office*
Michael L. Goodnight, B.A., M.S., *Associate Dean of Admissions and Enrollment Management*
Janet E. Stearns, B.A., J.D., *Dean of Students*
Marni B. Lennon, B.A., Ms.Ed., J.D., *Assistant Dean for Public Interest and Pro Bono, Director, HOPE Public Interest Resource Center*
William P. VanderWyden, III, B.A., M.Ed., J.D., *Assistant Dean for Professional Development*
Greg Levy, B.A., J.D., *Assistant Dean of Academic Affairs and Student Services*
Stephanie D. Cox, B.A., *Assistant Dean for External Affairs*

FACULTY

David Abraham, B.A., M.A., Ph.D., J.D., *Professor of Law & University of Miami Law Review Faculty Advisor*
Anthony V. Alfieri, A.B., J.D., *Dean's Distinguished Scholar, Professor of Law & Director of the Center for Ethics & Public Service*
Paula Arias, J.D., *Director of International Moot Court Program & Lecturer in Law*
Jill Barton, B.J., B.A., M.S., J.D., *Lecturer in Law*
Ricardo Bascuas, B.A., J.D., *Professor of Law*
Ellen Belfer, B.A., J.D., *Lecturer in Law*
Caroline Bettinger-Lopez, B.A., J.D., *Associate Professor of Clinical Legal Education & Director, Human Rights Clinic*
William Blatt, A.B., J.D., *Professor of Law*
Caroline M. Bradley, B.A. (Hons), LL.M., *Professor of Law*
Patricia A. Brown, B.S.F.S., J.D., *Director, Graduate Program in Taxation*
Sergio Campos, A.B., J.D., *Associate Professor of Law*
Donna K. Coker, B.S.W., M.S.W., J.D., *Professor of Law*
Mary I. Coombs, B.A., M.A., J.D., *Professor of Law*
Charlton Copeland, B.A., M.A.R., J.D., *Professor of Law*
Caroline Mala Corbin, B.A., J.D., *Professor of Law*
Andrew Dawson, B.A., J.D., *Associate Professor of Law*
Michele DeStefano, B.A., J.D., *Associate Professor of Law*
Stephen M. Diamond, B.A., A.M., Ph.D., J.D., *Professor of Law*
Mary Teresa Doud, B.A., M.A., J.D., *Lecturer in Law*
Mary Doyle, B.A., LL.B., *Dean Emerita & Professor of Law*
Alyssa Dragnich, B.A., J.D., *Lecturer in Law*
Marc Fajer, A.B., J.D., *Professor of Law*
Zanita E. Fenton, A.B., J.D., *Professor of Law*
Mary Anne Franks, B.A., M.Phil., Ph.D., J.D., *Associate Professor of Law*
Christina M. Frohock, B.A., M.A., J.D, *Lecturer in Law*
A. Michael Froomkin, B.A., M.Phil., J.D., *Laurie Silvers and Mitchell Rubenstein Distinguished Professor of Law*
Michael H. Graham, B.S.E., J.D., *Dean's Distinguished Scholar for the Profession, Professor of Law*
Susan Haack, B.A., M.A., B.Phil., Ph.D., *Distinguished Professor in the Humanities, Cooper Senior Scholar in Arts and Sciences, Professor of Philosophy & Professor of Law*
Stephen K. Halpert, A.B., J.D., *Professor of Law*
Frances R. Hill, B.A., M.A., Ph.D., J.D., LL.M., *Dean's Distinguished Scholar for the Profession, Professor of Law*
Jennifer Hill, B.A., M.A., J.D., *Lecturer in Law*
Elizabeth M. Iglesias, B.A., J.D., *Professor of Law*
Jan L. Jacobowitz, B.S., J.D., *Director of the Professional Responsibility and Ethics Program & Lecturer in Law*
Osamudia James, B.A., J.D., LL.M., *Associate Professor of Law*
D. Marvin Jones, B.S., J.D., *Professor of Law*
Stanley I. Langbein, A.B., J.D., *Professor of Law*

Tamara Rice Lave, B.A., M.A., Ph.D., J.D., *Associate Professor of Law*
Lili Levi, A.B., J.D., *Professor of Law*
Dennis O. Lynch, B.A., J.D., J.S.D., LL.M., *Dean Emeritus & Professor of Law*
Martha R. Mahoney, B.A., M.A., J.D., *Professor of Law*
Elliott Manning, A.B., J.D., *Dean's Distinguished Scholar for the Profession, Professor of Law*
Fred McChesney, A.B., J.D., Ph.D., *Carlos de la Cruz-Soia Mentschikoff Chair in Law and Economics*
Felix Mormann, J.D., LL.M., *Associate Professor of Law*
Jessica Carvalho Morris, J.D., *Director of International Graduate Law Programs*
Sarah A. Mourer, B.S., J.D., *Director of the Capital Defense Project and Miami Innocence Project & Associate Professor of Clinical Legal Education*
George Mundstock, B.A., J.D., *Professor of Law*
Peter Nemerovski, B.A., J.D., *Lecturer in Law*
JoNel Newman, B.A., J.D., *Director of the Health and Elder Law Clinic & Professor of Clinical Legal Education*
James W. Nickel, B.A., Ph.D., *Professor of Philosophy & Professor of Law*
Leigh Osofsky, A.B., J.D., *Associate Professor of Law*
Bernard H. Oxman, A.B., J.D., *Richard A. Hausler Endowed Chair& Professor of Law*
Kunal Parker, A.B., M.A., J.D., Ph.D., *Dean's Distinguished Scholar & Professor of Law*
Jan Paulsson, A.B., J.D., *Michael Klein Distinguished Scholar Chair & Professor of Law*
Bernard P. Perlmutter, B.A., J.D., *Director of the Children & Youth Law Clinic & Professor of Clinical Legal Education*
Shara Pelz, B.A., J.D., *Lecturer in Law*
Alejandro Portes, B.A., M.A., Ph.D., *Professor of Sociology & Professor of Law*
Tina Portuondo, B.A., J.D., LL.M., *Director of the Heckerling Institute on Estate Planning*
Thomas A. Robinson, B.S., J.D., B.Litt., *Professor of Law*
Scott Rogers, B.S., M.S., J.D., *Director, Mindfulness and the Law Program & Lecturer in Law*
Laurence M. Rose, B.A., J.D., *Director of the Litigation Skills Program & Professor of Law Emeritus*
Robert E. Rosen, A.B., M.A., J.D., Ph.D., *Professor of Law*
Keith S. Rosenn, B.A., LL.B., *Professor of Law & Chair of Foreign Graduate Law Program*
Edgardo Rotman, J.D., LL.M., Ph.D., LL.B., *Lecturer in International & Comparative Law*
Andres Sawicki, S.B., J.D., *Associate Professor of Law*
Stephen J. Schnably, A.B., J.D., *Professor of Law*
Rebecca Sharpless, B.A., M.Phil., J.D., *Associate Professor of Clinical Legal Education*
Rachel Smith, B.A., J.D., *Lecturer in Law*
Rachel Stabler, B.A., J.D., *Lecturer in Law*
Kele Stewart, B.S., J.D., *Professor of Clinical Legal Education*
Irwin P. Stotzky, B.A., J.D., *Professor of Law*
Scott Sundby, B.A., J.D., *Dean's Distinguished Scholar & Professor of Law*
Jessi Tamayo, B.A., J.D., *Director of Public Programming & Lecturer in Law*
Annette Torres, B.A., M.B.A., J.D., *Lecturer in Law*
Stephen K. Urice, B.A., Ph.D., J.D., *Professor of Law*
Francisco Valdes, B.A., J.D., J.S.M., J.S.D., *Dean's Distinguished Scholar & Professor of Law*
Teresa Verges, B.A. J.D., *Director, Investor Rights Clinic & Lecturer in Law*
Markus Wagner, J.S.M., M.J.I., J.D., *Associate Professor of Law*
William H. Widen, A.B., J.D., *Professor of Law*
Richard L. Williamson, Jr., A.B., M.A., J.D., *Professor of Law*
Sally H. Wise, B.A., J.D., M.LL., *Director of the Law Library & Professor of Law*
Jennifer H. Zawid, B.A., J.D., *Director of the Externship Program & Lecturer in Law*
Cheryl Zuckerman, B.A., J.D., *Lecturer in Law*

Emeriti

Terence J. Anderson, B.A., J.D., *Professor Emeritus of Law*
Kenneth M. Casebeer, A.B., J.D., *Professor Emeritus of Law*
M. Minnette Massey, B.B.A., LL.B., M.A., LL.M., *Professor Emerita of Law*
Kathryn D. Sowle, B.A., J.D., *Professor Emerita of Law*

Visiting Professors

Kristina Klykova, LL.M., *Visiting Assistant Professor*

STATEMENT OF EDITORIAL POLICY

The *University of Miami Law Review* (ISSN 0041-9818) is published quarterly during the fall, winter, spring, and summer by the students of the University of Miami School of Law. Periodicals postage paid at Miami, Florida and additional mailing offices. POSTMASTER: Send address changes to *University of Miami Law Review*, 1311 Miller Drive, University of Miami School of Law, B-349 Law Library, Coral Gables, FL 33124.

SUBSCRIPTIONS: One year's subscription for four issues/one volume is $45.00 for domestic mailing and $55.00 for international mailing, payable in advance. Single Issues are $15.00. Address your order to ***University of Miami Law Review***, 1311 Miller Drive, B-349 Law Library, Coral Gables, FL 33124. If the *University of Miami Law Review* does not receive notice of termination before the expiration of the subscription, it will be automatically renewed. Because the *University of Miami Law Review* holds back issues at its editorial offices for a limited time only, subscribers should report non-receipt of an issue within six months of its mailing or one month following receipt of a succeeding issue.

SINGLE AND BACK ISSUES: Each issue of Volume 68 of the *Review* can be purchased for $15.00 from the *University of Miami Law Review*. Back issues of Volumes 1–67 are available through William S. Hein and Company, Inc., 1285 Main Street, Buffalo, New York 14209, (800) 828-7571. Back issues can also be found in electronic format on HeinOnline (http://heinonline.org).

SUBMISSIONS: The *University of Miami Law Review* invites the submission of unsolicited articles. All submissions should conform to *The Bluebook: A Uniform System of Citation* (19th ed. 2010). In general, the *University of Miami Law Review* follows *The Redbook: A Manual on Legal Style* (2d ed. 2006) on grammar, style, and usage. Authors seeking publication in the *University of Miami Law Review* should submit manuscripts in Microsoft Word format electronically through its homepage. Please visit us online at http://lawreview.law.miami.edu/.

COPYRIGHT: Copyright © 2014 by the *University of Miami Law Review*. The author of each article published in the *Review* grants permission for copies of that article to be made and used for classroom use, provided that the user identifies the author and the journal, affixes proper notice of copyright to each copy, and sends notice and a description of the use to the *University of Miami Law Review*. In addition, the author of each article grants the *University of Miami Law Review* the right to authorize the publication, reproduction, and distribution of the article in electronic, computerized-retrieval systems, and similar forms, and to transfer such rights. For reprint permission for purposes other than classroom use, please contact the *University of Miami Law Review* at the above address, or fax (305) 284-5632. Please allow at least one business week for processing.

University of Miami Law Review

VOLUME 68 WINTER 2014 NUMBER 2

SYMPOSIUM
Social Media and the Law

KEYNOTE ADDRESS

John G. Browning 353

ARTICLES

Our Copyright Code: Continue Patching or Start Rewriting? — *Honorable Edward J. Damich* 361

The Digital Death Conundrum: How Federal and State Laws Prevent Fiduciaries from Managing Digital Property — *James D. Lamm, Christina L. Kunz, Damien A. Riehl & Peter John Rademacher* 385

Pinterest and Copyright's Safe Harbors for Internet Providers — *Michael W. Carroll* 421

The Social Media Frontier: Exploring a New Mandate for Competence in the Practice of Law — *Jan L. Jacobowitz & Danielle Singer* 445

Why Can't We Be Friends? Judges' Use of Social Media — *John G. Browning* 487

NOTES

Laying Your Online Self to Rest: Evaluating the Uniform Fiduciary Access to Digital Assets Act — *Samantha D. Haworth* 535

Has the Quest to Quelch Piracy Gone Too Far?: Government Overreach in Forfeiture of Linking Websites — *Freddi Mack* 561

UNIVERSITY OF MIAMI LAW REVIEW