

OKLAHOMA LAW REVIEW

SYMPOSIUM: DRAWING THE LINE: MODERN SEXUAL CONFLICTS AND THE LAW

Introduction: Three Cohorts' Vulnerabilities on the Issue
of Sexual Consent *Anita Bernstein*

Standing In Between Sexual Violence Victims and
Access to Justice: The Limits of Title IX *Hannah Brenner Johnson*

Title IX and Official Policy Liability: Maximizing
the Law's Potential to Hold Education Institutions
Accountable for Their Responses to Sexual Misconduct *Erin E. Buzuvis*

Discriminatory Dualism in Process: Title IX, Reverse
Title IX, and Campus Sexual Assault *Sarah L. Swan*

Rape Exceptionalism Returns to California: Institutionalizing
a Credibility Discount for College Students Reporting
Sexual Misconduct *Kelly Alison Behre*

Due Process Overbreadth? The Void for Vagueness Doctrine,
Fundamental Rights, and the Brewing Storm over Undefined
Consent in Sexual Assault Statutes *Donald A. Dripps*

Unconditional Coercion and Positive Autonomy *Russell Christopher*

Institutionalizing Consent Myths in Grade School *Shawn E. Fields*

Victim Impact Statements and Corporate Sex Crimes *Erin Sheley*

VOLUME 73

AUTUMN 2020

NUMBER 1

Except as otherwise expressly provided, the author of each article in this volume has granted permission for copies of that article to be made and used by nonprofit educational institutions, provided that the author and the *Oklahoma Law Review* are identified and that proper notice of the copyright is affixed to each copy. In all other cases, the author and the *Oklahoma Law Review* should be contacted directly.

Cite as: 73 OKLA. L. REV. ____ (2020).

The *Oklahoma Law Review* online edition, ISSN 2473-9111, is edited and compiled at the College of Law of the University of Oklahoma. Copyright October 2020 by the *Oklahoma Law Review*. Manufactured in the United States of America. The *Oklahoma Law Review* is published quarterly and is available online via Digital Commons, Westlaw, Lexis, HeinOnline, and the OLR website, <http://www.law.ou.edu/faculty-and-scholarship/journals/oklahoma-law-review>.

Selected back issues are available electronically free of charge via the *Oklahoma Law Review's* Digital Commons page, at <http://digitalcommons.law.ou.edu/olr/>.

Editorial office: All editorial communications should be directed by email to mwaters@ou.edu, or by regular mail to the Editor-in-Chief, *Oklahoma Law Review*, University of Oklahoma College of Law, 300 Timberdell Road, Norman, Oklahoma 73019.

UNIVERSITY OF OKLAHOMA COLLEGE OF LAW

ADMINISTRATION

Katheleen Guzman, B.A., J.D., LL.M., *Interim Dean of the College of Law, Interim Director of the Law Center, Earl Sneed Centennial Professor, MAPCO/Williams Presidential Professor, and Professor of Law.*

Andrew M. Coats, B.A., J.D., *Dean Emeritus, Director Emeritus, Samuel Roberts Noble Foundation Presidential Professor, Arch B. & Joanne Gilbert Professor, and Professor of Law.*

Gail Mullins, B.S., J.D., *Associate Dean for Academics, Assistant Dean of Experiential Learning, Director of Legal Writing, and Assistant Professor of Law.*

Megan Wischmeier Shaner, B.S., J.D., *Associate Dean for Research and Scholarship, and Professor of Law.*

C. Brent Dishman, B.S., J.D., *Assistant Dean of Student Affairs.*

Stanley L. Evans, B.B.A., M.B.A., J.D., *Assistant Dean.*

Laura Palk, B.A., J.D., *Assistant Dean of Development and Alumni Affairs, Adjunct Professor of Law*

Kenton Brice, B.B.A., J.D., M.S.-L.S., *Director of Technology Innovation.*

Alicia Currin-Moore, B.A., J.D., *Director, Office of Career Development.*

David W. Dye, B.A., J.D., M.L.I.S., *Director, Graduate and International Programs.*

Rachel Egli, B.A., *Director of Continuing Legal Education and Events.*

Brian Griffith, A.A.S., *Director of Information Technology.*

Rebecca K. Hamrin, B.A., J.D., *Director, Master of Legal Studies Healthcare Law Program and Oil, Gas, and Energy Law Program.*

Peter C. Kraemer, B.A., M.A., M.A., *Director of Faculty Support.*

Camal Pennington, B.A., J.D., *Director of Admissions.*

Lisa Monsour Millington, B.A., J.D., *Executive Director, Graduate & International Programs.*

Amy Pepper, B.A., J.D., *Director, OU Legal Clinics, Assistant Professor of Clinical Education.*

Glen Pinkston, B.S.B.A., M.A., *Director, Financial Services.*

Sunny Rowland, B.S., J.D., *Director of Academic and Bar Support, and Director of Legal Assistant Education.*

Connie S. Smothermon, B.A., J.D., *Director of Competitions, Director of Externships, and Assistant Director and Assistant Professor of Legal Research & Writing.*

Joel Wegemer, B.A., J.D., M.L.S., *Interim Director of the Law Library and Adjunct Professor of Law.*

Lizanne Carlson, B.A., J.D., *Associate Director of Admissions.*

Maddie Farris, B.A., J.D., *Associate Director of Admissions.*

Kayla Doiron, B.S., M.B.A., J.D., *Associate Director of Career Development.*

Elaine B. Bradshaw, B.M., M.A., M.L.I.S., *Assistant Director for Collections and Digital Products.*

Rebecca J. Lucas, *Registrar and Study Abroad Coordinator.*

Rebeka Morales, B.A., B.A., *Events and Communications Coordinator.*

Lisa Ross, *Executive Assistant to the Dean.*

Michael F. Waters, B.A., M.A., *Editorial Advisor for the Law Reviews.*

FACULTY

Owen L. Anderson, B.A., J.D., *Eugene Kuntz Chair in Law in Oil, Gas and Natural Resources Emeritus, George Lynn Cross Research Professor Emeritus, and Professor of Law Emeritus.*

Carolina Arlota, LL.M., J.S.D., *Visiting Assistant Professor of Law.*

Evelyn Aswad, BSFS, J.D., *Herman G. Kaiser Chair in International Law, and Professor of Law.*

Mary Sue Backus, B.A., M.A.T., J.D., *Robert Glenn Rapp Foundation Presidential Professor of Law.*

Brenda H. Barnes, B.A., J.D., *Assistant Professor of Clinical Legal Education.*

Donald T. Bogan, A.B., J.D., *Thomas P. Hester Presidential Professor, and Frank Elkouri and Edna Asper Elkouri Professor in Law.*

Todd Buchwald, B.A., J.D., *Visiting Professor of International Law.*

Sarah Burstein, B.A., J.D., *Professor of Law.*

Steven J. Cleveland, B.A., J.D., *Thomas P. Hester Presidential Professor, and Professor of Law.*

Andrew M. Coats, B.A., J.D., *Dean Emeritus, Director Emeritus, Samuel Roberts Noble Foundation Presidential Professor, Arch B. & Joanne Gilbert Professor and Professor of Law.*

Monika U. Ehrman, B.S., J.D., LL.M., *Faculty Director, Oil & Gas, Natural Resources, and, Energy Center, and Associate Professor of Law.*

Jonathan Forman, B.A., M.A., M.A., J.D., *Kenneth E. McAfee Centennial Chair in Law.*

Steven S. Gensler, B.S., J.D., *Gene and Elaine Edwards Family Chair in Law, and President's Associates Presidential Professor.*

Mark R. Gillett, B.A., J.D., LL.M., *Professor of Law Emeritus.*

Katie Griffin, B.B.A., J.D., *Visiting Professor of Legal Research and Writing.*

Katheleen Guzman, B.A., J.D., LL.M., *Interim Dean of the College of Law, Interim Director of the Law Center, Earl Sneed Centennial Professor, MAPCO/Williams Presidential Professor, and Professor of Law.*

Taiawagi Helton, B.A., J.D., LL.M., *W. DeVier Pierson Professor of Law, and Professor of Law.*

Stephen E. Henderson, B.S., J.D., *Judge Haskell A. Holloman Professor of Law.*

Eric E. Johnson, B.A., J.D., *Professor of Law.*

Kit Johnson, B.A., J.D., *Professor of Law.*

Drew Kershner, B.A., J.D., LL.M., *Earl Sneed Centennial Professor of Law Emeritus.*

F. Stephen Knippenberg, B.A., J.D., LL.M., *Floyd H. and Martha Norris Chair in Law, and Professor of Law.*

Maria T. Kolar, B.A., M.A., J.D., *Visiting Assistant Professor of Law.*

Peter F. Krug, B.A., M.S., Ph.D., J.D., *Herman G. Kaiser Foundation Chair in International Law Emeritus, and Professor of Law Emeritus.*

Peter B. Kutner, A.B., J.D., *Hugh Roff Professor of Law.*

Lubomir P. Litov, B.S., M.S., Ph.D., *Affiliate Associate Professor of Law.*

Brian McCall, B.A., M.A., J.D., *Orpha & Maurice Merrill Professor in Law.*

William J. McNichols, A.B., J.D., *Professor of Law Emeritus.*

Erin Means DeWalt, B.S., J.D., *Assistant Professor of Legal Research and Writing.*

Roger Michalski, B.A., J.D., Ph.D., *Professor of Law.*

Frederick H. Miller, A.B., J.D., *Professor of Law Emeritus.*

Melissa Mortazavi, B.A., J.D., *Professor of Law.*

Gail Mullins, B.S., J.D., *Associate Dean for Academics, Assistant Dean of Experiential Learning, Director of Legal Writing, and Assistant Professor of Law.*

Daniel Nicholson, B.A., J.D., *Assistant Professor of Legal Research and Writing.*

Joyce Palomar, B.S., M.A., J.D., *Kenneth E. McAfee Chair in Law Emeritus, and Ada Lois Sipuel Fisher Presidential Professor of Law.*

Alex Pearl, B.A., J.D., *Professor of Law.*

Tracy Hresko Pearl, B.A., M.Sc., J.D., *Professor of Law.*

Amy Pepper, B.A., J.D., *Director, OU Legal Clinics, Assistant Professor of Clinical Education.*

Osborne M. Reynolds, A.B., J.D., LL.M., S.J.D., *Professor of Law Emeritus.*

Robert E.L. Richardson, B.A., J.D., LL.M., *Professor of Law Emeritus.*

Liesa Richter, B.S., J.D., *William J. Alley Professor of Law and Thomas P. Hester Presidential Professor of Law.*

Theodore Roberts, B.S., J.D., *Edith Kinney Gaylord Presidential Professor of Law, and Professor of Law Emeritus.*

Lindsay G. Robertson, A.B., M.A., Ph.D., J.D., *Faculty Director, Center for the Study of American Indian Law and Policy, Chickasaw Nation Endowed Chair in Native American Law, Sam K. Viersen Jr. Family Foundation Presidential Professor, and Professor of Law.*

Michael A. Scaperlanda, B.A., J.D., *Professor of Law Emeritus.*

Zachary M. Schmook, B.S., J.D., *Assistant Professor of Legal Research and Writing.*

Megan Wischmeier Shaner, B.S., J.D., *Associate Dean for Research and Scholarship, and Professor of Law.*

Connie S. Smothermon, B.A., J.D., *Director of Competitions, Director of Externships, and Assistant Director and Assistant Professor of Legal Research & Writing.*

Robert G. Spector, B.S., J.D., *Glenn R. Watson Centennial Chair in Law, and Professor of Law Emeritus.*

Rennard Strickland, B.A., M.A., J.D., S.J.D., *Senior Scholar in Residence.*

David Swank, B.A., J.D., *Dean Emeritus, and David Ross Boyd Professor of Law Emeritus.*

Murray Tabb, B.A., M.A., J.D., LL.M., *Judge Fred A. Daugherty Chair in Law, and David Ross Boyd Professor of Law.*

Rebekah C. Taylor, B.A., J.D., *Assistant Professor of Clinical Legal Education.*

Rick Tepker, B.A., J.D., *Floyd & Irma Calvert Chair of Law and Liberty, and Professor of Law.*

Joseph T. Thai, A.B., J.D., *Presidential Professor of Law, Glenn R. Watson Centennial Chair in Law, and Professor of Law.*

Stacey Ann Tovino, B.A., J.D., Ph.D., *Professor of Law.*

This publication is issued online by the University of Oklahoma College of Law as authorized by Interim Dean Katheleen Guzman. It is available by subscription via Westlaw, Lexis, and HeinOnline, and at no charge via Digital Commons and the College of Law website.

OKLAHOMA LAW REVIEW

EDITED AND COMPILED AT THE COLLEGE OF LAW OF THE UNIVERSITY OF OKLAHOMA
AND PUBLISHED QUARTERLY
© Oklahoma Law Review, 2020

JONATHAN L. ROGERS
Editor-in-Chief

TAYLOR FREEMAN PESHEHONOFF
Managing Editor

BAILEY BETZ
Executive Articles Editor

JACOB P. BLACK
COURTNEY D. KEELING
NICK MARR
*Note & Comment
Editors*

RYAN D. BROWN
JACOB M. DOWNS
KARSON J. KATZ
Articles Editors

CONNOR LANE BALLINGER
EVAN J. CRUMPLEY
MATTHEW NIEMAN
REED C. TRECHTER
GRAYSON POWELL WALKER
ALLYSON WILCOX
*Assistant Articles
Editors*

BRENNAN T. BARGER
COOPER E. EPPES
MARCI J. GRACEY
JUSTIN MAI
HEATHER SWINBURNE TALLEY
ISAAC Z. TREADAWAY
Assistant Managing Editors

SIERRA L. WHITE
*Research Editor &
Candidate Mentor*

JD WEISS
Symposium Editor

REED C. TRECHTER
*Topic Editor
& Candidate Mentor*

EVAN J. CRUMPLEY
GRANT SCOWDEN
AUSTIN SHEEHY
Judiciary Committee

NATALIE M. JESTER
AUSTIN SHEEHY
Staff Editors

CANDIDATES FOR MEMBERSHIP

STEVEN P. AMREIN
SYDNEY BARRETT
SAMUEL BLACK
DIANE DOH
AMANDA FINCH
CAROLINE FAITH GRAHAM
LAUREL "TRAE" HAVENS III
HAMMONS P. HEPNER
TANNER HERRMANN
KAITLYN HUELSKAMP
HEATHER N. HUFF
ARRON M. KIDDER
MAEVE P. LINDSEY
WYATT ALLEN MCGUIRE

ANNA MCNEIL
JENNIE M. MOOK
NICHOLAS A. MUNOZ
ANAMAYAN NARENDRAN
MOTAHAREH NICKEL
AUSTIN TAYLOR RAY
ALLYSON SHUMAKER
ANGELA SORENSEN
GATLIN SQUIRES
JORDAN STROH
LAUREN SWINNEY
MORGAN E. VASTAG
WILLIAM WHITEHURST

OKLAHOMA LAW REVIEW

VOLUME 73

AUTUMN 2020

NUMBER 1

SYMPOSIUM: DRAWING THE LINE: MODERN SEXUAL CONFLICTS AND THE LAW

- Introduction: Three Cohorts' Vulnerabilities on the Issue
of Sexual Consent
Anita Bernstein 1
- Standing In Between Sexual Violence Victims and Access
to Justice: The Limits of Title IX
Hannah Brenner Johnson 15
- Title IX and Official Policy Liability: Maximizing the Law's
Potential to Hold Education Institutions Accountable for Their
Responses to Sexual Misconduct
Erin E. Buzuvis 35
- Discriminatory Dualism in Process: Title IX, Reverse Title IX,
and Campus Sexual Assault
Sarah L. Swan 69
- Rape Exceptionalism Returns to California: Institutionalizing
a Credibility Discount for College Students Reporting Sexual
Misconduct
Kelly Alison Behre 101
- Due Process Overbreadth? The Void for Vagueness Doctrine,
Fundamental Rights, and the Brewing Storm over Undefined
Consent in Sexual Assault Statutes
Donald A. Dripps 121
- Unconditional Coercion and Positive Autonomy
Russell Christopher 159
- Institutionalizing Consent Myths in Grade School
Shawn E. Fields 173
- Victim Impact Statements and Corporate Sex Crimes
Erin Sheley 209