

THE UNIVERSITY OF TOLEDO COLLEGE OF LAW

TRANSCRIPT

FALL 2015



D. BENJAMIN BARROS

Named College's 13th Dean

Stay in touch!

Subscribe to quarterly Enewsletter.

Email your request to LawCommunications@utoledo.edu

Follow Toledo Law on social media.

 @UTOLEDOLAW

 @UTOLEDOLAW



I was thrilled to join Toledo Law in July. At every turn, I've been warmly welcomed – by the University, our alumni, students, faculty, and staff. I've been impressed by the people I have met and the community that exists here. This is a wonderful law school, and I am honored to be a part of it.

I was happy to discover that my values – a student-centered education, solid preparation for the bar and practice – are Toledo Law's existing values. We already do a great job here, but together, we can do even better. We know that students attend law school to pass the bar exam and launch a satisfying career. In what areas can we improve so that we provide a legal education so strong and so practical that our students have a competitive advantage in the job market? What can we do to make this place even better?

1. Focus on bar exam success. Historically, our students have done well on the bar, but this year's results show that we should not rest on our laurels. We should aspire to consistently be a top bar performer in Ohio, and we need to constantly think about how we can improve our bar success. To that end, I'm pleased to announce that Legal Writing Professor Lesa Byrnes was appointed the College's first Director of Academic Success and Bar Preparation earlier this fall. She will work with her colleagues and the rest of our community to perform a comprehensive review of our bar efforts, and to develop new programs and initiatives in areas where we can improve.
2. Expand career development opportunities. Our Office of Professional Development is building innovative programs to put current students in the best place to succeed after graduation. We have set a goal that every first-year student will have a law-related experience this summer. The faculty is also committed to increasing practical training for our students, and we are exploring ways to better prepare our students for practice. Professional development is an area where we can always use alumni help. The single biggest contribution you can make as an alum is to assist a current student's professional development. We need alumni to serve as mentors, as resources for students interested in your region of the country, and as participants in our career fairs, among many, many other important roles. If you can help current students develop their network, if you can provide an internship for a current student, or if you can help in any way, please let us know.
3. Increase enrollment. Following a nationwide trend, the College of Law's enrollment has declined over the past few years. I am optimistic that we can turn this trend around. I am delighted that Jessica Mehl recently re-joined the College of Law as our Assistant Dean for Admissions. We have just launched a new program to allow students to start law school in January, as well as the traditional August start date. We will welcome our first cohort of January starters this year. We are also developing programs to diversify our offerings beyond our core J.D. program. For example, we are developing a regulatory compliance program that will provide skills-based education in compliance to non-J.D. students. At the same time, we will be developing a compliance-focused concentration for our J.D. students.
4. Improve fundraising. Every step that we need to take to move the College of Law forward – creating exciting new practical training opportunities, expanding career development resources, hiring and retaining the best faculty, improving our facilities – requires resources. We can't improve the College of Law without increased alumni support. Your contributions are essential to our success.

I'm proud to be a part of this enterprise and eager for input from our alumni and students. I look forward to meeting and hearing from you soon!

Sincerely,

A handwritten signature in black ink that reads "Benjamin Barros". The signature is written in a cursive, flowing style.

D. Benjamin Barros
Dean and Professor of Law

TABLE OF CONTENTS

The **Toledo Transcript** is published once a year by the College of Law Office of Communications.

Dean

D. Benjamin Barros

Associate Dean for Academic Affairs

Geoffrey C. Rapp

Associate Dean for Faculty Research and Development

Eric C. Chaffee

Assistant Dean for Student Affairs

Katherine Raup O’Connell

Assistant Dean for Law Career Services and Alumni Affairs

Heather S. Karns

Assistant Dean for Admissions

Jessica Mehl '05

Assistant Dean for the LaValley Law Library

Rick Goheen

Assistant Dean for Communications

Rachel Phipps '07

Editor

Rachel Phipps '07

Graphic Designer

Amanda Ngur

Photographers

Daniel Miller
Anthony Tscherne

Project Manager

Paula Ashley



FALL 2015

| | |
|-----------------------------------|----|
| College of Law News | 3 |
| 2014-2015 Year in Review | 10 |
| College of Law Commencement | 12 |
| 13th Dean Named | 15 |
| 5 Steps to Ethical Representation | 22 |
| The ADA at 25 | 28 |
| Faculty News | 34 |
| Alumni News | 45 |
| In Memoriam | 48 |

**TOLEDO LAW FACULTY
RECOGNIZED FOR SCHOLARLY
IMPACT; RANKS #62 OF NATION'S
LAW SCHOOLS**

| | |
|----|----------------|
| 57 | Boston College |
| 62 | Missouri |
| 62 | Toledo |
| 64 | DePaul |
| 64 | Rutgers-Camden |

The University of Toledo College of Law recently ranked 62nd of the nation's 205 law schools, as measured by citations to faculty articles, in a study on faculty productivity completed by Professor Gregory Sisk and several of his colleagues at the University of St. Thomas School of Law.

The College of Law appeared between the University of Missouri and DePaul University on the recently released list. Of the 13 other law schools in Ohio and Michigan, only the University of Michigan, Ohio State University, and Case Western Reserve University were among the top third of law schools in terms of scholarly impact, according to the Sisk ranking.

"I was excited to come to UT in part because of our outstanding faculty," said D. Benjamin Barros, dean of the College of Law. "This study reinforces our faculty's strength, and shows that we are producing scholarship that has a real impact."

Toledo Law faculty scholarship has been cited in recent years in multiple U.S. Supreme Court briefs and one Supreme Court opinion, and several federal trial and appellate court decisions. Faculty members have penned Supreme Court amicus briefs and testified in state legislative and judicial proceedings and in U.S. Congressional hearings.

Faculty members are regularly sought for analysis and opinions by the media. Many faculty members are interviewed for local television and newspaper articles, and several comment frequently in national publications such as The New York Times and USA Today. Additionally, faculty members edit two top law professor blogs.

"The faculty at the College of Law has worked to build and maintain a fertile scholarly environment," said Eric Chaffee, associate dean for faculty research and development. "We are excited about this study because it demonstrates that we are making an impact within the legal academy based upon the breadth and depth of knowledge and ideas of those teaching at the school."

The Toledo Law faculty's commitment to scholarship enriches the student experience.

"The quality of faculty scholarship at our school is directly related to the first rate instruction students get in our classrooms," said Geoffrey Rapp, associate dean for academic affairs and Harold A. Anderson Professor of Law and Values.

"I was excited to come to UT in part because of our outstanding faculty. This study reinforces our faculty's strength, and shows that we are producing scholarship that has a real impact."

– Dean Ben Barros

"Should a student care about how many citations a professor gets? No. But students should care that professors have a broad and deep understanding of their fields,

and it's that understanding that supports our high impact research," Rapp said.

The Sisk study applied methodology to evaluate faculty productivity developed by Brian Leiter, professor of law at the University of Chicago Law School, and can be downloaded free of charge on the SSRN website.

This is the second major study to highlight the prominence of Toledo Law faculty scholarship in recent years. In a study conducted by Roger Williams University in 2013, Toledo Law's faculty ranked 90th in the country and 4th among Ohio law schools as measured by placements in top law reviews.

STUDENTS ARGUE FIRST AMENDMENT AND DORMANT COMMERCE CLAUSE QUESTIONS IN 43RD ANNUAL CHARLES W. FORNOFF APPELLATE ADVOCACY COMPETITION

What can the government legally do to reduce the consumption of sugar-sweetened beverages? Second- and third-year students argued a case with a fact pattern loosely based on New York City's soda ban in the 43rd annual Charles W. Fornoff Appellate Advocacy Competition.

The problem, styled *Fraper v. Association of Beverage Producers and Retailers*, required students to grapple with constitutional questions involving the first amendment and the dormant commerce clause.

In the final round on Oct. 23, 2014, Thomas J. Walsh '16 and Brian Boyd '16 represented Ron Fraper, the Governor of the State of Old York, and Michael Allen '16 and Lisa Davis '16 represented the Association of Beverage Producers and Retailers.

The four finalists emerged victorious from the double-elimination tournament and were given the opportunity to argue the case in front of a panel of highly respected judges: Raymond M. Kethledge of the U.S. Court of Appeals for the Sixth Circuit, Jeffrey J. Helmick of the U.S. District Court for the Northern District of Ohio, and Arlene Singer of the Ohio Sixth District Court of Appeals.

The four finalists adeptly handled questions from an active bench. At the argument's conclusion, Walsh was named Best Oralist, and Boyd and Walsh together were named Best Team.

The Fornoff Competition is organized each year by the Moot Court Board. Dominic Gentile '15 and vice-chair Shelby Gordon '15 were 2014 Fornoff co-chairs.

Professors Eric Chaffee and Bryan Lammon served as Fornoff faculty advisors and helped to prepare the finalists in the weeks between the tournament and the final argument.

PROF. BRYAN LAMMON'S ARTICLE WINS APPELLATE LAWYERS ACADEMY PRIZE



The American Academy of Appellate Lawyers (AAAL) has chosen a recent article by Bryan Lammon, assistant professor of law, for its Eisenberg Prize. Lammon's article, "Rules, Standards, and

Experimentation in Appellate Jurisdiction," was published in the *Ohio State Law Journal* in 2013.

The annual Eisenberg Prize recognizes the publication of high-quality articles in the field of appellate practice and procedure. Winners receive \$2,000. Lammon joins a distinguished list of past awardees, including last year's recipient, Judge Richard Posner of the United States Court of Appeals for the Seventh Circuit, one of the most distinguished and well-known jurists in the country. Lammon received the prize at the AAAL's spring meeting in Santa Fe, New Mexico on April 16, 2015.

"It is absolutely phenomenal that someone at such an early stage of his career would win this award. Professor Lammon has a tremendously promising future as a scholar, and is already a highly accomplished teacher. We are very proud of his accomplishment," said former dean Daniel Steinbock.

According to its website, the AAAL is committed to advancing the administration of justice and promoting the highest standards of professionalism and advocacy in appellate courts. Membership in AAAL is reserved for experienced appellate advocates who have demonstrated the highest skill level and integrity.

"It is absolutely phenomenal that someone at such an early stage of his career would win this award. Professor Lammon has a tremendously promising future as a scholar"

— Daniel Steinbock

PROF. JOSEPH SLATER ELECTED FELLOW OF COLLEGE OF LABOR AND EMPLOYMENT LAWYERS



Joseph E. Slater, the Eugene N. Balk Professor of Law and Values, was inducted as a fellow of the College of Labor and Employment Lawyers on Nov. 8, 2014, after being elected by colleagues in recognition of his sustained outstanding performance in the profession.

"Joe Slater is an outstanding and popular teacher and is nationally known among scholars and practitioners as one of the top experts in the country in labor law," said former dean Daniel Steinbock. "This honor only reinforces our pride in having him on our faculty."

The College of Labor and Employment Lawyers was founded in 1995 as a professional association to honor leading labor and employment attorneys and has evolved to become an important resource for labor and employment law issues. Election as a fellow is the highest recognition by one's colleagues of sustained outstanding performance in the profession, exemplifying integrity, dedication, and excellence.

Professor Slater has been on the Toledo Law faculty since 1999 and teaches Torts, Labor Law, Public Sector Labor Law, and Employment Law. He is a graduate of Georgetown University (PhD), the University of Michigan Law School (J.D.), and Oberlin College (B.A.). He is a

member of the Labor Law Group. Before joining the faculty, he practiced law in Washington, D.C. for over a decade.

Slater is the co-author of a new book titled “Mastering Labor Law,” which was published by Carolina Academic Press during fall 2014, as well as the co-author of two casebooks.

TOLEDO LAW OFFERS INDIANA AND MICHIGAN RESIDENTS OHIO IN-STATE TUITION

What if the most affordable law school in Michigan and Indiana isn’t in Michigan or Indiana?

For members of the fall 2015 and fall 2016 entering class, The University of Toledo College of Law will provide Michigan and Indiana residents a scholarship to cover the out-of-state tuition surcharges, making Toledo Law the most affordable law school for both states’ residents. The scholarship will be automatically renewed each semester of law school enrollment.

With the new Indiana and Michigan Resident Scholarship Guarantee, residents of both states will effectively pay Toledo Law’s in-state tuition rate of \$17,900 – lower than any public or private law school in Indiana or Michigan.

“Toledo Law offers a nationally ranked education with a personal touch,” said Daniel Steinbock, former dean of the College of Law. “We have many graduates who have had outstanding legal careers after returning to or settling in Indiana and Michigan with a Toledo Law degree.”

Toledo Law is consistently looking for ways to improve the value it provides its students. Other recent initiatives include enhanced opportunities for experiential

learning during all three years and more emphasis on joint degree programs such as the JD/MBA and JD/MD.

PROF. LEE STRANG NAMED JOHN W. STOEPLER PROFESSOR OF LAW AND VALUES



As one of his last official duties, former dean Daniel Steinbock named Professor Lee J. Strang the next John W. Stoepler Professor of Law and Values, effective July 1, 2015. Strang follows Professor Susan Martyn, who became the John W. Stoepler Professor of Law and Values Emeritus following her retirement in June.

“Professor Strang’s outstanding national scholarly reputation and concern for values in his work put him squarely within the aims of this Professorship” said Steinbock. “He joins three other distinguished scholars on the College of Law faculty, Professors Geoffrey Rapp, Joseph Slater, and Rebecca Zietlow, in holding one of our named Professorships.”

Professor Strang is the author of more than 20 law review publications, a constitutional law casebook, as well as several book chapters and book reviews. He has published in the fields of constitutional law and interpretation, property law, and religion and the First Amendment. Among other scholarly projects, he is currently editing the second edition of his casebook for LexisNexis, writing a book titled

“Originalism’s Promise and Its Limits,” and authoring a book on the history of Catholic legal education in the United States. He frequently presents at scholarly conferences and participates in debates at law schools across the country. He is also regularly quoted in the media. Professor Strang was named the College’s director of faculty research in 2014. This fall 2015 he is a visiting scholar at the Georgetown Center for the Constitution, where he will complete his book on originalism.

A graduate of the University of Iowa, where he was articles editor of the *Iowa Law Review* and a member of Order of the Coif, Professor Strang also holds an LL.M. degree from Harvard Law School.

Before joining the Toledo Law faculty, Strang was a visiting professor at Michigan State University College of Law and an associate professor at Ave Maria School of Law. Prior to teaching, Professor Strang served as a judicial clerk for Chief Judge Alice M. Batchelder of the U.S. Court of Appeals for the Sixth Circuit and an associate with Jenner & Block LLP in Chicago, where he practiced general and appellate litigation.

The Professorship is named after John W. Stoepler, the seventh dean of the College of Law. Dean Stoepler was an alumnus and longtime faculty member before being named dean of the College in 1983. Stoepler served as interim president of the University in 1988. The Stoepler Professorship of Law and Values is funded out of a bequest by Eugene N. Balk, a former general counsel of The Andersons, Inc.

Professor Strang delivered an installation lecture for the Professorship on Sept. 21, 2015.

MOOT COURT TEAM AWARDED HONORS AT CHINA IP COMPETITION



From left to right: Jason Csehi '17, Joseph Stanford '16, Kolet Buenavides '16, and Jonathan Kohfeldt '16.

The University of Toledo College of Law's moot court team earned high honors in the 2015 Beijing Foreign Studies University-Wanhuida Cup Intellectual Property Moot Court Competition in Beijing, China held on May 23- 24, 2015.

The team of Kolet Buenavides '16, Jason Csehi '17, Jonathan Kohfeldt '16, and Joseph Stanford '16 performed exceptionally well in oral argument, placing fourth out of fourteen teams. Csehi won the competition's best oralist award and Buenavides received an award as outstanding oralist. The team ranked fifth in the competition overall.

Llewellyn Gibbons, professor of law and intellectual property expert, served as faculty advisor to the team and also traveled with the students to Beijing.

"In addition to their very hard work preparing for the legal argument part of the competition, I was very impressed with the level of cultural sensitivity and professionalism of the UT team," said Gibbons. "Several team members took the additional step of taking a conversational Chinese class so that they could pronounce Chinese language terms correctly and contacted the Confucius Institute at The

University of Toledo for a briefing in Chinese business and banquet etiquette. Our students showed the initiative and the attention to detail necessary to compete in a global legal marketplace."

The University of Toledo's Center for International Studies and Programs was especially helpful in making the trip possible with its generous funding as well as support navigating the necessary visa requirements for travel to China.

The BFSU-Wanhuida competition is one of only two English language international moot court competitions involving intellectual property law. This year's competition hosted 14 teams from China, Australia, Taiwan, and the U.S.

The competition problem was based on an actual case involving Chinese copyright law. Students submitted briefs and argued the issues in front of a distinguished panel of judges which included a former member of China's Supreme People's Court, a retired justice of the Minnesota Supreme Court, the U.S. Department of Justice's resident legal advisor to the U.S. Embassy in Beijing, intellectual property judges from Taiwan and China, senior partners in two of China's largest intellectual property firms, and law professors from China and Australia. In this context, the competition provided a unique opportunity to explore intellectual property issues with a dynamic and diverse group of students and experts from around the world in a way that is not possible in the traditional classroom setting.

"Our students showed the initiative and the attention to detail necessary to compete in a global legal marketplace."

– Llewellyn Gibbons

TOLEDO LAW LOWERS TUITION FOR 2015-16

The University of Toledo College of Law is cutting its in-state tuition from \$20,579 to \$17,900 for the academic year starting fall 2015. Tuition for out-of-state students also will drop – to \$29,449.

The tuition reduction, approved unanimously by The University of Toledo Board of Trustees on Sept. 15, 2014, makes Toledo Law's in-state tuition the lowest of any law school in Ohio, Michigan, and Indiana. Michigan and Indiana residents pay Ohio in-state tuition rates by virtue of the College's automatic Michigan and Indiana Resident Scholarship Guarantees.

The tuition decrease benefits all students who are enrolled at Toledo Law in the 2015-16 academic year, whether they are new or continuing, full-time or part-time.

"We want to make legal education more affordable and accessible," said former dean Daniel Steinbock. "Students are rightfully price-conscious, and lower tuition helps make law school a better investment. At Toledo Law, you can obtain a nationally-ranked legal education without incurring a mountain of debt." Merit scholarships are also available for tuition, further reducing the cost of attendance.

ARTICLE BY ALEC VOGELPOHL '15 RECEIVES OSBA AWARD



Alec Vogelpohl '15 has been announced the winner of the Ohio State Bar Association's 2015 Environmental Law Award for his paper titled "Ohio's Public Trust Doctrine: The State's Duty to Prevent Harmful Algal Blooms in Lake Erie."

The article was published in the OSBA Environment, Energy, and Resources Law Seminar materials and Vogelpohl received a prize of \$1,000 donated by the Ohio law firm McMahan DeGulis LLP.

The OSBA Environmental Law Award is a writing contest for law students on topics that advance the application and practice of environmental, energy, or resources law in Ohio.

Vogelpohl's paper analyzes how the public trust doctrine, rooted in the Constitution, statutes, and common law, imposes a duty on the state to protect the public's rights of navigation, commerce, and fishing in Lake Erie. The state is violating its duties under the public trust doctrine by failing to address key sources of nutrient pollution contributing to harmful algal blooms in Lake Erie, Vogelpohl argues, and the state should be forced to regulate those sources.

"Alec's novel paper does a great job of applying an ancient legal doctrine to an important modern problem," said

Professor Kenneth Kilbert, director of Toledo Law's Legal Institute of the Great Lakes.

Vogelpohl graduated *cum laude* in May 2015 with a certificate of concentration in Environmental Law. Last year he earned a best oralist award at the National Environmental Law Moot Court Competition.

This is the 6th year for the OSBA Environmental Law Award, and it marks the second time a Toledo Law student captured the top prize. M. Zack Hohl '12 won in 2012.

According to the OSBA website, a panel of environmental lawyers and OSBA members reviewed the submissions to select the winner. Submitted articles were judged on the following criteria: relevance to the practice of law in Ohio, timeliness and importance of the selected topic, organization, quality of legal analysis, quality of legal research, and quality of the overall writing.

This year there were two second place winners: Alex Savickas, also a Toledo Law student, and a student from Cleveland-Marshall College of Law.

"Alec's novel paper does a great job of applying an ancient legal doctrine to an important modern problem."

— Kenneth Kilbert

PROF. HOWARD FRIEDMAN'S RELIGION CLAUSE BLOG NAMED TO ABA JOURNAL'S BLAWG 100

A blog authored by Howard M. Friedman, professor of law emeritus, was recently named to the American Bar Association Journal's Blawg 100 List.

The Blawg 100 is compiled by ABA Journal staff and recognizes those law blogs that consistently offer insight into what current events mean for clients, the legal profession, and the public. Nominations from readers are considered in the process.

Friedman writes about legal and political developments in the areas of religious liberty and separation of church and state at religionclause.blogspot.com. He tweets at the handle @ReligionClause.

Friedman's blog was also one of 10 blogs added to the ABA Journal's 30-blog-strong Hall of Fame this year.

"[The Religion Clause blog] often reports ahead of major media on judicial decisions, legislation, and legal scholarship," said Friedman. "Its objective coverage and links to primary source material have attracted a readership across religious denominations and across the political spectrum."

Friedman, the author of four books and more than 25 articles and book chapters in the areas of securities and corporate law, First Amendment law, and white collar crime, joined the Toledo Law faculty in 1970. He started the Religion Clause blog in 2005, and his blog has made the ABA Journal's list on four other occasions. Friedman headed the Cybersecurities Law Institute, where he created the Financial Regulators Gateway, an online guide to securities, banking, and insurance regulators around the world, until 2005. He is a graduate of Ohio State University (B.A.), Harvard University (J.D.), and Georgetown University (LL.M).

Visit abajournal.com/blawg100 for a list of all 100 honorees.

PROF. JELANI JEFFERSON EXUM TO JOIN FEDERAL SENTENCING REPORTER EDITORIAL BOARD



Professor Jelani Jefferson Exum has been invited to join the editorial board of the *Federal Sentencing Reporter*. The journal explores in detail sentencing law, practice, and theory. In her new role, Exum will pick a topic for one FSR issue each year and oversee production of that issue.

“Professor Exum has established herself as one of the top researchers and theorists in the highly important field of criminal sentencing,” said former dean Daniel Steinbock. “This appointment to the editorial board of a major journal in the field confirms her status as one of the leaders of the next generation of sentencing scholars.”

Two of Professor Exum’s articles have previously been published in the *Federal Sentencing Reporter*: “Reflections of a First-Time Expert Witness” in December 2013, and “What’s Happening With Child Pornography Sentencing?” in December 2011. Professor Exum also guest-edited the December 2011 issue on child pornography.

Professor Exum mainly writes in the area of sentencing law and policy, but her research interests also include comparative criminal law and procedure and the impact of race on criminal justice. Before joining academia, Professor Exum served as a law clerk for James L. Dennis, U.S. Circuit Judge for the Fifth Circuit Court

of Appeals, and Eldon E. Fallon, U.S. District Judge for the Eastern District of Louisiana. Exum is a graduate of Harvard Law School and Harvard College.

Published five times annually, each issue of the *Federal Sentencing Reporter* features articles, cases, and other primary materials written by judges, prosecutors, defense attorneys, probation officers, scholars, and members of sentencing commissions. The journal is published for the Vera Institute of Justice by the University of California Press.

LAW AND LEADERSHIP INSTITUTE RECEIVES \$20,000 GRANT

The Law and Leadership Institute (LLI) at Toledo Law was awarded a \$20,000 grant by the Toledo Community Foundation in January 2015 to enhance its upper level curriculum.

Supported by the Ohio State Bar Foundation, the Supreme Court of Ohio, Ohio’s nine law schools, and others, LLI is a state-wide initiative to help prepare students from underserved communities for post-secondary success through a four-year academic program in law, leadership, analytical thinking, and writing skills.

The grant permits the expansion of the writing program during the last two years of LLI’s four-year high school program. Students will now receive instruction from experienced composition teachers, write an in-depth research paper, and respond to rigorous feedback on drafts.

“This grant will help further the goals of LLI to inspire and prepare students by strengthening their analytical and writing skills, which are critical for success in college and professional careers,” said Marilyn Preston, legal writing professor and director of Toledo Law’s LLI program.

Those students who complete top-level research papers will receive a monetary award.

“The potential of the award will motivate those LLI students who now leave LLI during the last two years to remain in the program through graduation,” said Preston. “It also will cause them to strive for excellence in their writing, which, in turn, will make them more likely to succeed in college.”

Toledo Law’s LLI program began in 2009 with a single ninth grade class; a new class has joined the program each year. The LLI program was piloted in Columbus and Cleveland in 2008, and has since grown to more than 400 high school students on eight law school campuses across the state.

Each of the four summers, beginning the summer after eighth grade, LLI students take three to five weeks of classes or internships. They also return on some Saturdays during the academic year. Students compete in mock trials and public policy discussions, intern in law firms, visit colleges, and prepare for the ACT.

Toledo Community Foundation, Inc. is a public charitable organization created by citizens in the Toledo area to enrich the quality of life for individuals and families in the area. In existence since 1973, the Foundation has more than 670 funds with assets of approximately \$219 million. The Foundation provides philanthropic services for individuals, families, businesses, and corporations to meet their charitable giving needs.

COLLEGE OF LAW DEBUTS TOLEDO WOMEN LAWYERS HISTORY PROJECT



Posing for a photo in front of the display in the LaValley Law Library were, from left, honoree and Lucas County Prosecutor Julia Bates '76, honoree and Assistant U.S. Attorney Holly Taft Sydlow '75, honoree and former Ohio Supreme Court Justice Alice Robie Resnick, Ohio Sixth District Court of Appeals Judge Arlene Singer '76, honoree and U.S. Magistrate Judge Vernelis Armstrong, and former Dean Daniel Steinbock.

A new display at the LaValley Law Library at The University of Toledo College of Law recognizes a group of courageous and strong-willed women attorneys who blazed trails for future generations after the Ohio General Assembly first admitted women to the practice of law in Ohio in 1878.

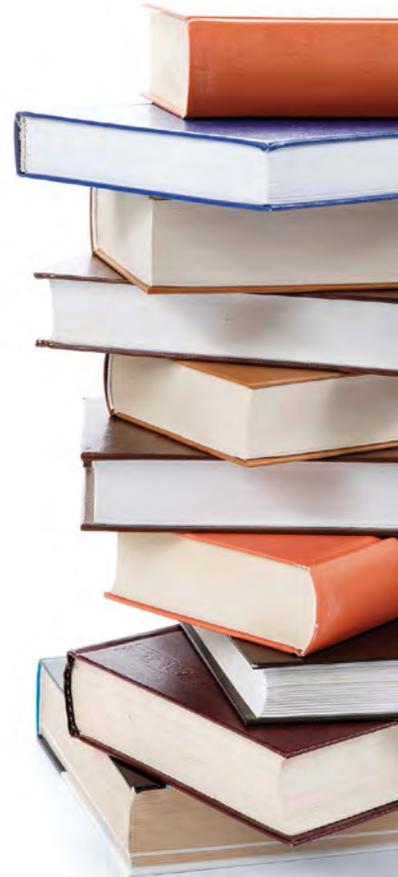
The Toledo Women Lawyers History Project, a joint effort by the Toledo Women's Bar Association (TWBA) and the College of Law, seeks to discover and preserve the stories of women lawyers in the Toledo area. Portraits created by Paula Mowry '88 that depict 12 pioneers will be permanently displayed on the second floor of the LaValley Law Library.

The display honors attorneys including: Clara Millard, the first woman in Ohio to earn a law degree and to pass the Ohio Bar examination, Florence Hartman

Wells, the first woman to be elected to both branches of the Ohio legislature, Alice Robie Resnick, the second woman elected to the Ohio Supreme Court and the founder of the Toledo Women's Bar Association and the Ohio Women's Bar Association, and College of Law alumna Julia Bates '76, the first woman elected Lucas County Prosecutor.

A dedication and ribbon-cutting ceremony were held on Oct. 2, 2014, in the LaValley Law Library. Former dean Daniel Steinbock and Lindsay Navarre, TWBA president, were on hand at the dedication to unveil and discuss the project.

Plans for the second phase of the project include a speaker series and an interactive display.



2014-2015 YEAR IN REVIEW



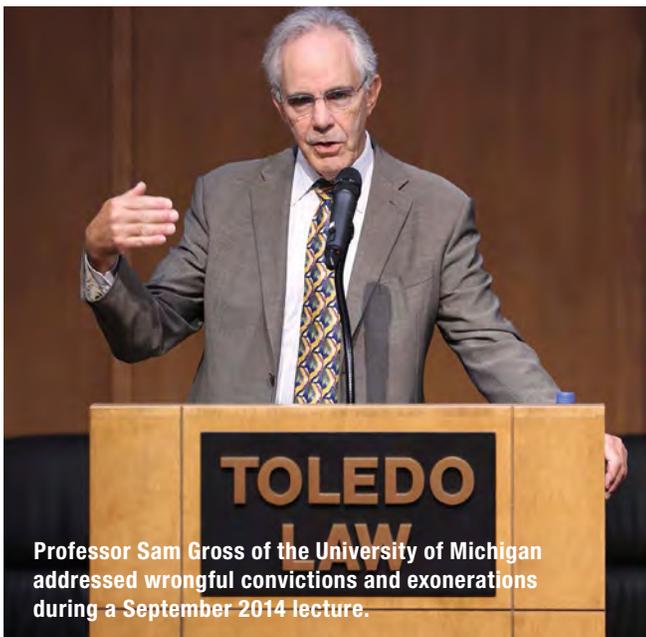
New students at Orientation in August 2014.



Jed Rakoff, senior United States District Judge for the Southern District of New York, visited in October 2014 to deliver the Cannon Lecture titled "Why Innocent People Plead Guilty."



A packed McQuade Law Auditorium for the November 2014 Great Lakes Water Conference.



Professor Sam Gross of the University of Michigan addressed wrongful convictions and exonerations during a September 2014 lecture.



The College of Law debuted the Toledo Women Lawyers History Project, a joint effort by the College and the Toledo Women's Bar Association, in September 2014.



Partygoers at the February 2015 Public Interest Law Fellowship Benefit Auction at The Toledo Club.



Professor Emeritus Lee Pizzimenti and Professor Joseph Slater serenade Dean Daniel Steinbock during his stepping-down party in June 2015.



Dean Daniel Steinbock and family pose with his official portrait.



Welcome, Toledo Law Class of 2017!

COLLEGE OF LAW COMMENCEMENT

Cheers to the Class of 2015

The College of Law celebrated 107 candidates eligible for law degrees in December 2014, May 2015, and August 2015, as well as two candidates for the Master of Studies of Law degree, in a commencement ceremony in the Student Union Auditorium on May 9, 2015.

Bryant Green, the class valedictorian, and Daniel Brewer, the 2014-2015 president of the Student Bar Association, addressed their peers during the event.

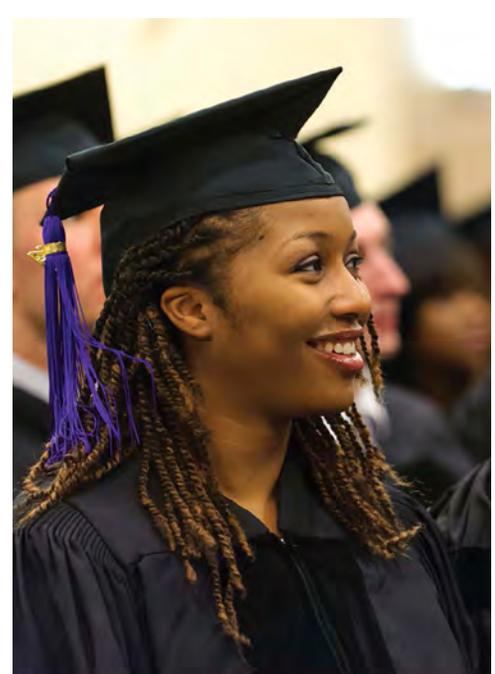
Judge Jack Zouhary of the United States District Court, Northern District of Ohio, delivered the commencement address. A 1976 graduate of the College of Law, Judge Zouhary was nominated to the U.S. District Court by President George W. Bush in 2005. Before joining the bench, Judge Zouhary was a partner at Robison, Curphey & O'Connell, LLC, a law firm with offices in northwest Ohio and southeast Michigan, and senior vice president and general counsel for S. E. Johnson Companies. Judge Zouhary received his bachelor's degree from Dartmouth College.

Susan Martyn, Distinguished University Professor and John W. Stoepler Professor of Law and Values Emeritus, delivered the Faculty Welcome.

After the chair of The University Board of Trustees, Joseph H. Zerbey IV, officially conferred the graduates' degrees, Judge Arlene Singer '76 of the Ohio Sixth District Court of Appeals, the 2014-2015 president of the Law Alumni Affiliate, congratulated and welcomed the new alumni.

Several awards were handed out during the course of the morning. Dean Steinbock presented graduates Daniel Brewer and Krysten Beech with the Dean's Award. The graduating class recognized Professor Bryan Lammon with the Outstanding Faculty Award. Professor Eric Chaffee received the Beth A. Eisler Award for First-Year Teaching.

A reception at the Law Center immediately followed the commencement ceremony.





2015 Graduates

JOINT JD/MBA

Ryan William Casano
 Ryan William-Arthur Dolan
 Jonathon B. Hoover
 Justin Allen Hughes
 Zachary Alexander Laumer
 David Michael Manoogian**
 Meghan Elyse Shingledecker*

Christopher Michael Dolinski
 Andrew Joseph Egan
 Khaled Elwardany
 James Irvin Fintel
 Trevor Francis Fisher
 Marissa K. Fitzpatrick
 Richard A. Frelin**
 Jacob Nelson Frizado**

Linda Marie Miller
 Scott O. Miller*
 James L. Nabors III
 Chimezirim A. Nwankwo*
 Maria Alejandra Otero
 David Thomas Palmer
 Andrea Paige Petitjean
 Megan Ann Philbin
 Tyler J. Pierpont

Steven P. Spitler*
 Matthew James Spitnale*
 Scott Jacob Stafford
 Margie Warne Stoner
 Selena Katherine Strickling
 Trent Sulek*
 Benjamin George Paul Sutter
 Jamie Lynn Takacs*

JOINT JD/MPA

Jake Laurence Rachman

Anthony Steven Fye
 Dominic Joseph Gentile

Justin Mark Potter
 Jeremy S. Pratt

Travis John Thiel
 Wesley R. True

JOINT JD/MSE

Marc Anthony McClain

Bryant S. Green
 Stephanie Mary Gurgol

Christopher Andrew Pryor
 Emily K. Puffenberger

Melissa Marie VanGessel
 James John Vasill III

JURIS DOCTOR

Harshavardhan Abburi*
 Ralph Ablorh-Quarcoo*
 Brandon Joseph Allen
 Alicia Ann Allenbaugh
 Linda Amrou
 Kristen A. Anderson
 Micah James Barry*
 Nicolas Jensen Baughman
 Kathleen Ann Becks Stamm*
 Krysten Elizabeth Beech
 Nathan Lee Bishop
 Daniel Joseph Brewer
 Peter Aaron Brogdon II
 Darien Marie Brucoli
 Sarah Angelle Cano
 Alex John Carpenter
 Ryan William Casano
 Alex Dongmin Chang
 Trevor W. Colvin
 Ryan William-Arthur Dolan

Ryan S. Harris**
 Andrew James Heberling
 Jonathon B. Hoover
 Justin Allen Hughes
 Derek William Jacques
 Tyler Naud Jechura
 Eric Paul Johansen
 Tony C. Johnson
 Michelle Aria Kuipers
 Marshall Allen Kupresanin
 Zachary Alexander Laumer
 Sarah Christine Laws*
 Christina L. Lowry
 David Michael Manoogian**
 Mackenzie Ann Mayer
 Marc Anthony McClain
 Drew Marie McDonell
 Samantha Kathleen McGuire
 Tanya Rene McKinley
 Leah O. Michael*

Jake Laurence Rachman
 Francisco Javier Ramon**
 April L. Renner
 Jasmine Derrice Rippy
 Talitha Tamar Robertson
 Christina Marie Rodriguez**
 Yasmyne S. Castillo-Ronquillo*
 Jillian D. Roth
 Lara Jessie Rump
 Carrie L. Russell*
 Benjamin Lee Ruttan
 Alex Mark Savickas**
 Angela Christine Seiple
 Joseph Walter Shinaver Jr.
 Meghan Elyse Shingledecker*
 Jensen Silvis
 Deyana Joi Simmons-Howard
 Blake William Skilliter
 Colleen Anne Slattery

Benjamin George Paul Sutter
 Jamie Lynn Takacs*
 Travis John Thiel
 Wesley R. True
 Melissa Marie VanGessel
 James John Vasill III
 John C. Vigorito
 Nicholas E. Vincent*
 Alec William Vogelpohl
 Lance K. Vought
 Niyah I. Walters
 Corey Q. Wheaton
 Sherrod Daunta Williams
 James Phillip Wistner
 Michael Emmanuel Yakumithis

MASTER OF STUDIES IN LAW

Andrew Curtis Black**
 Schylar M. Meadows

*Graduated December '14

** Graduated August '15

BARROS NAMED **DEAN**

COVER

D. BENJAMIN BARROS NAMED COLLEGE'S 13TH DEAN

RACHEL PHIPPS '07





THE UNIVERSITY OF TOLEDO COLLEGE OF LAW

Est. 1906

DEANS

| | |
|---------------------|-------------|
| CHARLES W. RACINE | 1927 - 1937 |
| EDWARD S. STIMSON | 1937 - 1942 |
| CHARLES W. FORNOFF | 1942 - 1960 |
| J. ALLEN SMITH | 1960 - 1963 |
| KARL KRASTIN | 1963 - 1976 |
| FRANCIS X. BEYTAGH | 1976 - 1983 |
| JOHN W. STOEPLER | 1983 - 1991 |
| THOMAS D. CRANDALL | 1991 - 1995 |
| ALBERT T. QUICK | 1995 - 1999 |
| PHILLIP J. CLOSIUS | 1999 - 2005 |
| DOUGLAS E. RAY | 2006 - 2010 |
| DANIEL J. STEINBOCK | 2010 - 2015 |
| D. BENJAMIN BARROS | 2015 - |

Dean Ben Barros is probably better at video games than you are.

Our new dean devoted many, many hours to Doom and Doom II while a law student at Fordham University School of Law. Though he took a sabbatical from gaming as an associate in New York City, now that his two sons, Griffin (age 14) and Brayden (age 11), are of video game age, he has returned with a vengeance — focusing his talents on Destiny and Call of Duty: Black Ops III. He and his boys have plans to convert the basement of their new home in Sylvania into a gamer’s haven.

This is not to say that Dean Barros expects to spend all of his time in Toledo in his basement. Since being named the College’s 13th dean at the end of May following a national search, he has quickly won the hearts of the Toledo Law community. He has connected with students, faculty, and staff, and met with many local alumni. Dean Barros plans to visit alumni in Georgia, Florida, New York, Pennsylvania, Arizona, and California soon.

A nationally-recognized property law expert, Barros is the founding editor of the *Journal of Law, Property, and Society* and the PropertyProf Blog. He teaches and writes in the areas of property law and theory, regulatory takings, and property law reform. He has served as chair of the Association of American Law Schools (AALS) Property Section and as president of the Association for Law, Property, and Society. Earlier this year, he released a textbook on property law with Aspen/Wolters Kluwer.

“I’ve read and learned from Dean Barros’s scholarship since I first started teaching,” said Lee Strang, the John W. Stoepler Professor of Law and Values and the College’s director of faculty research last school year. “I was teaching

Property Law for the first time, over ten years ago, and I had a question about the Takings Clause. I found and read Dean Barros's article, 'The Police Power and the Takings Clause,' which helped me clarify my teaching and my own thoughts on the Constitution. Since that time, Dean Barros has become a national leader in property law scholarship."

Previously associate dean of academic affairs and professor of law at Widener University School of Law in Harrisburg, Pa., Barros was one of the youngest educators to serve on the Executive Committee of the AALS. He is currently chairing the Program Committee for the AALS Annual Meeting, which is the largest gathering of legal educators in the world.

"The most rewarding part of being a law professor to me is seeing the transformation of my students in law school and following their career success."

– Dean Ben Barros

In addition to his law degree from Fordham (1996), Dean Barros holds a bachelor's degree in philosophy from Colgate University (1991) and a master's degree in philosophy from the University of Maryland (2013). He writes occasionally in the philosophy of science, and his scholarship has been published in the leading journals *Philosophy of Science* and *Synthese*. His legal scholarship has been published in leading law reviews, and he has delivered lectures throughout the U.S. and around the world.

Barros practiced as a litigator before joining academia. He worked as an associate at the law firms Debevoise & Plimpton and Latham & Watkins LLP, both in New York City. Immediately after graduating from Fordham's law school, Barros clerked for Judge Milton Pollack of the U.S. District Court for the Southern District of New York.

"Ben Barros has extensive experience in legal education and in the practice of law at two of the nation's top law firms, each with an international footprint," said John Barrett, interim provost and executive vice president for academic affairs, and professor of law. "As dean, Ben will bring with him innovative

educational approaches that respond to the changes in the legal profession and ensure our law graduates continue to leave UT a step ahead of their peers as they pursue employment."

To his list of many accolades, Dean Barros recently added "Professor You Would Most Like To Have A Drink With" after being so recognized by his students at Widener. It quickly became clear to this interviewer why Barros is deserving of this distinction – laughter and opinions and interesting tidbits abound.

Our conversation quickly bounced from video games to the benefits of city living. Having grown up near Boston, spent a decade in Manhattan, and travelled internationally as an attorney to Asia and other far-flung locales, Dean Barros refused to pick a favorite city, quickly listing Boston, NYC, Vancouver, London, Amsterdam, and Rome all in the running. Next there was a quick tutorial on the world of competitive rock climbing — his eldest is a rising star. We then moved to the subject of Dean Barros's childhood (with only a brief detour into science fiction literature — Barros was reading "Seveneves" by Neal Stephenson at the time, and loves authors William Gibson and China Miéville!).

An only child, Barros remembers his childhood in the Boston area fondly. His parents were life-long learners – both pursued bachelor's degrees at the University of Massachusetts while he was a young boy, and his mother completed graduate work in urban design at Harvard University while Barros was in middle school.

Barros's own interests as he pursued his bachelor's degree at Colgate University were wide-ranging and he initially declared a chemistry major. But after nearly incinerating a lab during organic chemistry ("Seriously, there was fire. Lots of it."), he turned to philosophy, and he credits an undergraduate Philosophy of Law course with setting his sights on law school. After graduating from Colgate, he worked a few years for Macmillan Publishing in New York before enrolling in Fordham law school's evening program.

It was while sitting in his first year property course with Professor Bill Treanor (now dean at Georgetown University Law Center) that the idea of a career as a law professor began to percolate. Barros was immediately smitten with the intellectual rigors of law school and with property law in particular.

“Something about property law clicked with me,” said Barros. “I loved thinking about property from an academic perspective, perhaps because I had a background in philosophy. I was always asking Professor Treanor oddball questions. One of those questions – about the nature and scope of the state’s regulatory police power – led to my first major article, although I didn’t actually publish it until six years later.”

Dean Barros graduated from Fordham University School of Law, where he was an editorial board member on the *Fordham Law Review* and a member of Order of the Coif, in 1996. A series of career moves followed – a federal clerkship, experience at two New York law firms, part-time teaching at Fordham University – before he moved to teaching and writing full-time as a professor at Widener in 2004.

“The most rewarding part of being a law professor to me is seeing the transformation of my students in law school and following their career success,” he said.

Moving to the administration at Widener’s law school was a natural fit for Barros. His position as associate dean of academic affairs allowed him to continue to work on behalf of the students he so enjoys, while helping to lead his institution as it navigated a steep decline in enrollment, a trend at both Widener and at law schools nationwide.

“Ben Barros brings the right mix of practice, law teaching, and administrative experience. The College of Law is in excellent hands,” said former Dean Daniel Steinbock.

Moreover, Barros is perpetually positive – jubilant even – about the value of a law degree. He is proud to be a lawyer and points to a long list of past students and colleagues who are making a difference with their law degrees. One such attorney is Dean Barros’s wife, Jody King. A litigator, Jody has worked for a leading white-collar defense firm in New York, where she was on the defense team during a pair of high-profile trials against the former chief executives at Tyco in the early 2000’s, for the Pennsylvania Department of Transportation, and most recently at the Pennsylvania Department of Health.

LEGAL EDUCATION COMMUNITY’S RESPONSE



“Ben Barros is an inspired choice to lead Toledo’s Law School in these challenging times. He is a superb property scholar whose work I deeply admire. But more importantly, he is an energetic leader; an institution builder; and an entrepreneur. I know he will be a terrific success.”

— *Eduardo M. Peñalver, Allan R. Tessler Dean and Professor of Law, Cornell University Law School*



“At a time of transformation in the legal profession, Ben Barros is exactly the type of dean law schools need as leaders. He is a superb scholar, he has a deep experience in practice, he has substantial administrative experience, and he is a thoughtful analyst of legal practice. Ben has the skills and insight needed to build for the future, and Toledo deserves congratulations on this wise choice.”

— *Bill Treanor, Dean, Georgetown University Law Center*



“Dean Benjamin Barros is one of the nation’s leading scholars of property law as well as a person of integrity and good judgment. The University of Toledo College of Law will be in good hands with him as the Dean.”

— *Joseph William Singer, Bussey Professor of Law, Harvard Law School*



“Ben Barros is one of the leading lights of the rising generation of leaders in legal education. He has already served as one of the youngest members of the Executive Committee of the Association of American Law Schools (AALS) and in that role has developed a deep understanding of the issues confronting law schools around the nation. [...] Ben stands out for his ability to develop innovative approaches to every task he handles, and also inspires others to do their best work. He also is a charismatic speaker and writer. Legal education has already benefitted from his talent and skills — and will undoubtedly benefit more in the future.”

— *Judith Areen, Executive Director, Association of American Law Schools*

A man in a dark suit and a woman in a brown sleeveless top and black pants are walking on a green lawn. In the background is a large, light-colored stone building with a prominent clock tower. The scene is outdoors with trees and a clear sky.

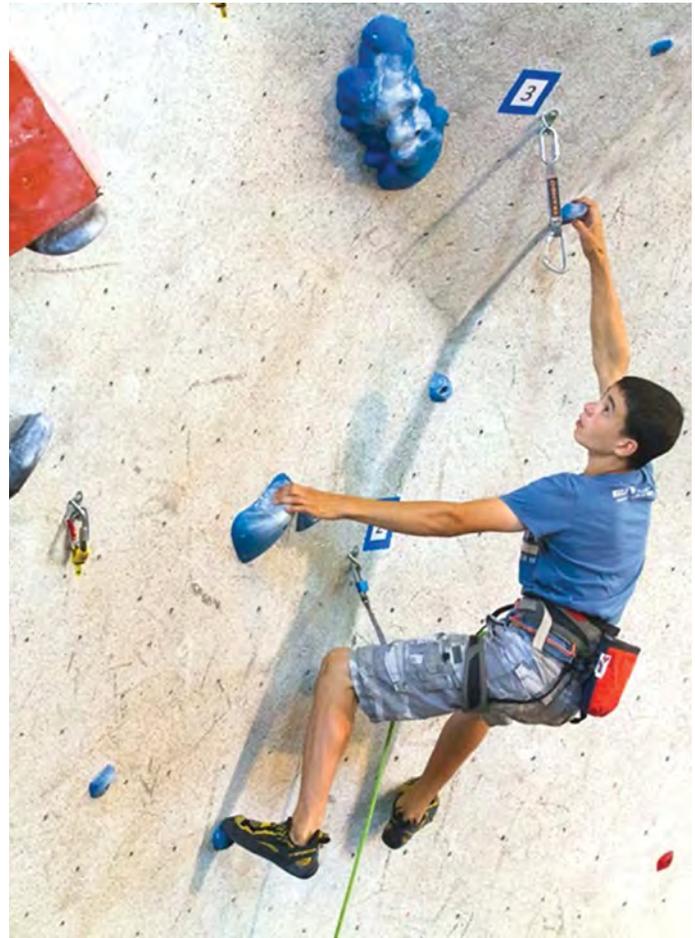
“Ben will bring with him innovative educational approaches that respond to the changes in the legal profession and ensure our law graduates continue to leave UT a step ahead of their peers as they pursue employment.”

– Interim Provost John Barrett

BARROS NAMED DEAN



Dean Barros's son Brayden and lab Bailey (in a bow tie) at Thanksgiving last year.



Dean Barros's son Griffin at a climbing competition.



Dean Barros and Jody during a recent trip to Amsterdam.

The couple met while at Colgate and they celebrated their 20th wedding anniversary this August. They live in Sylvania with sons Griffin and Brayden, two cats, Purres and King Sparta, and seven-year-old yellow lab, Bailey.

It was the strength of the school that attracted Dean Barros to his new position – specifically, our stellar faculty.

“Toledo Law faculty members are regularly advancing national legal conversations in their published scholarship and are frequently the voices media at a national level reach out to for expertise,” said Barros. “Their scholarship is outstanding, and has a real impact.”

While law schools nationwide are facing a steep decline in enrollment, a difficult job market for their recent graduates, and a changing legal profession, Dean Barros believes the College of Law has core strengths that will allow it to weather the current challenges and to continue to thrive in the future.

“The College of Law is committed to preparing students to excel as practicing lawyers and as leaders in their communities,” said Barros. “We are proud of our graduates’ success on the competitive Ohio and Michigan bar exams. We have a strong and productive faculty. As a small school, we are well positioned to offer an intimate and truly student-centered educational experience. And our low in-state and out-of-state tuition provide a tremendous competitive advantage.”

Dean Barros believes the College can’t go wrong doubling down on the student experience.

“We already provide a great student-centered education. If we continue to focus on student success, and work hard to improve student outcomes during school, on the bar, and in post-graduate employment, then we will end up in a great place.”

– Dean Ben Barros

“We already provide a great student-centered education,” he said. “If we continue to focus on student success, and work hard to improve student outcomes during school, on the bar, and in post-graduate employment, then we will end up in a great place.”

Barros’s vision for the College of Law includes nurturing and building on the College’s partnerships with the University’s other colleges and the city of Toledo.

“We must take advantage of the strengths of our University and our community,” he said. “For example, we are already strong in Health Law. The University has tremendous strengths in health care, and many of the leading employers in Toledo are health care companies. We can use these University and community strengths to improve the College’s Health Law program.”

Dean Barros also appreciates the symbiotic nature of the College’s relationship with the University and the city of Toledo.

“In the other direction, the College of Law should be engaged in the University

and the community,” he continued. “The University’s success and Toledo’s success will be our success.”

Perhaps most importantly, Barros’s excitement for the school – for what it is, for what it could be – is infectious.

“I was impressed by Ben’s enthusiasm and sincerity. He has great ideas for collaborating on campus, in our immediate community, and beyond,” said Heather Karns, assistant dean for law career services and alumni affairs, and a member of the search committee.

“In his short time here, Ben has been enthusiastically received as dean by community leaders and our alumni,” added Barbara Tartaglia-Poure, associate vice president for development at the University.

To be sure, Toledo Law can be confident with Ben Barros manning the helm – or leading our platoon – depending on which first-person shooter video game metaphor you are using. ■



Representing clients in litigation can be daunting. In this excerpt, we summarize our five-step approach to legal ethics issues.

FIVE STEPS TO ETHICAL REPRESENTATION OF YOUR CLIENTS IN LITIGATION

From “The Ethical Litigator” (ABA Litigation Section, forthcoming 2015)

LAWRENCE J. FOX AND SUSAN R. MARTYN

STEP ONE: IDENTIFY YOUR CLIENTS

Your role as an officer of the legal system creates primary obligations to clients, as well as responsibilities to courts and third parties. All of these obligations require you to identify your clients, an inquiry that can produce unanticipated results.

In most situations, lawyers know who their clients are because they have expressly agreed to represent them. Increasingly, however, the law governing lawyers also has recognized what lawyers may think of as “accidental” clients, those a lawyer did not expect, but those recognized by law as being owed the same fiduciary duties lawyers owe clients they intend to represent.

General rules of contract and tort govern the creation of client-lawyer relationships. If you provide or agree to provide legal advice or services in response to a request for either, you have a client. If you are asked to provide legal advice or services and fail to say “no,” you have a client if the person reasonably relies on you to provide services. Courts approach discrepancies in remembering what occurred from the viewpoint of the reasonable prospective client.

These legal principles can create accidental clients when a lawyer does not intend them. Accidental clients lurk in all prospective clients situations. They also can be created by court appointments and by imputation. Identifying some clients can be complicated by their organization, such as entities that act only through agents. They also can change, such as by merger, reorganization, bankruptcy or death.

Accommodating a client may create an accidental joint client. Accidental clients also can materialize as quasi-clients if your client designated them as third-party beneficiaries.

Once you identify accidental as well as intended clients you will be in a position to avoid client-lawyer relationships you do not wish to create and embrace those you do. When you know your clients, you will be able to know who to bill and to whom you owe your 5 C fiduciary duties.

STEP TWO: CLARIFY YOUR FEE

Lawyers are fiduciaries, and therefore owe clients certain pre-contractual duties of fairness in bargaining for fees. Model Rule 1.5 articulates this premise by providing that you may not agree to, charge or collect an unreasonable fee or expense. Factors determining reasonableness include the time and difficulty of the matter, the fee customarily charged, the amount involved, results obtained, your experience and ability, and the kind of fee. You are free to charge an hourly, flat, contingent or blended fee, but it must be reasonable. Contingent fees and agreements to split fees must meet specific writing requirements. All other fees should be communicated to the client, preferably in writing, along with the scope of representation and the basis or rate at which expenses are charged. Failure to clarify the basis for expenses in such an agreement leaves you with the only option of passing on the actual cost.

In an increasing number of situations, courts determine a reasonable fee. Often this occurs in a statutory fee-shifting case, but it also can occur

when a court has jurisdiction to consider the fee as part of its general obligations, for example, in approving the reasonableness of amounts owed by an estate or trust to a lawyer for the personal representative or trust.

Courts also become involved in common funds cases, especially class actions, by virtue of their obligations under court rules. And of course, whenever litigation over a fee occurs, courts look to the reasonableness of the fee in deciding the matter.

Once you take on a representation and agree to a fee, fiduciary duties attach, making any attempt to modify a fee upward, after the initial agreement, subject to a presumption that you unduly influenced the client. To rebut this presumption, you should recommend that clients have outside advice before agreeing to a fee modification. Clients also have the right to fire lawyers at any time for any reason, or no reason at all, and you must withdraw from a matter if this occurs. You also must withdraw when your other ethical obligations will be violated if you continue a representation.

STEP THREE: ATTEND TO FIDUCIARY DUTY - THE FIVE C'S

Lawyers assume five fiduciary duties – what we call the “5 C’s” – when an actual or implied client-lawyer relationship is established. These obligations rest on a key agency law insight now restated in the law governing lawyers: you derive your power from clients, but your superior knowledge and skill also allow you to overpower your client’s interests. You assume fiduciary

duties of proper deference to client control, communication, competence, confidentiality, and conflict of interest resolution to ensure that the client's best interests are promoted in a representation.

The first "C," control, assumes that, like other agents, you have a duty to act on the client's behalf, subject to the client's right to control the objectives of the representation. The law governing lawyers divides client-lawyer authority into three spheres. Clients have sole authority to determine the objective or goals of the representation. Lawyers have sole authority to take actions required by law before tribunals and to refuse to engage in unlawful conduct. Clients and lawyers share authority and are free to negotiate control in the vast middle sphere that governs all other aspects of the representation.

The client's ambit of authority includes the goals of the representation and specific decisions where clients retain sole authority, including whether to settle or appeal a matter, and in criminal cases, how to plead, whether to waive a jury trial and whether to testify. Clients may authorize you to make a particular decision within this area, but the ultimate authority of clients to decide may not be delegated completely.

The lawyer's sphere of sole authority includes refusing to perform, counsel or assist a client's unlawful act. The lawyer also has sole authority and may bind clients by actions taken, despite client preferences to the contrary, before tribunals that are required by law or court order.

The third sphere, where your clients and you share authority, often is labeled

the means to accomplish the client's objectives. Tactics are part of this vast middle ground, where you and your client are free to agree to strategy. You may bargain for authority in this middle sphere before a client engages you, and if you do not feel comfortable with your client's later requests, you may withdraw from the representation. This sphere also includes the scope of the representation, which you may reasonably limit with proper client informed consent.

All three spheres of authority require that you initiate communication during a representation. When a client decision arises, you must promptly inform, consult with your client, and clarify your client's decision. When a client insists on illegal conduct, you must inform the client that the conduct is not permitted, and explain why. When a client has decided upon an objective, you should consult with the client about the means to accomplish it.

The outcome of these consultations creates your actual authority and empowers you to act on behalf of the client. Clients also can be legally bound by apparent authority, which requires their own holding out to a third party that you are duly authorized, even if you in fact are not.

The second "C," communication, is essential to every aspect of the client-lawyer relationship. It defines the initial terms of the representation and is necessary to make each of your fiduciary duties work properly. Clients cannot control the goals of a representation without understanding feasible legal options. You cannot act competently without understanding what your client hopes to accomplish and knowing how



to get there. You need facts sufficient to permit you to apply the law to your client's situation, and confidentiality helps you get them for the client's benefit. And you must search for and resolve conflicts of interest to avoid favoring your own or some other person's interest over that of your client.

The key to understanding your communication duty is to recognize that lawyers must initiate the conversation. Seven specific events trigger this obligation. First, when you initially agree to a fee, you should define the scope of a representation and craft an engagement agreement. Second, throughout the representation, you should explain the matter to enable the client to determine the objectives of the representation. Third, you should keep the client reasonably informed about the status of the matter throughout the representation, including changes in your practice, such as a serious illness or a law firm merger. Fourth, you must inform the client when you make a

material mistake in a matter. Fifth, you should promptly respond to your client's requests for information. Sixth, you must inform your client whenever the law imposes limits on conduct the client expects you to undertake. Finally, you must specifically obtain your client's informed consent to important decisions, including limiting the scope of a representation, obtaining exceptions to fiduciary duties, (especially confidentiality and conflicts of interest), and before providing an evaluation for use by third parties that is likely to adversely affect the client's interests.

Like other fiduciary duties, informed consent is viewed from the client's perspective. To obtain informed consent, you must first disclose and explain the risks of the proposed course of conduct and, second, inform the client of alternatives to that option. When considering litigation, disclosure of ADR options could be one such alternative.

The third "C," competence, focuses on why you were hired in the first place: to provide competent service in a complex legal system clients are not able to navigate themselves. Both tort law and the lawyer codes require "reasonable" competence and diligence. You do not have to be perfect, but you do have to meet or exceed the standard of practice in your jurisdiction. A violation of the Rules of Professional Conduct may be evidence of a lapse from the appropriate standard of care.

In both malpractice and disciplinary matters, reasonable care can be established by expert testimony, although disciplinary agencies typically do not proceed against lawyers for isolated instances of incompetence or lack of diligence. Some errors are deemed so obvious that they are within the common knowledge of a fact finder. These include the failure to file within a mandatory time period and the failure to perform legal or factual research. Most courts also recognize another obvious error, often labeled breach of fiduciary duty, which includes a failure to comply with lawful client instructions, a failure of communication, a breach of confidentiality, or a failure to recognize and respond to a conflict of interest.

Malpractice requires not only that a client prove a lawyer violated the appropriate standard of care, but also that the violation caused the client harm. The same is true of suits for breach of fiduciary duty, which typically allege violation of a well-defined core professional duty such as communication, confidentiality or conflict of interest.

If you make a mistake, notify your client as well as your carrier. You do not need to fall on your sword, but you do need to explain the facts that led to your error, the conflict of interest you now face, and your need to withdraw. Do not attempt to settle the matter yourself, because your now former client needs independent representation before deciding what to do about your mistake. The law of undue influence will invalidate any such agreement, and the potential for serious discipline also should not be overlooked. Above all, avoid any deceit or cover-up of any relevant facts. That constitutes breach of fiduciary duty and often fraud, which brings additional adverse tort and disciplinary consequences.

Lawyers also need to think about competence in a limited but growing class of cases where third-party nonclients seek relief. In most jurisdictions, third parties who are intended beneficiaries or who are invited to rely on your representation of a client may sue for malpractice. Third parties also may sue for fraud, which includes intentional as well as reckless misstatements of material fact, as long as the third party reasonably relies on the misstatement and can prove damages. Some courts also recognize a cause of action against lawyers for negligent misrepresentation and for aiding and abetting a client's breach of fiduciary duty, but only if the lawyer gives substantial assistance to the client's breach, for example by engaging in fraud, a crime, or statutory breach.

The fourth "C," confidentiality, assures that clients are encouraged to share all relevant information with their lawyers. Without relevant facts, you can mistake what your client wishes to accomplish, the law that is relevant to your client's circumstance, and other legal options that might be available to fulfill your client's needs. Breaching confidentiality can result in serious harm to client interests.

Modern confidentiality obligations originated in both agency law and the attorney-client privilege, an evidentiary doctrine. The agency fiduciary duty now abides as well in the lawyer disciplinary codes, and protects all information relating to the representation of a client, from the initial prospective client communication, throughout the representation and beyond, even after your client's death or reorganization. The evidentiary privilege is narrower, and may be invoked only before a tribunal to block disclosure of confidential communications between client and lawyer for the purpose of seeking legal advice. The law of evidence also immunizes

Pursuing the client's best interests requires you to remain vigilant throughout the representation so that you can recognize conflicts when they arise.

lawyer work-product from discovery, which includes the lawyer's opinions and mental impressions formed in representing the client in anticipation of litigation.

Both fiduciary duty and the evidence-based privilege recognize parallel exceptions, whose exact dimensions nevertheless may differ substantially, even within the same jurisdiction. Exceptions to the fiduciary duty usually grant lawyers discretion to disclose, and if you choose to do so, you must only disclose to the extent reasonably necessary to accomplish the narrow purpose of the exception. Once privilege exceptions are established, courts may order lawyers to testify, on pain of contempt if they refuse to do so.

Express or implied client consent allows disclosure or use of client confidences. Most jurisdictions also recognize a confidentiality exception to prevent future client crime or fraud, on the basis that the client may not use the client-lawyer relationship to accomplish either. Whether criminal or not, the lawyer codes increasingly also recognize future threats of serious bodily harm as an additional sufficiently weighty reason to disclose, even without client consent.

Two exceptions grant you some measure of self protection. One allows you to employ confidential information to collect fees and to defend yourself against charges of misconduct by clients or others. The other allows you to seek guidance about how to comply with your ethical obligations by sharing otherwise confidential information with another lawyer.

Most jurisdictions also recognize an exception "to comply with other law or a court order." In the context of the evidentiary privilege or work product protections, this exception requires you first to claim the privilege (or the client will lose it) and then, if the other side prevails, either to appeal the order to testify or to produce documents, or to obey it if no appeal or collateral attack is available. Outside of actual litigation, this exception can mean that another legal requirement, such as a disclosure required by statute is within your authority to disclose.

Your fifth "C" requires you to identify and avoid or to resolve conflicts of interest. This obligation is based on your fiduciary duty of loyalty, which imposes the obligation to seek client consent whenever your judgment from the client's point of view might reasonably be called into question. It also prevents client harm by imposing on you the obligation to recognize and respond to any influences that may interfere with your ability to act in the client's best interests as defined by the client.

Both agency law and the lawyer codes recognize that conflicts of interest can arise from several sources, including the lawyer's own personal interests, the interests of

other clients, third persons, and former clients. Pursuing the client's best interests requires you to remain vigilant throughout the representation so that you can recognize conflicts when they arise. Once identified, a conflict must be disclosed to your client(s), unless doing so would violate another client's confidentiality. If confidentiality obligations intrude, you should resolve the conflict by not proceeding in the matter.

A lawyer's conflicts are imputed to the lawyer's firm. This imputation is premised upon the fiduciary principle that all firm lawyers owe loyalty to all firm clients and lawyers readily interact with each other in firms. Imputation also requires a conflict of interest system to check for conflicts whenever a firm takes on a new lawyer, new matter or new client.

If conflict disclosure will not violate the lawyer's duty of confidentiality, such disclosure is the beginning of the informed consent process, which allows your client to consent to continuing the representation understanding the conflict. In some situations, conflicts are so serious that client consent cannot vitiate them. When this occurs, you may not seek an exception to the loyalty requirement, and must turn down a prospective client or withdraw from representing the current client(s) to avoid the conflict.

Failure to recognize and properly respond to conflicts creates overlapping remedies for clients. If harm is caused, the client may seek tort relief. If harm is threatened, the client may seek disqualification or injunctive relief ordering you to end the representation of the conflicting interest. If you have proceeded in a representation without

disclosing a conflict, your client also can seek fee forfeiture, disgorgement of fees already paid, or a constructive trust of other property that is implicated.

STEP FOUR: OBSERVE THE LIMITS OF THE LAW

Every agency and client-lawyer relationship is subject to one significant limitation: neither your client's power of control nor your obligation of loyalty allows either of you to violate the limits or bounds of the law. Both of you remain responsible for the consequences of your conduct as autonomous legal persons.

The limits of the law include several familiar bodies of law that are explicitly incorporated into lawyer code provisions. This means that straying over the line can result in both professional discipline as well as other legal consequences, such as procedural sanctions, civil and criminal accountability, or equitable relief.

The most obvious legal limits are created by the criminal law, although today's thousands of criminal statutes can create a legal limit that goes unrecognized. Tort law, and in particular the law of fraud, creates similar limitations. The law of evidence, which recognizes the client-lawyer privilege and the work product doctrine, is enforced by contempt orders and sanctions when orders are violated. Courts also impose monetary sanctions for violations of procedural rules, such as Rules 11 and 26. Tribunals further exercise their inherent power when they disqualify, disbar or discipline lawyers, or hold lawyers in contempt.

Lawyer codes impose additional limits on client advocacy. Specific rules govern ex parte contact with opponents, define improper inducements to settle a matter,

and regulate lawyers who serve as witnesses in client matters.

All of these bodies of law impose limits or bounds that restrain unfettered client allegiance. If you violate these legal limits or fail to identify them to avoid violation by clients you also may face professional discipline. Taken together, these limits remind us that client-lawyer relationships do not exempt either client or lawyer from general legal requirements, some of which impose limits on client advocacy. This is not an unfamiliar role, because lawyers have long advised clients about how to avoid illegality. Many of these limits seek to provide a fair and accessible justice system. Others seek to avoid serious wrongdoing.

STEP FIVE: RECOGNIZE REMEDIES

Lawyers owe agency-based fiduciary duties to clients, which trigger equitable as well as legal remedies. These fiduciary duties are the foundation for many of the provisions in lawyer codes, violation of which further triggers professional discipline. Lawyers who fail to understand a legal limit imposed on unrestrained client advocacy also may be accountable to third-party nonclients.

Client legal remedies include claims for breach of contract, malpractice and breach of fiduciary duty. Equitable remedies for breaches of fiduciary duty also grant to clients presumptions of undue influence, and allow them to seek a constructive trust, disqualification or injunctive relief, fee forfeiture, or restoration of pre-contractual rights.

Nonclients can seek relief against you if they are identified third-party beneficiaries, invited by you or your client to rely on your legal services, or if you commit

crimes or intentional torts against them. In an increasing number of situations, nonclients also seek relief for negligent misrepresentation or aiding and abetting a client's fraud or breach of fiduciary duty. Nonclients involved in litigation also can seek procedural sanctions for filing frivolous actions or discovery abuse.

Both client and nonclient remedies have been created to support lawyer fiduciary duties or the limits on advocacy imposed by other law. If you understand and observe your 5 C fiduciary duties you should not create grounds for client relief. Identifying and staying within the limits of the law also should keep you out of third-party trouble.

All of this legal regulation demands careful attention to identifying your clients, as well as to your 5 C fiduciary duties, and proper identification of the limits of the law. It also requires that you understand a range of distinctive remedies created by lawyer codes, statutes or common law. We hope this chapter will help grease the skids of your understanding of this law governing lawyers, so that you will serve your clients well. If you do not, it may be that you have confused your client's identity, or worse, misunderstood your own obligations created by lawyer codes or other regulation. ■

Professor Emeritus Susan Martyn's publications include books about legal ethics intended for clients, practicing lawyers, and law students, and numerous articles about both legal and bioethics. This excerpt is adapted from her new book, "The Ethical Litigator" (with Lawrence J. Fox) (ABA Litigation Section, 2015).

THE ADA AT 25: THE EFFECT OF THE ADA AMENDMENTS ACT

NICOLE BUONOCORE PORTER

The original Americans with Disabilities Act (ADA) was enacted 25 years ago with much fanfare and hope for a successful future. However, by most accounts, it has not lived up to its potential. Beginning in the late 1990s, the federal courts (and particularly the Supreme Court) began to dramatically limit the coverage of the ADA by narrowly interpreting the definition of disability. Under this interpretation, conditions such as diabetes, cancer, AIDS, bipolar disorder, multiple sclerosis, monocular vision, epilepsy, cerebral palsy, and intellectual disabilities failed to qualify as disabilities, leaving employers free to discriminate against individuals with those conditions with impunity. Congress was unhappy with this dramatically narrowed class of persons protected by the ADA and thus enacted legislation to return the ADA to its full potential.



THE ADA AMENDMENTS ACT

The ADA Amendments Act of 2008 (“ADAAA” or “Amendments”) made significant (perhaps even drastic) changes to how the term “disability” should now be interpreted. Although not changing the actual definition of disability (a physical or mental impairment that substantially limits one or more major life activities), the Amendments add several interpretive sections emphasizing that Congress intends courts to give the definition of disability a broad construction. First, the Amendments make clear that the definition of disability should be interpreted broadly, thus overruling an earlier Supreme Court case, which had said that the ADA needs to be given a strict construction using “demanding standards.” Second, the Amendments expressly overruled another Supreme Court case, which had held that, when determining whether an individual is disabled, courts should consider the ameliorative effects of mitigating measures, such as medications and assistive devices. The Amendments make clear that, when determining whether an individual has a disability, courts should not consider the ameliorative effects of mitigating measures. Third, the Amendments made several changes to the “major life activities” provision. The statute now includes a broadened, but non-exhaustive list of major life activities. It also states that “major life activities” include “major bodily functions.” These include functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The effect of this provision is to allow diseases such as

HIV, cancer, multiple sclerosis, diabetes, and others to be considered disabilities even if there is no manifestation of the impairment on the individual’s daily activities. Finally, the amendments make clear that episodic impairments can still be considered disabilities if they would substantially limit a major life activity when active.

DEFINITION OF DISABILITY AFTER THE AMENDMENTS

Several scholars predicted that under the new definition many more individuals will qualify as disabled under the statute. In my article, *The New ADA Backlash*, I analyzed the entire body of federal ADA cases that were decided under the Amendments up through December 31, 2013 in order to ascertain whether the courts were, in fact, broadly construing the definition of disability as Congress had intended.

My findings on this question were positive—the federal courts have been broadly construing the definition of disability. In fact, many conditions that had previously not qualified for coverage were considered disabilities under the ADA as amended. The courts appear to be correctly interpreting the Amendments’ mandate that mitigating measures should not be considered, thereby holding that impairments such as hearing loss remedied by hearing aids, hypertension mitigated by medication, and diabetes managed by insulin are all disabilities. Plaintiffs with knee injuries, back impairments, sleep apnea, severe digestive problems, and mental impairments survived summary judgment on the issue of whether they have a disability. Similarly, although many plaintiffs did not rely

on the major bodily functions provision when it would be the easiest way for them to prove their disability, when it is alleged, courts appear to be arriving at the correct conclusion. Thus, using the major bodily functions provision in conjunction with the provision regarding episodic impairments, several cases held that cancer in remission or the relapsing-remitting form of multiple sclerosis were disabilities under the ADA, as amended.

Certainly, there are some plaintiffs who are losing their disability claims at the summary judgment stage, but many of these involved conditions that really could not be considered disabilities under any stretch of the imagination. These included conditions such as a flu that lasts one week, or a colonoscopy. There were a few troubling cases—ones in which the court ignored Congress’s mandate that determining whether someone is disabled should not demand an extensive analysis. But these cases were very few in number. There were also several cases that were poorly litigated. The Amendments to the ADA are somewhat technical and complicated. Many plaintiffs and their attorneys did not take full advantage of all of the interpretive provisions in the Amendments that make it easier for an individual to be considered disabled under the Act. Certainly, attorneys practicing in this area should make sure that they become educated about the detailed provisions of the ADA as amended.

THE ADA’S SUBSTANTIVE PROTECTIONS

In addition to analyzing how courts have been interpreting the definition of disability after the ADAAA, I also

wanted to determine how courts were interpreting the substantive provisions of the ADA. Prior to the Amendments, scholars frequently lamented that there was a “backlash” against the ADA—that judges were resistant to allowing the ADA to reach its full potential. The way this backlash manifested itself was through the courts’ narrow interpretation of the definition of disability. After the Amendments, when it became obvious that courts could no longer use the definition of disability to restrict the scope of the ADA’s protection, I wondered whether courts would find another way to limit the remedial power of the ADA. Thus, in addition to reviewing case law discussing the definition of disability, I also reviewed cases decided on the merits under the ADA.

The ADA states that an employer discriminates against an individual with a disability if the employer fails to provide a reasonable accommodation to a qualified individual with a disability unless the employer can establish that the accommodation would cause an “undue hardship” on the employer. The statute also defines “qualified” as being able to perform the “essential functions of the job with or without a reasonable accommodation.” Accordingly, the qualified inquiry and the reasonable accommodation inquiry often intersect. Determining the essential functions becomes especially important because courts have uniformly held that if a function is essential, it is never a reasonable accommodation to eliminate that function. Prior to this research, I suspected that, if courts were inclined to continue to limit the protection of the ADA, they could do so in one of

three ways: (1) by giving great deference to the employer’s description of the essential functions of the job; (2) by narrowly interpreting the employer’s obligation to accommodate employees with disabilities; or (3) by holding that particular accommodations caused an undue hardship. My conclusion regarding whether we are heading towards another backlash against the ADA is mixed.

I separated the body of cases I analyzed into two categories—(1) cases where the needed accommodation related to the actual physical functions of the job; and (2) cases where the requested accommodation dealt with the “structural norms” of the workplace. By structural norms, I am referring to the “when and where” work is performed as opposed to the actual physical tasks of the job; thus, schedules, hours, shifts, attendance policies, work-from-home policies, and leaves of absence policies. Although my research was descriptive, and not empirical, I believe it is possible to draw some conclusions from the body of cases decided since the Amendments went into effect.

First, with respect to the physical functions of the job, I discovered that courts do not appear to be attempting to limit the protection of the ADA through the merits of the case. Instead, I noticed that several courts were following the ADA’s mandate to undertake an individualized inquiry when determining whether an individual with a disability is qualified for the job. Furthermore, courts at the summary judgment stage were drawing inferences in favor of plaintiffs, allowing them to survive summary judgment on the issue of whether they were qualified to

perform the essential functions of the job. Courts also appeared willing to require employers to accommodate plaintiffs who needed modifications to the physical functions of the job. When plaintiffs were unable to survive summary judgment on the issue of whether they were qualified, I found most of these cases to be correctly decided. Many of these cases involved heavy lifting when the plaintiff-employee was unable to lift the requisite weight. Only three cases, upon my analysis, were incorrectly decided. Thus, even though this body of case law is still in its infancy (in part because the ADA does not apply retroactively), I do not believe that this body of cases represents another backlash against the ADA.

STRUCTURAL NORMS: A NEW BACKLASH?

However, I arrived at a different conclusion when the accommodation requested was a modification of the structural norms of the workplace rather than the physical functions of the job. In these cases, I found that courts were more willing to defer to the employers’ opinion about whether its structural norms are essential to the particular job in question.

For instance, several post-Amendments cases discussed whether working a particular shift or a rotating shift was an essential function of the job. Courts uniformly held that it was, often with very little discussion. If the employer utilized rotating shifts uniformly for its workplace or even part of its workplace, courts would defer to the employer’s assertion that rotating shifts were an essential function without inquiring into whether the workplace had to be organized in that way. Similarly, courts



When employees have disabilities that cause them to miss too much work, there are usually just two possible accommodations those employees could use—working from home or a leave of absence ...

held that full-time hours were an essential function of the job, thereby allowing an employer to avoid accommodating an employee who needed to work part-time because of a disability.

Perhaps not surprisingly, courts in these post-Amendments cases also held that regular attendance was an essential function of the job; thus, employers were not required to accommodate an employee whose disability prevented him or her from regularly being at work. Certainly, it is easy to understand why reliable attendance is important. When employees have disabilities that cause them to miss too much work, there are usually just two possible accommodations those employees could use—working from home or a leave of absence to allow them time to heal and return to work. Post-Amendments cases addressed both of these possible accommodations. In a case requesting a telecommuting arrangement, the court deferred to the employer's assertion that in-person attendance was mandatory despite the fact that, technically, the work could be accomplished at home. In the leave of absence cases, courts refused to require employers to give employees a leave of absence if it was not certain that a set amount of leave would allow the employee to return to work full-time and fully healed.

Based on this research, I have tentatively concluded that, if we are going to see another backlash against the ADA, it will be located in courts' refusal to require employers to modify the structural norms of the workplace. If I am right about this, it could have fairly significant consequences. In one study, modifications to the structural norms of the workplace were the most frequently requested accommodations. Furthermore, deference to employers' structural norms can have consequences outside of the disability context. Other employees, especially workers with caregiving responsibilities, often need modifications to these workplace norms.

EXPLAINING THE PREFERENCE FOR EMPLOYERS' STRUCTURAL NORMS

In many ways, a bias in favor of employers' structural norms (or a bias against allowing employees to receive modifications to those structural norms) is counter-intuitive. After all, it is often costless for an employer to allow an employee a change in schedule, shift, hours, etc. Furthermore, it is odd to think of the hours someone works (as just one example of a structural norm) as an essential function of the job.

The hours worked are when the essential (and non-essential) functions of the job are completed, but calling the hours worked a function or task of the job seems awkward. Finally, the ADA itself specifically lists modification of hours or schedules as a possible reasonable accommodation. If those schedules and hours were always considered essential functions (based on nothing more than the employer's say-so), it would never be possible to provide an accommodation because an employer never has to eliminate an essential function of the job in order to accommodate an employee with a disability. This would make this provision of the ADA mostly superfluous.

Despite the fact that employers' refusal to modify their structural norms (and courts' willingness to defer to these employers) is counter-intuitive, there is an explanation for this preference for structural norms. First of all, even though modifications to hours, schedules, and shifts might be costless to employers, these accommodations possibly place burdens on other employees. If one employee cannot work overtime, other employees might be called upon to pick up the slack. Similarly, if an employee asks to work a straight day shift instead of rotating through the other shifts, other employees might have to rotate through the less desirable shifts more often. Employers are reluctant to give accommodations that place burdens on other employees.

Perhaps more importantly, employers are unwilling to provide what looks like "preferential treatment" to individuals with disabilities. Even though all accommodations might be seen as

preferential treatment, most accommodations to the physical functions of the job are not things that non-disabled employees would want or need. For instance, an employee with perfect vision is not going to be resentful of special software given to a visually impaired employee because the sighted employee has no need for that software. But non-disabled employees might be very resentful of schedule modifications that are given to employees with disabilities because the non-disabled workers are likely to also want those types of accommodations (especially, although not exclusively, workers with caregiving responsibilities). Many employers are concerned about anything that might seem like preferential treatment and they are unwilling to risk discord in the workplace.

Finally, employers and courts are worried about the slippery slope. If the employer allows individuals with disabilities to have modifications to the structural norms of the workplace, is this opening the employer up to demands by other employees for similar accommodations? The response to that concern, of course, is to point out that the ADA *requires* accommodations to disabled employees but there is less likely to be a legal obligation to accommodate other employees. However, the recent Supreme Court case in *Young v. UPS, Inc.*, where the Court decided in favor of a pregnant woman who needed accommodations in the workplace, causes some doubt about the merits of that response.

CONCLUSION: A NEW BACKLASH?

In this 25th anniversary of the ADA, we are seeing this statute stronger and more relevant than ever before. The ADA Amendments Act has made it much easier for plaintiffs to prove that they have a disability as defined in the statute. Considering that most cases decided before the Amendments never made it past the initial inquiry of whether the plaintiff has a disability and is therefore covered by the statute, this is definitely progress. But it remains to be seen whether courts will continue to be reluctant to give the ADA the full transformative potential that Congress and disability rights activists envisioned it having. Although courts seem willing (in many cases) to require employers to grant accommodations to the physical functions of the job, the new backlash might be revealed when we view cases where employees are seeking modifications to the structural norms of the workplace. Although it is too early to say this definitively, if this trend continues, it could have troubling consequences. ■

Professor Nicole Buonocore Porter's research interests focus on the employment rights of women and individuals with disabilities. She teaches Employment Discrimination, Disability Law, Criminal Law, Contracts, and Feminist Legal Theory. This excerpt is adapted from her article, "The New ADA Backlash," published in a 2014 issue of the *Tennessee Law Review*.



IN THE MEDIA

As experts in their fields, our faculty members are regularly consulted for analysis and opinion by the media. The following is a sampling of 2014-2015 media appearances by the College of Law faculty.

Bloomberg

JOSEPH E. SLATER

Eugene N. Balk Professor of Law and Values

“Rand Paul’s Favorite Union-Buster”

APRIL 3, 2015



REUTERS

ERIC C. CHAFFEE

Associate Dean for Faculty Research and Development

“Probe of Ackman Team Over Herbalife Campaign May Go Nowhere”

MARCH 13, 2015

POLITICO

ERIC C. CHAFFEE

Associate Dean for Faculty Research and Development

“Alan Grayson Hedge Funds Skirt Ethics Rule”

JUNE 30, 2015



BENJAMIN G. DAVIS

Professor of Law

“CIA HQ Ordered Torture of Prisoners, but Only Low-level Staff May Face Prosecution”

DECEMBER 12, 2014

BENJAMIN G. DAVIS

Professor of Law

“Poland’s Reparations for CIA Torture Program”

MAY 15, 2015



LEE J. STRANG

Professor of Law

“Professor Lee Strang on Common Core standards”

MARCH 1, 2015

JELANI JEFFERSON EXUM

Professor of Law

“What Happens When the Weapons of War Come Home?”

FEBRUARY 12, 2015

The Boston Globe

JOSEPH E. SLATER

Eugene N. Balk Professor of Law and Values

“MBTA Union Vows Fight Over Baker’s Plan for Agency”

MAY 27, 2015

THE PLAIN DEALER

EVAN ZOLDAN

Assistant Professor of Law

“The Surprising Constitutional Defects in Keystone XL Legislation”

FEBRUARY 13, 2015



JOSEPH E. SLATER

Eugene N. Balk Professor of Law and Values

“Police Unions Don’t Serve the People. Can the Labor Movement Force Them To?”

JANUARY 9, 2015



**ALJAZEERA
AMERICA**

JOSEPH E. SLATER

*Eugene N. Balk Professor of Law
and Values*

“New York Police Engage in ‘Virtual
Work Stoppage’ Amid Rising Tension”

DECEMBER 31, 2014

GREGORY M. GILCHRIST

Associate Professor of Law

“Family of Pre-teen Shot Dead By
Police Urges for Grand Jury Sidestep”

DECEMBER 8, 2014



JOSEPH E. SLATER

*Eugene N. Balk Professor of Law
and Values*

“Unions Fear High Court’s Ruling
Opens Door to More Trouble”

JULY 2, 2014



JOSEPH E. SLATER

*Eugene N. Balk Professor of Law
and Values*

“Supreme Court Ruling Spares Most
Unions, but Only Temporarily”

JUNE 30, 2014

COMPLIANCE WEEK

GEOFFREY C. RAPP

*Associate Dean for Academic Affairs
and Harold A. Anderson Professor
of Law and Values*

“SEC Whistleblower Program’s Latest
Threat: Its Success”

DECEMBER 2, 2014

The Washington Post

EVAN ZOLDAN

Assistant Professor of Law

“Why You Should Be Skeptical of
Congress’s Keystone XL Bill Even if
You Favor the Pipeline”

NOVEMBER 18, 2014



EVAN ZOLDAN

Assistant Professor of Law

“Sen. Landrieu Presses for Keystone
Votes, with Democratic Leader Saying
Final Tally Will Be Very Close”

NOVEMBER 17, 2014



GEOFFREY C. RAPP

*Associate Dean for Academic Affairs
and Harold A. Anderson Professor
of Law and Values*

“Court Rejected the NHL’s Petition –
The Trial is Likely to Begin in 2015”

AUGUST 10, 2014

THE WALL STREET JOURNAL.

GEOFFREY C. RAPP

*Associate Dean for Academic Affairs
and Harold A. Anderson Professor of Law
and Values*

“Invoking Anti-Fraud Law, Louisiana
Doctor Gets Rich”

JULY 24, 2014



**FINANCIAL
TIMES**

GEOFFREY C. RAPP

*Associate Dean for Academic Affairs
and Harold A. Anderson Professor of Law
and Values*

“Whistle-Blower Retaliation Suits Set
to Rise in 2015”

JANUARY 26, 2015

THE BLADE

KARA BRUCE

Associate Professor of Law

“Local Bankruptcy Filings Decline
for 5th Year”

JANUARY 3, 2015

BRUCE M. KENNEDY

Associate Professor of Law

“Houses May Be a Barrier to Jeep Future”

APRIL 12, 2015

KENNETH KILBERT

Professor of Law

“Lucas Co. Considers New Water Authority”

APRIL 16, 2015

IN MEMORIAM

PROFESSOR RONALD D. RAITT

1931-2015



“He was known for lively and sometimes irreverent classroom teaching. He was a real character. [Students] loved his classes.”

– Daniel Steinbock

Ronald D. Raitt, professor of law emeritus, died April 21, 2015 in Toledo. He was 83.

“Thirty-six years of distinguished service to the College of Law,” said former Dean Daniel Steinbock. “This is Professor Ron Raitt’s legacy,

Before joining the College of Law faculty, Professor Raitt was a pilot in the United States Air Force during the Korean War, assistant U.S. attorney, and minority counsel for the Antitrust and Monopoly Subcommittee of the Judiciary Committee of the United States Senate. Raitt was a 1953 honors graduate of the University of Nebraska at Lincoln with a bachelor’s degree in business administration. He returned to his alma mater for his law degree in 1959.

a career exemplified by his work inside and outside the classroom as an educator, scholar, mentor, and role model for generations of law students.”

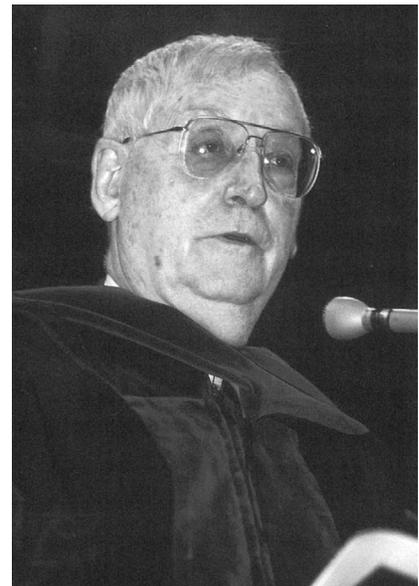
Raitt retired in 2002 from the College of Law. During his 36-year tenure, he served as Assistant Dean and Director of Admissions from 1972-1976. He was named an Outstanding UT Teacher in 1997 and in 2002 received the Outstanding Faculty Award from the College of Law. He was named Outstanding Professor by the 1990, 1993, 1995, and 1997 graduating law classes.

During his career Raitt taught courses in Civil Procedure, Evidence, Federal Jurisdiction, Products Liability, and Trial Practice. All of his classes were filled with practical wisdom and wit as well as legal doctrine, policy, and theory.

“He was known for lively and sometimes irreverent classroom teaching,” said Steinbock. “He was a real character. [Students] loved his classes.”

Raitt spoke quickly in class — some called him “Rapid Ron” — and peppered discourse and class discussion with memorable sayings. One of his students compiled some of these phrases into “The New American Anthology of Appropriate Aphorisms of an Accelerated Raitt” in 1993.

Outside the classroom many students enjoyed a respite from the rigors of law school by playing in the annual Ron Raitt Open golf tournament.



The New American Anthology of Appropriate Aphorisms of an Accelerated Raitt

An Excerpt

Compiled in 1993 by an anonymous law student, the document attempts to capture a few of the sayings that made a class with Professor Ron Raitt so memorable.

FALL 1991, ON PLEADINGS:

“Like an icicle shimmering in the moonlight...beautiful to behold, but lacking a single drop of blood.”

SPRING 1992, ON JURISDICTION:

“It’s like pounding sand down a rat hole.”

SPRING 1993, ON EVIDENCE:

“This is a situation where the monkey carries in the elephant.”

“He smelled like a test pilot for Seagrams.”

SUMMER 1993, ON PRODUCTS LIABILITY:

“A defective product...it’s not worth snot!”

“He got hoisted on his own petard.”

SCHOLARSHIP FUND TO HONOR PROF. RON RAITT

MITTEN ’84 LEADS CAMPAIGN

To honor and recognize Professor Ron Raitt’s lifelong impact on thousands of Toledo Law graduates, the College of Law has established the Professor Ron Raitt Scholarship Fund, which will provide scholarship support for current and future law students.

The fund’s goal is to build a substantial endowment that will support several law students each year.

Matthew Mitten ’84 and his wife, Brenda, contributed the initial funding to endow the scholarship.

“The excellent legal training, helpful guidance, and thoughtful mentoring Professor Raitt provided to me were invaluable components of the outstanding education I received as a UT law student,” said Mitten.

Mitten is a professor of law and director of the National Sports Law Institute at Marquette University Law School. A leading sports law scholar, he has authored several books and published articles in the nation’s leading law reviews and medical journals. As a member of the Court of Arbitration for Sport, Mitten served as an arbitrator at the 2014 Winter Olympic Games in Sochi, Russia.

If you are interested in contributing to or would like more information about the Professor Ron Raitt Scholarship Fund, please contact Daniel Steinbock at Daniel.Steinbock@utoledo.edu or Matt Mitten at Matt.Mitten@marquette.edu. ■

“The excellent legal training, helpful guidance, and thoughtful mentoring Professor Raitt provided to me were invaluable components of the outstanding education I received as a UT law student.”

– Matthew Mitten ’84

PROFESSOR SUSAN MARTYN RETIRES



A leading expert in the field of legal ethics, Distinguished University Professor and John W. Stoepler Professor of Law and Values Susan Martyn compiled an enviable record of teaching, scholarship, and service during her 35 years on the College of Law faculty. She retired in May.

Highly regarded by students and alumni, Martyn taught Torts, Legal Ethics, Health Care Provider Liability, and Bioethics, among many other courses, while at Toledo Law.

“Professor Martyn demands excellence of her students, and they rise to the occasion,” observed former Dean Daniel Steinbock.

Lynn B. Jacobs ’85 remembers Professor Martyn’s very first class. “How shocking that 35 years have passed since Professor Susan Martyn, young (yet scholarly in her wire-framed glasses), enthusiastic, and altogether serious, bounded up onto the platform of her first class — Torts — at our UT College of Law,” said Jacobs. “Wasting not a minute, her precise, warm yet businesslike voice rang out, ‘Let’s get started!’”

Professor Martyn sums up her teaching mantra in this way: “Be prepared, engage, expect the unexpected, hope to learn more.”

Several years ago, she co-taught a practicum with Professor Rob Salem ’90 on the subject of death and dying. The pair wrote an article about their experience, which was published in the *Louisville Law Review*.

“Teaching with Susan was transformational for me,” said Salem. “She has such talent for conveying complex information simply and concisely. She also genuinely respects the students in her class, and in turn, they adore her.”

Co-teaching the practicum with Martyn was made more meaningful for Salem because Martyn had taught several of his classes while he was a student at Toledo Law.

“Those two classes were among my favorites in law school,” said Salem. “The subject matter was fascinating, but the professor was amazing. She really had a profound influence on me.”

Professor Martyn has also developed innovative interdisciplinary courses. For the past four years she offered Bioethics and Law and Health Care Provider Liability to law students and fourth-year medical students taking an elective rotation. She holds the title of professor in the Department of Family Medicine at the Medical College and has conducted classes in the Pharmacy, Nursing, and Medical Colleges in medical ethics and related subjects. She has also taught classes at Yale and Harvard law schools.

A graduate of St. Olaf College (1969) and Marquette University Law School (1974), Martyn received an Outstanding Researcher Award from The University of Toledo in 2005, and in 2012, the University named Martyn a Distinguished University Professor, its highest academic honor. Martyn’s other awards include the College of Law Outstanding Professor Award and awards from The University of Toledo Law Alumni Affiliate and the Ohio State Bar Foundation, as well as the YWCA Milestones Award and the Eastman & Smith Ltd. Faculty Achievement Award.

She is known both nationally and internationally for her work in the field of legal ethics.

“What is striking about her scholarship is that, taken as a whole, it covers the theoretical, educational, and practical aspects of the field of legal ethics,” said Steinbock. “Professor Martyn has helped shape this important field of law, and is known widely for having done so.”

“Professor Martyn has helped shape this important field of law, and is known widely for having done so.”

— Daniel Steinbock



With co-authors, she has produced five books. Two of her books have been adopted in law school courses nationally; two offer expert guidance to practicing lawyers; and another is intended for clients. Her book “Red Flags: A Lawyer’s Handbook on Legal Ethics” is conferred as an award by the American Law Institute CLE to a graduating student at every law school in the country.

Not only has Professor Martyn influenced the law through her scholarship, but she has helped bring about practical changes through her professional activities. She was elected to the American Law Institute (ALI) and served as an advisor to an ALI Committee that drafted the Restatement of Law Governing Lawyers, a document providing guidance to practicing lawyers that has been cited by state and federal courts over 900 times, and is cited by all legal ethics scholars.

As a member of the American Bar Association Commission on Evaluation of the Rules of Professional Conduct (Ethics 2000), she helped draft the ABA Model Rules of Professional Conduct, a set of rules regulating lawyers that has been adopted verbatim or with minor changes by every state supreme court. As an appointed member of the ABA Standing Committee on Ethics and Professional Responsibility, Professor Martyn drafted ethics opinions providing guidance to ABA members throughout the country.

She has been a member of the Ohio Supreme Court Task Force on the Rules of Professional Conduct, drafting rules adopted by the Ohio Supreme Court for lawyers practicing in Ohio. In addition, she has contributed to amicus curiae briefs pro bono to assist the U.S. Supreme Court in its consideration of bioethics and legal ethics issues in several cases. She also lectures widely throughout the country and in other countries, to law schools and practicing attorneys.

Without a doubt, Martyn has left her mark on the field of legal ethics and the College of Law and its students.

“I don’t think any student could sit through [Professor Martyn’s] class without realizing that there were deeper ways to approach and analyze a legal problem,” said Martyn’s former student Breanne Rubin ’13. “She helped me to not only learn the Rules of Professional Responsibility for her final exam, but she made me learn the Rules of Professional Responsibility for life.”

In recognition of her place in the hallways and hearts around the Law Center, the Law Review will include a tribute to Professor Martyn in its next volume.

And don’t worry, Professor Martyn can still be spotted around the Law Center this fall.

“I’m pleased to continue teaching, research, and service,” she said. “A bit less teaching, a bit more time to service and publications that assist lawyers and students.” ■



**SEND A NOTE TO PROFESSOR MARTYN
AT LAWDEAN@UTNET.UTOLEDO.EDU.**

FACULTY NEWS

FACULTY NOTES



Kara Bruce, associate professor of law, placed her most recent article, “Vindicating Bankruptcy Rights,” in the *Maryland Law Review*. Her prior

article, “The Debtor Class,” was cited by several bankruptcy courts and a treatise on trust law. She presented her current research on class actions within consumer bankruptcy cases at the Mid-Atlantic People of Color Conference, a Case Western Reserve University School of Law Faculty Workshop, the Central States Law School Association Annual Meeting, and the UMass Dartmouth Junior Faculty Scholarship Exchange. Professor Bruce served as faculty advisor for the Women’s Law Student Association and coached two Bankruptcy Moot Court Teams. In spring 2015, she also served the College of Law as a faculty liaison to the Admissions Committee.



Shelley Cavalieri, associate professor of law, presented her forthcoming article “Theorizing Land Reform” at the University of Akron School of Law, at the

Class Crits Annual Meeting, and at the Association of Law, Property, and Society Annual Meeting. She presented her work on the Capabilities Approach to Development at the Vulnerability and the Human Condition Workshop on Theorizing the State. She also presented on land banking at the Law and Society Annual Meeting. She was awarded an Eastman & Smith Ltd. Faculty Achievement Award Fund Grant for her scholarship on land banking in the

Midwest. She was named a member of The University of Toledo’s Social, Behavioral, and Education Institutional Review Board.



Eric C. Chaffee, professor of law, published “Answering the Call to Reinvent Legal Education: The Need to Incorporate Practical Business

and Transactional Skills Training into the Curricula of America’s Law Schools,” in the *Stanford Journal of Law, Business & Finance*; “The Death and Rebirth of Codes of Legal Ethics: How Neuroscientific Evidence of Intuition and Emotion in Moral Decision Making Should Impact the Regulation of the Practice of Law,” in *The Georgetown Journal of Legal Ethics*; and “An Oak is an Oak Is an Oak: The Disappointing Entrenchment in *Halliburton Co. v. Erica P. John Fund* of the Implied Private Right of Action Under Section 10(b) and Rule 10b-5,” in the *NYU Journal of Law & Liberty*. Professor Chaffee presented at the AALS Annual Meeting, the Central States Law School Associations Conference, the Ohio Securities Conference, and the National Business Law Scholars Conference. He was elected chair-elect of the Association of American Law Schools Section on Scholarship and president of the Central States Law School Association. He helped to organize the Central States Law School Associations Conference, the Ohio Securities Conference, and the National Business Law Scholars Conference.



Benjamin G. Davis, professor of law, published “Domestic and International Developments in Online Dispute Resolution” (with Graham Ross) in the

State Bar of Texas Alternative Dispute Resolution Handbook; “The Ordinary Citizen and Drone Wordplay” in *Geopolitica*; “Addressing Federalism and Separation of Powers Social Violence: The Ordinary Citizen’s Voting Rights Beyond Shelby County, North Carolina and Ohio” in the *Mississippi College Law Review*; and “American Diversity in International Arbitration 2003-2013” in Columbia Law School’s *The American Review of International Arbitration*. Professor Davis helped to prepare three different shadow reports for the United Nations titled “Racial Discrimination in the Legal Profession,” “A short primer on U.S. federalism and the International Convention on the Elimination of All Forms of Racial Discrimination,” and “Advocates for U.S. Torture Prosecutions.” He continued to chair or serve on committees of the ABA Section of Dispute Resolution, and to serve as a board member and member of the Human Rights Committee for the Society of American Law Teachers. He was appointed by the President of the American Society of International Law to the Blacks of the American Society of International Law Task Force to help increase minorities in international law. He continued the Guantanamo Bay Military Commissions Human Rights Observer Program for Toledo Law students and alumni. He made numerous presentations around the U.S., including at Pace University Law School, the Ohio Association of Magistrates Spring Conference, the Third Annual

Conference of the Atlanta International Arbitration Society, and at the American Branch of the International Law Association Annual Meeting at Fordham Law School. He continues to blog at saltlaw.org/blog and to work with Brothers on the Rise.



Jelani Jefferson Exum, professor of law, published “Forget Sentencing Equality: Moving from the ‘Cracked’ Cocaine Debate Toward Particular

Purpose Sentencing” in the *Lewis & Clark Law Review*. She delivered presentations at Owens Community College, the University of Missouri School of Law, Terra State Community College, a Lucas County Bar Association Meeting, the Scott High School Stand Up Conference, the Northwest Ohio Chapter of the ACLU, the Toledo Buffalo Soldiers Motorcycle Club Community Forum, and TedxToledo. She was a University Outstanding Teaching Award Nominee. Professor Exum helped to organize the Sentencing Advocacy Workshop sponsored by the Defender Services Office of the Administrative Office of the U.S. Courts, which was held in June 2015 at the College of Law. She also made several media appearances and was invited to join the editorial board of the *Federal Sentencing Reporter*.



Maara Fink, clinical professor of law, and her students continued to provide mediation services to members of the community through the partnership of

the College of Law Dispute Resolution Clinic and the Lucas County Juvenile and Toledo Municipal Courts. The program has expanded the type of cases students mediate through the Citizens

Dispute Settlement Program to include a wider variety of civil, criminal, and housing matters. Professor Fink presented at TedxToledo. She continued her service as secretary of the Toledo Bar Association ADR Committee and chair of the Planned Parenthood Community Leadership Council and on the boards of The University of Toledo College of Law Alumni Affiliate and Ohio Mediation Association.



Llewellyn Joseph Gibbons, professor of law, published a book chapter, “Accentuate the Positive, Eliminate the Negative: Intellectual Property

Social Justice and Best Practices for Entrepreneurial Economic Development,” in “Intellectual Property, Entrepreneurship and Social Justice,” (Edward Elgar Pub., 2015). He has also published two law review articles: “Fake It Till You Make It: A Justification For Intellectual Property ‘Piracy’” in the *Indiana Law Review* and “E Unum Pluribus: After *Bond v. United States*, State Law As A Gap Filler To Meet The International Obligations of The United States” in the *Washington University Journal of Law & Policy*. Professor Gibbons presented at the China University of Political Science and Law, Marquette University, Nanjing University of Science and Technology, and Zhongnan University of Economics and Law. In addition, he helped to co-found and to co-organize the First Annual Mosaic Conference titled “Diverse Voices in IP Scholarship” held at Marquette University Law School.



Gregory M. Gilchrist, associate professor of law, published “Counsel’s Role in Bargaining for Trials” in the *Iowa Law Review* and

accepted an offer to publish “Trial Bargaining” in the *Iowa Law Review*. Professor Gilchrist presented at the University of Massachusetts School of Law, Ohio Northern University Pettit College of Law, and the SEALS Conference in Florida. He is presently working on trial bargain forms for use in federal court and a website meant to introduce the practice of trial bargaining to counsel in criminal cases and implement the idea more broadly.



Jessica Knouse, professor of law, published “Liberty, Equality, and Parentage in the Era of Posthumous Conception” in the *Journal of Law &*

Health. She presented on this same topic at the Law and Society Association’s 2014 Annual Meeting. She spoke on same-sex marriage litigation at a Toledo Bar Association Federal Courts Committee Meeting, a University of Toledo College of Law panel previewing the Supreme Court’s 2014 term, a forum on marriage equality organized by OUTLaw, and an event on same-sex marriage and the Constitution organized by the Federalist Society. She is scheduled to speak at the Law and Society Association’s 2015 Annual Meeting in Seattle, Washington. She served as faculty workshop coordinator through mid-November 2014, and helped co-teach a new course in Writing for Moot Court during fall 2014. She published an essay in the Toledo Bar Association Newsletter titled “Supreme Court to Decide on Same-Sex Marriages,” and a letter to the editor of The Blade titled “Fertility Center’s Closing is Community’s Loss.”



Kenneth Kilbert, professor of law and director of the College's Legal Institute of the Great Lakes, co-authored a report, "Moving Forward: Legal

Solutions to Lake Erie's Harmful Algal Blooms" (with Jack Tuholske). The report, published in April 2015, was commissioned by the Lucas County Board of County Commissioners in the aftermath of the August 2014 crisis that left more than 400,000 persons in the Toledo area without drinking water for two days due to elevated levels of a toxin attributable to harmful algal blooms detected in the public water supply system. Professor Kilbert spoke widely about Lake Erie water issues over the past year, including at a University-sponsored public forum days after the crisis, at the 14th annual Great Lakes Water Conference in November, and testifying before the Ohio Senate in December.



Bryan Lammon, assistant professor of law, placed his article "Perlman Appeals After *Mohawk*" for publication in the *University of Cincinnati Law*

Review. His article "Rules, Standards, and Experimentation in Appellate Jurisdiction," which he published in the *Ohio State Law Journal*, won the American Academy of Appellate Lawyers's 2013–2014 Eisenberg Prize for the best article on appellate practice and procedure.



Susan R. Martyn, Distinguished University Professor and Stoepler Professor of Law and Values Emeritus, published a book

chapter entitled "Can Luther Help Modern Lawyers Understand Fiduciary Duty?" in "So Much Good Fruit: Lutheran Interpretation of Contemporary Legal Issues," (Wm. B. Eerdmans, forthcoming 2015). She is currently working on her sixth book (with Lawrence J. Fox), entitled "The Ethical Litigator," which will be published later this year by the ABA Litigation Section. Over the course of the year Professor Martyn presented at the Toledo Women's Bar Association, the University of Michigan Law School, Hamline University School of Law, Yale Law School, and the ABA Center for Professional Responsibility 41st Annual Conference on Professional Responsibility.



Elizabeth McCuskey, associate professor of law, placed her forthcoming article, "Submerged Precedent," in the *Nevada Law Journal*.

She will present her work-in-progress, "Body of Preemption," at the 38th Annual Health Law Professors Conference, hosted this year by Saint Louis University School of Law. She also presented her scholarship at the University of Massachusetts and Cleveland-Marshall law schools. Professor McCuskey collaborated with the University of Toledo Law Review Board on their health law symposium and moderated the discussion on public health. Her prior article, "Clarity & Clarification," was included in Wright & Miller's "Federal Practice and Procedure." With the United States District Court for the Northern District of Ohio's Futures Committee, Professor McCuskey has worked to identify important areas of emerging technology and training for the bench and bar.



Agnieszka McPeak, assistant professor of law, published her article, "Social Media Snooping and Its Ethical Bounds," in the *Arizona State Law Journal*. She also

placed her forthcoming article, "Social Media, Smartphones, and Proportional Privacy in Civil Discovery," in the *Kansas Law Review*. Professor McPeak presented at the Social Media Law Symposium at SMU Dedman School of Law and was invited to publish her related piece, "Avoiding Misrepresentation in Informal Discovery of Social Media Data," in the *SMU Science and Technology Law Review*. In January, she presented at the Programme on European Private Law for Post-Graduates at the University of Silesia in Katowice, Poland. She also participated in a Faculty Colloquium at the University of Dayton School of Law and will present at the Developing Ideas Conference at the University of Kentucky College of Law.



Kelly A. Moore, associate professor of law, taught Trusts and Estates this year, but was otherwise on loan to the central administration, serving as a vice

provost of college and faculty relations for the University. He was recently selected to serve as interim dean of The University of Toledo Jesup Honors College during the upcoming 2015-2016 school year.



Dan Nathan, clinical professor of law, presented on "Legal Issues in Child Protection Cases" at Ohio CASA's annual conference in

Columbus. Professor Nathan continued as a board member of Student Legal Services and Northwest Ohio Medical-Legal Partnership for Children. He also continued to be a member of ABLE/LAWO's Emerging Leaders Council as well as a member of the Toledo Bar Association's CLE Committee. In fall 2014 Nathan joined the board of Food for Thought, an area non-profit that provides a mobile food pantry in the greater Toledo area.



Nicole Buonocore Porter, professor of law, has several articles that have been published or accepted for publication in the past year. They

include: "Special Treatment Stigma After the ADA Amendments Act," which will be published in the *Pepperdine Law Review*; "Withdrawn Accommodations," published as part of a symposium in the *Drake Law Review*; "What Disability Means to Me: When the Personal and Professional Collide," published in *Houston Law Review: Off the Record*; "A Defining Moment: Book Review of 'Disability & Equity at Work,'" published in the *Employee Rights and Employment Policy Journal*; and "The Difficulty Accommodating Healthcare Workers," which will be published as part of a symposium in the *St. Louis University Journal of Health Law & Policy*. She has presented her scholarship several times this past academic year, including at the Ninth Annual Labor and Employment Law Colloquium in Boulder, Colorado, Saint Louis University School of Law, the Employment Discrimination Section of the AALS Annual Meeting in Washington D.C., the Southeastern Association of Law Schools Annual Conference in Amelia Island, and the AALS Workshop, "Next Generation Issues of Sex, Gender, and Law" planned by Women in Legal Education.



Geoffrey C. Rapp, associate dean for academic affairs and Harold A. Anderson Professor of Law and Values, published his first book, "Careers in Sports Law,"

co-authored with Professor Marc Edelman of the Zicklin School of Business, Baruch College, City University of New York. He also co-authored an empirical analysis of the impact of Supreme Court decisions on public opinion in the case of same-sex marriage, published in the *North Carolina Law Review*, with Professor Courtney Cahill of the Florida State University College of Law (a former Toledo Law professor). He completed work on an article comparing corporate law rules on fiduciary duty to the NCAA "institutional control" rules, inspired by the Penn State scandal, which was accepted for publication in the *BYU Law Review*. He was also asked to contribute a short essay on the SEC's new "Office of Market Intelligence" to the Columbia Law School *Blue Sky Blog*. He gave presentations at Marquette Law, Cleveland Marshall Law, and to the Promedica-TBA Annual Medical-Legal seminar. He was quoted in the Wall Street Journal, Agenda Week (a Financial Times publication), and Compliance Week on whistleblower lawsuits and in a Finnish publication, Helsingin Sanomat, on the NHL, in the Penn State Daily Collegian on the NCAA's decision to lift sanctions on the University, and interviewed on WWL AM 870/FM105.3 (New Orleans) and WTOL on the NFL blackout rule.



Robert S. Salem, clinical professor of law, presented at the annual Midwest Clinical Legal Education conference held at Michigan

State University College of Law, the International Conference on Conflict Resolution at George Mason University, the Ohio School Counselors Conference in Columbus, Bowling Green State University, and the Toledo Bar Association Probate and Elder Law seminar. He conducted bullying-prevention workshops at St. John's Jesuit and Whitmer High Schools in Toledo, and for the Frederick Center for Professional Development at the Columbus Public Health agency. He continues to present annually to University of Toledo medical students on health care privacy and confidentiality, and to serve as an instructor on workplace harassment and discrimination for the University of Toledo Diversity Certificate Program. Professor Salem and his students are collaborating with the City of Toledo Public Defenders Office to create a holistic service model for public defender clients. Professor Salem is also partnering with the University of Akron School of Law and members of the Northwest Ohio Prison Reentry Coalition to host clinics for former inmates in the area. He is working with Equality Toledo, through a grant from the Toledo Community Foundation, to consult with local schools on bullying prevention. Professor Salem continues to be active on the boards of the National LGBTQ Task Force, the Toledo Bar Association, the Toledo Fair Housing Center and Northwest Ohio Development Association, Equality Toledo, and the Toledo Public Defenders Office. Professor Salem is also a member of the Ohio Advisory Committee for the U.S. Commission on Civil Rights.

FACULTY NEWS



Joseph E. Slater, the Eugene N. Balk Professor of Law and Values, published the hornbook, “Mastering Labor Law,” with co-authors Paul

Secunda, Jeffrey Hirsch, and Anne Lofaso (Carolina Academic Press, 2014). He is now working on updates and new editions for his two casebooks: “Modern Labor Law in the Private and Public Sectors: Cases and Materials” (with Seth Harris, David Gregory, and Anne Lofaso) (LexisNexis 2013) and “Public Sector Employment: Cases and Materials” (with Marty Malin and Ann Hodges) (West Publishing, 2nd ed. 2010). In the fall, he was inducted into the College of Labor and Employment Lawyers, an invitation-only group of practitioners and scholars, promoting achievement, advancement, and excellence in the practice of labor and employment law. At academic conferences, he was the chair and commenter for the panel “Race, Labor, Law: The Mid-Twentieth Century,” at the Biannual Conference of the Southern Labor Studies Association, in Washington, D.C. He also presented at the West Virginia University College of Law Labor Law Conference and the 10th Annual Colloquium on Labor and Employment Law, held at the University of Colorado Law School. He continues to coach the Labor & Employment Law Moot Court Team, which advanced in its competition this year. He made various media appearances this year especially on issues concerning police unions. In his spare time, he enjoys debating the merits of various professional wrestlers with his son, Isaac.



Lee J. Strang, the John W. Stoepler Professor of Law and Values is a visiting scholar at the Georgetown Center for the Constitution this fall. He

published “The Forgotten Jurisprudential Debate: Catholic Legal Thought’s Response to Legal Realism” (with John M. Breen) in the *Marquette Law Review*; “Originalism’s Promise and Limits” in the *Cleveland State Law Review*; the second edition of “Cases and Materials on Federal Constitutional Law: Introduction to Interpretative Methods, and Federal Judicial Power,” Volume 1 in the LexisNexis Modular Casebook Series; the second edition of “Cases and Materials on Federal Constitutional Law: Federal Executive Power and Separation of Powers,” Volume 2 in the LexisNexis Modular Casebook Series; and “Materials on Federal Constitutional Law: The First Amendment,” Volume 6 in the LexisNexis Modular Casebook Series. He also published the book chapter “A Brief History of American Catholic Legal Education: The Arc of an Uncertain Identity” (with John M. Breen) in “American Law from a Catholic Perspective: Through a Clearer Lens” (Ronald J. Rychlak ed., Rowman & Littlefield Press, 2015). Professor Strang placed his article, “Originalism’s Subject Matter: Why the Declaration of Independence is Not Part of the Constitution,” with the *Southern California Law Review*. The second edition of his casebook “Cases and Materials on Federal Constitutional Law: Federal Legislative Power,” Volume 3 in the Modular Casebook Series, will also go to print in 2015. Professor Strang presented on 11 occasions in the course of the year, including at the National Center for the Constitution in Philadelphia, Pennsylvania. Professor Strang received the Eastman & Smith

Ltd. Faculty Scholarship Project Support Award and joined an amicus brief on originalism in *Obergefell v. Hodges* (2015) before the U.S. Supreme Court. He also served as faculty advisor to the Christian Legal Society and Federalist Society.



Evan C. Zoldan, associate professor of law, published “Reviving Legislative Generality” in the *Marquette Law Review* and “Primary Sources and

Ambiguity in Legal History” in *Teaching Legal History: Comparative Perspectives*. He also placed “Is Calder Bull? How Exposing a Historical Blunder Resolves a Modern Constitutional Debate” in the *Wisconsin Law Review*. Professor Zoldan presented his current research, which relates to legislation and constitutional law, at a number of academic conferences and workshops, including the Law & Society Association Annual Meeting, Indiana University, Robert H. McKinney School of Law, and the Loyola Chicago Constitutional Law Colloquium. Professor Zoldan’s scholarship on special legislation was cited by the news media, including The Washington Post. He was elected treasurer of the AALS Section on Legal History and to the Executive Committee of the AALS Section on Legislation & Law of the Political Process. He served as the faculty advisor for the Health Law Transactional Moot Court Team.

COLUMBUS ALUMNI RECEPTION (2/25/15)



CHICAGO ALUMNI RECEPTION (5/14/15)



TOLEDO LAW HONORS HANCOCK '70

The University of Toledo College of Law and the Law Alumni Affiliate recognized Paul F. Hancock '70, a partner at K&L Gates in Miami, Florida, with the Distinguished Alumni Award at last fall's Homecoming Gala on Oct. 24, 2014.



"Paul Hancock has had a truly remarkable career in federal and state government and in private practice," said former Dean Daniel J. Steinbock. "His work has touched many of the major

legal issues of the last forty years, including the presidential election of 2000."

Hancock started his career in the civil rights division of the U.S. Department of Justice (DOJ), where he worked for more than twenty years. While at DOJ, Hancock directed the Voting

Rights Act litigation program and enforcement of the Fair Housing Act and the Equal Credit Opportunity Act. He also served as the DOJ's acting deputy assistant attorney general for civil rights, the highest career position in the division.

While serving as deputy attorney general for South Florida in the Office of the Florida Attorney General in 2000, Hancock briefed and argued the position of the State of Florida in *Bush v. Gore* before the Florida Supreme Court and the U.S. Supreme Court.

Hancock, now a litigator at K&L Gates, focuses his practice on the defense of federal and state government investigations. He has represented many of the nation's largest financial institutions as well as other financial services industry members, large and small. He frequently defends businesses before the U.S. Department of Justice, the U.S. Department of Housing and Urban Development, the Federal Trade Commission, federal and state banking agencies, and state attorneys general, as well as in federal and state courts.

GIVING OPPORTUNITIES

The support of College of Law alumni and friends is important to our success. Your dollars help support current programs as well as new initiatives.

Moreover, your gift sends a message that you believe in what we do and in what the College of Law and your legal education have done for you.

Various opportunities to give are outlined below.

THE LAW ANNUAL UNRESTRICTED FUND

Unrestricted gifts to the Law Annual Unrestricted Fund can be put to work immediately and are used to support ongoing programs and new initiatives. These gifts enable us to meet our most pressing needs and to continue to offer a high quality educational program.

THE LAW ANNUAL UNRESTRICTED FUND SUPPORTS:

- Scholarships for students who might not otherwise be able to attend the College of Law
- Our legal clinics
- Public Interest Summer Fellowships
- The Pro Bono Legal Services Program
- Moot Court and Trial Advocacy Programs
- Conferences, Symposia, and the Distinguished Speakers Series
- Career fairs and networking events for students
- Office of Professional Development programming and activities for students
- Technology and furniture purchases

THE DEAN'S COUNCIL

Donors of amounts \$1000 and above in a year will be recognized with membership in the Dean's Council. Members are invited to an annual donor appreciation event and receive updates and invitations from the College of Law.

Gifts in this amount make a significant difference in a student's life. Donations can be designated for particular uses such as scholarships, public interest projects, faculty research, and student organization support.

THE FORNOFF SOCIETY

Fornoff Society membership recognizes those who pledge at least \$10,000 to the College of Law and are actively making payments on the pledge. It also recognizes those who make a one-time gift of at least \$10,000.

Fornoff Society pledges and gifts not only provide an important source of revenue but provide a continuity of giving that will enable us to plan and support longer term programs. Fornoff Society members will receive recognition in addition to that which they receive as Dean's Council members, and they are automatically members of the University's President's Club.

ENDOWED AND NAMING GIFT OPPORTUNITIES

Gifts or pledges of \$25,000 and up can be used to establish endowed funds to support scholarships, graduation awards, summer public service fellowships, faculty research awards, clinic activities, library acquisitions, student organizations, endowed professorships, and a wide range of other valuable activities. Income from such funds is used each year while the principal remains intact, making these gifts that keep on giving. A donor may choose to name the fund to honor his or her law firm, a colleague or a loved one, or may allow us to name the fund for the donor.

Naming gifts provide another way to leave a legacy. Classrooms, offices, courtyards, faculty suites, and student organization offices are available to be named in recognition of appropriate

gifts. Naming opportunities are available for a wide variety of giving levels.

PLANNED GIVING

Planned giving offers an array of gift options and tools to enable and empower you to accomplish charitable goals, provide for your needs, and pass assets on to loved ones. Frequently a planned gift and a current gift can be combined to achieve your goals and to enhance the mission of the College of Law. Planned giving can be a tax-efficient and effective way to remove property from your estate, to save on estate and gift taxes, to diversify assets, and to provide income for life. Your gift benefits Toledo Law and can be designated to address a purpose or program that you select and value at the College of Law.

DID YOU KNOW?

When you make a gift to the College of Law, your entire gift goes to the College.

You may make a gift online at utoledo.edu/law/alumni/give.html or send a check made payable to *The University of Toledo Foundation* to:

The University of Toledo Foundation
P.O. Box 586
Toledo, Ohio 43697-0586

QUESTIONS?

Please contact Assistant Dean Heather Karns at 419.530.2851 or Heather.Karns@utoledo.edu.

ALUMNI

SUPPORT THE COLLEGE OF LAW

Yes! I would like to make a GIFT/PLEDGE in the amount of:

\$1,500 \$1,000 \$500 \$250 \$100 Other \$ _____

Please designate my gift to the following fund:

Law Annual Unrestricted Fund (2400047)

Law Alumni Scholarship (1300011)

Moot Court Progress Fund (2400519)

Other _____

Payment Options:

Enclosed is a check made payable to the UT Foundation

Charge my: Visa MasterCard American Express

Card #: _____

Exp. Date: _____

Signature: _____

I am making a pledge to be paid in installments over one year.

Please bill me:

Annually Quarterly Semi-annually Monthly

Start Date: _____ Installment Amount: _____

Matching Gift:

My company/ My spouse's company: _____
will match my gift.

Please include a completed matching gift form from your personnel office

Personal Information:

Name: _____

Address: _____

City, State: _____ Zip: _____

Phone: _____

Email Address: _____

Make your gift online at: give2ut.utoledo.edu

Thank you for supporting The University of Toledo College of Law.
Gifts to the UT Foundation are tax-deductible as provided by law.

The University of Toledo Foundation

P.O. Box 586

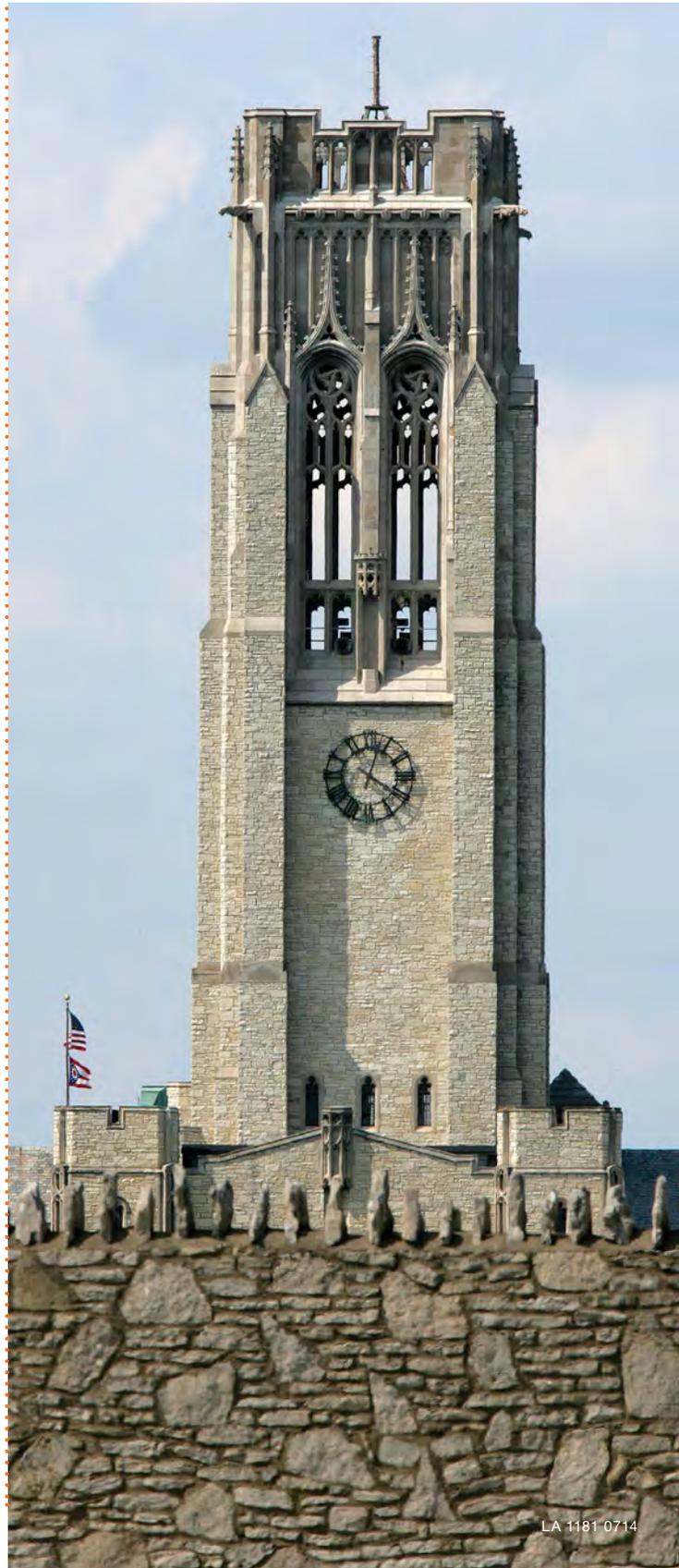
Toledo, OH 43697-0586

419.530.7730

AG2016 TRANSCRIPT NEW

Class notes are now online.

Check out "Alumni in the News," at utoledo.edu/law/





TOLEDO LAW

THE UNIVERSITY OF TOLEDO

Toledo Law

Mail Stop 507

The University of Toledo

2801 W. Bancroft St.

Toledo, OH 43606-3390

SAVE THE DATE!

NEW YORK ALUMNI RECEPTION

January 7, 2016

ANNUAL STOEPLER ALUMNI GOLF OUTING

JUNE 13, 2016

**For more information or to RSVP,
email Heather Karns at Heather.Karns@utoledo.edu.**



UTOLEDO.EDU/LAW