

THE UNIVERSITY OF TOLEDO COLLEGE OF LAW

TRANSCRIPT

FALL 2012



BYE-BYE BENCHES:

**AUDITORIUM RENOVATED
WITH MCQUADES'
SUPPORT**



TOLEDO LAW
THE UNIVERSITY OF TOLEDO



I write this letter at the end of an interesting and rewarding first year as the “permanent” dean at the College of Law. I have been delighted with the support I have received from alumni, students, faculty, and staff, as well as The University of Toledo administration.

As I head down to Columbus this week to lend support (and a free lunch) to our Ohio bar exam takers, I think back on our great bar exam results from last year. Yet again, we were above the Ohio average pass rate for first-time takers on the July 2011 exam. In Michigan, all of our first-time takers passed last July, prompting one of our faculty members to suggest that we post a billboard on the highways into Michigan saying “The University of Toledo College of Law, Michigan’s Best Law School.”

Our faculty members have been doing as well as our students. Three terrific new tenure-track faculty, Shelley Cavalieri, Jelani Jefferson Exum, and Greg Gilchrist, joined us this past year and hit the ground running in their teaching and scholarship. (Selections from Professor Gilchrist’s and Professor Exum’s recent articles appear at p.34 and p.39.) Two more new faculty members, Liz McCuskey and Evan Zoldan (story on p.44), are already here preparing for the fall semester. Professors Geoffrey Rapp (sports law and securities law) and Joseph Slater (labor law) have been quoted repeatedly in national publications and others have appeared in various media. Several faculty members have published in top law reviews. Professor Ken Kilbert has just started as Associate Dean for Academic Affairs, replacing Nicole Porter who decided to return to her faculty role after two productive years in the post. On the staff front, Rachel Phipps ’07 joined us as Assistant Dean for Communications in December – and edited and wrote much of this edition of the Transcript. Tara Thompson ’08 just started as Assistant Director of Admissions. They join an already strong administrative team.

The law auditorium is finally undergoing a major overhaul, and should be ready for its dedication in September. In recognition of their generous gift, we are delighted to name it the Richard and Jane McQuade Law Auditorium (story p.4-5). If you have not already done so, there is still time to add your name (or that of a friend or loved one) to the new auditorium, in the form of a named seat (see p.6). We have begun to plan for a new entrance to the Law Center and a refurbished patio. You will be hearing more about both in the near future, I trust.

It is no secret that the national economy in general and the legal economy in particular have been battered in the last several years. Few have been immune from its effects, and this is especially true of law schools. There are fewer jobs for graduates than before the downturn. At the same time, university budget pressures have caused tuition to continue to rise. The unsurprising upshot has been a wave of bad publicity and a marked decline in law school applicants.

The College of Law has responded in a number of ways. We have maintained our admissions standards, even if that has meant somewhat smaller entering classes. Our education has emphasized skills for years, and we continue to require legal writing in all three years, to offer a range of clinics and externships, and to encourage practical experiences in all courses. We look for candidates who can teach those skills when hiring new faculty. We have stepped up efforts to ready our students for a tougher job market and will expand our already existing focus on preparing law students to use their legal and analytical skills outside of the traditional practice of law.

Even with recent tuition increases, we remain an affordable choice. Indeed, National Jurist magazine has named us a Best Value Law School for three years running. We pride ourselves on our small, caring environment and the close relationships between our students and faculty – aspects of our law school recently confirmed by a national survey in which we participated. We believe that this type of legal education can still open doors to rewarding careers, and we remain committed to offering it in an affordable and effective way.

I welcome your thoughts – and support – as we strive to adapt to the changing legal education and practice environment and to improve as a law school. For all of the reasons that persuaded me to become dean a year ago, I am confident that we will do so in fine fashion.

Sincerely,

A handwritten signature in black ink that reads "Daniel J. Steinbock". The signature is written in a cursive, flowing style.

Daniel J. Steinbock
Dean and Harold A. Anderson Professor of Law and Values



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

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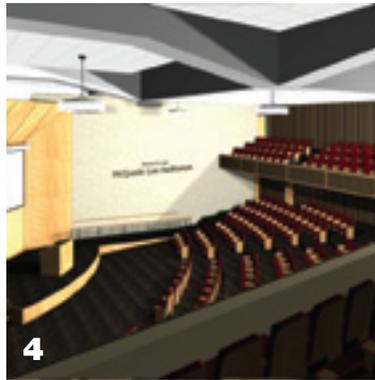
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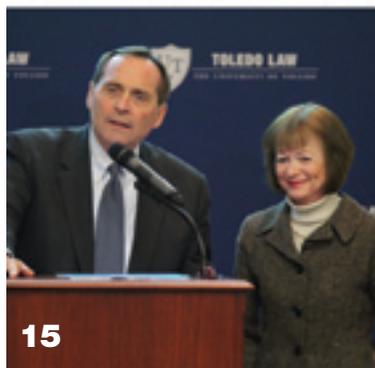
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FALL 2012

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On the cover: Dean Steinbock in the new Richard and Jane McQuade Law Auditorium.

Auditorium renovation begins; Bye-bye goldenrod burlap benches!



Dean Steinbock, students, faculty, and staff prepare for demolition with a final celebration in the old auditorium in April.

THE AUDITORIUM: A TIMELINE



December 9, 1972.

The year is 1972. The first episode of “The Price Is Right” is hosted by Bob Barker. “The Godfather” is released in the U.S. The Watergate scandal erupts. And the Law Center Auditorium with its goldenrod benches celebrates its first birthday.

The Law Center, a \$3,265,000 facility, is formally dedicated on December 9, 1972.



1972-2012.

In its forty years, the auditorium has been the scene of some of Toledo Law’s most memorable moments. It is the setting for a robust speaker series and for symposia, CLE, orientation, Fornoff finals, and events sponsored by Toledo Law’s many student organizations.



Past visitors and speakers include:

- U.S. Supreme Court Justices **Antonin Scalia (twice), Sandra Day O’Connor,** and **Ruth Bader Ginsburg**
 - U.S. Attorney General **Janet Reno**
 - Author and humorist **P. J. O’Rourke**
 - Civil rights activist **Al Sharpton**
 - Nobel Laureate **James Buchanan**
 - Judge and civil rights pioneer **Constance Baker Motley**
 - ABA President **Dennis Archer**
 - Senator **George McGovern**
 - Feminist and activist **Gloria Steinem**
 - Vanity Fair columnist **Christopher Hitchens**
 - Harvard Law Professor **William Stuntz**
- And many, many others.



Judge Richard McQuade '65 & Jane McQuade

In recognition of a generous donation by Judge Richard McQuade '65 and his wife, Jane McQuade, the renovated auditorium will be named the **Richard and Jane McQuade Law Auditorium.**

The McQuades' recent gift to the College of Law is only the latest in the couple's long history of philanthropy and service to The University of Toledo. Judge McQuade served as University Trustee, and Jane McQuade is a member of UT's Women and Philanthropy Committee.

Past gifts by the pair have funded the McQuade Courtroom, a teaching courtroom used by the paralegal studies program, in the Judith Herb College of Education, Health Science and Human Service. Jane McQuade also created The Interview Suit Award to provide four Toledo Law students who might not otherwise have the means with a tailored suit as they interview for future employment.

April 3, 2012.
Students joined Dean Steinbock, the faculty, and staff for one final celebration – the Adios Auditorium 1.0 Party – with ice cream and karaoke.



September 10, 2012.
Dedication ceremony and reception to celebrate the new Richard and Jane McQuade Law Auditorium is held.



April 5, 2012.
Renovation on the new auditorium begins.

July 2012.
"PLEASE BE SEATED" campaign kicks off.

Toledo Law friends and alumni have the opportunity to name a chair in law. Visit utoledolaw.tix.com for more details!



Toledo Law lauded as great value and top school for preparing students for public service; moves up in rankings

During the 2011-2012 school year, the College of Law was recognized on several occasions by National Jurist magazine. In the November 2011 issue, the magazine named the College of Law to its list of “**Best Value Law Schools**,” reflecting Toledo Law’s relatively high bar passage and employment rates, coupled with reasonable tuition.



In the January 2012 issue devoted to identifying the “**Best Schools for Public Service**,” National Jurist named Toledo Law one of the **top 20 schools**

in the U.S. for preparing students for prosecutor and public defender positions. The magazine looked at employment data, curriculum, standard of living, and loan forgiveness programs in evaluating the nation’s law schools.

Most recently, the College of Law was recognized in National Jurist’s February 2012 issue, in an article titled “**Best Schools for Bar Exam Preparation**,” as a school that is outperforming the bar exam passage rate predicted by students’ LSAT scores.

The College of Law also moved up in the **U.S. News and World Report** graduate program rankings this past school year. Toledo Law is now ranked 129 among the 195 accredited law schools; the part-time

program was ranked 35 among the 85 part-time programs in the country.



However, as various rankings of the nation’s law schools are rolled out over the course of the school year, the attention of the College of

Law and its administration remains constant.

“The focus of Toledo Law continues to be on the education and career success of our students. Rankings based on various statistics will never be able to convey the high quality of the teaching, the individual attention, and the personal growth experienced by so many of our students,” said Dean Steinbock.

Please Be Seated

Richard and Jane McQuade Law Auditorium

Choose your seat now.

SEATS ARE LIMITED!

Plates that will be placed on the arm of each named chair can be engraved in honor of a favorite professor, in memory of a loved one, with your own name, your year of graduation, or the name of your organization.

Select the exact location of your chair on the main floor or in the balcony of the auditorium.

Register and pay online at utoledolaw.tix.com



TOLEDO LAW

THE UNIVERSITY OF TOLEDO

Mann '12 selected as the Sixth Circuit Distinguished Law Student by the American College of Bankruptcy



David Mann '12 stands in front of a home acquired and sold by the Lucas County "Land Bank" in Toledo's Old West End. Mann, now an associate at Marshall & Melhorn, LLC, served as executive director of the Land Bank while an evening student at Toledo Law.

The American College of Bankruptcy named David Paul Mann '12 the 2012 Distinguished Law Student from the Sixth Circuit. He was the only student from the states in the Sixth Circuit — Michigan, Ohio, Kentucky, and Tennessee — to receive the award this year.

Mann traveled to Washington in March to attend the college's induction ceremony at the U.S. Supreme Court, where he had the opportunity to meet practitioners and judges from the bankruptcy bar.

"David Mann is a superb representative of the College of Law. I have no doubt that he was a hit with the American College of Bankruptcy, and that the connections he has developed as an American College of Bankruptcy Distinguished Law Student will serve him well in his professional career," said Kara Bruce, assistant professor of law. Bruce nominated Mann for the award.

As an evening student at Toledo Law, Mann collected several major awards, including Best Oralist and Best Team at the 39th Annual Charles W. Fornoff Appellate Advocacy Competition for his argument before a panel of judges that included two United States District Court judges. He also served as assistant managing editor on *The University of Toledo Law Review*, and his note, "Out of the Penalty Box: Why Supreme Court Precedent Should Have Saved Matching Fund Triggers," was published in the Law Review's summer 2011 issue.

By day, Mann served as the executive director of the Lucas County Land Reutilization Corporation, locally known as the "Land Bank." A non-profit, quasi-governmental entity established by state statute, the Land Bank strategically acquires vacant and abandoned properties to reduce blight, increase property values, and promote economic development in Lucas County, Ohio.

"It's about each individual property that we deal with, but it's really about all the other homes that are around that property that are watching their values drop, watching their neighborhoods deteriorate, and are looking for solutions," explained Mann.

Mann was hired as director a few months after the Land Bank was created in August 2010, and for many months was its sole staff member. When asked what it was like to build the new Land Bank by day and attend law school at night, Mann was quick to smile and

quipped, "I don't have a life, but I knew that going in."

Following graduation in May, Mann left the Land Bank to join the Toledo law firm Marshall & Melhorn, LLC, as an associate in the firm's business litigation practice.

Mann's nomination was supported by Judge Mary Ann Whipple of the United States Bankruptcy Court for the Northern District of Ohio, a part-time faculty member at Toledo Law who teaches bankruptcy course offerings, and Nicole B. Porter, professor of law.

All nominated students are considered by the council in their circuit, which selects the winning student.

"I was honored to represent The University of Toledo College of Law at this event," said Mann after the induction ceremony and his weekend in Washington. "It's an important recognition of the work that Judge Mary Ann Whipple and Professor Kara Bruce are doing to prepare the next generation of bankruptcy professionals in our community."

The American College of Bankruptcy is an honorary professional and educational association of bankruptcy and insolvency professionals. College fellows include commercial and consumer bankruptcy attorneys, insolvency accountants, turnaround and workout specialists, law professors, judges, government officials, and others involved in the bankruptcy and insolvency community.

Vartanian '10 to clerk for Sixth Circuit Court of Appeals



Jessica Vartanian '10, who will join the Sixth Circuit Court of Appeals as a clerk this fall, is pictured outside her old work place – the Michigan Supreme Court.

Jessica Vartanian '10 accepted a clerkship with Judge Richard Allen Griffin of the U.S. Court of Appeals for the Sixth Circuit beginning in September 2012.

"I am honored and humbled to have received the opportunity," said Vartanian, now clerking for Michigan Supreme Court Justice Brian K. Zahra. "Clerking for Judge Griffin will provide me with additional insight into the reasoning and thought process of judicial decision-making. I will also gain another great mentor. I could not be happier."

Judge Griffin is based in Traverse City, Mich., but the Sixth Circuit sits in Cincinnati, Ohio, meaning that Vartanian will travel to Ohio approximately once every six weeks.

"We are all very proud of Jessica. We have many terrific students at Toledo Law, but Jessica is especially deserving of this great honor and opportunity. Her strong legal mind and exceptional writing skills will serve her well in this very important position," said Nicole B. Porter, professor of law.

A magna cum laude graduate of the College of Law, Vartanian was a member of the labor and employment law moot court team and served as assistant executive editor of *The University of Toledo Law Review*. She was undefeated in the Charles W. Fornoff Appellate Advocacy Competition.

Last year, Vartanian published an article in *The Georgetown Journal of Gender and the Law* that she co-authored with Professor Porter. The article, titled "Debunking the Market Myth in Pay Discrimination Cases," challenges employers' use of prior pay, competing offers, and salary negotiation as defenses to paying men and women unequal pay for performing equal work.

Her most recent article, "Speaking of Workplace Harassment: A First Amendment Push Toward a Status-Blind Statute Regulating 'Workplace Bullying'," will be published in the *Maine Law Review* next year.

University bestows top honors on Professors Martyn and Zietlow



Professors Susan R. Martyn (left) and Rebecca E. Zietlow (right)

Susan R. Martyn, the Stoepler Professor of Law and Values, was named Distinguished University Professor, The University of Toledo's highest academic honor, in April. Martyn, a life member of the American Law Institute, has authored five books in the field of legal ethics. She has contributed amicus curiae briefs pro bono to the U.S. Supreme Court to assist as it assessed bioethics and legal ethics issues, and has served on several national bodies that shape the laws that govern lawyer conduct, including the American Bar Association's Ethics 2000 Commission.

Also in April, Rebecca E. Zietlow, the Charles W. Fornoff Professor of Law and Values, was unanimously selected as the winner of one of two Outstanding Researcher Awards presented by The University of Toledo this year. The award celebrates outstanding research, scholarship, and creative activity on UT's multi-campus university and recognizes Zietlow's scholarship in the area of constitutional history and politics. Her research focuses on the Reconstruction Era amendments, including the meaning and history of the 13th and 14th Amendments.

Great Lakes Compact article by Hohl '12 wins statewide award



M. Zack Hohl, in the Law Center Forum

M Zack Hohl '12 won the Ohio State Bar Association's 2012 Environmental Law Award for his paper titled "The Great Lakes Compact: States Suffering from Withdrawal."

The article was published in the OSBA Environmental Law Symposium, and Hohl received a prize of \$1,000 donated by the Ohio law firm McMahon DeGulis LLP.

Hohl's winning paper analyzed the goals and framework of the Great Lakes-St. Lawrence River Basin Water Resources Compact by evaluating the exemption for bottled water under the compact. After being signed and ratified by the eight Great Lake States, including Ohio, the compact was ratified by Congress and signed into law by President Bush in 2008.

According to Hohl, "While the compact is admirably thorough and a major step toward sustainable development in the region, if the

compact is weakened (either through state action or exploitation of exemption like that for the bottled water) it will be incredibly difficult for states to act on their own. Therefore, it is important that states and individuals follow both the letter and spirit of the compact if we are to achieve sustainable use of our regional waters."

"The new compact is vital to Ohio and this region," said Kenneth Kilbert, associate dean for academic affairs and director of Toledo Law's Legal Institute of the Great Lakes. "Zack's paper is a terrific piece of legal work and will be very useful to lawyers, judges, and policymakers."

Hohl graduated summa cum laude in May 2012, and delivered the class address at commencement.

While at Toledo Law, Hohl collected highest ranking student awards in several classes, including his environmental law, natural resources law, and water law courses. Hohl also served as articles editor for *The University of Toledo Law Review* and as co-president of the Environmental Law Society.

Moreover, Hohl's scholarship during his law school career was published not once, but twice. "Legal Tools for Reducing Harmful Algal Blooms in Lake Erie," which Hohl co-authored with Professor Kilbert and Tiffany Tisler '11, was published in the fall 2012 issue of *The University of Toledo Law Review*.

According to an OSBA press release announcing Hohl's selection, the Environmental Law Committee asked that submissions for the 2012

Environmental Law Award advance the application and practice of environmental, energy, or resources law in the state of Ohio.

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.

Law Review Symposium

Votes and Voices in 2012 – Issues Surrounding the November Election and Beyond

Panel 1: The Voting Rights Acts and Other Constitutional Issues

Panel 2: Election Litigation – Current Issues in State And Federal Law

Panel 3: Citizens United and Its Impact

Panel 4: Navigating the Future of Election Law

Friday, October 19, 2012

CLE available!

Visit law.utoledo.edu or call the Law Review Office, 419.530.2962, for more details.

College of Law Speakers & Events 2011-2012

10 – 20 – 2011

Toledo Law celebrates 40th Anniversary of Charles W. Fornoff Appellate Advocacy Competition



Judge Jeffrey S. Sutton of the U.S. Court of Appeals for the Sixth Circuit (center) with Charles Hatley '13 (right) and Bradley Levine '12 (left), the Fornoff finalists named Best Team during the final argument.

Four students emerged victorious from the 40th Annual Charles W. Fornoff Appellate Advocacy Competition. Katherine Greene '13 was named Barrister as the only unbeaten student in the competition. Bradley Levine '12, bested only by Greene, was named Solicitor. Finalists Soren Dorius '13 and Charles Hatley '13 rounded out the pack.

By negotiating the double-elimination Fornoff tournament successfully, these four students won the opportunity to argue their case in front of a three judge panel that included Judge Jeffrey S. Sutton of the United States Court of Appeals for the Sixth Circuit, Judge Benita Y. Pearson of the United States District Court, Northern District of Ohio, and Peter R. Casey III '73, a member at Eastman & Smith Ltd. in Toledo, Ohio. As a Toledo Law student 40 years ago, Casey helped to start the Fornoff competition.

In the two weeks between the Fornoff tournament and the Oct. 20, 2011 final argument, students prepared daily with Lee A. Pizzimenti, associate dean for student affairs, and other faculty members. Past Fornoff winners and moot court members assisted in drills.

The final took place in a Law Center Auditorium packed with faculty, family members, and peers. Each

team of two — Levine and Hatley, and Greene and Dorius — was assigned 30 minutes for argument. The hypothetical involved two issues, a first amendment question and a 42 § U.S.C. 1985(3) conspiracy to interfere with civil rights claim.

“Arguing before Judges Sutton and Pearson, and attorney Casey was truly an incredible experience. Just prior to standing up, I recall feeling an intense sensation of the ‘butterflies.’ Luckily all my fears dissipated as soon as I began my delivery,” said Dorius. “I honestly had a great time, from start to finish, in the Fornoff competition.”

At the conclusion of the argument, the three judge panel named Dorius the Best Oralist. Levine and Hatley were named Best Team.

The Fornoff competition begins each year in the spring of a student's 1L year and continues into the following fall semester. In the double-elimination tournament, students argue the preliminary rounds before panels comprised of faculty and student judges.

“The Fornoff competition is a rite of passage for most of our students — one that they will always remember — and marks a step on the road to becoming a lawyer,” said Dean Steinbock. “Having the founder of the first competition, along with two of the most distinguished judges in the region, was a wonderful way to commemorate its 40th anniversary.”

41st Annual Charles W. Fornoff Appellate Advocacy Competition

FINAL ROUND

October 18, 2012, Noon

Before judges:

Chief Judge Alice M. Batchelder, U.S. Court of Appeals for the Sixth Circuit

Judge Patricia A. Gaughan, U.S. District Court, Northern District of Ohio

Justice Terrence O'Donnell, Ohio Supreme Court

Named for former College of Law Dean Charles W. Fornoff, the competition has become a high point in the fall semester. Fornoff joined the College of Law faculty in 1938 and began his term as dean in 1942. His 18 years of service in that capacity, from 1942-1960, are the longest in the school's history. He is remembered for keeping the College of Law open during World War II, encouraging female students to pursue careers as lawyers, and even providing financial assistance from his own pocket to students in need.

09 – 26 – 2011

Law Prof on America's invisible Middle Eastern minority

John Tehranian, the Irwin R. Buchalter Professor of Law at Southwestern Law School and author of "Whitewashed: America's Invisible Middle Eastern Minority," lectured over the noon hour on Sept. 26, 2011. Professor Tehranian combined his personal experience with an analysis of current events and legal trends to analyze what he calls "the bizarre Catch-22" of Middle Eastern racial classification in the United States. Focusing on the contemporary immigration debate, the war on terrorism, media portrayals of Middle Easterners, and the processes of creating racial stereotypes, he argued that the modern civil rights movement has not done enough to protect the liberties of Middle Eastern Americans.

10 – 06 – 2011

Sixth Circuit Judge: Heed anti-federalist warning against overpowerful judiciary



Chief Judge Alice M. Batchelder, of the U.S. Court of Appeals for the Sixth Circuit

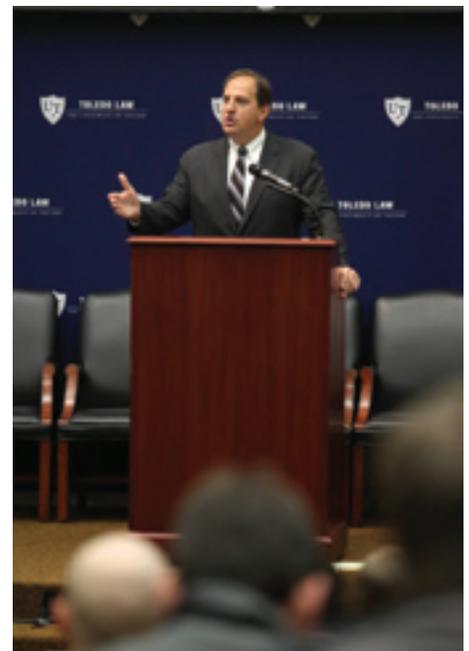
During the state ratification debates over the Constitution, the Anti-Federalists warned that the federal government would not consist of three co-equal branches; instead, they predicted that the federal judiciary would become the dominant power. Chief Judge Alice M. Batchelder of the United States Court of Appeals for the Sixth Circuit evaluated whether the Anti-Federalists' prediction has come true in the fall Stranahan Lecture titled "The Anti-Federalists' Warning: An Overpowerful Federal Judiciary" on Oct. 6, 2011.

The lecture was presented by Toledo Law and its chapter of the Federalist Society for Law and Public Policy Studies.

10 – 17 – 2011

U.S. Deputy Secretary of Labor speaks on role of workers in 21st century economy

In the Cannon Lecture titled "The Role of Workers in a 21st Century Economy: An Administration Perspective" on Oct. 17, 2011, United States Deputy Secretary of Labor Seth D. Harris discussed forces that have been aligned against the middle class and working families over the last several decades, as well as the Obama administration's efforts to stem the recent economic crisis. Prior to joining the Department of Labor, Harris was a professor of law at New York Law School and director of its labor and employment law programs.



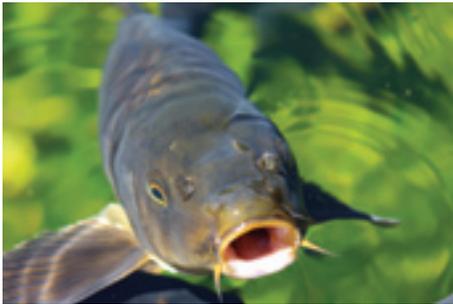
Seth D. Harris, U.S. Deputy Secretary of Labor



LEGAL INSTITUTE OF THE GREAT LAKES 2011-2012 SERIES

11 – 04 – 2011

Asian carp: Coming soon to a lake near you?



Some wags in the Great Lakes region have observed that Asian carp are like the weather: everyone talks about them but no one does anything about them.

Not true, said John Goss, keynote speaker at the 11th Annual Great Lakes Water Conference on Nov. 4, 2011 at the College of Law. Goss, Asian carp director of the White House Council on Environmental Quality, is coordinating the efforts of federal agencies to prevent Asian carp from spreading into the Great Lakes.

Asian carp are no joke, according to the Water Conference speakers. Asian carp species, imported to the United States decades ago, have been moving north up the Mississippi River for decades and now are at the doorsteps of the Great Lakes. If these voracious eaters, which

can exceed 100 pounds, establish a foothold in the Great Lakes, the native fish population will starve because these invasive species will consume the food supply — severely harming the ecology of the Great Lakes and its multi-billion dollar fishing industry.

Goss described the strategy and actions designed to stop the Asian carp from entering the Great Lakes, including monitoring, poisoning, and improving physical barriers at potential entry points. Among the options being studied is physically separating the Great Lakes and Mississippi River systems.

The 2011 conference also featured three panels of experts addressing hydraulic fracturing and its impact on water resources, disputes over ownership of and access to the shores of the Great Lakes, and regulating water use in the Great Lakes states under the new interstate compact. Speakers included elected officials, agency leaders, scientists, and lawyers from throughout the Great Lakes region.

Approximately 200 persons attended the 11th annual conference, sponsored by the College of Law and its Legal Institute of the Great Lakes.

03 – 16 – 2012

Workshops address battle to tame harmful algal blooms in Lake Erie

At a March 16, 2012 workshop sponsored by Toledo Law and Ohio Sea Grant, Dr. Thomas Bridgeman of The University of Toledo's Lake Erie Center described the harmful algal blooms problem in Lake Erie as "now in crisis stage." He and his team have been monitoring Lake Erie's algae biomass over the last decade, and 2011 brought the largest bloom in recent years.



The HABs problem

Harmful algal blooms (HABs), toxin-producing algae that form during the summer, are triggered primarily by excess phosphorus. Found in Lake Erie and in bodies of water worldwide, HABs adversely impact aquatic life and human health as well as recreation, tourism, fishing, and property values.

But HABs are not new to Lake Erie. During the 1960s and early 1970s, legislative and regulatory steps were necessary to reduce phosphorus loading to Lake Erie. Most notably, the Clean Water Act and the Great Lakes Water Quality Agreement

12th Annual
Great Lakes Water
Conference
November 2, 2012

The University of Toledo College of Law
law.utoledo.edu





Dr. Thomas Bridgeman of UT's Lake Erie Center and Dr. Jeffrey Reutter, director of the Ohio Sea Grant College Program and The Ohio State University's Stone Laboratory, participate in a panel at the March 16, 2012 Toledo workshop.

of 1972, and the restrictions they imposed on publicly owned treatment works, considerably reduced the amount of phosphorus discharged into Lake Erie and its tributaries.

“Lake Erie is biologically the most productive of the Great Lakes, and always will be,” said Dr. Jeffrey Reutter, director of the Ohio Sea Grant College Program and The Ohio State University’s Stone Laboratory. It is the shallowest and southernmost of the five Great Lakes, and its temperatures are the warmest.

The Lake Erie watershed is also marked by more residential use and more cropland than in the watersheds of the other four Great Lakes. The result: more sediment, nutrients – most notably phosphorus – from fertilizers and sewage, and pesticides run to Lake Erie. Storms exacerbate the situation.

Working toward a solution

An April 2010 report by the Ohio Lake Erie Phosphorus Task Force, formed by the Ohio Environmental Protection Agency (OEPA), found that the most significant Ohio contributor to phosphorus loading to Lake Erie today is storm water runoff from agricultural activities.

According to Reutter, phosphorus loading to Lake Erie must be reduced by two-thirds to curb the current HABs crisis and Reutter advocates for a two-thirds reduction for all sources of phosphorus, not only farm runoff.

During the workshop, experts from law, science, and government addressed ways to reduce phosphorus loading to Lake Erie and its

tributaries from key Ohio sources. In addition to Bridgeman and Reutter, presenters included Steve Davis of the U.S. Department of Agriculture, Natural Resources Conservation Service, Katie Rousseau of American Rivers, Bill Fischbein of the OEPA, and Kenneth Kilbert, associate dean for academic affairs and director of Toledo Law’s Legal Institute of the Great Lakes.

Kilbert presented a legal white paper titled “Legal Tools for Reducing Harmful Algal Blooms in Lake Erie,” prepared by Kilbert and his former students Tiffany Tisler ’11 and M. Zack Hohl ’12. Among the paper’s many recommendations was a call for Ohio to designate the Lake Erie watershed as “in distress.” Such a designation triggers restrictions on land application of manure during the winter, among others.

The HABs problem in Lake Erie is “now in crisis stage.”

A companion workshop was held on March 30, 2012 in Columbus at the Ohio Department of Natural Resources. The workshops were partially funded by a grant from The National Sea Grant Law Center.

Materials from the workshops and the legal white paper are available on the Toledo Law website at law.utoledo.edu/ligl/habs.



Photo by Todd Crail

11 – 10 – 2011

Touro Law Prof: Jewish law on capital punishment contains lessons for American legal system



Samuel J. Levine, professor of law at the Touro College Jacob D. Fuchsberg Law Center

Professor Samuel J. Levine of the Touro College Jacob D. Fuchsberg Law Center visited Toledo Law on Nov. 10, 2011 to deliver a lecture titled “An Analysis of Capital Punishment in

Jewish Law, with Possible Lessons for the American Legal System.” Levine, the director of the Jewish Law Institute at Touro, examined capital punishment in Jewish law and its application, by courts and scholars, to the American legal system.

The lecture was made possible by a grant from the David S. Stone Jewish Law Fund established in the Toledo Jewish Community Foundation in 2001.

01 – 12 – 2012

In the trenches: Restoring the rule of law in Afghanistan

Jeffrey Crowther '81 addressed a classroom overflowing with students from across campus on Jan. 12, 2012. An employee of the U.S. State Department, Crowther is a senior rule-of-law adviser embedded with a multinational force of Australians, Dutch, and Americans in Afghanistan. Crowther's lecture, “Restoring the Rule of Law in Afghanistan,” described his work as part of a



Jeffrey Crowther '81, U.S. State Department senior rule-of-law adviser in Afghanistan, speaks to Toledo Law community

provincial reconstruction team that follows NATO forces after areas of insurgency have been cleared.

The lecture was co-sponsored by Toledo Law and the UT College of Adult and Lifelong Learning.

02 – 23 – 2012

Financial crisis, Dodd-Frank topic of Heurman Lecture



Jeffrey Quayle



Jeffery Smith '78

“[Banking is] the most heavily regulated industry in the world; the nuclear guys argue that nuclear is, I would argue that banking is,” began Toledo Law alumnus Jeffery Smith '78, a partner at Vorys, Sater, Seymour and Pease LLP, during the Heurman Lecture on Feb. 23, 2012.

Smith was joined by fellow attorney Jeffrey Quayle, senior vice president and general counsel to the Ohio Bankers League. Together, the pair surveyed the issues that prompted

the 2008 financial crisis and examined the fallout for the financial services industry and the consumer in a lecture titled “The Financial Crisis — A Retrospective and Update.”

The pair led the audience through the happenings in the housing market and banking industry that led the federal government to take drastic action in fall 2008, including seizing control of mortgage finance companies Freddie Mac and Fannie Mae, in an effort to stabilize financial markets around the world. “You know where you were when the twin towers fell or ... when President Kennedy was shot. For those of us in the banking industry, when Freddie and Fannie were taken over ... you knew where you were, it was something bigger than we had seen in our professional lifetimes.” said Quayle.

“You know where you were when the twin towers fell or ... when President Kennedy was shot. For those of us in the banking industry, when Freddie and Fannie were taken over ... you knew where you were, it was something bigger than we had seen in our professional lifetimes.”

The lecture also provided a brief update on the current state of regulation under the Dodd-Frank Wall Street Reform and Consumer Protection Act signed into law by President Obama in July 2010, which mandated new financial regulations to improve accountability and transparency in the country's financial systems.

The lecture was made possible by the Heurman Fund for the Study of Investment Law and Regulations.

01 – 24 – 2012

Jim and Nancy Petro outline myths and misconceptions about wrongful convictions

Better that 10 guilty people go free, the saying goes, than to convict a single innocent person. This sentiment is often used to explain why proof beyond a reasonable doubt is required in criminal cases.

The advent of DNA testing about 25 years ago, however, has revealed hundreds of false positives in criminal adjudication. Indeed, DNA evidence has acted as a window into the flaws — some would even say the systemic failure — of the criminal process.

Ohio Board of Regents Chancellor Jim Petro and his wife, Nancy Petro, co-authors of “False Justice — Eight Myths that Convict the Innocent,” have taken this as a powerful challenge. The couple delivered the spring lecture in the College



of Law’s Distinguished Speaker Series on Jan. 24, 2012.

As Ohio attorney general from 2003-2007, Jim Petro added 210,000 DNA profiles from Ohio felons and misdemeanants to the national Combined DNA Index System (CODIS) database. This effort resulted in dozens of cold cases being solved in the weeks to follow and hundreds more in the succeeding months and years.

The Petros’ book tracks the development of DNA testing and the use of DNA evidence to exonerate individuals wrongfully convicted.



Ohio Board of Regents Chancellor Jim Petro and Nancy Petro

The couple was recognized for their work with a 2011 Constitutional Commentary award at Georgetown University School of Law.

During their lecture, the Petros took turns at the lectern outlining eight myths and misconceptions that they feel permeate most American beliefs about the justice system.

What is Myth No. 1? “Everyone in prison claims innocence.”

To prove this premise false, Jim Petro shared a personal anecdote. In 2003, the Ohio General Assembly, at the urging of then-Attorney General Petro, passed a bill that required that post-conviction DNA testing be made available to prisoners in certain instances.

Opponents of the bill cried that courts would be overrun with individuals taking advantage of DNA testing to challenge their conviction. However, in the nearly 10 years since the law was enacted, fewer than 500 prisoners

have requested post-conviction DNA testing under the law’s provisions, said Petro.

The reality is that the great majority of convicted criminals do not claim their own innocence. Those individuals who do maintain their innocence after conviction must often make great sacrifices. An individual gives up opportunities for a lesser sentence, or for parole (because the individual refuses to show remorse), or for plea bargain to greatly reduce a sentence, said Petro.

In explaining why she and her husband have decided to “stump” to raise awareness for wrongful convictions, Nancy Petro explained, “After a lifetime of public service, we recognize that changes in public policy usually do not happen very readily until conventional wisdom supports them, and so our message is certainly to lawyers, certainly to people in the criminal justice system, but also to everyday voters who have an impact on the type of criminal justice system we have.”

1. Toledo Law staff display Valentine's Day cheer.
2. Students from the Public Interest Law Association (PILA) start the bidding at PILA's February 10, 2012 live auction to benefit summer public interest fellowships.
3. Public Service Commendation Certificate winners for the 2011-2012 school year were honored at the April 12, 2012 Public Service Recognition Program for performing 30 or more hours of unpaid law-related public service work during the spring or fall semester.
4. The 2012 Public Interest Fellowship recipients were recognized at the April 12, 2012 Public Service Recognition Program. Fellowships permitted students to spend the summer in such offices as the Rhode Island Center for Law and Public Policy and the Office of the Federal Public Defender of the Eastern District of California.
5. On a brisk March 31, 2012 morning, Toledo Law students pose in scarves and hats after the Student Bar Association's Eighth Annual 5K Run/Walk. Proceeds from the event were donated to Family House, a Toledo-area nonprofit.
6. Professor Joseph Slater on stage at the Environmental Law Society's February 14, 2012 "Chili Goof-Off," where he and Lee Pizzimenti, associate dean for student affairs, joined students and alumni on drums and vocals to regale the crowd as it sampled more than fifteen chili recipes from students, faculty, and staff.
7. Silent bidding at PILA's February 10, 2012 auction to benefit summer public interest fellowships.
8. Toledo Law honored the Class of 2012 and the 2011-2012 student organizations on April 13, 2012 at the Toledo Club, including those honorees pictured here.
9. Students meet with various employers at the Office of Professional Development's "Government and Public Interest Speed Networking" event on February 15, 2012.
10. Toledo Law students Miranda Vollmer, Nic Linares, and Adam Motycka received free tickets and a bus ride to cheer on the UT Rockets football team in the December 2011 Military Bowl in Washington, D.C. as part of the UT "Tweet Team."
11. Students pose with Kelly Moore, associate professor of law, at the SBA's October 2011 fundraiser held at Miracle Lanes. Toledo Bar Association attorneys, Toledo Law faculty, and staff joined students to bowl a few games to raise funds for the TBA's Annual Pro Bono Campaign.
12. Students chat with local attorneys at the Office of Professional Development's February 16, 2012 "Coffee and Conversation" focused on health care law.





March speakers address future of feminism and sexual harassment law

03 – 14 – 2012

Call to ‘take back feminism’ at Stranahan Lecture

Dr. Christina Hoff Sommers encouraged the audience to “take back feminism” during her lecture “Sex, Lies, and Feminism” on March 14, 2012, a presentation in the Stranahan National Issues Forum.

“Contemporary feminism has taken a wrong turn. It is my view that the noble cause of women’s emancipation has been harmed by the contemporary women’s movement,” began Sommers.

Sommers, a resident scholar at the American Enterprise Institute (AEI), is best known for her critique of late 20th-century feminism and is the author of such titles as “Who Stole Feminism?” and “The War Against Boys,” a New York Times Notable

Book of the Year. Before joining AEI, Sommers was a professor of philosophy at Clark University.

Asserting that the major battles of the feminist movement in the United States have been fought and won, Sommers identified three

“Contemporary feminism has taken a wrong turn ... [T]he noble cause of women’s emancipation has been harmed by the contemporary women’s movement.”

flaws in contemporary feminist theory. First, the movement is reckless with statistics, such that the average student in a women’s studies course is subject to a “sea of propaganda,” said Sommers. Next, Sommers rejected what she deems the movement’s “dogmatic attachment” to the view that the sexes are essentially the same. And, finally, she faulted the contemporary feminist movement for focusing too

few resources on the oppression of women in the developing world.

Though much of her lecture was polarizing, Sommers concluded with a call for unity. She urged those in attendance, “Make [feminism] family-friendly, men- and husband-friendly,

insist that moderate and conservative women be given a voice at the table, and then set about writing the next great chapter in the history of women’s quest for freedom and that’s helping women in the developing world.”

The lecture was presented by Toledo Law and its chapter of the Federalist Society for Law and Public Policy Studies.



Dr. Christina Hoff Sommers, a resident scholar at the American Enterprise Institute

03 – 26 – 2012

Sexual harassment and women of color topic of Cannon Lecture

In a lecture on March 26, 2012, Tanya K. Hernandez, professor of law at Fordham University School of Law and non-resident faculty fellow at the Fred T. Korematsu Center for Law and Equality at the Seattle University School of Law, discussed the role women of color have played in the development of sexual harassment law. Her lecture, “Sexual Harassment and Women of Color,” was a part of Toledo Law’s Cannon Lecture Series.

Although women of color have figured prominently in the development of sexual harassment law and policy — indeed, African-American women in particular brought most of the early precedent-setting sexual harassment cases — few are aware of the racial context of these cases, said Hernandez. No discussion of race appears in the court opinions, and legal discourse and commentary in this area also largely neglect issues of race.

As an example of this “racial silencing,” Hernandez focused on the 1986 landmark sexual harassment case of *Meritor Savings Bank v. Vinson*. In that case, judicial opinions failed to mention that plaintiff and harasser were African American.



Tanya K. Hernandez, professor of law, Fordham University School of Law

“By ignoring race ... the court rendered invisible the racialized construction embedded in their analysis and thereby insulated it from challenge and reform. All sexual harassment plaintiffs now continue to endure this unfortunate legacy.”

In evaluating Civil Rights Act of 1964 Title VII discrimination claims, courts view individuals “in categorically simplistic terms such that a human being either has a gender or has a race, but rarely both,” said Hernandez. “Title VII does not mandate that protected categories be examined in

isolation, it is the courts that choose to do so,” and this single category approach does not reflect reality for women of color, said Hernandez.

Social science literature demonstrates that racial identity often shapes a woman’s experience of sexual harassment. “Unlike white women, women of color who are sexually harassed typically describe a workplace interaction where racially and sexually charged comments are made simultaneously regarding their clothing, their bodies, and their conduct,” said Hernandez.

In the *Meritor* case, the Supreme Court developed a “welcomeness” analysis in which a plaintiff’s “sexually provocative speech or dress” is relevant to a finding of sexual harassment.

“Although framed as evidence of ‘welcomeness’ the focus on the plaintiff’s clothing or lifestyle often seems more intended to evoke the timeless dichotomy of the good versus bad girl, a virgin versus a whore, painting the woman as so degraded as to be impervious to offense,” said Hernandez.

“By ignoring race in [*Meritor*], the court rendered invisible the racialized construction embedded in their analysis and thereby insulated it from challenge and reform. All sexual harassment plaintiffs now continue to endure this unfortunate legacy,” Hernandez concluded. She called for courts to reexamine their position to provide room for a more flexible analysis that acknowledges that discrimination may occur at the intersection of race and sex.

03 – 15 – 2012

Ohio Sixth District Court of Appeals draws large crowd to Law Center Auditorium

Usually law schools encourage students to round out their classroom education by visiting a courtroom to observe real practitioners. Toledo Law takes this a step further and brings the courtroom to its students.

On the morning of March 15, 2012, students filed through security at the Law Center Auditorium's doors to hear oral arguments in several cases on the Ohio Sixth District Court of Appeals' docket including challenges to convictions for felonious assault and murder and a contract dispute filed by a pro se litigant.

As the main floor of the auditorium filled to near capacity, local television station crews set up camera equipment at the rear of the room.

When Judges Arlene Singer '76, Peter M. Handwork, and Stephen A. Yarbrough entered and were seated on the auditorium's stage, the room fell quiet.

First up on the court's docket? Argument in *State v. White*. Ottawa Hills police officer Thomas Caine White was convicted of felonious assault after shooting a motorcyclist following a short, early morning pursuit for a traffic stop.

The bench peppered both prosecutor and defense attorney with questions. All appeared exceedingly well prepared and professional as the argument danced from the crime scene to the evidence rulings at the jury trial and back again.

"This opportunity to observe judges and lawyers in a real court session is a valuable adjunct to our advocacy curriculum," said Terrell Allen, legal writing professor and director of



Judge Peter M. Handwork and Judge Arlene Singer '76 of the Ohio Sixth District Court of Appeals direct questions to an attorney during argument in *State v. White*.

Toledo Law's legal research, writing, and appellate advocacy program. "We appreciate the court's willingness to provide this useful experience and instruction for our students."

adjunct professor at Toledo Law, responded that she looks at argument as a conversation with the panel of judges.

"You have to know your case. You have to feel comfortable about your case. And you have to feel a certain passion about your case, because if you don't, the court won't."

After the session ended, Judges Singer, Handwork, and Yarbrough were joined by their colleague Judge Thomas J. Osowik on the stage. The panel then fielded audience questions for nearly an hour.

Among the questions posed, a 1L student asked the judges and attorneys for advice in preparing for oral argument.

Deborah Kovac Rump, appellate attorney for police officer White and

Rump, who taught a course on post-conviction relief during the spring semester, appealed to the students in the audience to approach oral argument with integrity. "You have to know your case. You have to feel comfortable about your case. And you have to feel a certain passion about your case, because if you don't, the court won't." Rump said. "If you know your case well, the rest of it falls into place."

The sessions were open to the public.

03 – 01 – 2012

Attorney visits Toledo Law after arguing U.S. Supreme Court case on police use of GPS surveillance



Stephen C. Leckar

Following his argument before the Supreme Court in *U.S. v. Jones*, attorney Stephen C. Leckar visited Toledo Law on March 1, 2012 in the Day After Speaker Series. GPS data were used to convict Leckar's client, respondent Antoine Jones, in a drug-trafficking conspiracy case.

In the decision handed down a few weeks before Leckar's visit, the Supreme Court held that attachment of a GPS tracking device and use of the device to monitor a car's location for 28 days was a "search" for purposes of the Fourth Amendment and could only be conducted with a valid warrant. Since the decision, experts and commentators have lit up the blogosphere with clashing views on whether the court's decision permits shorter-term surveillance and under what circumstances a warrant will be required. The spirited debate continues, and it seems certain that the court will grapple with questions of police surveillance and electronic privacy again soon.

04 – 02 – 2012

Panel evaluates whether Vatican is legally accountable for sexual violence against children by clergy

A complaint submitted to the International Criminal Court in The Hague requesting an investigation of the Vatican for crimes against humanity was the subject of two panel discussions titled "Child Sexual Violence by Clergy: Is the Vatican Accountable under International Law?" sponsored by Toledo Law and its International Law Society on April 2, 2012.

The September 2011 complaint filed by the Survivors Network of those Abused by Priests (SNAP) and the Center for Constitutional Rights charges that Vatican officials tolerate, enable, and fail to stop the systematic and widespread concealing of rape and other sex crimes by clergy against children throughout the world. The complaint stated, "the high-level officials of the Catholic church who failed to prevent and punish these criminal actions ... have, to date, enjoyed absolute impunity."

Panelists Barbara Blaine, founder and president of SNAP, Pam Spees, senior staff attorney for the International Human Rights Program at the Center for Constitutional Rights, and David Beckwith, executive director for The Needmor Fund, discussed the background and international legal framework for the action. The panel was moderated by Benjamin G. Davis, associate professor of law.

Mark your calendars!

SPEAKER:

John Thompson
Tuesday, September 18, 2012
Noon

SPEAKER:

Judge Nancy Gertner
Thursday, September 20, 2012
Noon

Washington, D.C. Alumni Event
Thursday, October 11, 2012

SPEAKER:

Judge Stephen Markman
Tuesday, October 16, 2012
Noon

41st Annual Charles W. Fornoff Appellate Advocacy Final
Thursday, October 18, 2012
Noon

Law Review Symposium
Friday, October 19, 2012

Great Lakes Water Conference
Friday, November 2, 2012

SPEAKER:

Professor David Harris
Wednesday, November 7, 2012
Noon

Visit law.utoledo.edu to see all upcoming events.



Toledo Law community celebrates Class of 2012

Distinguished alumnus shares rules to succeed in practice of law

On May 6, 2012, more than 1,400 friends and family members were in attendance to celebrate the Class of 2012 at The University of Toledo College of Law commencement ceremony at the Student Union Auditorium.

Those 147 candidates eligible for law degrees in December 2011, May, and August marched in the ceremony. Music from the Glass City Brass Quintet led the faculty and graduates into the auditorium.

Christopher P. Bussert '83, a partner at Kilpatrick Townsend & Stockton LLP in Atlanta, Ga., returned to his alma mater to deliver the commencement address.

Bussert has more than 25 years of experience helping clients such as Sony Music Entertainment, Harley-Davidson, and National Football League Properties protect and defend their assets and brands in trademark, copyright, unfair competition, franchise litigation, and licensing matters.

At his own law school graduation 29 years earlier, Bussert recalled, the graduation speaker suggested that he and his fellow graduates “work hard and no matter what else life throws at you, you will be alright.” Bussert modified this advice for the Class of 2012 by distilling the “work hard” appeal into five basic rules.

Rule 1 - Always bring your “A” game. Bussert told the graduates that their work product should be uniformly exceptional. “Your work product is your legal mark and by it you will be judged by your colleagues, your clients, and the profession.”

Rule 2 - The practice of law is much more than producing an exceptional work product. “Part of being successful in the practice of law is not only enhancing the reputation of the firm or organization with whom you may be working, it is also enhancing your own individual brand and reputation, and building individual relationships,” said Bussert. He encouraged graduates to get involved in a meaningful way with local and state professional bar associations, to find opportunities to speak and write, and to volunteer for pro bono work in their communities.

Rule 3 - Stay on top of the technology. This rule goes to self-preservation, said Bussert. “Many law firms and in-house departments have dramatically decreased support staff in recent years. What that means is the more self-sufficient you are, the better off you will be.”

Rule 4 - Don't be a jerk. Bussert appealed to graduates to treat both colleagues and opposing lawyers with respect. With regard to opponents, Bussert said, “Every battle does not have to be a land war in Asia. Litigation, negotiations, and other adversarial relationships should not be unnecessarily confrontational, and should never be personalized in terms of allegations of bad faith ... Civility is not a sign of weakness.”

Rule 5 - Remember that in the practice of law your legal education never stops. “The fact that you are graduating today does not mean that you will stop learning. In fact, law school is only the starting point ... As long as you practice, you will continue to learn new subject areas and skills; you will learn from your opponents, your clients, and your colleagues,” Bussert told the graduates. “Position yourself to take maximum advantage of these opportunities.”

Bussert's final rule echoed Dean Daniel Steinbock's message for the graduating class. “To be a competent and effective attorney nowadays, one must keep learning: new cases, new statutes, rules — sometimes whole new fields of law,” said Steinbock.

“I trust we have given you the tools to be lifelong learners, not only in law, but in all aspects of life — skills of close reading, careful speaking and writing, thorough research and analysis, good judgment, ethical behavior, and interpersonal skills — hopefully, coupled with intellectual curiosity. Far more than any particular legal rules, these abilities are what you will come to see as the lasting legacy of your legal education. If we have done that, we, the faculty, really have done our jobs,” he continued.

Several graduates addressed their class. **Miranda M. Vollmer**, the 2011-2012 Student Bar Association



president, delivered the student greeting and **M. Zack Hohl** gave the class address. Class valedictorian **Carl Alfred Schaffer** also made remarks.

In addition, **Lee A. Pizzimenti**, associate dean for student affairs, gave a musical faculty welcome that included a rendition of the Sound of Music’s “So Long, Farewell” — complete with a pirouette — and **Jill Hayes ’90**, president of the Law Alumni Affiliate, welcomed the new alumni.

Two University trustees, **Judge Richard McQuade ’65** and **Joseph H. Zerbey, IV**, officially conferred degrees.

Various awards were handed out over the course of the afternoon. **Kelly Moore**, associate professor of law, was chosen by the graduating class for the Outstanding Faculty Award for the third time in as many years on the faculty. Moore teaches tax and trusts and estates.

Dean Steinbock awarded **M. Zack Hohl** the American Law Institute/American Bar Association Scholarship and Leadership Award. The award is presented to one student at each of the country’s ABA-accredited law schools. In addition to free CLE courses, each winner receives a copy of the ALI-ABA’s bestselling text “Red Flags: A Lawyer’s Handbook on Legal Ethics,” by Lawrence J. Fox and Toledo Law’s Susan R. Martyn, the Stoepler Professor of Law and Values.

Hohl holds a bachelor’s degree in civil and environmental engineering from the University of Michigan. A summa cum laude graduate of the College of Law, Hohl was co-president of the Environmental Law Society, and served as articles editor for *The University of Toledo Law Review*.

Dean Steinbock presented **Miranda M. Vollmer** with the 2012 Dean’s Award calling Vollmer “a great ambassador of the law school.” Vollmer holds a bachelor’s degree in political science from Bowling Green State University. In addition to serving as the 2011-2012 Student Bar Association president, Vollmer was an Inns of Court member, the College of Law liaison to the Toledo Bar Association, and vice president of the Labor and Employment Law Association and the Public Interest Law Association. She graduated with a certificate in labor and employment law.

During the reception at the Law Center following the commencement ceremony, the Law Alumni Affiliate presented each graduate with a bronze “Scales of Justice” gift.



Dean Steinbock presents M. Zack Hohl with the American Law Institute/American Bar Association Scholarship and Leadership Award.



Class valedictorian Carl Alfred Schaffer addresses his class.



Christopher P. Bussert '83 delivers a commencement address with five rules for the new graduates.



University Trustee Judge Richard B. McQuade '65 officially presents the graduates with degrees.



Lee A. Pizzimenti, associate dean for student affairs, delivers a faculty welcome to the Class of 2012 in song.



Committed to Justice

Highlighting the work of Toledo Law faculty, alumni,
and students in the field of criminal justice

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These stories are especially timely as Toledo Law was recognized as one of the top 20 schools in the United States for preparing students for prosecutor and public defender positions in the January 2012 National Jurist magazine — an issue devoted to identifying the “Best Schools for Public Service.”

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The University of Toledo



David M. Beller '04

Empathy of defense attorney Beller '04 makes for powerful advocacy

It is the job of the criminal defense attorney to humanize his or her client for the judge and jury — to learn the defendant's story and to relate it in a compelling way.

“The most hardened of offenders breaks when they realize they have someone advocating, not just for their legal posture, but for their worth as a person — especially when no one else will,” said **David M. Beller '04**.

In November 2008, a little over a year after he moved from the Colorado Public Defender's Office to private

practice at Recht Kornfeld PC in Denver, a high-profile homicide case landed on Beller's desk. Just four years into his legal career, he had defended individuals accused of murder before, but never in a case with this kind of media frenzy.

Beller had been asked to represent Willie Clark, a man alleged to have committed two grim murders only weeks apart. Clark was accused of the 2007 New Year's Day drive-by killing of Denver Broncos cornerback Darrent Williams and the December 2006 shooting of state witness

Kalonnian Clark — no relation — in her home, days before she was to testify against Willie Clark's gang boss in a homicide case.

“These cases were some of the highest profile and well-known in Colorado since the Jon Benet Ramsey killing,” said Beller, who was one of two attorneys appointed to represent Clark in the Kalonnian Clark murder case. “The media coverage, both local and national, was constant.”

Beller has quickly established himself as an attorney to watch. Since leaving

Toledo Law in 2004, he has tried more than 50 jury cases. He was recognized as a “Criminal Defense Rising Star” in 2012 and the three years previous by Colorado Super Lawyers, and as one of “Colorado’s Top 40 Under 40” in 2012 by The National Trial Lawyers Association.

At the time he accepted Willie Clark’s case, Beller knew Clark only from media accounts and by the heinousness of the alleged crimes. But after years preparing for trial and countless hours spent together, Beller’s opinion has evolved. He described Clark as funny,

“The most hardened of offenders breaks when they realize they have someone advocating, not just for their legal posture, but for their worth as a person – especially when no one else will.”

When talking with Beller, his passion for trial work is immediately evident. A frequent guest lecturer at the University of Denver Sturm College of Law and a faculty member for Colorado Alternate Defense Counsel, where he teaches trial skills to criminal defense lawyers, it is clear that Beller enjoys the challenge that the courtroom presents.

But his career could have taken a different path. With a bachelor’s degree in environmental health from Colorado State University, Beller considered heading into the fields of environmental or patent law when he entered Toledo Law. However, after winning the Charles W. Fornoff Appellate Advocacy Competition, Beller realized he had talent in the courtroom. “Professor Zietlow’s constitutional law class coupled with Professor — now Dean — Steinbock’s stories of being a [New York] public defender made me quickly realize that criminal defense was the best confluence of trial work, constitutional law, public service, and individual client contact,” Beller said.

compassionate, and intelligent. “While many people may cringe at the idea of a twice-convicted murderer being called compassionate, knowing and understanding his whole life story makes this an easy word to use when describing him,” said Beller.

Moreover, Beller now sees a tragic inevitability in Clark’s life — abandoned in a crack house at just three months of age and racing up a street gang’s ranks in his youth. Beller recognizes a pattern that destined Clark to end up in a courtroom, with Beller seated next to him.

“I have yet to meet a client I believed to be a ‘cold-hearted killer.’ Each had a life story or circumstance, usually rooted in abuse, abandonment, and poverty, that allows you to understand where they were mentally at the moment of the crime,” Beller said. “While it rarely if ever excuses the conduct, the understanding has always made me a better advocate for them. Rarely have I ever had to emotionally rely on the old go-to ‘it makes the system work, everyone deserves a defense’ line defense attorneys often cite as justification for their work.”

When Willie Clark’s trial began in October 2011 — nearly five years after Kalonnian Clark was murdered — Clark was 28 and already serving life plus 1,152 years in state prison for the drive-by killing of Bronco Darrent Williams.

Though the death penalty is rarely pursued in Colorado, “we had an African-American defendant, two killings, one of them a witness killing and the other a beloved and well-known athlete,” said Beller. “If ever there was a case to ‘go death’ it seemed to be this one.” But arguing mitigation for Clark’s life, litigation costs to the taxpayer, and the unpopularity of the death penalty among Denver County residents, Clark’s attorneys were able to convince the district attorney not to pursue the death penalty.

The trial ran several weeks. When it was over, the jury of 12 took two and a half days to review the evidence and to convict Willie Clark of the murder of Kalonnian Clark. He was sentenced to a second life term in prison and an additional 420 years.

“Willie hoped for the best and expected the worst,” Beller and his team said in a media statement following the verdict. “He is disappointed but not surprised ... The man we’ve grown to care about over the last three years is not the same person the government claims him to be.”

Beller has not taken a homicide case since Willie Clark was sentenced nearly a year ago, saying that he sorely needed a break. But each client whom Beller represents receives the same compassion and understanding that Clark received. “I find the heart and emotion relatively easy to find when there is an understanding of the client and judgment for their alleged act is left for someone else to champion.”

With assistance of Toledo Law students, inmates receive ‘better chance at second chance’

Students involved in the Prison Reentry Project work to slow down the revolving door of the nation’s prison system by helping ex-offenders navigate legal obstacles — such as outstanding warrants and unpaid child support — in their transition from confinement back into the community.

Recidivism, or the rate at which offenders return to crime, plagues the nation’s criminal justice system, with four out of every 10 adult offenders returning to prison within three years of their release. A 2011 Pew survey reports that 45.4 percent of people released from prison in 1999 and 43.3 percent of those sent home in 2004 were re-incarcerated within three years, either for committing a new crime or for violating conditions governing their release.

Many obstacles, including substance abuse and the inability to find employment or safe housing, face an ex-offender upon leaving prison.

“You have to remember, the people coming out of prison do not have cars, jobs, or housing — and some do not have a support network, like family, in the area to help ease them back into society,” said **Ben Timmerman ’13**, a participant in the Prison Reentry Project during the spring 2012 semester. “Most of the inmates who we deal with have child support that has been accruing since they went in [and] cannot locate a high-paying job because of their education and/or the fact they now have a criminal record that includes jail time.”

April Miller ’11 was interested in criminal law while at Toledo Law and was introduced to the Prison Reentry Project during her 3L year. “I liked the idea, because it was a way for me to do both criminal work and public interest work. It turned out to be an excellent match; it was the work that I most enjoyed doing for the legal clinic,” Miller said.

“Projects like the Prison Reentry Project not only provide students with essential skills experience, they give law students an appreciation of problem solving in collaboration with social service agencies and law enforcement, and the importance of law reform when systems are broken.”

The Prison Reentry Project is part of the Reentry Coalition of Northwest Ohio, a large group of public agencies, non-profit organizations, businesses, faith-based partners, and other interested community members who collaborate to assist ex-offenders in transitioning back into the community. Services are intended to address the range of an ex-offender’s possible needs and include assistance in the areas of employment, education, housing, mental health, and substance abuse, among others.

As of December 2008, prisons in 13 states and the federal system operated at more than 100 percent of their highest capacity. 19 states operated at between 90 percent and 99 percent. (Source: Bureau of Justice Statistics, U.S. Dep’t of Justice, State and Federal Prison Facility Characteristics, available at bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=133)



Janet Hales '91, director of private attorney involvement at Legal Aid of Western Ohio, acts as a liaison between Toledo Law students and the program. She coordinates student trips to minimum-security at the Toledo Correctional Institution, known as “The Camp,” where students interview inmates who are within six months of release to identify possible legal issues they will face upon leaving prison.

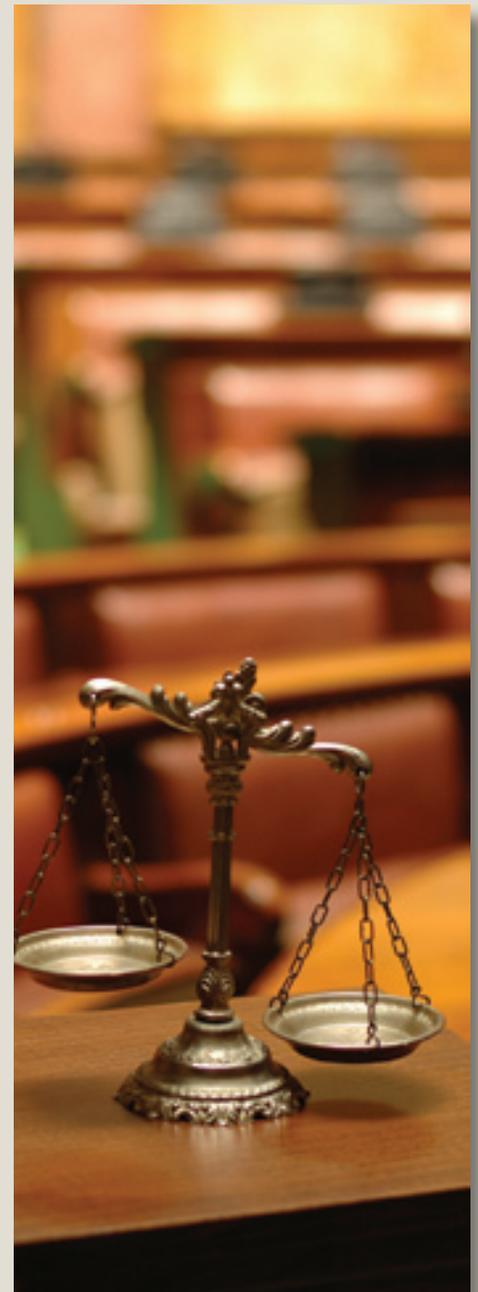
Students’ next steps often include running an Ohio Bureau of Motor Vehicles report to discover any impediments to an ex-offender’s successful application for a driver license. “Most of the inmates we see have outstanding fines, and there is a block on their registration. We work with them to set up a low payment plan with the BMV so that they can get a valid driver license,” Timmerman said.

Additionally, inmates regularly have outstanding warrants for petty crimes such as traffic tickets, as well as fees associated with prior convictions; while the inmate was being held, he or she would have been tried for any serious charges. At video hearings from prison, pro bono attorneys and Toledo Law students petition the court to set aside any outstanding warrants and fees. In Timmerman’s experience, the judges who work with the program are very sympathetic. “Most, if not virtually all, of the warrants are removed, including the fines associated with them,” he said.

Jennie Marino '11 participated in a series of video conference calls during the semester she spent working with the Prison Reentry Project. “I learned practical skills like being able to quickly look at a file, speak to a client, and come up with an argument,” Marino said. “It was a great opportunity to work with clients and gain experience speaking to a judge in a courtroom-like setting.”

Robert S. Salem, clinical professor of law, stated, “Projects like the Prison Reentry Project not only provide students with essential skills experience, they give law students an appreciation of problem solving in collaboration with social service agencies and law enforcement, and the importance of law reform when systems are broken.”

Students also have the chance to impact individual lives. This was not lost on Miller, who neatly summed up the work of volunteers in the program as giving ex-offenders “a better chance at a second chance.”



Students in Criminal Law Practice Program partner with local prosecutor offices

In talking about the work of his students in the Criminal Law Practice Program, Robin Kennedy, associate professor of law, radiates pride. You practically need sunglasses.

Since the late 1960s, Toledo Law has included practical lawyering experience in its curriculum, and the Criminal Law Practice Program is one of the College of Law's oldest efforts in this area. In the program, students licensed under student practice rules are placed in offices in northwest Ohio and southeast Michigan to prosecute criminal cases under the supervision of local prosecutors.

Students interview victims, negotiate plea bargains, and try cases. "Students love it, as soon as they recover from the jitters of their first appearance in court," Kennedy said.

One such early appearance for **Hermine Monroe '13** was as lead attorney during a misdemeanor domestic violence trial in the 36th District Court in Detroit. Monroe was able to rattle off several lessons learned during the three-day jury trial, "Preparation is key, but you must be able to tailor it to what happens in court . . . Don't give up on an objection or explanation from the judge. If you know you are right, insist with your objections or demand a response from the court, but always be courteous – and you better be right."

Students work part-time at a prosecutor's office during the semester-long program. There are also classroom sessions that help students to improve skills such as non-judgmental listening, negotiation, and trial practice. Kennedy also requires students to complete weekly journal entries in which they reflect on their work in the course.

"The journals let me in on the students' thoughts and concerns. I use individual journals in class, with a student's permission, to initiate discussion of common issues of specific skills, professional responsibility, and the balance of personal and professional life," said Kennedy.

In addition, the supervising prosecutors are necessary and invaluable program partners. "Every one of the prosecutors who our students work with is a natural teacher, they want to teach – we are simply taking advantage of that," said Kennedy. "And they are all generous with their time."

Steven Hiller, the chief assistant prosecutor at the Washtenaw County Office of the Prosecuting Attorney, is one of these supervisors. **Jacklyn Pasquale '12** worked with Hiller during the spring 2012 semester. During that time, Pasquale handled three bench trials, two felony exams, one evidentiary hearing, and two hearings on motions to quash. She continued interning at the Washtenaw County prosecutor's office following graduation, and she managed to squeeze in two jury trials this past summer before sitting for the bar exam.

"Jacklyn demonstrated from the beginning that she was highly motivated to make the most of her internship, and was eager to roll up her sleeves and do the work required to excel," Hiller said. "As a result she will leave here with a level of real courtroom experience far exceeding that of most new lawyers. I am sure it is something prospective employers will notice."

Pasquale believes she gained such a range of trial experiences by making herself available to colleagues within

the office for any assignments. She is grateful for the experience. "There are some things you simply cannot learn without actually doing," she said. "You can watch, you can learn in class, but until you do it yourself, some things just won't come together."

Kennedy often attends his students' trials and hearings, cheering them on – silently – from the back of the courtroom. "Sometimes I get a little jealous," he said, smiling, "and wish it was me out there."

Honors program in prosecution

In 1999, the Reinberger Foundation established the Reinberger Honors Program in Prosecution with the goal of attracting outstanding law students to careers in prosecution. Of the 148 students who participated in the program from 1999 through 2010, 36 students or 24 percent accepted positions in prosecution after graduation.

Most recently, the Reinberger Foundation granted Toledo Law \$15,000 for the summer 2011 program. Toledo Law matched the foundation's grant, and six students were awarded \$5,000 stipends each to spend eight weeks prosecuting criminal cases in jurisdictions ranging from Toledo, Ohio, to Boise, Idaho, and from Stafford, Va., to San Diego, Calif.

The Reinberger Foundation's funding for the honors program ended with the 2011 cohort. The College of Law is working to secure support for the continuation of the honors program.



Michael A. DiLauro '80

Assistant public defender DiLauro '80 fights to pass legislation to safeguard against wrongful conviction

The Rhode Island General Assembly meets in the evening to accommodate its members' part-time service, and assistant public defender **Michael A. DiLauro '80** heads over to the statehouse to testify at committee meetings and to meet with state legislators after a full day at the office. DiLauro is responsible for drafting and advocating key legislative proposals on behalf of the Rhode Island Department of the Public Defender (RIPD).

During his 12-year stint as RIPD's first legislative liaison, DiLauro has lobbied for several pieces of legislation designed to safeguard against wrongful conviction. With the introduction of DNA testing nearly 25 years ago, efforts by the Innocence Project and others to exonerate the innocent through post-conviction DNA testing ramped up, and the tally of those exonerated is steadily growing. A recent report assembled by the University of Michigan Law

School and the Center of Wrongful Convictions at Northwestern University School of Law numbers those exonerated in the United States in the past 23 years at more than 2,000. And according to a separate study by the Innocence Project, innocent defendants made false confessions, admissions, or other statements to law enforcement officials in more than 25 percent of the wrongful convictions overturned with DNA evidence.

In light of sobering statistics such as these, DiLauro proposed legislation on behalf of the RIPD to require that entire custodial interrogations be recorded in cases where the potential sentence is one of life imprisonment, such as murder or rape. Rhode Island has abolished the death penalty.

Twice the legislation passed the Rhode Island Senate and House of Representatives — in 2009 and 2010. And twice, the legislation was vetoed by then-Gov. Donald L. Carcieri.

Before assuming his current role as legislative liaison for the RIPD in 2000, DiLauro spent nearly 20 years as an assistant public defender, where he tried to verdict approximately 60 cases that carried potential life sentences.

The transition from advocating on behalf of a criminal defendant to lobbying was not without a learning curve. "I had a reputation as an aggressive litigator, but the same sort of aggressiveness doesn't serve you well in the policy arena," said DiLauro, who also works as director of training for the RIPD and still handles a caseload of several cases that address issues with far-ranging impact for the office.

The RIPD has a notable history. Believed to be the first statewide, full-service public defender office in the nation, the office of the Rhode Island Public Defender was created by the state legislature in 1941 — 22 years before the U.S. Supreme Court ruled in *Gideon v. Wainwright* that state courts are required by the Sixth Amendment to the United States Constitution to provide counsel in criminal cases for defendants unable to afford an attorney.

Immediately following graduation from Toledo Law, DiLauro accepted an internship with the RIPD, fell in love with the office and never left. “It is rewarding to find your niche,” he said.

“I had a reputation as an aggressive litigator, but the same sort of aggressiveness doesn’t serve you well in the policy arena.”

As the RIPD-proposed interrogation legislation bounced around the capital, from the General Assembly to the governor’s office and back, DiLauro waged the battle for increased custodial interrogation protections on another front — the courts. In spring 2011, the Rhode Island Supreme Court agreed to hear the case of *State v. Barros*.

Defendant Barros was interrogated at a detention center for hours, but only the final 12 minutes of the interrogation were captured in an audio recording. Those 12 minutes included Barros’ confession.

Barros, represented by the RIPD, appealed his conviction for first-degree murder, claiming that his confession should have been suppressed because the interrogations were not recorded in their entirety. He asserted, in part, that a recording requirement was rooted in the due process guarantees of the United States and Rhode Island Constitutions. DiLauro argued the case on behalf of Barros

in the Supreme Court, losing in a split decision, but DiLauro found a sympathetic ear in a lengthy dissent by Justice Francis Flaherty.

On the heels of the Supreme Court decision — and with a new governor and state attorney general taking office earlier in the year — DiLauro said that the climate was ripe for compromise. Just a year earlier, DiLauro had succeeded in introducing and passing a piece of legislation designed to address eyewitness identification, another leading cause of wrongful conviction. He worked diligently with the task force created by the legislation to issue a report that now serves as a model for similar

eyewitness identification reforms in other states. With that recent success in mind, DiLauro garnered consensus for a task force to study and recommend law enforcement procedure for electronically recording custodial interrogations. In 2011, the RIPD legislation was enacted.

The custodial interrogation task force was comprised of individuals holding various positions within the criminal justice system, including defense attorneys, prosecutors, and police officers. In early 2012 the task force made nine unanimous recommendations to the governor, including that audio-visual equipment be used to record custodial interrogations in their entirety in instances where a life sentence may potentially be imposed.

DiLauro represented the RIPD on the task force and called the task force’s work an extraordinary effort. “The cooperation and common ground we all shared to help make the system work better was remarkable, a real revelation. [It was] a fabulous experience and a chance to make real

changes for the better in our state’s criminal justice system.”

In August 2011, in recognition of his work, DiLauro received the National Association of Criminal Defense Lawyers’ first Champion of State Criminal Justice Reform Award. According to the association’s press release announcing the honor, the award was bestowed due to DiLauro’s “exceptional efforts [that] have led toward progressive reform of a state criminal justice system.”

DiLauro is now on to the next battle, which includes fighting for the amendment of a “draconian sentencing law” for certain firearm offenses. He will continue to monitor implementation of the task force’s custodial interrogation recommendations by law enforcement in the state.

When asked what keeps him striving for criminal justice reform, DiLauro replied, “A healthy skepticism of those in authority. I think you have to have that to be a good public defender.”

FACULTY SCHOLARSHIP

Plea Bargains, Convictions, and Legitimacy

Gregory M. Gilchrist challenges the pervasive practice of plea bargaining and proposes clear rules to limit its harm to the criminal justice system.



Gregory M. Gilchrist

In 2004, 92 percent of all felony defendants charged were convicted. 96 percent of those were convicted by guilty plea. (Source: Bureau of Justice Statistics, U.S. Department of Justice, Compendium of Federal Justice Statistics, 2004, available at bjs.ojp.usdoj.gov/content/pub/pdf/cfjs04.pdf)



Plea bargaining introduces factors unrelated to guilt or innocence

Guilty pleas routinely are secured by something akin to coercion. Although courts require defendants to affirm that pleas are given freely and voluntarily, many pleas are entered under the threat of severe penalties for the defendant or their loved ones should they not plead guilty. And, the law largely ignores this pressure.

Plea bargaining enhances efficiency. The legal system, as presently structured and funded, could not generate the number of convictions it does by trial alone. However, this efficiency comes at a significant cost — innocent defendants are

induced to plead guilty. More innocent defendants are convicted by plea bargains than would be by trials alone. These wrongful convictions not only harm the innocent persons who plead guilty; they undermine the reliability of all convictions.

Classically, plea bargaining was understood to replicate or approximate likely trial results through freedom of contract. Knowledgeable attorneys for the prosecution and defense would evaluate the evidence and assess the likely outcome of trial. The prosecutor would make an offer that provided the defendant with some discount from the likely trial result in exchange for the defendant's agreement to forego the uncertainties of trial. Defense counsel could advise their client on the merits of the proposed deal in light of their assessment of the likely trial result.

This classic model of plea bargaining, however, has been subject to an extensive and compelling attack. First, it assumes too much. For example, it assumes the prosecution and defense have equal access to evidence when in reality this is rarely the case — the prosecution generally has more access to evidence from the investigation and the defense generally has more access to evidence of the defendant's state of mind. It also assumes time, willingness, and ability of counsel on both sides to engage in the sort of detailed and extensive analysis required to fully assess the likely outcome of a trial.

The bigger problem with the classic model, however, is its failure to recognize the importance of cognitive bias on the part of the defendant. People are not perfectly rational actors. One defendant may be a gambler — preferring a slight chance of acquittal at trial even at the cost of a dramatically increased penalty should they be convicted. Another defendant may be risk-averse — preferring the slightest reduction in a possible penalty over the risk of a more serious penalty if convicted at trial. The shortcomings of the classic model are noteworthy because they introduce factors to the plea bargaining process that are unrelated to guilt, innocence, and evidence. Whereas the classic model suggests plea bargaining turns on factors not very far-removed from guilt or innocence (e.g. weight of the evidence or the learned assessment of how the evidence is likely to be received at trial), the reality is that additional factors play into the decision and these additional factors have little, if anything, to do with guilt or innocence. The degree to which a defendant is risk averse bears no relation to the defendant's guilt; yet risk aversion may play a significant role in whether or not the defendant accepts a plea bargain. Plea bargains, therefore, allow non-guilt-related factors to play a role in the assignment of guilt in the criminal justice system.

But why would someone innocent ever plead guilty? Consider the high-profile prosecution of Broadcom executives over backdated options.

In that case, a federal court rejected the previously entered guilty plea and dismissed the indictment against Dr. Henry Samueli, Broadcom co-founder. Samueli pled guilty to one count of making a false statement to the Securities and Exchange Commission and agreed to pay \$12 million to the U.S. Department of Treasury. His co-defendants did not plead guilty and went to trial. Samueli was called as a defense witness at trial. After he completed two days of testimony, the judge asked Samueli to step off the witness stand and face the bench. When Samueli did so, the judge told him that, on the basis of his testimony, there was insufficient evidence to support the plea of guilty. The court rejected the plea and dismissed the indictment.

So why would Samueli have pled guilty in the first place? According to the L.A. Times' story on the dismissal, "[Samueli] said he had agreed to plead guilty and pay the penalty because he didn't want to put his family through the ordeal of a public trial — or risk a prison sentence. 'It was a personal decision, based on what I would have had to put my family through,' Samueli said."^[1]

Sometimes innocent people plead guilty because they do not believe they can prevail at trial. Sometimes they do so because they do not wish to risk the more severe sentence that will result if they lose. Sometimes they do so for personal reasons. The practice of plea bargaining — granting a benefit to the defendant

in exchange for the waiver of certain trial and appellate rights — provides an incentive to plead guilty. And, the incentive is not related to guilt or innocence. An innocent defendant may decide the incentive is worth pleading guilty and a guilty defendant may decide it is not. In those cases, the innocent defendant will be convicted by a guilty plea and the guilty defendant will have a chance of being acquitted at trial.

The result is that plea bargaining generates outcomes that have less to do with the weight of the evidence than trials. Plea bargaining hinges on the psychological temperament of the defendant and the charging options available to the prosecutor. In the end, plea bargaining has little to do with actual guilt or innocence, and yet it is the method by which almost all criminal convictions are obtained.

Plea bargaining undermines the legitimacy of the criminal justice system

By failing to generate results correlated with the likely outcome at trial, plea bargaining undermines the legitimacy of the criminal justice system. As empirical work by Tom Tyler and others has confirmed, the perception of legitimacy is a crucial aspect of a legal system's efficacy. The perception of legitimacy is predicated in significant part on whether and how well the system functions in accord with basic rules of procedural fairness. Whether these rules are approached empirically or normatively, there is significant

overlap in the factors that generate procedural fairness; common examples include neutrality, lack of bias, treating like cases alike, accounting for relevant differences, and providing parties an opportunity to be heard. Systems that fail to operate in accord with such principles lose some legitimacy. Plea bargaining — at least as currently practiced — is at odds with many of these principles.

This article considers two ways in which the current practice of bargaining for convictions is at odds with important principles of fairness: first, it fails to account for materially different kinds of convictions and second, it institutionalizes an incentive for some defendants — innocent ones — to be dishonest.

Bargained-for convictions should be distinguished from trial convictions

Bargained-for convictions are formally treated the same as convictions after trial, notwithstanding the different processes and factors that lead to each result. This formal identity between materially different results is at odds with the basic principle of treating like cases alike, and its corollary of accounting for material differences. We care about wrongful convictions. Our system of criminal justice is predicated on valuing the avoidance of wrongful convictions more highly than the maximization of rightful convictions. Where one method of securing convictions is less able to avoid wrongful convictions and is less directly predicated on evidence, it is a difference that matters. The failure to recognize that difference is an affront to the principle of neutrality — to treat like cases alike and different cases differently.

The solution, I contend, is to formally recognize the distinction. Bargained-for convictions should be treated as distinct from trial convictions. Whereas presently our criminal justice system produces convictions and acquittals (and dismissals), the system should more accurately produce convictions, acquittals, dismissals, and the results of plea bargains — a category formally distinguished from convictions.

But what should this new category of conviction be called? The name matters. Consider the perceptual difference between calling the new category “pleas” and calling it “bargains.” The former suggests a defendant surrendering to authority in light of near certain conviction and in hope of mercy. The latter emphasizes the commoditization of convictions. And neither is likely right. “Pleas” would be inaccurate for being incomplete; there are, of course, guilty pleas that involve no agreement with or leniency from the prosecution, but many more do. On the other hand, “bargains” ignores the fact that, notwithstanding the bases for doing so, the defendant is pleading guilty. Perhaps more fair would be “plea bargains.” Looking to the civil realm, the new category might be called “settlements.” The important thing is to use terminology to draw some distinction.

The distinction itself is important for two reasons. First, failure to draw the distinction posits a false likeness between convictions earned at trial and those secured through bargain. The perceived legitimacy of the legal system will rarely be served where the system ignores such meaningful distinctions. Second, there is an expressive element. To the extent

bargained-for convictions are less reliable than trial convictions, they should not, as a normative matter, be treated as identical to trial convictions. By treating the two as distinct, the law itself might engender a shift in the societal norm that fails to distinguish between the two types of convictions.

The entry of a guilty plea should be disentangled from admissions of factual guilt

A second way in which the practice of plea bargaining undermines the procedural fairness and hence legitimacy of our legal system is by creating an incentive for dishonesty. When a defendant seeks the benefit of a plea agreement, she generally must admit her guilt in court. Where an innocent defendant seeks leniency through a plea, she is compelled to lie to get it.

Although the Constitution permits Alford and no contest pleas — pursuant to which a defendant is allowed to enter a formal guilty plea without admitting factual guilt or even while maintaining factual innocence — there is no right to enter such a plea and receive the benefit of a plea bargain. As a result, prosecutors routinely require admissions of factual guilt in exchange for any leniency through a plea bargain. In fact, most plea agreements include a statement of facts the truth of which the defendant must attest to in open court as a condition of the agreement.

Of course, confessing is only a problem where the confession is dishonest, so the special harm of incentivizing dishonesty applies only to innocent defendants. What should be made of the untrue and insincere confession? One might argue that

such confessions also serve a purpose: a system that compels all who plead guilty to acknowledge their guilt might protect itself to some degree from the perception that it convicts innocent persons. This even could be seen as a helpful step in avoiding the harm to the legitimacy of the system that is inherent in treating all convictions alike; by demanding that all defendants confirm their guilt, the legal system can pretend the innocence problem does not exist. Unfortunately, this suggestion is contrary to what we know. We know that innocent persons are convicted, and we know that some number of innocent persons, who would be acquitted at trial, are instead induced to plead guilty through bargains.

than merely not being able to tell one's story. That is, to the defendant, the system is preventing them from telling their story and forcing them to tell a lie in its place. Second, few subjected to such coercion would feel that the compulsion to lie about one's own guilt is consistent with being treated with dignity.

When we accept a bargained-for guilty plea, we have taken a shortcut as a matter of practical necessity, but the shortcut comes at a cost in terms of the certainty of result. No method of adjudication demands or provides absolute certainty of result; however, the practice of compensating pleas produces more wrongful convictions than the practice of jury trials

concern is misplaced. The fact that the outcome in criminal cases might hinge on something other than our best estimate of guilt or innocence is troubling, but it is also inherent to any system that permits plea bargaining. A system that acknowledges that flaw is more open than one that turns a blind eye to reality.

A defendant who pleads guilty— notwithstanding her own good-faith belief in her innocence—to secure leniency for herself or her family is likely to harbor significant skepticism about the justice system. She will have been deprived of the opportunity to meaningfully participate in the process of adjudicating her guilt by telling her story. To the contrary, she

“Plea bargaining hinges on the psychological temperament of the defendant and the charging options available to the prosecutor. In the end, plea bargaining has little to do with actual guilt or innocence, and yet it is the method by which almost all criminal convictions are obtained.”

While the compelled statement of guilt may help prevent the identification of individuals who believe in their innocence (to some degree), it cannot alter the fact that we know innocent individuals are convicted through plea bargaining because the incentive offered is deemed preferable to the risks of trial.

Requiring that a defendant with a good-faith belief in her innocence confess in order to secure leniency prevents the defendant from stating her case. It also fails to treat the defendant with dignity; and from the defendant's perspective, it reflects poorly on the character of the legal authorities. First, being compelled to state something that the defendant believes to be untrue is much worse

at a reasonable-doubt standard. Compelling those defendants who seek the benefit of the bargain to declare their factual guilt may cause some defendants to balk at the deal. It will compel others to lie.

The solution is simple. When a formal guilty plea is induced through bargaining, it should be entirely decoupled from confessions. Eliminating the requirement that the defendant confess in order to secure the leniency of a plea offer serves to eliminate a portion of the harm to the legitimacy of the system. Some might argue that open acknowledgement of the possibility of wrongful convictions would do more harm to the integrity of the justice system than plea bargaining does. This

will have been compelled—by a system with significant power over her—to make statements she believes to be untrue. A defendant who feels that she was coerced into publicly and falsely declaring guilt will likely share her complaint with others. The value of a public confession issued under substantial pressure from the government is limited when balanced against the cost of the confession and the ability of, and likelihood that, the defendant will subsequently renounce her confession.

Permitting the practice of induced confessions to continue perpetuates the harm to the perceived legitimacy of the system every time a defendant feels compelled to choose between leniency and what she perceives

to be the truth. Any potential loss of the pretense of certainty that presently accompanies all convictions, regardless of how secured, would be outweighed by the increased perception that the system requires procedural fairness.

Conclusion

Perhaps something would be lost if the system were to admit that even in the serious business of criminal convictions, it does not always get it right. That may be, but it also suggests a possible benefit of the proposals offered herein. Plea bargaining is problematic. Pretending it is not so, and pretending it does not carry significant costs for the legitimacy of our system, is perhaps easier, but it is not better. Recognizing those costs, even while trying to minimize them, carries the hope that people might reevaluate the place and merit of plea bargaining in our criminal justice system. Decades of criticism have failed to undermine the status of plea bargaining. A plea bargain is merely a contractual exchange by which a person charged with a crime agrees to plead guilty in exchange for leniency. Perhaps openly treating it as such will serve to curb the practice.

Accordingly, my final comment on plea bargaining is admittedly an aspirational one. If the system were to openly and formally acknowledge what has long been clear to those familiar with the system — that plea bargaining is not fully aligned with the truth-finding function of criminal justice — it might change the popular perception of plea bargaining.

The Department of Justice publishes statistics on the adjudication of federal criminal cases. The government states that 92 percent of all felony defendants charged in 2004 were convicted. It does so without blanching at the fact that 96 percent of those were convicted by guilty plea. Might the denominational shift — by which plea bargains would be distinguished from convictions — generate some pressure on a system over-reliant on plea bargaining? Were the Department of Justice to publish annual reports demonstrating that 92 percent of those charged were sentenced, but only 4 percent of those sentenced were formally convicted, it would at least draw attention to the increasing bureaucratization of the criminal justice system. And, that might — eventually — generate the support needed for more significant reform.

Gregory M. Gilchrist, assistant professor of law, teaches and writes in the areas of criminal law, criminal procedure, white-collar crime, and corporate criminal liability. This excerpt is adapted from an article of the same title published in the winter 2011 issue of *The American Criminal Law Review*.

ⁱ See *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (“confronting a defendant with the risk of more severe punishment[,]” even where it has “a ‘discouraging effect on the defendant’s assertion of his trial rights,’” is permissible).

ⁱⁱ Stuart Pfeifer & E. Scott Reckard, *Broadcom founder cleared of felony*, L.A. TIMES, Dec. 10, 2009, at 1.

Sentencing, Drugs, and Prisons: A Lesson from Ohio

Jelani Jefferson Exum describes the incarceration boom and the need for drug sentencing reform.

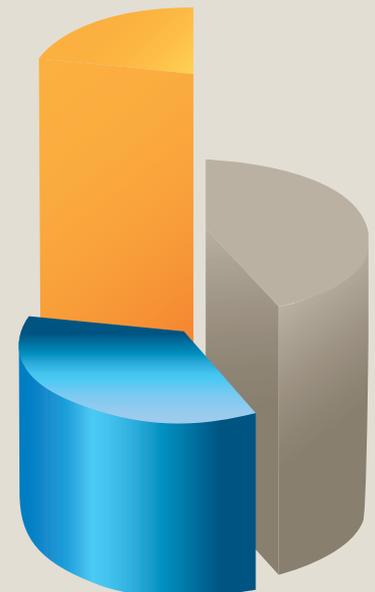


Jelani Jefferson Exum

Prison overcrowding has become a familiar story. Current data shows that more than one in 100 adults in America — over two million people — are incarcerated, earning the United States the distinction of having the highest incarceration rate in the world. It should not be a surprise, therefore, that state and federal prisons are reaching and exceeding capacity. Nor should it be a shock that drug offenders take up many of the beds in those overcapacity prisons. Relative to other crimes, drug sentencing in the United States has been increasingly harsh since the 1970s, and the prison population is feeling the effects of that overly punitive approach. In 1980, 40,000 people were imprisoned in the U.S. for drug crimes; however, that number jumped to 450,000 in 2005. Incarceration at these rates is an incredibly expensive enterprise. In fiscal year 2009, states spent a total of \$52.3 billion on corrections, including constructing and operating prisons. With the current economic crisis and state budgets being stretched thin, the costs of maintaining an ever-growing prison population are becoming impossible to sustain, prompting government officials to start discussing solutions.

For the most part, the discourse on how to handle the prison overcrowding dilemma has been approached as a reactive policy matter. State governments have discussed whether it is safer or more efficient to begin releasing nonviolent prisoners or to increase the rate of good time accrual to shorten the

In 1980, 40,000 people were imprisoned in America for drug crimes. That number jumped to 450,000 in 2005. (Source: Marc A. Levin, Buckeye Inst. for Public Policy Solutions, *Smart on Crime: With Prison Costs on the Rise, Ohio Needs Better Policies for Protecting the Public* (2010), available at [buckeyeinstitute.org/uploads/files/buckeye-smart-on-crime\(1\).pdf](http://buckeyeinstitute.org/uploads/files/buckeye-smart-on-crime(1).pdf))



portion of sentences that are actually served. Policymakers and legislators have even raised the possibility of building more prisons or adding prison beds. Yet, there has been reluctance to adjusting the front-end laws of sentencing as a lasting solution to the prison overcrowding situation. For instance, John Murphy, the head of the Ohio Prosecuting Attorneys Association, has been quoted as saying, “You don’t write sentences to fit the budget.”ⁱ Though the idea of drug treatment programs as an alternative to incarceration has been discussed in several states, officials in only a few states are beginning to consider such reforms as long-term sentencing law and policy shifts rather than as short-term solutions couched in the current budgetary concerns.

This essay focuses on drug laws in Ohio in order to emphasize the importance of thinking about sentencing decisions’ long-term consequences when determining sentencing laws on the front-end. First, this essay explains the current problem of prison overcrowding in greater depth. The essay then turns specifically to the sentencing of drug offenses in Ohio, using federal drug sentencing as a point of comparison. Ultimately, this essay concludes that the atmosphere in Ohio is ripe for readjusting sentencing attitudes so that the consequences of sentencing become proactive lawmaking concerns rather than after-the-fact reactions to a current economic situation.

Prison overcrowding: The current problem

Prison systems throughout the nation, including the federal system, are experiencing massive strain. The

Bureau of Justice Statistics reported that as of December 2008, “[t]hirteen states and the federal system operated at more than 100 percent of their highest capacity, and 19 states operated at between 90 percent and 99 percent.”ⁱⁱ Recent statistics are not any better. In October 2010, news stories reported that Kansas had officially run out of beds for its male prisoners. It has been projected that by 2020, Kansas will be nearly 2,000 prisoners over capacity. A month later, reports out of West Virginia revealed that some of their inmates now have to sleep on mattresses on the floor of the local jails to help absorb some of the state prison overflow. Florida is feeling the crunch as well, with approximately 102,000 people in prison and a budget of \$2.4 billion to manage them. Arizona has a total population of close to 6.5 million but a prison population of 40,000 inmates — an estimated 10 times greater than it was 30 years ago. Indiana’s prison count has grown by a stunning 41 percent between 2000 and 2009, with 55 percent of prison admissions in 2008 being property or drug offenders. The Oklahoma Department of Corrections has sought emergency funds from the state and estimates that it needs \$592 million to operate. The situation is so dire in California that a federal court has declared the overcrowded prison system “criminogenic” and ruled that it deprives prisoners of constitutionally adequate medical and mental health care.ⁱⁱⁱ Of course, prisons bursting at the seams combined with increasingly limited budgets have led many governments to scramble to figure out what can be done about their prison systems.

Ohioans are having many of the same discussions taking place all

over the nation. Marc A. Levin’s report, “Buckeye Inst. for Public Policy Solutions, Smart on Crime: With Prison Costs on the Rise, Ohio Needs Better Policies for Protecting the Public,” gives numerous statistics explaining the situation in Ohio.^{iv} Ohio currently faces an estimated budget shortfall of \$8 billion. As in many other states, this budget crisis has come to Ohio at the same time its prisons are more than full. Ohio’s prison population is 33 percent over capacity and estimates say that if nothing changes, Ohio will need 5,330 more beds by 2018. It currently costs an average of \$69.19 per day to incarcerate one inmate in Ohio, amounting to \$25,254 per inmate per year. With those rates, it is no surprise that Ohio now spends billions on prisons — \$1.29 billion in 2008. The 7.3 percent of its total budget that Ohio spends on corrections makes prisons one of the largest categories in the entire Ohio budget. The extremely strained prison system and consequently overburdened state budget have led Ohio lawmakers to come to bipartisan support for Senate Bill 10 and its mirror House Bill 86, a massive criminal justice reform measure that shortens sentences for inmates who complete certain programs in prison and diverts nonviolent drug offenders from prison to treatment. As with most reform legislation, even with bipartisan support, it is unlikely that reforms in Ohio will completely solve the prison overcrowding and expense problem. Though the reform has bipartisan support, as well as support in all branches of government, there are still critics. For instance, the Ohio Prosecuting Attorneys Association has expressed serious concerns about several aspects of the bill. Therefore, as Ohio legislators

— as well as legislatures in other states — think through the myriad of possible options in addressing the current prison situation, now is the perfect time to think about systematic changes to sentencing law and policy that go beyond simply responding to today’s budget predicament. In thinking about why such a long-term approach is imperative, it helps to consider the disastrous results caused by the increasingly punitive sentencing of drug offenses — a group of offenses for which long-term consequences, budgetary or otherwise, were not the main concerns when the sentencing laws were enacted and increased over time.

The impact of drug sentencing: A focus on Ohio

A great deal of the growth in the U.S. prison population comes from the significant increase in the incarceration of drug offenders. As previously stated, the drug offender population in America increased from 40,000 in 1980 to 450,000 by 2005. This drastic increase has been seen in Ohio as well, with drug offenders now accounting for 15 percent of prison admissions compared to only 10 percent of prison commitments in 1981. In 2008, offenders in Ohio were convicted of fourth-degree and fifth-degree felony offenses — the lowest level of felony offenses — at a rate of 56 percent of total prison admissions. Of the 2008 Ohio prison commitments, 35 percent were fourth- and fifth-degree drug offenders — the single largest category of low-level offenders.

The effect on the Ohio prison system from this high rate of drug offender imprisonment has been profound. These fourth- and fifth-degree property and drug offenders



used 4,756 beds, costing Ohio an estimated \$121 million in 2008. And, despite the state’s budget concerns, the nonviolent prison population continues to be a significant portion of the drug offender population. As of November 2010, there were 8,514 drug offenders in Ohio prisons, with 3,759 being convicted of simple possession and 3,948 convicted of the more serious crime of trafficking. As this data indicates, drug offenses — and low level drug offenses, at that — are big contributors to Ohio’s overcrowded prison conditions. This state of affairs is due to the number of drug offenders convicted in the Ohio system and the length of sentences Ohio mandatorily imposes upon drug offenders. Similar to the federal system, Ohio statutes impose mandatory minimum sentences on many drug offenses. Also similar to the federal system, as the number of people serving drug offenses increases over time in Ohio, a lot of pressure is put on Ohio’s prison

system. A closer look at Ohio drug-possession sentencing laws compared to federal drug sentencing reveals that disregarding the consequences of sentencing laws can lead to an overburdened prison system that is not sustainable over time.

Two controlled substances have been the subject of sentencing controversy in recent drug reform conversations — marijuana and crack cocaine. The Ohio sentencing laws for each category of controlled substance exemplify how harsh sentencing laws can strain a prison system. Marijuana possession is a helpful offense to study due to the growing number of people who favor decriminalizing marijuana use and possession, suggesting that enough of the public may be agreeable to an overall reduction in marijuana possession sentences. Upon initial glance, Ohio’s marijuana sentencing laws may not appear overly stringent.

When compared to the federal marijuana laws, however, Ohio marijuana sentencing is relatively strict. In Ohio, the possession of less than 100 grams of marijuana is a citable offense only, carrying a fine of \$150. An offender does not face the possibility of jail time until possession reaches 200 grams or more. A mandatory minimum sentence is not triggered until an offender possesses 20,000 grams (or 20 kilograms), and then the minimum is eight years in prison. By contrast, under federal law a mandatory minimum of five years applies to the possession of 100 kilograms of marijuana. The

an “overwhelming majority” of crack offenders were black — 91.4 percent in 1992 and 84.7 percent in 2000. As in the federal system, blacks have been disproportionately incarcerated in Ohio. The Ohio Office of Criminal Justice Services reported that at midyear 2005, Ohio incarcerated blacks at an alarming rate of 2,196 per 100,000 U.S. residents and incarcerated whites at a rate of 344 per 100,000 U.S. residents. Also similar to the federal system, Ohio law treats crack cocaine offenders much more harshly than it treats powder cocaine offenders.

an increased mandatory minimum sentence of two to eight years imprisonment; possession of 27 to 100 grams requires imposition of a prison term of three to 11 years; and possession of more than 100 grams prompts a mandatory minimum sentence of 11 years of imprisonment. Therefore, despite the sentencing reform brought by House Bill 86, Ohio remains relatively harsh when it comes to cocaine sentencing.

Federal laws also impose mandatory sentencing minimums on cocaine offenders. Though a disparity in the sentencing of crack and powder cocaine offenders still remains in the federal system, federal law has recently changed from the 100:1 sentencing ratio that has existed since the 1980s to the current 18:1 ratio. The Fair Sentencing Act of 2010 raised the minimum amount of crack required to trigger a five-year mandatory minimum sentence from five to 28 grams and the amount of crack required to generate a 10-year mandatory minimum from 50 to 280 grams. Powder cocaine still requires 500 grams for a mandatory minimum sentence of five years imprisonment and 5000 grams (or 5 kg) for a mandatory minimum sentence of 10 years. With drug sentences that can be more severe than in the federal system, Ohio faces the same problem as the federal system, but to a greater degree — a substantial percentage of prisoners are incarcerated for a lengthy amount of time for drug offenses.

Ohio lawmakers have made some strides in addressing the effect of drug sentencing generally on the prison population, but those efforts do not completely rethink harsh drug sentences. As of September 2010, there are a recorded 79 drug courts in Ohio. These courts are designed to provide an alternative

“Prison populations and budget deficits in Ohio and other states have reached such a height that something has got to give.”

federal system imposes a mandatory minimum of 10 years imprisonment to the possession of 1,000 kilograms of marijuana. This comparison shows that Ohio’s mandatory minimum sentencing for marijuana is more severe than federal sentencing.

Crack cocaine sentencing is another controversial area where Ohio’s sentencing laws are harsher than the federal laws in some aspects. Debates about the sentencing of crack possessors have been contentious for some time because of the disparity between the sentences applicable to crack offenders and those applicable to powder cocaine offenders in most jurisdictions, though crack and powder cocaine are simply different forms of the same drug. This disparate treatment is usually discussed along racial lines and seen as a main contributor to racial disparities in imprisonment rates. For example, in its 2002 Report to Congress, the U.S. Sentencing Commission found that

Prior to the enactment of House Bill 86, which became effective on September 30, 2011, Ohio law required courts to impose a third degree felony prison term of one to five years for 25 to 100 grams of powder cocaine or five to 10 grams of crack cocaine. A mandatory prison term for second-degree felonies of two to eight years applied to possession of 100 to 500 grams of powder cocaine or 10 to 25 grams of crack cocaine. The harshest sentencing mandate, a first-degree sentencing range of three to 10 years, applied to the possession of 500 to 1000 grams of powder cocaine and 25 to 100 grams of crack cocaine under Ohio law. House Bill 86 has changed cocaine sentencing by equalizing crack and powder cocaine penalties; however, the Bill is not a complete overhaul of the mandatory minimum sentencing approach and does not lower crack and powder cocaine sentencing overall. Instead, possession of 20 to 27 grams of crack and/or powder cocaine triggers

to incarceration for nonviolent, low-level drug offenders. Ohio drug courts operate as specialized units within existing courts, such as the Court of Common Pleas, Municipal Court, Juvenile Court, and Family Court. While these drug courts offer a helpful alternative to incarceration and may reduce recidivism, current drug courts are not equipped and do not have the capacity to handle all drug possession cases, so only a relatively small percentage of drug cases get diverted to drug courts. Furthermore, the previously discussed numbers of low-level drug offenders admitted to Ohio prisons demonstrate that drug courts alone do not solve the prison overcrowding problem.

The Ohio legislature has to refocus on the length of prison sentences imposed on drug offenders if it is actually to relieve the prison system's burden. As House Bill 86 demonstrates, it is not that the Ohio legislature has not at all considered changing drug sentencing, but those sentencing changes have not been discussed in a manner that would actually alleviate the prison overcrowding situation. The sentencing reforms in Ohio expose the legislature's discomfort in rethinking drug sentencing in a way that would lower the prison population on the front-end by shortening drug sentences overall. Much of this hesitation is due to the political pressure legislatures feel not to appear soft on crime. But, as costs continue to rise and space in prisons becomes scarce, this may be the time when governments across the nation find the courage to take prison population projections and other consequences into account and reduce the lengths of sentences for drug crimes and other overly punished offenses.

Going forward by thinking ahead

Prison populations and budget deficits in Ohio and other states have reached such a height that something has got to give. The upward trend of drug offender admissions to prison, coupled with the possibility of long periods of incarceration produced by mandatory minimum sentencing, teaches an important lesson, though. Sentencing laws based on the usual, political, "tough on crime" approach — an approach not backed by studies on the effect of such sentences on deterrence, recidivism, or prison population — get us to where Ohio and many other states are today. As the effect of harsh drug sentencing reveals, considering the potential consequences of sentencing laws must become a part of the discourse on setting sentencing lengths for any offenses. Hopefully, as Ohio lawmakers, lawmakers in other states, and lawmakers in the federal government continue to go forward in thinking about and experiencing sentencing reforms, drug sentencing will serve as an example that back-end consequences should always be in the forefront of sentencing law and policy decisions.

Jelani Jefferson Exum, associate professor of law, teaches criminal law, criminal procedure, comparative criminal procedure, federal sentencing, and race and American law. She 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. This excerpt is adapted from an essay of the same name published in the summer 2011 issue of *The University of Toledo Law Review*.

ⁱ See Alan Johnson, Treatment, Not Prison, Now Is Looking Good, Columbus Dispatch, (Feb. 3, 2011), available at dispatch.com/live/content/local_news/stories/2011/02/03/copy/treatment-not-prison-now-is-looking-good.html

ⁱⁱ See Bureau of Justice Statistics, U.S. Dep't of Justice, State and Federal Prison Facility Characteristics, available at bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=133

ⁱⁱⁱ *Coleman v. Schwarzenegger*, 2009 WL 2430820, at *3 (E.D. Cal. Aug. 4, 2009), affirmed by *Brown v. Plata*, 131 S.Ct. 1910 (May 23, 2011).

^{iv} Available at [buckeyeinstitute.org/uploads/files/buckeye-smart-on-crime\(1\).pdf](http://buckeyeinstitute.org/uploads/files/buckeye-smart-on-crime(1).pdf)

Faculty News

Toledo Law welcomes two new faculty members



Elizabeth Y. McCuskey

Assistant Professor of Law

EDUCATION

J.D., University of Pennsylvania Law School
B.A., University of Pennsylvania

Elizabeth Y. McCuskey joins the Toledo Law faculty as assistant professor of law to teach health law and jurisdiction. Her research is at the intersection of health law, civil justice, and jurisprudence. A current project explores the ideal role of preemption doctrines in health care jurisprudence and legislation.

Two of Professor McCuskey's recent works on federal question jurisdiction were published in 2012. "Structuring Jurisdictional Rules and Standards," with co-author Scott Dodson, appeared in the *Vanderbilt Law Review En Banc*, and "Clarity & Clarification: Grable Federal Questions in the Eyes of Their Beholders" was published in the *Nebraska Law Review*.

Prior to joining the Toledo Law faculty in fall 2012, Professor McCuskey was a faculty fellow at the Thomas Jefferson School of Law in San Diego. Before that, she was an associate at Drinker Biddle & Reath LLP, where she litigated antitrust and appellate cases for health care industry clients and maintained an active pro bono practice of First Amendment and federal habeas cases.



Evan C. Zoldan

Assistant Professor of Law

EDUCATION

J.D., Georgetown University Law Center
B.A., New York University

Evan C. Zoldan brings to Toledo Law his experiences as a teacher, scholar, and attorney in both the public and private sectors. His research interests include the regulation of government benefits, special legislation, and constitutional law.

The author of law review articles in such publications as the *Connecticut Law Review* and *Public Contract Law Journal*, he most recently published his article "The Permanent Seat of Government: An Unintended Consequence of Heightened Scrutiny Under the Contract Clause" in the *New York University Journal of Legislation and Public Policy*.

In addition, he has served as law clerk to Judge Kathryn A. Oberly of the District of Columbia Court of Appeals and Judge Nancy B. Firestone of the U.S. Court of Federal Claims. Professor Zoldan has worked as a trial attorney at the U.S. Department of Justice and as an associate at Kirkland & Ellis LLP. His prior teaching experience includes stints as an adjunct professor at The George Washington University Law School and at American University, Washington College of Law.



Kara Bruce, assistant professor of law, placed “Rehabilitating Bankruptcy Reform” in the *Nevada Law Journal*. She presented a work-in-progress at the

Ohio Legal Scholarship Workshop and spoke on bankruptcy reform matters at the Law and Society Association Annual Meeting, the 2011 Midwest Corporate Law Scholars Conference, and at the Northern Kentucky University Salmon P. Chase College of Law. She was invited to present at the Toledo Women’s Bar Association annual meeting, where she spoke on foreclosure issues. She was also awarded a fellowship by the Editorial Advisory Board of the *American Bankruptcy Law Journal* which allowed her to attend the National Conference of Bankruptcy Judges.



Shelley Cavalieri, assistant professor of law, joined the faculty in July 2011 after two years as a visiting assistant professor at West Virginia University College of Law. This year,

she published “Between Victim and Agent: A Third-Way Feminist Account of Trafficking for Sex Work” in the *Indiana Law Journal* and “The Eyes that Blind Us: The Overlooked Phenomenon of Trafficking into the Agricultural Sector” in the *Northern Illinois University Law Review*. During her first year at the College of Law, she taught two sections of Property I and II. She is currently working on an article in which she is exploring theoretical justifications



Please join us in congratulating Professor James E. Tierney on his retirement. A faculty member since 1988, Professor Tierney has touched many lives while at Toledo Law. We invite you to share a personal message or memory with Professor Tierney and our Toledo Law community online at law.utoledo.edu.

for land reform efforts, and she has presented this article in various stages at the LatCrit Annual Conference, the Central States Law Schools Association Conference, the Ohio Legal Scholars Workshop, Wayne State University Law School, and the Law and Society Association’s Annual Meeting.



Benjamin G. Davis, associate professor of law, published “State Criminal Prosecution of a Former President: Accountability through Complementarity Under American

Federalism” in the *Florida Journal of International Law*, forthcoming 2012, and “Obama and Libya” in the *Florida A&M University Law Review*, forthcoming 2012. His piece, “What War Does To Law,” was included in “The Military Industrial Complex at 50” (2011), edited by David Swanson. He presented “The Promise of Dual Sovereigns: Structural Complementarity in Federalism” at the Midwestern People of Color Legal Scholarship Conference at Marquette Law School and “Some thoughts

about Sharia law in the United States through the lenses of Freedom of Contract, Arbitration and International Law” during Islamic Awareness Week at The University of Toledo. He traveled to Canada to participate in a panel on “Transcending Borders” at the 21st Annual Conference of the Black Law Students Association of Canada at the University of Windsor Law School. Davis participated in a panel on “Sexual Violence against Children By Clergy, Is the Vatican Legally Accountable?” at Harvard Law School and moderated the panel “Child Sexual Violence by Clergy: Is the Vatican Accountable under International Law?” at The University of Toledo College of Law. Davis also participated in a panel discussion at American University Washington College of Law that coincided with the release of the World Organization for Human Rights USA report, “Indefensible: A Reference for Prosecuting Torture and Other Felonies Committed by US Officials Following September 11th,” which he contributed to along with Toledo Law students under his supervision. At the request of Vincent Bugliosi, he and Toledo Law students under his supervision prepared the “Research Report on Criminal Prosecution in California Courts of Former President

George Bush for Conspiracy to Commit Murder and Murder.” He presented “# Occupy Arbitration: Power and Values in Supreme Court Judicial Review of Arbitration Clauses and Awards” at Fordham Law School, University of Missouri Law School, and the 2011 AALS Works-in-Progress Conference at Creighton University School of Law via Skype. He also presented at the annual meeting of the American Bar Association’s House of Delegates. Davis was elected council member on the ABA Section on Dispute Resolution and was selected to be the section’s liaison to the ABA Council for Racial and Ethnic Diversity in the Educational Pipeline.



Jelani Jefferson Exum, associate professor of law, joined the faculty from the University of Kansas in July 2011. During her first year at Toledo Law she taught Criminal Procedure:

Investigations, Race and American Law, Criminal Law, and Sentencing. She served as president of the Central States Law Schools Association (CSLSA) and organized the CSLSA Annual Scholarship Conference, which was held at the College of Law in October 2011. Professor Exum published “Sentencing, Drugs, and Prisons: A Lesson From Ohio” in *The University of Toledo Law Review* and “Reassessing Concurrent Tribal-State-Federal Criminal Jurisdiction in Kansas” in the *Kansas Law Review*. She also served as the guest editor for the *Federal Sentencing Reporter’s* special issue on child pornography sentencing. She participated in the Southeast/Southwest People of Color Conference at Cumberland School of Law and a conference on “Race and Criminal Justice in the West” at

Gonzaga University School of Law. She also participated in numerous student events, including giving the keynote address for the UT Black Law Students’ Association (BLSA) Black History Luncheon and serving as a panelist in the student-organized vigil for Trayvon Martin. She was awarded Professor of the Year by the UT BLSA.



Maara Fink, clinical professor of law, continues to train law students to serve as mediators, enabling them to provide mediation services to hundreds of community

members through the College of Law Dispute Resolution Clinic. She is also responsible for coordinating the externship placements of nearly 100 students annually through the College of Law Public Service Externship Clinic. She presented to several groups and organizations on various topics related to the field of alternative dispute resolution, including a presentation titled “Lawyer-Free Zones: Mediating with Pro Se Parties” at the 48th Annual Conference of the Association of Family and Conciliation Courts. She is the immediate past-president and current board member of the Ohio Mediation Association. She is the chair of the Planned Parenthood of Northwest Ohio Leadership Council and serves on several other boards and committees including the Awards Committee of the Toledo Women’s Bar Association and the Board of Governors of The University of Toledo Law Alumni Affiliate.



Llewellyn J. Gibbons, associate professor of law, was elected a Fellow of the American Bar Foundation, an honorary organization of lawyers, judges,

and legal scholars whose public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. In fall 2011, he was selected to be a tutor for the Intellectual Property Licensing distance-learning course offered by the World Intellectual Property Organization (WIPO) academy. He published “Love’s Labor’s Lost: Marry for Love, Copyright Work Made-for-Hire, and Alienate at your Leisure” in the *Kentucky Law Journal*. He traveled to China to present “Intellectual Property Rights System Improvement and Development” at the 2012 Nanhu Conference. He also presented “Tolerate Piracy or Provide Direct Foreign Aid” at Howard University, “Love’s Labor’s Lost: Marry for Love, Copyright Work Made-for-Hire, and Alienate at your Leisure” at Drake University School of Law, “Excellence in the Library Begins With . . . Copyright Law” at the annual meeting of the Ohio Regional Association of Law Libraries, and “What’s Love Got to Do With Intellectual Property: Marriage is Really Just a Partnership by Another Name” on two occasions, at the Central States Law School Association Conference and at the University of New Hampshire.



Gregory M. Gilchrist, assistant professor of law, published “Plea Bargains, Convictions and Legitimacy” in the *American Criminal Law Review*. He presented his

most recent article, “The Expressive Cost of Corporate Immunity,” at the Ohio Legal Scholarship Workshop, to the faculties of Cleveland-Marshall College of Law and The University of Toledo College of Law, and at the Law and Society Association meeting this past summer. The article will be published in the *Hastings Law Journal*, forthcoming 2012.



Rick Goheen, associate professor of law and assistant dean for the LaValley Law Library, continued his work as Treasurer of the Ohio Regional Association of Law

Libraries (ORALL) and will serve as local arrangements chair for ORALL’s annual meeting in Toledo in fall 2013. In addition to the Advanced Legal Research course in spring 2012, he taught a class on Legal Information Resources and Law Office Management for the UT Paralegal Program. In spring 2012, Goheen was promoted to associate professor and assistant dean for the law library.



Bruce M. Kennedy, associate professor of law, spoke on “Engineering Cultural Property Rights from the Common Law of Property” at the Fourth

Annual Conference on Innovation and Communication Law held at the University of Turku, Finland.



Kenneth Kilbert, associate dean of academic affairs, published “Neither Joint Nor Several: Orphan Shares and Private CERCLA Actions” in *Environmental Law*, the flagship

journal of Lewis & Clark Law School. He also co-authored a white paper, “Legal Tools for Reducing Harmful Algal Blooms in Lake Erie,” with Tiffany Tisler ’11 and M. Zach Hohl ’12, as part of an interdisciplinary research and public outreach project partially funded by a grant from the National Sea Grant Law Center. The project also included public workshops in Toledo and Columbus where experts from science, government, and law addressed ways to combat the formation of harmful algal blooms in Lake Erie. He was awarded tenure and promoted to professor, effective fall 2012, and in summer 2012 he began serving as associate dean of academic affairs. Lastly, on Halloween 2011 he eschewed his traditional International Shoe costume and instead dressed as an Asian Carp to promote the 11th Annual Great Lakes Water Conference.



Jessica Knouse, associate professor of law, published “Civil Marriage: Threat to Democracy” in *The Michigan Journal of Gender & Law* and placed “Reconciling

Liberty and Equality in the Debate over Preimplantation Genetic Diagnosis” in the *Utah Law Review*. She gave presentations

at the Michigan State University College of Law’s Midwest Family Law Consortium, the Cleveland-Marshall College of Law’s Ohio Legal Scholarship Workshop, a Saint Louis University School of Law Faculty Workshop, the Loyola University Chicago School of Law’s Constitutional Law Colloquium, and the Central States Law Schools Association Conference. She lectured at a Toledo Women’s Bar Association CLE. Within the College of Law, she presented in the Faculty Roundtable Series and participated in the annual Supreme Court Preview panel discussion.



Susan R. Martyn, the Stoepler Professor of Law and Values, was named Distinguished University Professor, UT’s highest academic honor,

in April 2012. She presented “Legal Implications of Using Brain Dead Patients as Research Subjects in Xenotransplantation” at a conference that featured Arthur Caplan, professor of bioethics at the University of Pennsylvania, on the UT Health Science Campus. She wrote an article about the subject 25 years ago and this is the first national symposium since that article to examine the subject of using brain dead patients as research subjects in the context of pre-clinical trials of xenotransplantation. She was a panelist on the topic of “Taking Your Scholarship to the Next Level: Books, Consulting, Commentary” at the Central States Law School Association Conference. She spoke on the topic of “Distributive Justice in Bioethical Decision-making” at the Sixth Annual Dr. Sharon Erel Lecture, Applying Everyday Ethics to End-of-Life Decision Making, sponsored

by Hospice of Northwest Ohio. She traveled to London to present a CLE titled “Twenty Years of Legal Ethics: Back to the Future?” to American lawyers practicing in Europe. An amicus brief co-authored by Professor Martyn and Lawrence J. Fox, partner at Drinker Biddle & Reath LLP in Philadelphia, was cited and relied on by the United States Supreme Court in its January 2012 decision in *Maples v. Thomas*. The brief, filed on behalf of 90 legal ethics professors and practitioners and the Ethics Bureau at Yale, also received attention on SCOTUSblog.



Kelly Moore, associate professor of law, completed his first year on the University’s Faculty Senate, on which he served as chair of the elections committee. He also served on the

University Steering Committee and as the faculty adviser to the University’s chapter of Phi Gamma Delta, an undergraduate fraternity. In addition to his University involvement, he chaired a sub-committee at the College of Law to begin the process of exploring possible initiatives to bolster career service efforts. He received the Outstanding Professor Award from the graduating class of 2012.



Nicole B. Porter, professor of law and associate dean for academic affairs during the 2011-2012 school year, published “Embracing Caregiving and Respecting

Choice: An Essay on the Debate over Changing Gender Norms”

in the *Southwestern Law Review* and placed “Martinizing Title I of the Americans with Disabilities Act” in the *Georgia Law Review*, forthcoming 2013. She presented “Women, Unions, and Negotiation” at UNLV Law School, “Disability and Gender: The Common Bond and Diverse Experiences of Individuals with Disabilities and Women with Children in the Workplace” at a symposium at Berkeley Law School, “Debunking the Market Myth in Pay Discrimination Cases” at the AALS Workshop on Women Rethinking Equality, and “Martinizing Title I of the Americans with Disabilities Act” at the Fifth Annual Colloquium in Labor and Employment Law and the Central States Law Schools Association (CSLSA) Conference. She helped to organize the CSLSA Conference, which was sponsored by and held at Toledo Law, and included 40 professors from more than a dozen law schools. In recognition of her mentoring, support, and service to fellow faculty, the UT Faculty Club Board of Directors named Porter a 2011-2012 Faculty Club Award Recipient. For the 2012-2013 school year, she has joined the University of Denver Sturm College of Law as a visiting professor.



Marilyn F. Preston, legal writing professor, gave a presentation on critiquing student writing at the Law and Leadership Institute Summer Leadership Conference. She

continues to serve as the Toledo site director for the Law and Leadership Institute, a pipeline program supported by the Ohio Supreme Court and other organizations to promote diversity in the legal profession.



Garrick B. Pursley, assistant professor of law, published “Defeasible Federalism,” which was written by invitation, in the *Alabama Law Review* in July 2012. His

article “Dormancy” was designated as “download of the week” on Georgetown Law Professor Lawrence Solum’s influential Legal Theory Blog, and was published in the centennial volume of the *Georgetown Law Journal* in February 2012. His current works-in-progress include “Stakes,” a new article with Professor Hannah Wiseman (Florida State) expanding on the thesis of their 2011 article “Local Energy; Legal Authorship,” co-authored with University of Denver Professor Ian Farrell which was well-received and is contributing to the debate over the proper role that authors’ intent should play in legal interpretation. Pursley is also working on “Unblocking Cooperative Energy Governance,” an essay addressing constitutional restrictions on collaborative intergovernmental regulatory programs and “Thinning Out Structural Theory,” a constitutional theory piece building on the insights of “Dormancy.” In 2011, he presented “Defeasible Federalism” at The University of Toledo College of Law faculty workshop and presented “Dormancy” at faculty workshops at the Case Western Reserve University School of Law, Florida State University College of Law, and the University of Connecticut School of Law. In 2012, he presented “Defeasible Federalism” at Vanderbilt University School of Law and “Unblocking Cooperative Energy Governance” at a conference on federalism and energy law held at Northwestern University Law School, where he participated in the panel “Hydro-Fracturing, State Regulation

and the Federal Role, Federalism and Energy in the United States.” Pursley joined The Florida State University College of Law as assistant professor in fall 2012.



Geoffrey C. Rapp, the Harold A. Anderson Professor of Law and Values, published “Mutiny by the Bounties? The Attempt to Reform Wall Street by the New Whistleblower

Provisions of the Dodd-Frank Act” in the *BYU Law Review*, a follow-up article to his 2007 *Boston University Law Review* article on securities fraud. His 2007 article was cited four times by the Securities and Exchange Commission in its final rules on the Dodd-Frank whistleblower bounty provision, which took effect in August 2011. The same 2007 article was also cited in a decision by the U.S. Court of Appeals for the Second Circuit. In addition, he published “Regulating On-Line Peer to Peer Lending in the Aftermath of Dodd-Frank: In Search of an Evolving Regulatory Regime for an Evolving Industry,” with co-author Eric Chaffee from the University of Dayton School of Law, in the *Washington and Lee Law Review*. That paper was selected after a national call for papers for presentation at the 2012 AALS Annual Meeting, Section on Financial Institutions and Consumer Financial Protection. He also presented “Harry Potter and the Law” at The University of Toledo Carlson Library as part of the University’s Harry Potter’s World exhibit, “States of Pay: Extending the Bounty Model from the False Claims Act” at the South Texas College of Law, “The Brain of the College Athlete” at DePaul University School of Law, “Regulating On-line Peer-to-

Peer Lending” at Washington and Lee University School of Law, “Defense Against Outrage and the Perils of Parasitic Torts” at the University of Dayton School of Law, “Mutiny by the Bounties?” at the 2011 Central States Law Schools Association Conference, and moderated a panel, “Dodd-Frank: One Year Later,” at the 2011 Ohio Securities Conference (an event co-sponsored by Toledo Law and the Ohio Division of Securities). He was quoted in such publications as USA Today, MSNBC.com, CBSsports.com, The Toronto Star, The Washington Post, Reuters, and Fox Business, and was interviewed on San Francisco’s KCBS RADIO 106.9FM and by Toledo WTVG-TV 13 ABC for the Roundtable with Jeff Smith. He was also quoted in a variety of financial industry trade publications, including Fair Warning: News of Safety, Health, and Corporate Conduct, CFO World, and CFO Magazine.



Robert S. Salem, clinical professor of law, presented “Storytelling in Clinical Teaching” at the Midwest Clinical Legal Education Conference held at the University

of Wisconsin School of Law, “The Emergence of Child-Friendly Case Law in Peer Harassment Cases” at the Children’s Rights Conference held at Drake Law School, and “Rhetorical and Language Trends in Peer Harassment Cases” at the Lavender Law Conference. He also gave a talk on First Amendment rights and the Occupy Movement at a program sponsored by the ACLU of Ohio and presented at a CLE seminar on peer harassment in Toledo. He was also invited by LexisNexis Inc. to address their law school representatives on

the research needs of clinical law professors at their annual meeting. Salem’s 2009 article, “Victims Without Legal Remedies: Why Kids Need Schools to Develop Comprehensive Anti-Bullying Policies,” co-authored with Julie Sacks and published in the *Albany Law Review*, was cited in a 2011 U. S. Department of Education study on bullying policies and legislation and in an American Bar Association Resolution that urges lawmakers to enact comprehensive and meaningful anti-bullying laws. Salem was recently elected general counsel for the ACLU of Ohio. He was also elected to serve as president of the Toledo Legal Aid Society Public Defender Board. He continues to serve on the Toledo Bar Association Board of Trustees, the Board of Trustees of the National Gay and Lesbian Task Force, and Planned Parenthood of Northwest Ohio’s Advisory Council. Through the Legal Clinic’s Elder Law Project, he and his students have helped many senior citizens by travelling to assisted care facilities and nursing homes throughout Lucas County and providing free legal services for Advance Health Care Directives. He and his students also continue to participate in the Northwest Ohio Prison Reentry Program by helping to staff legal clinics in the Toledo Correctional Institute.



Joseph E. Slater, the Eugene N. Balk Professor of Law and Values, published “Public Sector Labor in the Age of Obama” in the *Indiana Law Review* and “Employee Voice: Lessons from the Public Sector” in the *Marquette Law Review*. He spoke at two symposia that will lead to two more articles published this year: “Public Sector Bargaining Impasse Dispute Procedures as ADR: From 1919 to the Present” in the *Ohio State Journal on Dispute Resolution* and “The Rise and Fall of SB-5 in Political and Historical Context” in *The University of Toledo Law Review*. He continues to work on his second casebook, “Modern Labor Law in the Private and Public Sectors: Cases and Materials,” with co-authors, Seth Harris, David Gregory, and Anne Lofaso, forthcoming 2012 (LexisNexis). He also made the following presentations: “A Review of the Literature on Employee Pay” at the NYU Annual Conference on Labor; “A Review of New Laws Affecting Public Sector Bargaining” at the National Academy of Arbitrators Annual Meeting; “Legislative Attacks On Teachers’ Collective Bargaining Rights” at the American Federation of Teachers’ Lawyers Conference; “The Assault on Collective Bargaining Rights in the Public Sector,” the Rush McKnight Labor Law Lecture, at Case Western University Law School; “Attacks on Public Sector Bargaining as Attacks on Employee Voice: A (Partial) Defense of the Wagner Act Model” at Osgoode Hall Law School;

“Public Sector Labor Law in the U.S., and its Discontents” at the University of Western Ontario; “In Defense of Public Sector Collective Bargaining” at the Federalist Society 14th Annual Faculty Conference; “A Brief History of Public Sector Labor Law” at the AALS Section on Labor Relations and Employment Law Annual Meeting; “State Legislators Target Public Sector Labor Rights” at the ABA Section of Labor and Employment Law, State and Local Government Bargaining and Employment Law Committee Midwinter Meeting; “A Survey of Recent State Law Changes in Public Sector Labor Law” at the ABA Section of Labor and Employment Annual Conference; “Ohio Senate Bill 5: What it Will Mean for Public Employees and Employers in Ohio if it Survives the Upcoming Referendum Vote” at Cleveland-Marshall College of Law; “Ohio SB-5: the Law and the Politics” at the University of Richmond College of Law; and “State Legislators Target Public Sector Rights” at the ABA Annual Meeting. He also participated in an on-line debate on the topic, “Are Dues Check-Off and Agency Shop in the Public Interest?” (Available at publicsectorinc.com/online_debates/2012/04/are-dues-check-off-and-agency-shop-in-the-public-interest.html). He coached the Labor and Employment Law Moot Court team, and accompanied the team to its competition in Manhattan. And, after many years of performing at the Environmental Law Society’s Chili Goof-Off, he finally got a rhythm section — including current student Dan Dersham on drums — to play with him, alumnus Scott Williams, and Dean Lee Pizzimenti.

2011), Volume Four in his six-volume Modular Casebook Series. He is currently editing Volume Five, which covers the Reconstruction Amendments. He also published “Originalism as Popular Constitutionalism?: Theoretical Possibilities and Practical Differences” in the *Notre Dame Law Review*, “The Road Not Taken: Catholic Legal Education at the Middle of the Twentieth Century” in the *American Journal of Legal History*, with co-author John M. Breen, and a symposium essay, “The Most Faithful Originalist?: Justice Thomas, Justice Scalia, and the Future of Originalism,” in the *University of Detroit Mercy Law Review*. Additionally, he placed his most recent law review article, “Originalism and the Aristotelian Tradition: Virtue’s Home in Originalism,” with the *Fordham Law Review*. He presented papers at numerous conferences and workshops, including “Originalism and the Aristotelian Tradition: A New Normative Foundation for Originalism in Human Flourishing” at the Midwest Political Science Association Annual Conference, the Law and Society Annual Conference, and the Central States Law Schools Association Conference, “Originalism and the Aristotelian Tradition: Virtue’s Home



Lee J. Strang, professor of law, published “Cases and Materials on Federal Constitutional Law: Federalism Limits on State and Federal Power” (LexisNexis,

2011), Volume Four in his six-volume Modular Casebook Series. He is currently editing Volume Five, which covers the Reconstruction Amendments. He also published “Originalism as Popular Constitutionalism?: Theoretical Possibilities and Practical Differences” in the *Notre Dame Law Review*, “The Road Not Taken: Catholic Legal Education at the Middle of the Twentieth Century” in the *American Journal of Legal History*, with co-author John M. Breen, and a symposium essay, “The Most Faithful Originalist?: Justice Thomas, Justice Scalia, and the Future of Originalism,” in the *University of Detroit Mercy Law Review*. Additionally, he placed his most recent law review article, “Originalism and the Aristotelian Tradition: Virtue’s Home in Originalism,” with the *Fordham Law Review*. He presented papers at numerous conferences and workshops, including “Originalism and the Aristotelian Tradition: A New Normative Foundation for Originalism in Human Flourishing” at the Midwest Political Science Association Annual Conference, the Law and Society Annual Conference, and the Central States Law Schools Association Conference, “Originalism and the Aristotelian Tradition: Virtue’s Home

in Originalism” at the Ohio Legal Scholarship Workshop and the Loyola University Chicago School of Law’s Constitutional Law Colloquium, and “The Forgotten Jurisprudential Debate: Legal Realism and Catholic Legal Thought’s Response” at Loyola New Orleans University School of Law. He also delivered the keynote address “Protecting Individual Liberty Through Constitutional Interpretation: Originalism, Natural Rights, and Human Flourishing” at the McMaster Symposium, at Defiance College. He frequently debated and spoke on constitutional interpretation at law schools across the country including St. Louis University School of Law, South Texas College of Law, the University of Louisville Brandeis School of Law, the University of Detroit Mercy School of Law, the University of Dayton School of Law, Capital University School of Law, Northwestern University School of Law, the University of Tennessee School of Law, Duquesne University School of Law, Thomas M. Cooley School of Law, and Creighton University School of Law. As faculty advisor to the Federalist Society, he assisted organizing speakers and debates including a panel discussion, “The Upcoming Supreme Court Term,” with College of Law faculty. He frequently spoke to civic, religious, and political organizations, and regularly commented in the media. He also testified before the Ohio Senate Health, Human Services and Aging Committee, on House Bill 125, The “Heartbeat Bill.”



Rebecca E. Zietlow, the Charles W. Fornoff Professor of Law and Values, received The University of Toledo’s 2012 Outstanding Faculty

Research Award. She published “James Ashley’s Thirteenth Amendment” in the *Columbia Law Review*, forthcoming 2012, “The Ideological Origins of the Thirteenth Amendment” in the *Houston Law Review*, forthcoming 2012, “Popular Originalism? The Tea Party and Constitutional Theory” in the *Florida Law Review*, “The Political Thirteenth Amendment” in the *Maryland Law Review*, and “Democratic Constitutionalism and the Affordable Care Act” in the *Ohio State Law Journal*. Her presentations included “Democratic Constitutionalism and the Affordable Care Act” and “Popular Originalism? The Tea Party and Constitutional Theory” at the Midwest Political Science Association, “Theorizing Economic Rights for Women” at Indiana University Maurer School of Law, “Democratic Constitutionalism and the Affordable Care Act” at Roger Williams University School of Law, “James Ashley’s Thirteenth Amendment” at the Columbia Law Review Symposium on the Thirteenth Amendment, “Originalism and Popular Constitutionalism: What the Tea Party Can Teach Us About Constitutional Theory” at the Loyola University Chicago School of Law’s Constitutional Law Colloquium, and “Theorizing Economic Rights for

Women” at the AALS Workshop on Women Rethinking Equality. She was recently elected as a member of the executive committee for the AALS Section on Constitutional Law and as a member of the executive committee for the AALS Section on Women in Legal Education and chair of its mid-year program committee.

Class notes are now online.

Head to law.utoledo.edu and check out “Alumni in the News!”

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A London Reunion.

Professor Susan Martyn (left) and her former student Marja Lasek-Martin '88 (right) posed for this picture after bumping into each other on the other side of the Atlantic while attending the 20th Annual London MCLE Fair held at the Herbert Smith LLP offices in January 2012. Professor Martyn presented a session titled “Twenty Years of Legal Ethics: Back to the Future?” at the CLE fair for American lawyers who practice in Europe.

Lasek-Martin remembered Professor Martyn as an enthusiastic, but commanding teacher; “You did not want to mess with her.” And 25 years later? “She hasn’t changed at all,” Lasek-Martin said.

Since sitting in Professor Martyn’s medical and legal ethics classes, Lasek-Martin has lived and practiced in Chicago, New York, London — where Lasek-Martin became an English solicitor — and, most recently, Hong Kong. Her husband, alumnus Ken Martin '90, is a partner at the London-based firm of Freshfields Bruckhaus Deringer, and his position as the head of the firm’s corporate practice in China took the couple to Hong Kong several years ago.

In Memoriam

John J. Beck Sr. '43	8/12/11
James F. Shemas '47	12/28/11
Elmer V. Scallish '48	11/16/11
Hon. Robert V. Franklin Jr. '50 ...	11/29/11
Hon. Reno R. Riley Jr. '52	12/31/11
Carl A. Williams '53	8/4/11
Richard L. Millward '56.....	5/24/11
Richard C. Garand '64.....	4/19/12
David M. Mohr '66.....	5/15/12
Rex C. Keener '68	9/2/11
Kalman Gold '72.....	10/27/11
Hon. Barbara L. Marley '72	4/14/12
Richard L. Aman '74.....	11/1/11
James W. Van Deilen '78.....	5/21/11
Dennis C. Clark '78	1/16/12
Mohamed Y. Shousher '79	4/30/12
Lawrence S. Pollak '81	10/19/11
James H. Ross '81	9/3/11
Keith J. Watkins '81.....	11/21/11
Thomas G. Overley '84.....	3/14/12
Dr. R. Donald Woodson '84.....	2/6/12
John R. Moynihan '88	7/25/11
Patrick J. McLaughlin '93.....	12/1/11
Kristin A. Stahlbush '94.....	9/2/11
Eric G. Saltzmann '95.....	8/4/11
Gregory A. O'Dell '96	12/23/11
James B. Allen '97.....	11/1/11
Darcy D. Ummel '05	11/1/11

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Dear Alumni and Friends:

As Toledo's sweltering August heat recedes, and we cross our fingers for cooler weather for the Alumni Gala on September 8, we urge you to consider volunteering with the College of Law. Your experience, knowledge, and interest in your community position you to make a difference at Toledo Law.

We invite you to consider one (or several!) of the opportunities listed here to connect with Toledo Law's current students and alumni.

1. Mentor Current Law Students

We are always looking for mentors to meet with small groups of interested students. Meetings take place during the school year at a time determined by the mentors and mentees.

2. Be a Guest Speaker

Share the expertise you have developed in your field, practice area, or organization. The Office of Professional Development (OPD) regularly invites friends and alumni of the College of Law to speak or participate in panel discussions. Programs are typically held during the noon hour or early evening.

3. Participate in our Alumni Mock Interview Program

Provide feedback on students' interview skills. This OPD program usually takes place in the spring.

4. Get involved in the Law Alumni Affiliate

Numerous programs and activities are planned throughout the year by the Law Alumni Affiliate. Do you receive the Law Alumni Affiliate emails? If not, please contact **Ryan Hieber** at **419.530.5359** or email ryan.hieber@utoledo.edu.

5. Help us begin a Law Alumni Chapter in your Area

Connect with other Toledo Law alumni in your area and with the larger University of Toledo alumni chapters.

6. Interview Toledo Law Students

We have talented students with great work ethic. If you have an opening, consider interviewing a Toledo Law student or graduate, whether for a full-time position, a part-time position, project work, or an externship.

7. Continue the Tradition

Know a potential law school applicant? Please let us know! Connect with our Office of Law Admissions to stay up to date on admissions qualifications and practices, and for advice on writing strong letters of recommendation. Please contact **Jessica Mehl** in the school's Office of Law Admissions at **419.530.7905** or email jessica.mehl@utoledo.edu.

8. Sponsor an Event in your Area or within your Organization

Motivate alumni support within your organization and host an event. If interested, please contact **Heather Karns** in the school's Office of Alumni Affairs at **419.530.5128** or email heather.karns@utoledo.edu.

9. Send us your News

We want to help promote the work you are doing as well as your personal and professional successes. Send your news to **Rachel Phipps** in the school's Law Communications Office at rachel.phipps@utoledo.edu.

10. Recognize Fellow Toledo Law Alumni

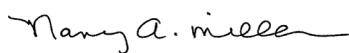
The College of Law and Law Alumni Affiliate accept nominations for annual alumni awards. If you know of a deserving alumna or alumnus, share their story by nominating that individual.

11. Financial Support

Donate through the annual giving campaign, with a planned gift, as part of a reunion class gift, or in support of a larger scholarship fund or effort. Every bit helps. Donate online at give2ut.utoledo.edu/giftlaw.asp or contact **Barbara Tartaglia-Poure** at **419.530.2713** or email barbara.tartaglia@utoledo.edu.

Please contact any one of us to discuss how you can make a difference at Toledo Law.

Sincerely,



Nancy A. Miller
President
Law Alumni Affiliate



Heather S. Karns
Assistant Dean, Career Services
& Alumni Affairs
The University of Toledo
College of Law



Ryan Hieber
Associate Director of Alumni Relations
The University of Toledo Foundation



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sponsored by the College of Law
and the Law Alumni Affiliate on September 8, 2012

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Professor Ronald C. Brown '65, '68 Law

COMMITMENT AWARD

Rabbi Alan M. Sokobin '96 Law

OUTSTANDING NEW EXEMPLAR AWARD

Major Michael R. Renz '02 Law

OUTSTANDING FACULTY MEMBER AWARD

Professor Rebecca E. Zietlow
Charles W. Fornoff Professor of Law and Values

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Professor Lee J. Strang