

THE UNIVERSITY OF TOLEDO COLLEGE OF LAW

# TRANSCRIPT

FALL 2014



Bryan Lammon

Eric Chaffee

Gregory Gilchrist

Evan Zoldan

Kara Bruce

Agnieszka McPeak

Shelley Cavalieri

Elizabeth McCuskey

Jelani Jefferson Exum

**RISING STARS:**  
Celebrating a New  
Generation of Faculty



Having entered my last year as dean and my 30th year on the faculty of the College of Law, I have been thinking lately about my years at the school and what makes it special. The building is certainly serviceable, and recent renovations to the McQuade Law Auditorium, the Forum, and even the stairway to the LaValley Law Library have improved it. We are still planning to replace the patio and make other exterior improvements, including, hopefully, a new entrance. The building is important, to be sure, but it is certainly not the essence of the law school. No, the heart of the College of Law is the people – faculty, staff, students, and alumni – who have worked, studied, and passed through here.

People not in the legal education field may have no way to appreciate how good our faculty is and has been for years. The faculty are remarkably accomplished and productive scholars, with an impressive level of citations and downloads of their work. They are regularly sought out for testimony before national and state legislatures, for service on national committees, and by the media for their opinions on current legal issues (our website often highlights these appearances). More importantly, they are terrific teachers, who are not only able to convey their knowledge, but help students develop their own abilities to think about and use legal material and legal rules. Teaching ability is the most important factor in our hiring.

The faculty and staff are involved with and committed to our students. I don't think there are many schools in which the teachers and staff members know as many of their students by name. Speaking of names, I want all our alumni and friends to know the names of our faculty, which is why the new faculty are the subject of this issue's cover story (page 15).

I have seen thousands of students pass through these halls, and have known many hundreds personally. They are individuals, of course, each with his or her own unique attributes, but I have been struck by what nice people they (you) are as a group. I like to think that the students' inherent professionalism and kindness is enhanced by the long-standing culture of collegiality we have developed here. I know that when I have asked SBA officers or other students for help, they have responded almost instantaneously. Over the years, I have learned from our students as they have learned from me; in fact, one of my law review articles was about a doctrine students questioned in class. Some students arrive after stellar undergraduate careers, but others, I know, don't really find their academic legs until they get to law school. With both groups, one of the deepest and most enduring satisfactions of my job as both a professor and dean has been the intellectual and professional growth of so many of our grads, and seeing how their education here has opened the door to rewarding careers.

Students, of course, become alumni, and one of the real pleasures of being dean these past four years has been the opportunity to connect with many of our alums. It is especially gratifying to see those I had as students, some many years ago, but it has also been a treat to meet many who never took (avoided?) a class with me. After alumni events, I almost always think about what a great group of people have graduated from the College of Law, and am always delighted to learn of their remarkable and varied professional accomplishments. I suspect every dean would say that, but I somehow feel that our alums are better people and lawyers than most. I have certainly appreciated the advice, the mentoring of students, the hiring of graduates, and, of course, the financial support to the College of Law from hundreds of our alumni over the years.

I apologize if these reflections come across as a bit maudlin or too backward-looking, but sometimes it is important to take stock of what one has. As the rest of this issue illustrates, there is a lot happening at the College of Law and there are more changes in the works. Understanding and appreciating all the good features of the College I have seen over the years only strengthens the impetus to have the College of Law improve and succeed. From my perspective, our faculty, staff, students, alumni, and friends have put us in a position to do just that.

Very best wishes,

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

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**Editor**

Rachel Phipps ’07

**Graphic Designer**

Amanda Ngur

**Photographers**

Daniel Miller  
Anthony Tscherne

**Project Manager**

Kim Goodin  
Paula Ashley



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**SUPREME COURT OF OHIO HEARS CASES AT TOLEDO LAW**

The Supreme Court of Ohio held court in the McQuade Law Auditorium at the College of Law April 9, 2014, through the Court’s Off-Site Court Program. The Court heard and considered oral arguments in three cases. One involved the termination and reinstatement of a former Cedar Point executive, another whether a visiting nurse was acting within the scope of her employment during an auto accident, and the third concerned the sufficiency of the evidence in a criminal case. The College of Law hosted the Court in conjunction with the Toledo Bar Association and the Ohio Sixth District Court of Appeals.

Along with Toledo Law students and members of the public, more than 350 juniors and seniors from 11 area high schools attended the arguments. Volunteers from the Toledo Bar Association, with the assistance of several law students, explained Ohio’s judicial system and reviewed case materials with the high school students before the session. Students also met after the Court’s session with the case attorneys to debrief and discuss the legal issues. A lunch at the Student Union for the Court, local judges and attorneys, and University board and staff members followed the argument.

“We were honored to host the Supreme Court of Ohio in its session here, its first since 1987 and the first ever at the College of Law,” said Daniel J. Steinbock, dean of the College of Law.

The event gave Toledo Law alumna Justice Judith Ann Lanzinger ’77 the opportunity to hear cases at her alma mater. A member of the Court since 2005, Justice Lanzinger is a Toledo resident and a former trial and appellate judge in Lucas County.

The Off-Site Court Program was founded in 1987 by the late Chief Justice Thomas J. Moyer and is designed to teach Ohioans about the state’s judicial system. Twice each year, once in the spring and once in the fall, the Supreme Court relocates from Columbus to hold session in another city, selecting a different county each time. The Supreme Court last sat in Lucas County in 1987, the first year of the Off-Site Court Program, and had never appeared before at Toledo Law.

See photos from the day on page 11.

**FOUR HOURS OF ‘LIVE CLIENT’ COURSEWORK NOW REQUIRED**

For students beginning their studies in or after fall 2014, Toledo Law will require four hours of “live client” coursework in a clinic or externship before graduation. This is part of a larger effort to emphasize experiential learning and preparation for practice.

“Toledo Law has long been a pioneer in clinical education,” said Ken Kilbert, associate dean for academic affairs at the College of Law. “Requiring students to complete a clinic or externship underscores our commitment to hands-on education and assures that our graduates have experience handling real legal problems for real clients.”

Toledo Law is one of a minority of law schools in the country that requires this experience.

Opportunities to develop practical lawyering skills have been a part of the College’s curriculum for nearly 50 years, and the new requirement bolsters an already strong experiential curriculum. Moreover, Toledo Law students are anxious to be exposed to lawyers’ work—72 percent of the Class of 2013 participated in a clinic or an externship while at Toledo Law.

Current clinic offerings include the Civil Advocacy Clinic, Domestic Violence and Juvenile Law Clinic, Dispute Resolution Clinic, and the Criminal Law Practice Program. In addition, the Public Service Externship Clinic places students with government or nonprofit organizations, where they perform legal work under the supervision of an attorney.

The new requirement was originally proposed in the College’s recent strategic plan, which will revise the school’s curriculum to integrate practical skills throughout all three years of law school. The new strategic plan, as presented in November 2013, also calls for legal simulations in small sections of first-year courses.

**NEW MASTER OF STUDIES IN LAW PROGRAM LAUNCHES**

Today’s professionals are increasingly involved with laws and lawyers during their careers. Recognizing this connection, Toledo Law has created a program to help such individuals gain working knowledge of the law to better prepare them for their legal interactions.

Designed primarily for professionals aiming to enhance their existing careers, the Master of Studies in Law program also can help redirect and launch career paths. The Master of Studies in Law program can benefit those who work with lawyers, whose work is governed by laws or regulations, or who work in fields in which knowledge of the law provides an edge.

Students earn the Master of Studies in Law degree by successfully completing 30 credit hours. Full-time students can complete the program in two semesters, and part-time students are welcome to arrange a workable program for themselves. Day and evening courses are available, making it convenient

to attain a Master of Studies in Law degree while working.

“Law touches almost every field of human endeavor,” said Dean Steinbock, “and knowledge of it can be invaluable for many professionals, as can the analytic skills learned in law school.”

After one introductory course, Master of Studies in Law students take classes alongside J.D. students, although they are graded on a different scale. The Masters of Studies in Law program allows students to acquire a basic foundation in the law and explore upper-level electives of their choice. Toledo Law offers courses in a wide variety of subjects, and Master of Studies in Law students are able to tailor their studies to concentrate in a specific area of law. Concentrations include health care, human resources, criminal justice, business, and others.

#### CERTIFICATE OF CONCENTRATION IN HEALTH LAW ANNOUNCED

As implementation of the Affordable Care Act progresses and attorneys grapple with the complexities in this rapidly-evolving area of the law, the College of Law announced the addition of a certificate of concentration in health law to its curriculum for full-time and part-time J.D. students.

The health law certificate joins the College’s five existing certificates of concentration in criminal law, environmental law, intellectual property law, international law, and labor and employment law.

“Health law is an area of increasing intricacy and expanding relevance. Our health law concentration reflects the skills and substantive knowledge health lawyers find most valuable in their practices to meet and anticipate these challenges,” said Elizabeth

McCuskey, assistant professor of law and faculty coordinator for the health law certificate program.

To obtain the certificate, students must complete at least three health law courses and a substantial research paper on a health law topic, for a total of 10 credit hours. Students may also apply up to three credits from one of the College’s health law externships toward the credit minimum.

This new program builds on the College’s strengths in health law. College of Law professors who teach and write in this area include Distinguished University Professor Susan Martyn, Professor Elizabeth McCuskey, and Professor Evan Zoldan.

In 2012, the College of Law and the College of Medicine partnered to offer a new J.D./M.D. joint degree program that enables students to graduate with a law degree and a medical degree in six years.



#### BARRETT AND MOORE IN PROVOST’S OFFICE

The College of Law will have a substantial presence in The University of Toledo’s Office of the Provost this fall. Long-time faculty member John Barrett has been named interim provost and executive vice president for academic affairs by interim President Nagi Naganathan. Barrett, who joined the Office of the Provost in 2013 as vice provost for faculty relations and accreditation, assessment and program review, assumed his new office July 1.

He will oversee UT’s academic affairs on all campuses, as well as Enrollment Management, Libraries, Experiential Learning, International Programs and Distance Learning. Barrett, who served as president of the Faculty Senate in 2009, joined the UT College of Law faculty in 1994.

Associate Professor Kelly Moore will become interim vice provost in the fall and will teach one course a semester this academic year. Moore joined the College of Law faculty in 2008 and has taught Trusts and Estates, Federal Income Tax, Estate and Gift Tax, Estate Planning, and Business Enterprise Tax. He was named Outstanding Professor by four graduating classes.

“We are very sorry to lose Professors Barrett and Moore as classroom teachers, but are pleased to see the recognition of the administrative talent in the college and wish them well,” said Dean Steinbock.

#### MOOT COURT TEAMS FIND SUCCESS AT COMPETITIONS NATIONWIDE

Moot court teams from the College of Law competed successfully at tournaments across the country during the spring 2014 semester. The Mediation Team placed first, with a perfect score in the final round of the Great Lakes Regional Mediation Tournament; the International Law Team placed fifth in the Jessup International Law Moot Court Competition Rocky Mountain Regional; and the Sports Law Team’s brief placed fourth at the Tulane Mardi Gras Sports Law Invitational, where the team also advanced to the quarterfinals.

In looking back over the year’s achievements, Robert Haley ’14, chair of the Moot Court Board, credits the support of College of Law faculty. Professors prepared teams for competitions by

serving as judges, advisers, or consultants on tournament problems.

“Faculty support and concern have made a significant difference and are really what makes Toledo Law such a unique place to learn,” said Haley.

#### MEDIATION TEAM BESTS COMPETITION WITH PERFECT SCORE

The Toledo Law Mediation Team of Chime Nwankwo ’14, Reem Subei ’14, and Molly Albertson ’14 placed first with a perfect score in the final round of the Great Lakes Regional Mediation Tournament Feb. 14-16, 2014, at Michigan State University College of Law.



The Toledo Law Mediation Team of Reem Subei ’14, clinical professor Maara Fink, Chime Nwankwo ’14, and Molly Albertson ’14.

Fourteen teams from eight schools competed in this challenging facilitative mediation tournament. In the preliminary and final rounds, teams were assigned to compete as either the mediator or advocate/client team. Toledo Law’s team prevailed over teams from UC Hastings College of Law, Michigan State University College of Law, Ohio State University Moritz College of Law, Marquette University Law School, and Osgoode Hall Law School.

“Our students excelled in this competition due in large part to the intensive training they received through the College of Law Dispute Resolution Clinic,” said Professor Maara Fink, the team’s coach and director of Toledo

Law’s Dispute Resolution Clinic. “Months of serving as mediators with real parties involved in real cases in our local courts more than adequately prepared them for competition in a simulated setting.”

#### INTERNATIONAL LAW TEAM HEADS TO SEMI-FINALS

The International Law Team placed fifth out of 23 teams in the Jessup International Law Moot Court Competition Rocky Mountain Regional at the University of Denver Sturm College of Law on Feb. 13-16, 2014. Toledo Law’s showing was its best at this competition in more than 10 years. The team of Ashley Kuruvilla ’14, Alexandria Heinonen ’14, Jonathon Hoover ’15, Shelby Gordon ’15, and student coach Joelynn Laux ’14 lost in the semifinals to the eventual winner.



The International Law Team of Alexandria Heinonen ’14, Ashley Kuruvilla ’14, student coach Joelynn Laux ’14, Jonathan Hoover ’15, and Shelby Gordon ’15. The competition was a simulation of a fictional dispute between countries before the International Court of Justice, the judicial body of the United Nations. Teams prepared oral and written pleadings, arguing both the applicant and respondent positions of the case.

“It took our team months to prepare for this competition and all of our hard work paid off,” said Heinonen. “When we heard our name called for the semifinal rounds, all of the countless hours we spent brief writing and practicing our arguments were well worth it.”

#### SPORTS LAW TEAM’S BRIEF WINS ACCOLADES

The Sports Law Team of Trevor Colvin ’15 and Zachary Laumer ’15 advanced to the quarterfinals and finished fifth out of 32 teams at the Tulane Mardi Gras Sports Law Invitational, Feb. 26-28, 2014, in New Orleans. The team’s brief placed fourth. The team’s competition included Duke University School of Law, UC Hastings College of Law, and Ohio State University Moritz College of Law.



The Sports Law Team of Trevor Colvin ’15, student coach Robert Haley ’14, and Zachary Laumer ’15.

The problem involved the NCAA use of athlete images in video games, the subject of current litigation. Oral argument for the tournament was held at the U.S. District Court for the Eastern District of Louisiana.

“It was incredible to see the team’s hard work and dedication pay off this year. To have an all 2L team perform at such a high level is a real testament to their mastery of the material and oral advocacy skills,” said Moot Court Board Chair Robert Haley, the team’s student coach. “The team will be returning to the competition next year, and I have no doubt they will once again be successful.”



### AMROU '15 ELECTED NATIONAL PRESIDENT OF THE INTERNATIONAL LAW STUDENTS ASSOCIATION

Linda Amrou '15 has been elected the national president of the International Law Students Association (ILSA) for 2014-15. She served as president of Toledo Law's International Law Students chapter during the 2013-2014 school year.

"It's a tremendous honor and privilege to have the opportunity to serve those pursuing a career in international law," said Amrou. "International law's reach extends to almost every facet of law in our quickly evolving and highly globalized world."

ILSA is the umbrella organization responsible for all of the International Law Students chapters worldwide. In her new role, Amrou will help manage the activities of these chapters and serve as a representative for ILSA. The organization publishes a quarterly magazine and also administers the Jessup Moot Court Competition, the largest moot court competition in the world, which involves student teams from more than 500 schools in over 80 countries. The president also is a voting member on ILSA's Board of Directors.

In addition to Amrou's recent recognition, Toledo Law's ILS chapter was awarded ILSA's Best All-Around Chapter accolade for the 2013-2014 school year by ILSA's national body. The award recognizes the work and programming of Toledo Law's ILS

chapter, comprised of 50 members, and includes prize money to help with programming for the upcoming academic year.

Last fall, the group organized a panel of Toledo Law students who had served as human rights observers to the 9/11 Commission's hearings for Khalid Sheikh Mohammed and others at Guantanamo Bay Naval Base, Cuba. The event attracted nearly 100 attendees, including many from the greater Toledo community. The organization also sponsored several other speakers, including Dr. Lisa Hajjar from the University of California Santa Barbara, who presented on drone warfare, Judge Naoki Takaishi from Tokyo District Court, who discussed Japanese implementation of the Saiban-In jury system, and Zeke Johnson, director of Amnesty International's Security & Human Rights Program.

"The recognition of Ms. Amrou and our ILS chapter is a testament to her leadership and hard work, the dedication of our students interested in international law, and the strength of our international law curriculum," said Lee Pizzimenti, associate dean for student affairs and professor of law. "We at the College of Law are proud of her and the ILS."

Toledo Law's ILS chapter also was named "Student Organization of the Year" by the Student Bar Association.

For more information regarding the International Law Students Association, visit [ilsa.org](http://ilsa.org).



### SALLAH '14 PLACES SECOND IN NATIONAL SECURITIES LAW WRITING COMPETITION

Anthony Sallah '14 has won second place in a national writing competition sponsored by the Association of Securities and Exchange Commission Alumni (ASECA). His second place finish came with a \$3,000 prize and an invitation to the ASECA annual dinner in Washington, D.C., in February.

The title of his winning paper is "Scheme Liability: Conduct Beyond the Misrepresentations, Deceptive Acts, and a Possible Janus Intervention." The paper appeared as a student article in *The University of Toledo Law Review* in fall 2013.

"I've had the privilege of teaching Anthony in three classes during his time at UT and advising his student article for the *Law Review*," said Professor Geoffrey Rapp. "He is, like so many of our students, bright, engaged, and headed for a wonderful legal career."

"He selected one of the most challenging topics on which I've ever had a *Law Review* member write. He had to navigate a complex set of cases, unpacking several different doctrines in securities law. He did a wonderful job, as this award verifies, and I expect his paper to be influential on courts and the bar over the coming years," added Professor Rapp.

Sallah's article has already been cited in a reply brief before the U.S. Court of Appeals for the 11th Circuit in *SEC v. Big Apple Consulting USA*.

During his time at Toledo Law, Sallah served as note and comment editor for the *Law Review* and as a teaching assistant for Professor Katherine O'Connell's legal research and writing course. He also interned with the U.S. Securities and Exchange Commission in Denver during the summer following his 1L year. Sallah is a graduate of the University of Michigan, where he majored in economics and minored in political science. After graduating in May, he joined the Cleveland office of Benesch, Friedlander, Coplan & Aronoff, LLP.

Submissions to the ASECA's annual writing competition may be on any topic in the field of securities law. Papers are screened by a panel of judges consisting of securities practitioners and law professors. The best papers are then submitted to the ASECA's Board of Directors, which chooses the award winners.

The ASECA was founded in 1990 by U.S. Securities and Exchange Commission alumni. ASECA is a non-profit organization whose membership is nearly 1,000 in the U.S. and abroad.



### IMDIEKE '16 RECEIVES MOYER FELLOWSHIP

Benjamin Imdieke '16 received one of three Chief Justice Thomas J. Moyer Fellowships presented by the Ohio State Bar Association this year.

The annual fellowships are awarded to exceptional first- or second-year students from Ohio law schools and are designed to honor Chief Justice Moyer's commitment to improving access to courts, advancing civility and ethics,

working with national and international organizations to promote the rule of law, and promoting civic education. Fellowship recipients receive \$3,000 from the Moyer Legacy Fund and \$1,000 from their law schools to fund a summer opportunity advancing these principles.

"For two out of the last three years, a University of Toledo College of Law student has been awarded one of the highly competitive Moyer fellowships," said Dean Steinbock. "This speaks volumes about the quality of our students and their dedication to the values of civility and community service the fellowships seek to foster."

As a Moyer Fellow, Imdieke researched how land use planning can advance the rule of law in Toledo and other midwestern cities experiencing declines in population.

Robert Haley '14 was also the recipient of a 2013 Moyer Fellowship.

### JUDGE JAMES G. CARR LEGAL WRITING AWARD CELEBRATES EXCEPTIONAL UPPER-LEVEL WRITING

A new award, the Judge James G. Carr Legal Writing Award, recognizes the best legal writing in a College of Law upper-level course.

James Carr, a senior judge in the United States District Court for Northern District of Ohio and a former professor at the College of Law, and his wife, Eileen Carr, a former faculty member in the College of Education, established the \$500 annual award for exceptional upper-level writing last year. This is the second year the award will be presented.

"Judge Carr has stressed the importance of legal writing as a faculty member and judge," said Dean Steinbock, "and it is totally fitting for him and Mrs. Carr to establish a way to recognize it into the future. This is one of many ways in which

Judge Carr continues to contribute to the education of our students."

The winner during the prize's 2013 inaugural year was Monica Solt '14. This year's winner is Rory O'Brien '14.

Eligible papers are those that receive a grade of "A" in an advanced research and writing course, a seminar, or an independent study course, and are nominated by the supervising faculty member.

With the assistance of two members of the local Toledo bar, Judge Carr selects the winner after evaluating the importance of the topic, significance of the student's discussion, quality of the research, and the quality of writing.



### DISTINGUISHED PANEL OF JUDGES PRESIDES OVER 42ND ANNUAL FORNOFF FINAL

Chief Judge Boyce F. Martin, Jr., of the U.S. Court of Appeals for the Sixth Circuit, Judge Mark R. Hornak of the U.S. District Court for the Western District of Pennsylvania, and Judge Mary Ann Whipple of the U.S. Bankruptcy Court for the Northern District of Ohio presided over final argument in the 42nd Annual Charles W. Fornoff Appellate Advocacy Competition on Oct. 24, 2013, in the McQuade Law Auditorium.

Four students, Ryan Dolan '15, Khaled Elwardany '15, Dominic Gentile '15, and Melissa VanGessel '15, successfully negotiated the double-elimination Fornoff tournament to win a spot in the final.

## THIRTEEN STUDENTS OBSERVE GUANTANAMO BAY MILITARY COMMISSIONS

The subject of several significant cases in the Supreme Court, including *Hamdan v. Rumsfeld* and *Boumediene v. Bush*, and ongoing federal court litigation, the Guantanamo Bay military commissions continue to be one of the biggest legal controversies of the past decade.

Since 2013, 13 College of Law students have observed military commission proceedings at the Guantanamo Bay Naval Base in Cuba after being designated as official human rights observers by the Department of Defense Office of Military Commissions.

Linda Amrou '15, Drew Ayers '14, Steven Cole '14, Bryant Green '15, Jonathon Hoover '15, Zachary Laumer '15, Evan Matheny '16, Joseph Pine '14, Jillian Roth '14, Trent Sulek '14, Audrey Sweeney '14, JD Walbom '16, and Sheila Willamowski '13 were each in Guantanamo Bay for a week or more to observe ongoing pretrial proceedings in the 9/11 Military Commission's hearings for Khalid Sheikh Mohammed

and others, as well as the Cole Bombing Military Commission for Abd al-Rahim al-Nashiri.

Professor Benjamin Davis was the first Toledo Law representative granted observer status. After visiting Guantanamo in January 2013, he coordinated the students' applications and visits.

"The goal is to have students live history and learn from that direct experience to complement what they have learned in the classroom," said Davis. "As long as these commissions are ongoing and there is student interest, we will continue this program."

While in Guantanamo Bay, Professor Davis and students observed the wide range of pretrial motions that the military judge addresses in organizing this unique criminal proceeding. Victims' families, observers from domestic and international organizations, and the press sit in a gallery separated by glass from the courtroom. Those in the gallery watch proceedings on television monitors, each with a 45-second delay.

The proceedings to date have been riddled with controversy. There were allegations that the mail of defendants' attorneys was being read and that monitoring devices had been placed in attorney-client meeting rooms. And, in January 2013, argument in open court was interrupted by an outside intelligence agency.

"My biggest takeaway from GITMO was that the military personnel [assigned to the cases] were an amazing group of professionals dealing with the horrible situation that Congress and both recent presidents had given them," said Jonathon Hoover, who visited Guantanamo in May 2014. "It was amazing to know I had witnessed history firsthand."

"To me, the most surprising thing about my trip was the amount of access we were given," said Drew Ayers, who visited Guantanamo in December 2013. "I ate breakfast every morning with the defense attorneys and occasionally had dinner with them. It provided a great time to get inside their heads. We talked strategy and motion preparation."



In addition to observing daily proceedings and meeting legal teams from both sides, students interacted with representatives of domestic and international organizations, as well as the press.

After their return, many students wrote papers on their experiences for credit as part of the advanced research and writing program. Amrou, Cole, Sulek, Sweeney, and Professor Davis also shared their experiences during panels and lectures at the law school on two occasions. ■



Photos by Drew Ayers, Jonathon Hoover, Zachary Laumer



Say hello to the Class of 2016!



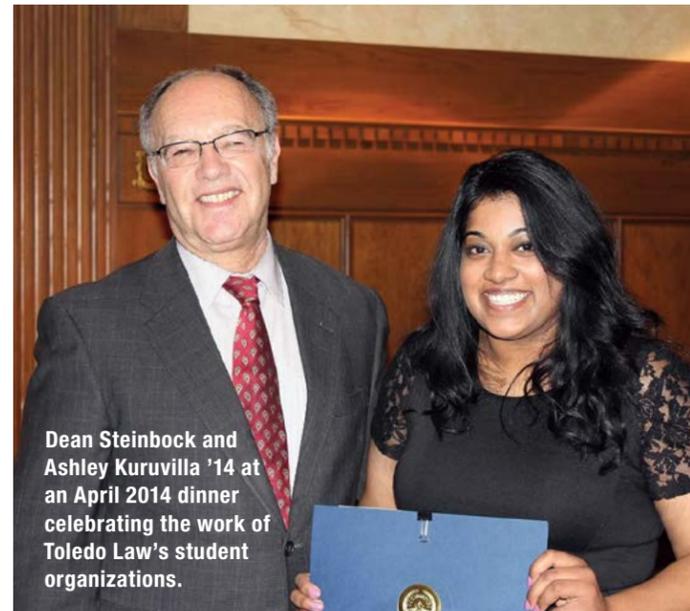
The Supreme Court of Ohio hears cases in the McQuade Law Auditorium in April 2014 as part of the court's Off-Site Court Program.



Emily Bazelon, author, senior editor at Slate, and the Truman Capote Fellow for Creative Writing and Law at Yale Law School, discusses the culture of bullying during the Fall 2013 Cannon Lecture.



Education experts address the legal and practical challenges facing the nation's schools during the 2013 Law Review Symposium titled "From Kindergarten to College: Brainstorming Solutions to Modern Issues in Education Law."



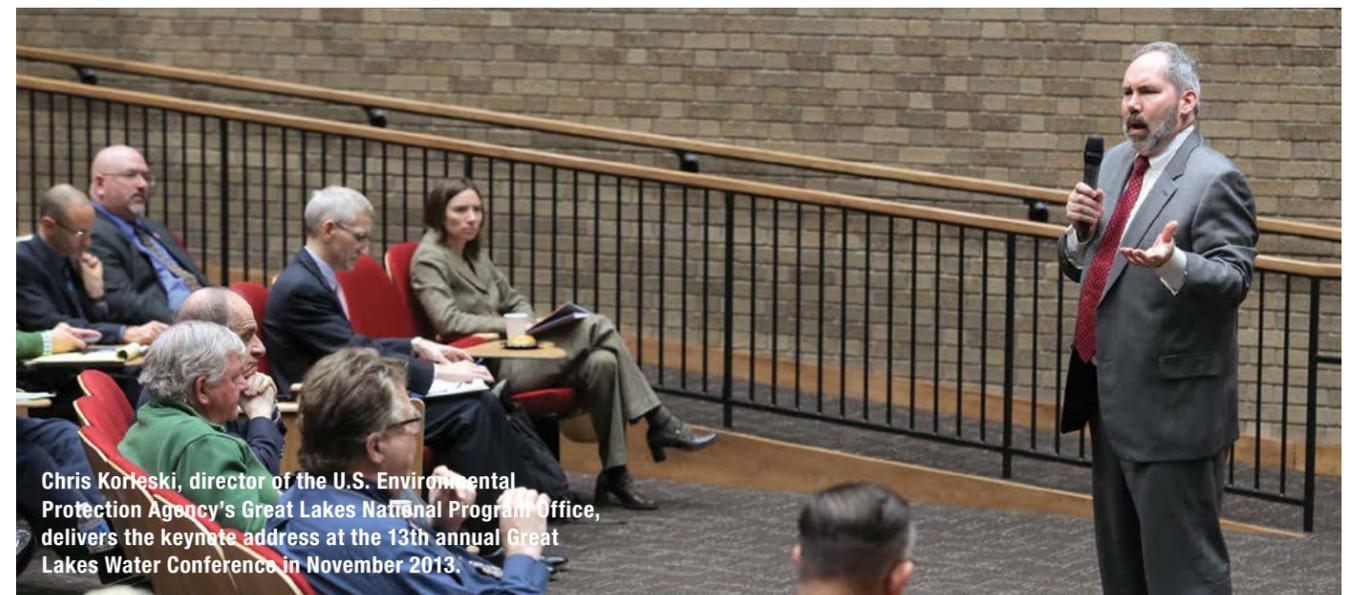
Dean Steinbock and Ashley Kuruvilla '14 at an April 2014 dinner celebrating the work of Toledo Law's student organizations.



Law student host Stephanie Green '14 and Justice Terrence O'Donnell at the reception following the Supreme Court of Ohio session at the Law Center in April 2014.



Guests at the February 2014 Public Interest Fellowship Benefit Auction, which raised money to support students working in summer public interest positions.



Chris Korteski, director of the U.S. Environmental Protection Agency's Great Lakes National Program Office, delivers the keynote address at the 13th annual Great Lakes Water Conference in November 2013.

# COLLEGE OF LAW COMMENCEMENT



## Congratulations, Class of 2014

On May 11, 2014, the College of Law community gathered to celebrate 125 candidates eligible for law degrees in December 2013, May 2014, and August 2014. The commencement ceremony was held in the Student Union Auditorium.

A. Louis Denton '83, president and chief executive officer of the Philadelphia investment management firm Borer Denton & Associates, Inc. and senior vice president of Petersen Investments, delivered the commencement address.

He shared lessons learned during his career and offered these final thoughts for the Class of 2014, "Remember to laugh at things that are funny, but also laugh at yourself. Keep things in perspective. Keep your casebooks; they'll remind you of all the work you did to get here today. They will also remind you of how many things you've probably forgotten after taking the bar exam. By the way, they still look pretty impressive on the bookshelf of your home or office. I still have mine. Congratulations and best of luck."

Denton is a member of the Pennsylvania Bar and is a past president of the Philadelphia Securities Association. He is an arbitrator with Philadelphia Common Pleas Court and the Financial Industry Regulatory Authority (FINRA), and regularly speaks at Securities Industry and Financial Markets Association events, FINRA conferences, and preventative compliance meetings.

"Continuing the tradition of highlighting the variety of paths our graduates have taken to success, this year's speaker represents one of the many professions to which our law degree opens the door," said Dean Steinbock. "An incredibly generous alumnus, Lou Denton has not forgotten where he got started."

Denton's generous financial support has allowed the College of Law to create the Denton Leadership and Service Scholarships, awards that help the school attract outstanding students. In 2010, Toledo Law dedicated its largest classroom in recognition of Denton's support.

In addition, Rebecca House, class valedictorian, and Joelynn Laux,

immediate past president of the Student Bar Association, addressed their peers.

Lee Pizzimenti, associate dean for student affairs, delivered the Faculty Welcome and received a standing ovation from the graduating class after serenading them with her rendition of the pop song "Cups."

After University trustees Joseph Zerbey, IV, and Linda Mansour officially conferred the graduates' degrees, Michelle Kranz, immediate past president of the Law Alumni Affiliate, congratulated and welcomed the new alumni.

Various awards were handed out during the course of the afternoon. Dean Steinbock presented Laux with the Dean's Award. The graduating class recognized Pizzimenti with the Outstanding Faculty Award, and Professor Elizabeth McCuskey received the Beth A. Eisler Award for First-Year Teaching.

During a reception at the Law Center following the ceremony, the Law Alumni Affiliate presented each graduate with a diploma frame.



2014 Graduates

JOINT JD/MBA

Joshua David Goldberg\*\*  
Joelynn Katherine Laux  
Kevin Andre Le Melle  
Christopher Anthony Miazgowicz\*\*  
Christopher A. Sawan  
Anant K. Tamirisa  
Steven Harold Vandercook

Michael P. Ciccone  
Steven D. Cole  
Andrea Jean Connor  
Aaron Cook\*\*  
Sarah A. Cunningham  
Jihad Dakkak  
Mark P. D'Apolito

Erin Elizabeth Krumm  
Cory B. Kuhlman  
Ashley Elizabeth Kuruvilla  
Nicholas S. Laue  
Michael Ryan Laurie  
Sunjae Lee\*  
Stephanie M. Lenke\*

Jennifer Lynn Ramon  
Justin A. Rasch\*  
Michael W. Reinheimer\*  
Christopher Cruz Rogers  
Anthony Charles Sallah  
Nader Osamah Sarsour  
Jamie L. Schonberg

JOINT JD/MPA

Natalie Marie Catalanotto\*\*

Soren Alexander Dorius\*

Brandy Lil Logsdon

Jonathan Michael Sheehan

JURIS DOCTOR

Brian Abdulghani Abbas  
Harshavardhan Abburi\*\*  
Spencer A. Adam  
Molly Nicolette Albertson  
David Tyler Adams Albrechta\*\*  
Eleni Maria Kennebeck Albrechta\*\*  
John H. Alexander  
Marissa K. Antonio  
Greg Arevigian II  
Keith Andrew Ayers  
Albert Louis Balewski  
James Jefferson Bandy\*  
Jacob Conrad Bender  
Carianne Sarah Betts  
Marques A. Binette  
Matthew Boehringer  
Andrew J. Boes\*  
Marianne L. Bohnlein  
Caleb Matthew Bower  
Matthew Alexander Brodof  
Carlianne Kaye Brown  
Bridget Marie Chalupka

Joshua David Draughon  
Evan Engler  
Tanisha Jane Evans\*  
James Eli Ewing\*  
Rebecca Anne Facey  
Veronica Annel Fasciana  
David J. Fournier\*  
Aaron Matthew Gallogly  
Elizabeth Apt Geer-Fry  
Joshua David Goldberg\*\*  
Stephanie L. Green  
Alex Joseph Hale\*  
Robert William Haley  
Matthew Hammer  
Samuel R. Harden  
Alexandria R. Heinonen  
Rebecca Susan House  
Christine Sarah Humphrey  
Julie Ann Jacek  
David M. Johnson  
Michael Lorincz Juhasz  
Suresh Karavadi  
Jonathan R. King\*  
Aaron Kovacs

Stephen Michael Maloney II  
Tyler A. Mamone  
Tahoe Lorraine McGuire  
Jeremy J. Molenda  
Thomas J. Morrissey II\*  
Jalal Naji Moughania  
Leah Sophia Mullen  
James R. Myers Jr.  
Shawn Nelson  
Molly Cathleen Netter\*  
Ali Adib Nour  
Chimezirim Aaron Nwankwo  
Rory Daniels O'Brien  
Christopher R. Orr  
Tyler Overlock  
Jeffrey S. Perry  
Kelly J. Persinger\*  
Fredrik Persson  
Carl Joseph Peterson  
Joseph Scott Pine  
Jeffrey Piotrowski\*  
Jonathan L. Pollock  
Mary Kathleen Potocki  
Calin Serban Radoi

Monica Kathleen Solt  
Bradley Harold Stanton  
Sarah G. Stika\*  
Jacob Asher Studer\*  
Reem Subei  
Audrey Ann Sweeney  
Matthew W. Talley  
Dmitriy R. Tatarko  
Kody R. Teaford  
Andrew E. Tetreau  
Kathleen E. Tharp\*  
Marcela A. Velazquez\*  
Michael Allan Walton  
Seneca Fanchon Weirich  
Elizabeth A. Wendt\*\*  
Elliott T. Werth  
Sabrina Rose Widman  
Sheila Louise Willamowski\*  
Lawrence Arthur Willard II  
Jennifer Lauren Williams\*  
Brett Philip Windecker  
Lele E. Yutzky  
David Louis Zavack

\* Graduated December '13  
\*\* Graduated August '14

RISING STARS:  
Celebrating a New Generation of Faculty

Change is the norm at most institutions, especially law schools, but the College of Law has probably experienced more turnover than usual in the past five years. A complete list appears on page 36. Several of our most long-serving and beloved faculty members have retired during that period (though some continue to teach part-time). One, Beth Eisler, tragically passed away. Their departures were certainly a loss to the school. But change brings opportunity, as well—in this case, the chance to add new talent to the faculty.

What follows is a list, in alphabetical order, of the ten faculty members who have joined us since the fall of 2009. For all, we give brief biographical information, a list of selected publications, and an excerpt from their recent writings. Even a cursory review reveals the outstanding credentials and the incisive intellect that all of them bring to the College. What this material cannot show, however, is their teaching excellence in the classroom and out, and the personal qualities that make them outstanding contributors to the College and role models for our students.

They joined, of course, an excellent cadre of faculty members who have been here since before 2009. A complete list of our current faculty appears on page 36. They and the recent hires profiled in the following pages comprise what is perhaps the most productive and impressive cohort in the school's history. We encourage you to become familiar with their names and their work.



KARA BRUCE

**KARA BRUCE**  
ASSOCIATE PROFESSOR OF LAW

**FACULTY MEMBER SINCE 2010**

**COURSES TAUGHT**

- Business Bankruptcy
- Secured Transactions
- Commercial Paper
- Contracts

**SCHOLARLY INTERESTS**

Bankruptcy law and, in particular, the extent of judicial authority

**EDUCATION**

- J.D., Tulane Law School
- B.A., University of North Carolina at Chapel Hill

**BEFORE JOINING THE FACULTY**

Professor Bruce worked as an attorney in the Bankruptcy and Restructuring Group of Locke Lord LLP in Chicago.

**HONORS**

In the fall of 2013, Professor Bruce served as the Robert M. Zinman Scholar in Residence at the American Bankruptcy Institute in Arlington, Va.

*The Debtor Class*

**Excerpt from 88 Tulane L. Rev. 21 (2013)**

Between 2007 and 2010, the default rates on consumer loans skyrocketed. The high rates of loan defaults stretched the capacity of the court system, bloating dockets with foreclosure and collection actions. Mortgage lenders and servicers struggled to keep up with the paperwork and litigation relating to their many borrowers in default, some adopting “assembly-line” methods of managing cases. In 2010, the mortgage industry drew national attention for “robo-signing” affidavits and other procedural abuses. This scandal revealed lenders’ disregard for the legal requirements of the foreclosure process and the details of individual homeowners’ mortgage obligations. Further inquiry ultimately established that these abusive foreclosure practices were only one component of the deep and pervasive problems affecting the mortgage industry.

Because families facing foreclosure may seek to save their homes through bankruptcy, it is not surprising that lenders’ sloppiness and overreaching carry over from the foreclosure arena into consumer bankruptcy cases. In recent years, large institutional lenders have systematically violated bankruptcy law and procedure in consumer bankruptcy cases. These violations range from filing unsupported or overinflated proofs of claim to abusing the automatic stay and discharge injunction. It is not clear whether these violations arise from institutional sloppiness or instead from a calculated departure from the Bankruptcy Code’s requirements. What is clear is that these practices are widespread and that they pass through the bankruptcy process largely unchecked.

This phenomenon reveals an inconsistency between the norms of the Bankruptcy Code and the realities of consumer bankruptcy practice. The Bankruptcy Code contains a variety of rules and procedures calculated to

provide the debtor a fresh financial start and ensure that creditors are treated fairly. But judging from the evidence of lender overreaching, existing law and procedure fail to provide sufficient incentives to ensure creditors’ compliance. Creditors’ noncompliance undermines the fresh start and distributional policies of consumer bankruptcy and may disadvantage other creditors who choose to follow the law.

This Article is the first in a series of articles examining the potential use of class actions to bridge the gap between bankruptcy law and creditor action in consumer bankruptcy cases. Class actions enable parties to litigate collectively claims that might be uneconomical to litigate on an individual basis. This aggregation of claims forces lenders to internalize the costs of their misconduct and may deter future wrongdoing. If employed on a widespread basis, class actions may enhance regulation of consumer bankruptcy cases without placing additional resource strains on the bankruptcy system and without the need for protracted reform efforts.

Rule 23 of the Federal Rules of Civil Procedure is incorporated into the Federal Rules of Bankruptcy Procedure (Bankruptcy Rules), providing a clear procedural basis for class actions in bankruptcy. But while bankruptcy courts have allowed class relief in other circumstances, some have hesitated to certify nationwide debtor classes. Aggregation of claims held by disparate consumer debtors seems incompatible with the fundamentally individualized and debtor-centric nature of the bankruptcy process. Bankruptcy jurisdiction is a notoriously “complex and convoluted” system, and little

*If employed on a widespread basis, class actions may enhance regulation of consumer bankruptcy cases without placing additional resource strains on the bankruptcy system and without the need for protracted reform efforts.*

appellate case law exists to guide courts handling debtor class actions. Nor have scholars provided a clear road map for courts to approach these cases. Unsurprisingly, jurisdiction decisions for debtor classes vary from court to court.

This Article addresses the threshold jurisdictional challenges facing debtor class action proceedings. It reconciles the divergent case law and presents a framework for approaching the debtor class. It concludes that courts generally should not hesitate, on jurisdictional grounds, to certify nationwide classes of consumer debtors asserting violations of bankruptcy law. Still, the debtor class action is no panacea. Certification requirements will limit the availability of class relief in many cases, and additional law reform efforts will be needed to remedy fully the disconnect between bankruptcy law and creditor action. ■

**SELECTED PUBLICATIONS**

- *BEST OF THE ABI 2013: THE YEAR IN BUSINESS BANKRUPTCY*, Kara J. Bruce, ed. (2013)
- *Rehabilitating Bankruptcy Reform*, 13 Nev. L.J. 174 (2012)



SHELLEY CAVALIERI

**SHELLEY CAVALIERI**  
ASSOCIATE PROFESSOR OF LAW

**FACULTY MEMBER SINCE 2011**

**COURSES TAUGHT**

- Property I and II
- Land Use Planning
- Human Rights and International Development

**SCHOLARLY INTERESTS**

Land use and human rights, with a particular focus on economic, social, and cultural rights

**EDUCATION**

- J.D., Order of the Coif, Boalt Hall, University of California, Berkeley
- B.A., University of Virginia

**BEFORE JOINING THE FACULTY**

Professor Cavalieri was a Visiting Assistant Professor at West Virginia University College of Law. She clerked for Judge Thelton E. Henderson on the U.S. District Court for the Northern District of California and Judge Martha Craig Daughtrey on the U.S. Court of Appeals for the Sixth Circuit.

*Grounding Land Reform*

Excerpt from *89 St. John's L. Rev.* \_\_\_ (forthcoming 2015)

Designed to democratize land access, redistributive land reform necessarily involves land changing hands because these programs must increase the number of people with rights to arable land. Land reform accomplishes its many important goals by creating a new group of people with land rights. These include pragmatic goals of poverty reduction, wealth accrual, increasing human capability, fulfilling human rights obligations, and responding to the hierarchy of human needs. In addition, land reform can serve the expressive goal of demonstrating a nation's post-colonialist effort to invest in the well-being of its own citizens. Critics of land reform decry these initiatives as wealth redistribution, claiming that such efforts grossly overstep permissible government actions. But these critics assume incorrectly that all reallocation of property is unjust. The problem is the imprecision inherent in the term redistribution: its meaning is imbued with contempt, but redistribution is a common, even pedestrian, government function. At the heart of this critique is the mistaken assumption that because some redistribution of private property goes too far, all redistribution is an unwarranted frustration of private property rights.

This article argues that redistribution in the context of land reform can be compatible with the operation of a land market. A market-compatible land reform program avoids uncompensated state expropriation of private property, but adopts as necessary compensated eminent domain to achieve the public good of democratized access to land. While uncompensated expropriation exceeds reasonable bounds because it generates externalities that can undermine the goals of land reform itself, the kinds of market-compatible land reform programs that are the centerpiece of this article

*At the heart of this critique is the mistaken assumption that because some redistribution of private property goes too far, all redistribution is an unwarranted frustration of private property rights.*

strike an appropriate balance, since states are concerned with, and at least partially responsible for, the well-being of their people. This article focuses on land reform programs that avoid state expropriation of private property; I refer to such non-expropriation approaches as market-compatible land reform programs. Although uncompensated expropriation warrants its own detailed scholarly consideration as a method by which states alter the system of land ownership, this article focuses explicitly on why land reform programs designed to further development-based national and international goals make sense. To that end, this section briefly defines expropriation in the context of land reform, explains how expropriation runs the risk of undermining land reform as a development initiative, and shows how market-compatible land reform balances economic efficiency with the achievement of a greater degree of equity in a nation.

To be clear, this article does not idealize the land market as the solution to problems of poverty. Rather, if the market for land is accepted as a given in nations' political arrangements, expropriation

can cause economic destabilization that disproportionately harms the poorest citizens. This is neither a normative nor a philosophical critique of expropriation, but a pragmatic one based upon its consequences under a certain set of circumstances. Thus, while this article argues that expropriation is problematic, this is a contextual and consequentialist claim based upon expropriation's ill effects in the situation of a system of private property in land. One could envision a different property system in which these consequences would not accrue in the same fashion, but that is a different project than this article. This article aims to show the most plausible route from the current market for land to a robust program of land reform. ■

**SELECTED PUBLICATIONS**

- *Medicaid Access for Disabled Military Dependents*, report to the U.S. Department of Defense (2013)
- *Between Victim and Agent: A Third-way Feminist Account of Trafficking for Sex Work*, 86 Ind. L.J. 1409 (2011)
- *The Eyes that Bind Us: The Overlooked Phenomenon of Trafficking into the Agricultural Sector*, 31 N. Ill. L. Rev. 501 (2011)

ERIC C. CHAFFEE



ERIC C. CHAFFEE  
PROFESSOR OF LAW

FACULTY MEMBER SINCE 2013

COURSES TAUGHT

- Business Law
- Business Ethics
- Contracts
- Criminal Law
- Nonprofit Organizations
- Securities Regulation

SCHOLARLY INTERESTS

Focus on business regulation with an emphasis on securities law and business ethics

EDUCATION

- J.D., University of Pennsylvania Law School
- B.A., The Ohio State University

BEFORE JOINING THE FACULTY

Professor Chaffee was an attorney with Jones Day and taught for seven years at the University of Dayton School of Law.

HONORS

Professor Chaffee received four Professor of the Year awards at the University of Dayton.

*An Interdisciplinary Analysis of the Use of Ethical Intuition in Legal Compliance Decision Making for Business Entities*

Excerpt from 75 *Maryland L. Rev.* \_\_\_ (forthcoming 2015)

Often, clarifying the law comes at the risk of a client’s interests, and lawyers are called upon to be oddsmakers in addition to competent researchers, communicators, and advocates. In many circumstances, clients’ and colleagues’ hopes about what the law might be are in direct conflict with a lawyer’s intuitions about what the law likely is.

This Article explores what role a lawyer’s ethical intuitions should play in making decisions about legal compliance matters in the business world. Lawyers must choose between either helping clients minimally comply with the law or providing them with some ethical counsel in addition to legal advice. This Article suggests that a lawyer’s ethical intuitions can provide useful information in helping a client comply with its legal and extra-legal duties.

In this Article, the term “ethical intuition” is used to designate the feeling that a specific action is good, evil, or morally neutral, i.e., the unconscious recognition of the moral qualities of an action without a resort to reason. The exact source and nature of ethical intuitions, however, remain open for debate. Some would argue that ethical intuitions are emotional responses to particular situations. Others would suggest that ethical intuitions are more similar to reflex responses to moral dilemmas. Still others would claim that ethical intuitions are conditioned responses based on previous experiences. Perhaps, all of these hypotheses are correct. The purpose of this Article, however, is not to take a position on the source of ethical intuitions,

and because of the issue’s complexity, the true nature of ethical intuitions will be left for another day. . . .

To be clear, this Article is not an attempt to develop a moral theory or normative system based on ethical intuitionism, but it is an explanation of how lawyers can better help to protect business entities through the use of ethical intuitions. One must remember the famous words of Oliver Wendell Holmes, Jr. in *The Path to Law* in which he stated, “The law is full of phraseology drawn from morals, and by the mere force of language continually invites us to pass from one domain to the other without perceiving it, as we are sure to do unless we have the boundary constantly before our minds.” He continued, “The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.” In recent years, the legal academy has seen a proliferation of moral theories regarding what the law ought to be. Although these moral theories are often interesting and sometimes useful, this Article aims at the use of ethical intuition to determine what the law is in the Holmesian tradition. In advocating for the use of ethical intuition in legal compliance matters, this Article provides a mechanism for predicting how courts, legislatures, administrative

agencies, and the public might respond to a business’s actions. The issue of whether ethical intuitions provide the foundations of morality will not be addressed. . . .

This Article challenges the view held by many in legal education and in practice that what lawyers do consists solely of engaging in legal research and analytic reasoning. . . . [T]his challenge is made with good reason, i.e. that academics from numerous disciplines have recognized that individuals use intuition at least in the part in making moral decisions. In addition, neuroscience is producing more and more scientific evidence to validate the intuition-based decision making models of philosophers, psychologists, and economists. Moreover, the reality is that most individuals resort to practical reason, i.e. intuition, when making moral decisions. This is not to claim that law and morality are coexistent. Still, intuition can provide insights into the foundations of law, assist in the discovery of the law, and help protect business entities because intuition can give insight into the legal and extra-legal punishments that may be visited upon a business entity as a result of its legal compliance decisions.

In fact, considering one’s ethical intuitions may be as reasonable and as useful as resorting to analytic

reason. This is not to claim that legal research and analytic reasoning should play no role in making legal compliance decisions for business entities. Exhaustive legal research should be at the heart of any legal compliance decision. Lessons from philosophy, neuroscience, moral psychology, and behavioral economics, however, demonstrate that a dual process approach that incorporates both intuition and analytic reason is best for considering issues relating to a business entity’s compliance with the law. ■

SELECTED PUBLICATIONS

- *The Death and Rebirth of Codes of Legal Ethics: The Role of Neuroscientific Evidence of Irrational Ethical Decision-Making in Formulating Rational Rules of Professional Responsibility in the Practice of Law*, 27 *Geo. J. Legal Ethics* \_\_\_ (forthcoming 2014)
- *Answering the Call to Reinvent Legal Education: The Need to Incorporate Practical Business and Transactional Skills Training into the Curricula of America’s Law Schools*, 19 *Stan. J. L. Bus. & Fin.* \_\_\_ (forthcoming 2014)
- *The Role of the Foreign Corrupt Practices Act and Other Transnational Anti-Corruption Laws in Preventing or Lessening Future Financial Crises*, 73 *Ohio St. L.J.* 1283 (2013)

*This Article challenges the view held by many in legal education and in practice that what lawyers do consists solely of engaging in legal research and analytic reasoning.*

JELANI JEFFERSON EXUM



**JELANI JEFFERSON EXUM**  
PROFESSOR OF LAW

**FACULTY MEMBER SINCE 2011**

**COURSES TAUGHT**

- Criminal Law
- Criminal Procedure
- Comparative Criminal Procedure
- Federal Sentencing
- Race and American Law

**SCHOLARLY INTERESTS**

Professor Exum mainly writes in the area of sentencing law and policy, but her research interests also include comparative criminal law and procedure, and the impact of race on criminal justice.

**EDUCATION**

- J.D., Harvard Law School
- A.B., Harvard College

**BEFORE JOINING THE FACULTY**

Professor Exum was an associate professor at the University of Kansas School of Law and a visiting associate professor at the University of Michigan Law School. Professor Exum also has been a Forrester Fellow and Instructor in Legal Writing at Tulane Law School. She served as a law clerk for Judge James L. Dennis on the U.S. Court of Appeals for the Fifth Circuit and Judge Eldon E. Fallon on the U.S. District Court for the Eastern District of Louisiana.

**HONORS**

Professor Exum received the Beth A. Eisler Award for First Year Teaching in 2013.

*Forget Sentencing Equality: Moving from the “Cracked” Cocaine Debate Toward Particular Purpose Sentencing*

Excerpt from 18 *Lewis & Clark L. Rev.* 95 (2014)

That sentencing ought to serve the desired purposes of punishment is the main lesson of the crack-powder cocaine debate, which should be re-focused from a discussion about racial equality to one about Particular Purpose Sentencing. There is currently approximately an 18:1 ratio in the federal sentencing of powder cocaine and crack cocaine, meaning that it takes nearly 18 times the amount of powder cocaine to receive a sentence equivalent to a crack cocaine sentence. Before the Fair Sentencing Act of 2010, that ratio had been 100:1 since the Anti-Drug Abuse Act of 1986. Since as early as 1995, the United States Sentencing Commission has recognized that this sentencing difference “is a primary cause of the growing disparity between sentences for black and white federal defendants.” Attorney General Holder has argued that, “with an outsized, unnecessarily large prison population, we need to ensure that incarceration is used to punish, deter, and rehabilitate—not merely to warehouse and forget.” Evidence suggests that current federal cocaine sentencing laws are not adequately deterring cocaine crimes, rehabilitating offenders, incapacitating dangerous offenders, or reflecting community sensibilities of retribution. Further, the general utilitarian goal of reducing the cost of

crimes is not being achieved because drug crimes have been contributing to the tremendous expense of mass incarceration. Thus, calls for parity between crack and powder cocaine sentencing laws are missing the bigger point—that cocaine sentencing laws in general are faulty and unprincipled. Therefore, it is “cracked” for reformers to argue for crack cocaine offenses to mirror the broken powder cocaine laws. Once it is acknowledged that cocaine sentencing is not serving any specific sentencing purpose, it becomes more apparent that there is a need for Particular Purpose Sentencing.

**IMPLEMENTING PARTICULAR PURPOSE SENTENCING**

In order to actually move toward fairness in sentencing, the priority should be demanding Particular Purpose Sentencing, enforced through measures of accountability. When it comes to cocaine, Particular Purpose Sentencing can be implemented by Congress selecting, and providing in the sentencing statutes, a goal for drug sentencing, whether that be deterrence, incapacitation, rehabilitation or retribution. Through 18 U.S.C. §3553(a), Congress has stated that all sentencing purposes should be considered by sentencing judges with no one factor taking precedence over the others. Each of the §3553(a)(2) factors can be mapped onto a sentencing purpose. Retribution is captured by the requirement that sentences imposed “provide just punishment.” Pursuant to §3553(a)(2)(B), sentences must “afford adequate deterrence to criminal conduct.” Incapacitation, while clearly the primary mode of punishment adopted by the Guidelines, is also apparent in the directive “to protect the public from further crimes of the defendant.” And, a concern for rehabilitation is evident in

the order that courts select sentences that will “provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” However, simply saying that all purposes should be considered is in actuality being vague, rather than particular, about purpose. It is a way to hide the fact that meaningful discussions about sentencing purpose have not occurred. The late District Judge Marvin E. Frankel, the visionary who gave the inspiration for the Sentencing Commission, said it well when he admonished:

But for now we ought at least to keep in mind the pervasiveness of our ignorance. We still scarcely know what we’re doing, or why we’re doing it, when we inflict punishment for crime. We are certainly far from agreement on what we claim to be doing.

It is figuring out what we “claim to be doing” that Particular Purpose Sentencing addresses.

In order to implement Particular Purpose Sentencing, sentencing statutes must state what specific punishment purpose legislators seek to achieve through the sentencing of certain offenses. For example, for homicide, the particular purpose of punishment may be retribution, while it may be deterrence for certain drug crimes. Additionally, sentencing statutes must mandate that judges take that particular purpose into account in imposing a sentence. In keeping with the parsimony principle, sentencing judges would be required to select the least severe punishment possible to fulfill that particular purpose. Sentencing judges would be required to articulate their reasons for imposing a certain sentence, whether within or outside of the Guidelines range, and those reasons must

make reference to the statutory purpose for that offense or offenses. It would be the job of appellate courts to police the sufficiency and credibility of that statement of reasons. For Particular Purpose Sentencing to be effective, however, there must be a system of accountability. This can be achieved by Congress authorizing the U.S. Sentencing Commission to study, review, and amend sentencing laws as it learns that the main purpose is or is not being achieved for various offenses. None of this works, though, without Congress actually selecting a particular purpose for each offense or offense category (for example, the punishment for all theft crimes may have the same guiding purpose) and following the Sentencing Commission studies. In order to avoid slow legislative change and the limits of legislative compromise, the Sentencing Commission should be empowered to be the body that identifies the appropriate purposes for the punishment of offenses. At the very least, the Commission should be trusted with studying whether those goals are being met if Congress identifies the goals itself. While this may seem like a daunting task—and it will in no way be a perfect endeavor—it is a better approach to sentencing justice than calls for sentencing equality alone have been. ■

**SELECTED PUBLICATIONS**

- *Reflections of a First-Time Expert Witness*, 26 Fed. Sent. R. 115 (December 2013)
- *Sentencing, Drugs, and Prisons: A Lesson From Ohio*, 42 U. Tol. L. Rev. 881 (Summer 2011)
- *Making the Punishment Fit the (Computer) Crime: Rebooting Notions of Possession for the Federal Sentencing of Child Pornography Offenses*, 16 Rich. J.L. & Tech. 8 (2010)



GREGORY M. GILCHRIST

**GREGORY M. GILCHRIST**  
ASSOCIATE PROFESSOR OF LAW

**FACULTY MEMBER SINCE 2011**

**COURSES TAUGHT**

- Criminal Law
- Criminal Procedure
- Corporate Law
- White Collar Crime

**SCHOLARLY INTERESTS**

Professor Gilchrist writes on plea bargaining, the use of criminal law to regulate corporations, and the impact of both on the expressive function and perceived legitimacy of the legal system.

**EDUCATION**

- J.D., Columbia University
- A.B., Stanford University

**BEFORE JOINING THE FACULTY**

Professor Gilchrist was a criminal defense lawyer both in private practice and in the Office of the Federal Public Defender. He clerked for Judge Robert H. Henry on the U.S. Court of Appeals for the Tenth Circuit.

**HONORS**

Professor Gilchrist's article, *The Special Problem of Banks and Crime*, was selected from blind review of more than 80 papers to be presented at the C-LEAF Junior Faculty Workshop at George Washington University Law School in February 2014.

*Can Counsel Bargain for Trials?*

Excerpt from 99 *Iowa L. Rev.* \_\_\_ (forthcoming 2014)

This Essay examines how counsel might use plea bargaining to mitigate the harm of plea bargaining: rather than bargaining only for pleas, counsel should bargain for trials.

This is, admittedly, a counterintuitive proposal. Defendants are entitled to trials, so what would it mean to bargain for something to which one is entitled? It means, simply, that defendants could bargain away *limited* trial rights in exchange for leniency. By this mechanism, defendants might preserve adjudication on the merits while still securing some of the leniency normally reserved for those defendants who plead guilty. In a system that only provides trials to a tiny fraction of all defendants, the practice of securing leniency in exchange for limiting the trial rights that are so rarely exercised might fairly be understood as bargaining for trials. This Essay is part of a larger project exploring the possibility of revitalizing criminal trials through trial bargaining.

Prior to trial, a criminal case rests in stasis. The defendant is presumed not guilty, and he is afforded a series of procedural protections. The state has threatened to deprive him of life, liberty, or property, and it can only do so after affording the defendant due process of law. The state must notify the defendant of the charges against him. He is entitled to a hearing before a jury of his peers. He is entitled to confront witnesses against him, and to compel witnesses to appear in court. He is entitled to testify; he is equally entitled not to testify, and, should he elect not to testify, he is entitled not to have that fact held against him. Prior to a trial affording him these and other rights, the defendant remains not guilty.

*Trial bargaining allows the parties to contract for the prosecutor to grant leniency in exchange for the defendant's waiver of limited trial rights.*

To alter this stasis of pretrial-not-guilty status, the defendant must allow the court to enter a finding of guilty. That is, the defendant must plead guilty. In the popular imagination, a guilty plea involves a defendant admitting guilt. Sometimes defendants do admit guilt, but this is neither necessary nor a core aspect of a guilty plea. At its core, a guilty plea is a waiver of rights. If he does not waive his trial rights, then the criminal case proceeds, unalterably, to trial. By pleading guilty, a defendant waives his trial rights, allowing the court to make a finding of guilt so long as there is a factual basis for the charges.

Consider, however, what is on the table in a typical plea negotiation. On the prosecutor's side there is an array of possible leniency conditions: leniency in charges to which the defendant will plead; leniency in facts the prosecutor will introduce for purposes of sentencing; leniency in legal arguments the prosecutor will make about sentencing; and leniency about the prosecutor's sentencing recommendation. Moreover, the prosecutor can offer leniency for others or to limit continued investigation in order to secure a guilty plea. On the defendant's side, however, there is little variation in the deal. The prosecutor expects the defendant to

waive all trial rights—i.e. enter a guilty plea. The negotiation proceeds on the assumption—by both parties—that the defendant only has this one thing to offer.

Trial bargaining upsets the assumption that the negotiations begin with requiring the defendant to waive all trial rights. Trial bargaining allows the parties to contract for the prosecutor to grant leniency in exchange for the defendant's waiver of *limited* trial rights. By this mechanism, the defendant can secure a trial, the prosecutor can limit the scope and nature of the trial, while the defendant enjoys some insurance about his exposure should he lose at trial.

Prosecutors will often prefer shorter, simpler, less uncertain trials, and they may offer leniency in exchange for such a limited trial. Of course, the prosecutor's leniency would really be in exchange for the defendant waiving some of his specified trial rights, but in effect the prosecutor would secure a more favorable form of adjudication in exchange for leniency. Defendants will sometimes prefer the opportunity to adjudicate the merits of the case while maintaining some of the leniency usually reserved for guilty pleas. In the cases where both parties perceive a benefit, trial bargaining offers a way

to use plea negotiations to craft new adjudicatory processes. And in this way, trial bargaining offers hope of a revitalizing the jury trial. ■

**SELECTED PUBLICATIONS**

- *The Special Problem of Banks and Crime*, 85 U. Colo. L. Rev. 1 (2013)
- *Condemnation Without Basis: An Expressive Failure of Corporate Prosecutions*, 64 Hastings L.J. 1121 (2013)
- *The Expressive Cost of Corporate Immunity*, 64 Hastings L.J. 1 (2012)

**BRYAN LAMMON**



**BRYAN LAMMON**  
ASSISTANT PROFESSOR OF LAW

**FACULTY MEMBER SINCE 2013**

**COURSES TAUGHT**

- Evidence
- Conflict of Laws
- Civil Procedure — Pleading and Practice

**SCHOLARLY INTERESTS**

Appellate jurisdiction and procedure with a focus on interlocutory appeals

**EDUCATION**

- J.D., Washington University in St. Louis
- B.A., University of Notre Dame

**BEFORE JOINING THE FACULTY**

Professor Lammon was a visiting assistant professor at Washington University in St. Louis. After graduating from law school, Lammon clerked for Judge Edward C. Prado on the U.S. Court of Appeals for the Fifth Circuit and practiced in the Issues & Appeals Group of Jones Day.

*Rules, Standards, and Experimentation in Appellate Jurisdiction*

**Excerpt from 74 Ohio St. L.J. 423 (2013)**

The United States courts of appeals generally have jurisdiction over only “final decisions” by a district court. Most litigants must therefore wait until the end of proceedings in the district court—when all issues have been decided and all that remains is executing the judgment—before they can appeal. But not always. In fact, a whole slew of judicial, legislative, and rule-based exceptions permit an appeal before final judgment. And by nearly all accounts, this system of interlocutory appellate review is a mess; the exceptions are so many, the requirements so vague, and the judicial treatment so inconsistent that the regime is too complicated and too unpredictable.

The system of appellate jurisdiction over non-final district court orders has thus been a persistent target of reform efforts. No one strongly defends the status quo, and proposed reforms generally fall into one of two camps. One camp advocates a system of clear categorical rules defining what can be appealed and when; the other proposes a system of appellate court discretion over whether to hear an interlocutory appeal.

The debate between these two camps is at something of a stalemate, as much of it occurs at an unhelpfully abstract level. The debate is largely about consequences—about the effect of proposed reforms on courts and litigants. And the two sides generally agree on what effects are relevant. But they disagree about the likely effects of proposed reforms. For example, the sides disagree about whether a discretionary regime would increase appellate workloads. Advocates of rules argue that discretion would inevitably and substantially increase the number of appeals; advocates of discretion counter that it would not, with some even suggesting that appellate workloads could actually decrease. Another example is the disagreement about the flexibility

of categorical rules. Advocates of discretion contend that a system of categorical rules would not be sufficiently flexible to accommodate unanticipated situations; rule advocates say that it would. Similar disagreements abound.

To the extent the debate over interlocutory appeal reform addresses the potential effects of proposed reforms, it lacks substantial evidence on those matters. Commentators instead implicitly rely on assumptions about how litigants and judges would respond to the proposed reform. Arguments about consequences—based primarily on reason, theory, and behavioral assumptions—dominate the debate. These assumptions are reasonable, but each side’s assumptions often conflict with the other’s. And the literature offers no way for determining who’s right. Disagreement thus occurs at both empirical and evaluative levels; the two sides can disagree over how much appeals would increase under a discretionary regime and whether that amount is “too much.”

A means of determining the actual consequences of various approaches to interlocutory appeals could go a long way toward breaking the current stalemate. In this Article, I argue that an experimental approach to interlocutory appeals, initiated and overseen by judges, would solve much of this problem. I show that judicial experimentation, sometimes called “percolation,” would likely work in the context of interlocutory appeals; federal courts have both the incentives and the ability to conduct this type of experimentation, and the costs of judicial experimentation are probably lower in this context. And at a general

*In fact, a whole slew of judicial, legislative, and rule-based exceptions permit an appeal before final judgment.*

level, I suggest one means of conducting this judicial experimentation—the use of standards in a hierarchical court system. Loose standards (as opposed to strict rules) can facilitate judicial learning, giving courts a way to gather information about what facts might be relevant when crafting a rule. In a hierarchical system like the federal judiciary, the adoption of a standard by a higher court might also facilitate judicial experimentation by encouraging multiple lower courts to take divergent approaches to a single legal issue. Simultaneous and repeated application of those divergent approaches would then generate evidence as to their consequences, allowing courts to then compare the observable effects of those approaches.

I set out a way by which experimentation could occur in the context of interlocutory appeals: tweaking one of the existing judicial exceptions to the final judgment rule, the collateral order doctrine. A more standard-like collateral order exception could permit appeals from particular types of orders when the benefit of doing so generally outweighs the costs. This standard-like approach would leave room for the courts of appeals to adopt different approaches to particular types of orders. When asked whether a new type of order is immediately appealable, the courts of appeals will likely need to make their own assumptions about the costs and benefits of permitting

collateral appeals, and reasonable people can disagree when making those assumptions. Some circuits might decide that a particular type of order is immediately appealable while others hold that it is not. As the circuits apply their different approaches, they would be able to monitor the effects of their different rules, such as the increase in appeals, the number of errors corrected, and the delay in trial court proceedings. Were the evidence to undermine the assumptions underlying a circuit court’s initial decision or otherwise draw that initial decision into question, the court could choose to revisit it. And should the Supreme Court need to resolve a persistent split between the circuits, it could choose to base its decision, at least in part, on the evidence generated rather than its own assumptions or conjecture. This Article thus offers a means of using judicial experimentation to generate evidence about the actual consequences of different interlocutory appeal rules. Such an approach could provide some of the empirical grounding that current reform discussions lack. ■

**SELECTED PUBLICATIONS**

- *What We Talk About When We Talk About Ideology: Judicial Politics, Scholarship, and Naive Legal Realism*, 83 St. John’s L. Rev. 231 (2009)

ELIZABETH MCCUSKEY



**ELIZABETH MCCUSKEY**  
ASSISTANT PROFESSOR OF LAW

**FACULTY MEMBER SINCE 2012**

**COURSES TAUGHT**

- Civil Procedure – Pleading and Practice
- Civil Procedure – Jurisdiction
- Health Law
- Food and Drug Law

**SCHOLARLY INTERESTS**

Health law, civil justice, and procedure in American courts

**EDUCATION**

- J.D., University of Pennsylvania
- B.A., University of Pennsylvania

**BEFORE JOINING THE FACULTY**

From 2010 to 2012, Professor McCuskey was a Faculty Fellow at Thomas Jefferson School of Law in San Diego. Prior to entering academia, she was a litigator with Drinker Biddle & Reath LLP in Philadelphia, specializing in antitrust, appellate, and commercial litigation for health care clients.

**HONORS**

Professor McCuskey received the Beth A. Eisler award for First Year Teaching in 2014.

*Submerged Precedent*

**Excerpt from forthcoming article**

The American civil justice system serves both individual and social interests by adjudicating disputes and establishing a system for resolving conflicts under law. Court decisions—the tangible products of that system—can play both private and public roles, telling feuding litigants who is right while offering reasoning available for posterity in the body of precedent. This article scrutinizes the intensely individual, yet powerfully public nature of precedent, inquiring about which decisions remain with the parties and which are made available for public consumption. Most broadly, this article investigates the intricate relationships among precedent, access, and technology, examining what public and private roles precedent should play in the context of evolving technology.

Theory and empiricism inform these inquiries. Drawing from a sample of district court decisions, the study presented here introduces the phenomenon of “submerged precedent” – reasoned opinions available only on court dockets. Submerged precedents often contain reasoned elaborations of greater length and depth than their counterparts in Westlaw or Lexis. Yet these precedents buried on dockets are effectively “submerged” from view, like the portion of an iceberg below the ocean’s surface. Submerged precedent, in a practical sense, is reserved solely for those who know it exists, namely the parties to that case and extraordinarily intrepid researchers employing grueling docket-based search techniques.

Contrary to the conventional wisdom that Westlaw and Lexis capture all the opinions with any useful elaboration, this study found that as many as 30% of district courts’ reasoned opinions may be submerged on dockets, effectively obscured from view.

The existence of a submerged body of law carries the potential to destabilize our system of precedent and undermine the system’s animating principles of efficiency, predictability, and legitimacy. To investigate whether these threats have materialized, this article presents an analysis of a sample of opinions in one area of law: remand decisions from two district courts over seven years, all adjudicating federal-question removals of state-law claims.

Looking purely at outcome measures (whether to grant or deny remand), the existence of submerged precedent may distort the picture of remand rates. Consider, for example, a defendant deciding whether to remove a state-law case based on the presence of a federal civil rights issue. Quantitatively, the defendant’s counsel would see from available precedent that the district court remanded 60% of removals on this issue. But if counsel also included submerged precedents in her research, she would see that the court’s average rate of remand for these removals is actually 88.9%. A different defendant contemplating removal based on the presence of an ERISA question would find a remand rate among Westlaw opinions of 46.67%, while 100% of the submerged opinions remanded, bringing the overall remand rate to 63.67%.

This miscalculation can create inefficiency for parties and interfere with their ability to predict how courts will treat their actions. Similarly, without the full context of all reasoned opinions, a particular ruling may seem arbitrary, thus eroding parties’ satisfaction with the court system and perceptions of its legitimacy.

Beyond outcome measures, submerging reasoned opinions carries the potential to skew the substantive law they apply. Although content analysis was inconclusive about whether Westlaw offers a skewed version of the substantive law in this sample, several possible factors emerged that may be contributing to submergence: structure of legal tests, managerial discretion, pro se parties, and insulation from appeal. The difficulty in content-coding opinions also highlighted the nuanced nature of precedent itself.

Given this information, there may be an ideal role for submerged precedent to play and some optimal level of submergence. That is, reserving some portion of all reasoned decisions from public consumption may actually enhance the systemic value of precedent by encouraging judges to write, streamlining legal research, and isolating the signal of the law from the noise of numerous individual applications of it. Ultimately, this project concludes that submerged precedent’s existence should inform the evolution of technology and the body of decisional law available to the public it is intended to serve. ■

**SELECTED PUBLICATIONS**

- *Clarity & Clarification: Grable Federal Questions in the Eyes of Their Beholders*, 91 Neb. L. Rev. 387 (2012)
- *Structuring Jurisdictional Rules and Standards*, 65 Vand. L. Rev. En Banc 31 (2012) (with Scott Dodson)
- *CIRCUIT CONFLICTS IN ANTITRUST LITIGATION*, John J. Bogart, ed. (2009)

*Contrary to the conventional wisdom that Westlaw and Lexis capture all the opinions with any useful elaboration, this study found that as many as 30% of district courts’ reasoned opinions may be submerged on dockets, effectively obscured from view.*



**AGNIESZKA MCPEAK**

**AGNIESZKA MCPEAK**  
ASSISTANT PROFESSOR OF LAW

**FACULTY MEMBER SINCE 2014**

**COURSES TAUGHT**

- Torts
- Ethics
- Social Media Evidence Seminar

**SCHOLARLY INTERESTS**

Research interests involve the impact of new technology, like social media, on civil procedure, ethics, and privacy law.

**EDUCATION**

- J.D., Tulane University Law School
- B.A., University of California, Santa Cruz

**BEFORE JOINING THE FACULTY**

Professor McPeak was a Westerfield Fellow at Loyola University College of Law in New Orleans. She practiced for five years with the New Orleans law firm of Stone Pigman Walther Wittmann LLC in the areas of complex commercial litigation, intellectual property law, malpractice, and mass tort litigation.

**HONORS**

Professor McPeak has been invited to speak about U.S. privacy and tort law as it relates to new technology at the Programme in European Private Law for Postgraduates at the University of Silesia in Poland in January 2015.

*The Facebook Digital Footprint: Paving Fair and Consistent Pathways to Civil Discovery of Social Media Data*

**Excerpt from 48 Wake Forest L. Rev. 887 (2013)**

The basic principles of discovery have proved difficult to apply to new technology like social media. The Federal Rules of Civil Procedure have been adapted to address the emergence of electronic discovery generally, but courts are currently struggling in their application of the rules specifically to social media data. What is more, courts faced with these issues have inexplicably diverged from the boundaries set forth for other forms of electronically stored information. Quite simply, courts are either throwing open the doors and granting complete access to the entire contents of social media accounts or allowing user-selected privacy settings to bar any discovery altogether. These polarized approaches to social media discovery place at risk the normative foundations of civil discovery.

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Much of the harm that may result from overly broad social media discovery can be prevented through the existing Federal Rules of Civil Procedure. Generally, the Federal Rules are designed to allow for broad discovery, within limits. Those limits allow litigants to seek out information that is reasonably calculated to lead to admissible evidence, as long as that information does not create undue burden, impede reasonable expectations of privacy, or embarrass or harass another individual. Fishing expeditions that demand

broad and unfettered access to data and documents, or that cross into irrelevant territory, are not permitted. Additionally, litigants cannot rummage through opposing parties' files to see if something relevant may exist. Rather, discovery requests must be specific and stated with reasonable particularity, and the need for the information must be weighed against the burden or embarrassment that producing it creates. Further, parties are expected to exercise good faith and assess the relevancy of their own documents and produce all nonprivileged, responsive materials.

These basic principles of discovery equally apply to electronically stored information ("ESI"). Additional rules governing ESI were created in the 2006 amendments to address some of the discovery issues that are specific to ESI. The amendments expressly confirm that ESI is part of the ambit of discoverable information, require that litigants confer and consider ESI-related discovery issues early on in the course of the litigation, and impose some preservation requirements.

Most significantly, however, the 2006 amendments create a two-step analysis for what ESI must be produced based on the ease of access to it. Data that are deemed "reasonably accessible" should be produced after they are reviewed by the producing party for relevance and privilege. But data that are not

reasonably accessible—that must be restored or recreated at great cost—are presumptively undiscoverable. Good cause must be shown to overcome this presumption, and the advisory notes to the Federal Rules list several factors considered before discovery of inaccessible data is permitted, including assessing the importance of the information sought and of the issues in the litigation. Thus, discoverability of ESI is expressly limited to specific requests for important, responsive information in certain instances.

Social media accounts are a form of ESI. Under the general discovery principles, data found on social media websites should only be discoverable if relevant. But the relevancy inquiry is problematic with social media data and should be narrowly defined by courts. After all, almost every type of civil case contains some allegation or issue that touches upon social media content, whether it be physical injury, a mental state, or even a chronology of events. Further, social media websites like Facebook make it easy for users to download their own account information, so much of the information stored in a social media account is easy to access. Nonetheless, the rules governing motions to compel, motions for protective orders, and discovery of inaccessible ESI contemplate limits based on importance and connection to issues in the

litigation. These same principles should be applied to discovery disputes over social media content.

Therefore, to avoid the harm that may result from overly broad social media discovery, meaningful boundaries must be created. First, judges and lawyers must develop a more nuanced understanding of social media and how it works. Second, the existing Federal Rules, particularly those created to address ESI, should apply equally to all social media evidence. Unfair approaches—such as equating all social media data to public information or, on the other end of the spectrum, requiring a factual predicate based on the publicly available account content—should be abandoned. Lastly, courts should recognize the privacy concerns that arise from the aggregation of personal information available in a social media account. Through a fair, consistent application of the general principles governing discovery and a rethinking of privacy concerns, much of the potential harm from overly broad social media discovery can be avoided. ■

**SELECTED PUBLICATIONS**

- *Avoiding Misrepresentations in Informal Discovery of Social Media Data*, \_\_ SMU Sci. & Tech. L. Rev. \_\_ (forthcoming 2014)
- *Social Media Snooping and its Ethical Bounds*, \_\_ Ariz. St. L.J. \_\_ (forthcoming 2014)

*Much of the harm that may result from overly broad social media discovery can be prevented through the existing Federal Rules of Civil Procedure.*

DAN NATHAN



**DAN NATHAN**  
CLINICAL PROFESSOR OF LAW

FACULTY MEMBER SINCE 2011

**COURSES TAUGHT**

- Domestic Violence and Juvenile Law Clinic

**SCHOLARLY INTERESTS**

Child abuse and neglect, child custody, and domestic violence

**EDUCATION**

- J.D., The University of Toledo College of Law
- Masters in Teaching, University of Chicago
- B.G.S., University of Michigan

**BEFORE JOINING THE FACULTY**

Professor Nathan was in private practice for six years, focusing in the areas of juvenile and appellate law. He is the former chair of the Toledo Bar Association’s Juvenile Court Committee. Before entering the field of law, Professor Nathan was a high school English teacher and an investigator and caseworker for Lucas County Children Services.

*The following is an excerpt from a brief Professor Nathan filed on behalf of two foster parents who successfully petitioned the court to adopt twin girls whom the foster parents had raised since birth.*

**INTRODUCTION**

The foster parents filed petitions to adopt three-year-old twins. Lucas County Children Services, which holds permanent custody of the girls, filed objections to the foster parents’ petition. The agency believes that it is in the twins’ best interest to be adopted by relatives in Florida who also will be adopting the twins’ birth sibling and two birth half-siblings. Since the agency filed its objection, the relatives have filed petitions to adopt the twins and the other three children.

An important issue in the case will be the proper weight to be accorded the preference for keeping blood siblings together and for adoption by blood relatives. Therefore, the foster parents offer this Brief for the Court’s consideration.

**OHIO CASE LAW**

Ohio case law has followed the plain meaning of the Revised Code and the Administrative Code to conclude that blood relationships should be considered, but that this single consideration does not predominate over others. This principle was stated clearly by the Probate Court of Clermont County in *In re Dickhaus*. In that case, the petitioners sought to adopt their three nephews, but the child protective services agency withheld its consent regarding the youngest child. The Court rejected the “claim of the relative petitioners that they have some preferential right to adopt their nephew ...” The Court explained that “[a] myriad of factors determines what is in the

*Nonetheless, Ohio’s courts recognized that blood ties are only one factor among many to be considered when determining a child’s best interest.*

best interest of the child. A relative placement for adoption should always be given consideration, but the mere fact that there are relatives who want to adopt a child does not control what is in the child’s best interest.” The Court pointed out factors that weighed against relative placement in that case—factors that apply equally in the case at bar:

Phillip has been placed in a pre-adoptive home where he is obviously well adjusted and happy. He has become attached to his pre-adoptive parents. They appear to be mature, stable parents who have the financial ability to carry additional responsibility and love of the child. Every indication of the evidence is that these pre-adoptive parents are very suitably qualified to care for and rear said child and that the best interests of the child will be promoted if adopted by them.

The Court noted that adoption law was intended to divest birth parents and relatives of their legal ties to a child, and the Court observed that if the child were adopted by his present custodians, he would “by law have a wholly new set of relatives. There is no sanctity in law in maintaining the continuity of relatives.”

In *Dickhaus*, the relatives who sought to adopt had already adopted two of the subject child’s siblings. Therefore, the Court addressed not only the issue of adoption by a relative versus

a non-relative, but also the issue of what weight should be given to placing siblings together. The Court explained that “[t]he law does not require children of the same family to be adopted en masse by one set of adoptive parents. The best interest of each child must prevail.”

Citing *Dickhaus*, the Twelfth District in 2002 upheld a trial court’s award of custody to a foster parent over a relative where “the children had bonded with the [foster parents] and the [foster parents] had been very active in helping the boys overcome delays as well as active in their school and daily activities.” The trial court had correctly held that the relatives’ blood tie was not a controlling factor in determining the children’s best interest. The Fourth District agreed that “relatives have no preferential right to adopt,” adding that “an adoption agency’s consent (or lack thereof) is but one factor to consider in conjunction with all other evidence.”

Most relevant here is a 2008 Sixth District case that is factually similar to the case at bar. In that case, Lucas County Children Services withheld its consent to the foster parents’ adoption petition, instead supporting the petition of the children’s great-grandparents. The trial court held and the Sixth District affirmed that the agency had unreasonably withheld its consent to the foster parents’ petition. The

Sixth District explained, “While we do not find fault in the agency’s general preference for blood relatives in adoption matters, we do find it to be unreasonable for the agency to only consider lineage to the exclusion of everything else.”

The agency failed to consider numerous other factors, such as the relationship between appellees and the children, the nurturing home environment appellees had provided for the children, the relationships between the children and appellees’ biological children, and the developmental progress the children had achieved while under the primary care of appellees.

In light of Ohio case law, Lucas County Children Services cannot maintain that a child should be placed with relatives whenever there is a suitable relative available to adopt. In each case discussed above, the relative who had petitioned for adoption was found or assumed to be suitable. Nonetheless, Ohio’s courts recognized that blood ties are only one factor among many to be considered when determining a child’s best interest. Specifically, the bond that a child has formed with a foster caregiver and with other members of the foster family may outweigh the benefits of placement with a relative, especially when the child is three years old and has been placed since birth in the same foster home. ■



EVAN ZOLDAN

**EVAN ZOLDAN**  
ASSISTANT PROFESSOR OF LAW

**FACULTY MEMBER SINCE 2012**

**COURSES TAUGHT**

- Administrative Law
- Civil Procedure
- Health Care Fraud and Abuse Litigation

**SCHOLARLY INTERESTS**

Legislation, regulated industries, and constitutional law.

**EDUCATION**

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

**BEFORE JOINING THE FACULTY**

Professor Zoldan previously worked as a litigator for the United States Department of Justice and for Kirkland & Ellis LLP. He also clerked for judges on the District of Columbia Court of Appeals and the United States Court of Federal Claims.

*Reviving Legislative Generality*

Excerpt from *98 Marquette L. Rev.* \_\_\_ (forthcoming 2015)

A significant barrier to meaningful wealth and social equality is the practice, employed both by Congress and state legislatures, of enacting special legislation—that is, legislation that singles out named individuals for special treatment. Legislatures often use special laws to confer benefits, like tax breaks for individual, favored corporations. Special legislation also can impose disabilities; for example, a recent federal law withdrew generally applicable legal protections from a particular individual without resort to the normal judicial process. I argue that a value that meaningfully restrains special legislation—which I call a value of legislative generality – should be enforced as a constitutional value. A constitutional value of legislative generality is supported by three pillars: A. the historical background of the framing of the Constitution, B. the text of the Constitution itself; and C. philosophical considerations.

**A. THE HISTORICAL BASIS**

The revolutionary generation, that is, the generation that lived through the last years of colonial rule and the first years of independence from Great Britain, suffered from special legislation enacted by Parliament and, subsequently, by their own state legislatures. The most hated special laws were undoubtedly bills of attainder and laws confiscating property. However, the new state legislatures, emboldened by their recent independence from royal governors and judges, also enacted special laws that immunized named individuals from civil suit, nullified already rendered judgments, provided immunity from criminal prosecution, granted monopoly rights, and transferred land titles. Although the expedience of special laws made them popular at first, it soon became evident that special laws permitted a well-connected few to capture public benefits and permitted the legislature to punish individuals who committed no offense but that of holding unpopular political beliefs.

Wearied by a decade of special laws, the revolutionary generation ultimately rejected special legislation, denouncing state legislatures that extended their deliberations to the cases of individuals. They rejected all manner of special laws, including both special detriment laws, like bills of attainder, and special benefit laws, like grants of monopoly rights. By the close of the

confederation period, granting peculiar privileges to individuals or levying detriments against them was considered repugnant to the spirit of the American republics. It was with these experiences, and in large part driven by them, that the framers of the Constitution arrived in Philadelphia in 1787.

**B. TEXTUAL SUPPORT**

The text of the Constitution memorializes the aversion to special legislation that the revolutionary generation developed during the confederation period. Much like the principle of separation of powers or the right to privacy, the value of legislative generality can be gleaned not from reading any single clause of the Constitution in isolation, but from reading a number of clauses of the Constitution together. These clauses, covering subject matters as diverse as public records, immigration, and criminal law, together suggest a constitutional norm of legislative generality. In particular, the Bill of Attainder, Ex Post Facto, and Title of Nobility Clauses, all of which restrain both Congress as well as state legislatures, embody a value of legislative generality and appropriately may be called the “generality clauses” of the Constitution.

Among the generality clauses, the Bill of Attainder Clauses are most explicitly addressed to the practice of singling out individuals or small groups for special treatment. Reflecting the recognition that the legislature, unrestrained by precedent, reason, or rules of evidence, can punish individuals for running afoul of the popular will, these clauses prevent the legislature from singling out an individual or small, known group for special penalties like death, banishment, the confiscation of property, and exclusion from one’s profession.

The Title of Nobility Clauses are the mirror image of the Bill of Attainder Clauses, supporting the value of legislative generality by prohibiting the legislature from granting certain special benefits to individuals or small, determinable groups. Certainly, the clauses prohibit the granting of literal titles, like naming an individual Duke or Baron. However, in light of the manifold legal and economic privileges that long have been associated with the English nobility, a more plausible reading of the clauses includes a prohibition on the establishment of both a literal titled nobility and also of a functional nobility imbued with special economic and legal privileges.

The Ex Post Facto Clauses operate as a check against special legislation by preventing the legislature from doing indirectly what the Bill of Attainder and Title of Nobility Clauses prevent them from doing directly. When a legislature enacts retroactive legislation, it acts with the knowledge of conduct that already has occurred. As a result, the ability to enact retroactive legislation permits the legislature to punish or benefit individuals without naming them specifically, but with the knowledge of whom the legislation will benefit or harm. Perhaps not surprisingly, during the first decades of the republic, the Ex Post Facto Clauses were viewed as a primary constitutional source for the prevention of special legislation.

**C. PHILOSOPHICAL CONSIDERATIONS**

It is not surprising that the text of the Constitution and the history leading up to its framing support a value of legislative generality; indeed, there is a long tradition among jurists and philosophers of law, including those most influential to the framers of the Constitution, that excludes special legislation from the definition of law

and recognizes legislative generality as a normatively attractive value. Traditionally, scholars defining the word “law” drew a sharp distinction between rules that applied to the population generally and rules that applied only to a single individual. Both Blackstone and Locke argued that a rule that applies to a single individual simply falls outside the definition of “law.” As Locke explained, the legislature must promulgate “one rule for the rich and poor, for the favourite at court and the country man at the plough.” Modern philosophers of law have adopted and reasserted this basic principle. In *The Morality of Law*, Lon Fuller calls the generality of law the “first desideratum of a system for subjecting human conduct to the governance of rules.” Moreover, both modern and classical scholars have concluded that special laws lead to a variety of societal harms, including corruption, the unequal treatment of similar cases, the failure to reform broken statutory schemes, encroachment on the judicial function, and a host of other harms.

Taken together, the three pillars of legislative generality—historical, textual, and philosophical—support the conclusion that the value of legislative generality should be enforced by courts as a constitutional principle. In *Reviving Legislative Generality*, I more fully describe each of the pillars sketched above and explore the implications—some of them surprising—of enforcing this value. ■

**SELECTED PUBLICATIONS**

- *The Permanent Seat of Government: An Unintended Consequence of Heightened Scrutiny Under the Contract Clause*, 14 N.Y.U. J. Legis. & Pub. Pol’y 162 (2011)

**CURRENT FACULTY**

Terrell A. Allen  
*Director of Legal Research, Writing and Appellate Advocacy, and Legal Writing Professor*

Kara Bruce  
*Associate Professor of Law*

Lesa Byrnes  
*Legal Writing Professor*

Shelley Cavalieri  
*Associate Professor of Law*

Eric C. Chaffee  
*Professor of Law*

Benjamin G. Davis  
*Associate Professor of Law*

Jelani Jefferson Exum  
*Associate Professor of Law*

Maara Fink  
*Clinical Professor of Law*

Llewellyn J. Gibbons  
*Professor of Law*

Gregory M. Gilchrist  
*Associate Professor of Law*

Rick Goheen  
*Assistant Dean for the LaValley Law Library and Associate Professor*

Bruce M. Kennedy  
*Associate Professor of Law*

Kenneth Kilbert  
*Associate Dean for Academic Affairs and Professor of Law*

Jessica Knouse  
*Professor of Law*

Bryan Lammon  
*Assistant Professor of Law*

Susan R. Martyn  
*Stoepler Professor of Law and Values*

Elizabeth McCuskey  
*Assistant Professor of Law*

Agnieszka McPeak  
*Assistant Professor of Law*

Kelly Moore  
*Associate Professor of Law*

Dan Nathan  
*Clinical Professor of Law*

Katherine R. O'Connell  
*Assistant Dean for Students and Legal Writing Professor*

Nicole B. Porter  
*Professor of Law*

Marilyn F. Preston  
*Legal Writing Professor*

Geoffrey C. Rapp  
*Harold A. Anderson Professor of Law and Values*

Robert S. Salem  
*Clinical Professor of Law*

Joseph E. Slater  
*Eugene N. Balk Professor of Law and Values*

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

Lee J. Strang  
*Professor of Law*

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

Evan Zoldan  
*Assistant Professor of Law*

**FORMER FACULTY**

**2014**  
**Lee Pizzimenti**  
(retired; living in Iowa)

**2013**  
**John Barrett**  
(Interim Provost at The University of Toledo)

**Bill Richman**  
(retired; teaching part-time)

**Robin Kennedy**  
(retired; teaching part-time)

**2012**  
**Beth Eisler**  
(deceased)

**James Tierney**  
(retired)

**Garrick Pursley**  
(teaching at Florida State University College of Law)

**2010**  
**Douglas Ray**  
(retired; teaching at St. Thomas University School of Law)

**Bruce Campbell**  
(retired; living in Toledo)

**Doug Chapman**  
(retired; teaching at Elon University School of Law)

**Bob Hopperton**  
(retired; teaching part-time)

**Melissa Hamilton**  
(resigned)

**Gaby Davis**  
(resigned)

**2009**  
**James Klein**  
(retired; teaching at Charleston School of Law)

**PROFESSOR LEE PIZZIMENTI RETIRES**



**Lee Pizzimenti**  
**Associate Dean for Student Affairs and Professor of Law**

Lee Pizzimenti, associate dean for student affairs and professor of law, retired in the spring after 29 years on the Toledo Law faculty.

As associate dean for student affairs for the past six years, Pizzimenti counseled students, advised the Student Bar Association and other student groups, and worked to assure the health, safety, wellbeing, and academic success of countless College of Law students. She received the University Student Impact Award in 2013.

“She has truly put the best interests of our law school and its students foremost for 29 years. On behalf of everyone here, students past and present, thank you,” said Dean Steinbock at Pizzimenti’s retirement party May 8, 2014. Steinbock and Pizzimenti joined the Toledo Law faculty the same year.

“Working with Lee is like being inside a musical,” Dean Steinbock continued, “because when a line reminds her of a tune, Lee bursts into song. It’s also like being inside a situation comedy, thanks to her irreverent wit. We’ve had a lot of fun.”

Colleagues and students alike could count on Pizzimenti to burst into song. She provided the musical entertainment at the annual Environmental Law Society Chili Goof-Off each spring and could be heard singing in the administrative suite, as well as in the classroom.

Pizzimenti’s courses have been popular and her classes lively. During her career at Toledo Law, she has taught Contracts,

Legal Ethics, Civil Procedure, Agency and Partnership, Advanced Sales, and Secured Transactions.

*No Holds Barred*, a publication produced by College of Law students, noted, “She always brought energy and Pizz’az to every single class.” The 2014 graduating class recognized Pizzimenti’s “Pizz’az” with the Outstanding Faculty Award, which was presented at the commencement ceremony in May.

In addition to her teaching and administrative duties, Pizzimenti served on many College and University-wide committees and as an adviser for the Charles W. Fornoff Appellate Advocacy Competition each fall. She also has been active in a number of professional and civic organizations, including the State Bar of Michigan Committee on Professional and Judicial Ethics, the American Civil Liberties Union, and the United Way. She has a history of service to the Toledo legal community, too, and has been involved for many years with the Toledo Bar Association Professionalism Committee and the American Inns of Court.

Pizzimenti earned her bachelor’s degree from the University of Michigan and her law degree, magna cum laude, from Wayne State University. She joined the College of Law as a visiting professor in 1985 after clerking for Judge Albert J. Engel on the U.S. Court of Appeals for the Sixth Circuit and working for Dykema Gossett PLLC in Detroit.

The University named Pizzimenti a professor of law emeritus in the summer.

Please join us in congratulating Lee Pizzimenti on her retirement. Alumni and friends may send a note congratulating her to [LawDean@utnet.utoledo.edu](mailto:LawDean@utnet.utoledo.edu).

**TOLEDO LAW WELCOMES PROFESSOR AGNIESZKA MCPEAK**



**Agnieszka McPeak**, whose research interests involve the impact of new technology like social media on civil procedure, ethics, and privacy law, and who has been a Westerfield Fellow at Loyola University College of Law in New Orleans, joined the faculty in fall 2014. She will teach Torts and Ethics during the 2014-2015 school year.

She received her J.D., magna cum laude, from Tulane University Law School in 2007, where she served as a

managing editor of the *Tulane Journal of International and Comparative Law*, won the 2006-07 Tulane Moot Court Senior ADR Competition, and served as the Administrative Justice for Academic Affairs of the Tulane Moot Court Board. Upon graduation, she received the Brian P. McSherry Award for demonstrating the greatest dedication to the school’s community service program and the Federal Bar Association, New Orleans Chapter, Award for achieving the greatest distinction in the study of federal law. Professor McPeak received her B.A., with honors, in Literature and in History from the University of California, Santa Cruz.

After law school, Professor McPeak was admitted to the Louisiana bar and practiced for five years with the New Orleans law firm of Stone Pigman Walther Wittmann LLC in the areas of complex commercial litigation, intellectual property law, malpractice, and mass tort litigation. During her time at Stone Pigman, she was selected for inclusion in the 2009 edition of *Benchmark Litigation* for her work in commercial litigation and was recognized as a “Rising Star” by *Louisiana Super Lawyers* magazine.

## FACULTY NOTES

**Kara Bruce**, associate professor of law, published “Rehabilitating Bankruptcy Reform” in the *Nevada Law Journal* and the “The Debtor Class” in the *Tulane Law Review*. She presented her ongoing research on class actions in consumer bankruptcy cases at several regional and national conferences. In fall 2013, she served as the Scholar in Residence at the American Bankruptcy Institute, where she assisted the Institute’s Commission to Study Reform of Chapter 11, conducted a media teleconference with the major players in the Lehman Brothers bankruptcy case, and produced a variety of podcasts and videos on hot topics in bankruptcy law. In spring 2014, Professor Bruce was the keynote speaker at the Michigan Federal Bar Association’s Walter Shapero Bankruptcy Symposium. Professor Bruce also served as faculty adviser for the Women’s Law Student Association and the College of Law’s Bankruptcy Moot Court Team.

**Shelley Cavalieri**, associate professor of law, completed her grant report on access to Medicaid services for disabled military dependents for the Department of Defense. She also placed her article “Grounding Land Reform” in the *St. John’s Law Review*. She presented articles on land reform at the Annual Meeting of the Association for Law, Property, and Society, the Valparaiso University Law School Regional Faculty Workshop, the LatCrit Biennial Conference, and Cleveland-Marshall College of Law. She also presented at The University of Toledo’s Annual Great Lakes Water

Professor McPeak’s scholarship is off to a strong start. She published “The Facebook Digital Footprint: Paving Fair and Consistent Pathways to Civil Discovery of Social Media Data” in the *Wake Forest Law Review* last year, and her piece “Social Media Snooping and Its Ethical Bounds” will appear in the *Arizona State Law Journal* this year.

Conference on recent U.S. Supreme Court cases regarding water law and water rights.

**Eric C. Chaffee**, professor of law, co-authored and published “Global Issues in Securities Law,” a casebook on international securities regulation. He presented his research relating to business law at the Ohio Securities Conference, the Mercer Law Review Symposium, and at the Central States Law School Association’s Conference. He was elected vice president of the Central States Law School Association and treasurer of the Association of American Law Schools (AALS) Section on Scholarship. He also was elected to serve on the AALS Section on Internet & Computer Law. He is a co-founder and on the executive committee of the National Business Law Scholars Conference. During spring 2014, Professor Chaffee taught a course on international business law at the University of Szeged in Hungary. He has accepted articles in the publication process with the *Maryland Law Review*, *Mercer Law Review*, *Georgetown Journal of Legal Ethics*, *New York University Journal of Law & Liberty*, and *Stanford Journal of Law, Business & Finance*. He also edits the Securities Law Prof Blog.

**Benjamin G. Davis**, associate professor of law, published “American Diversity in International Arbitration 2003-2013” in its short form in the *ABA Dispute Resolution Magazine* Winter 2014 issue. The extended version of his piece has

been accepted for publication by the Columbia Law School *American Review of International Arbitration*. In addition, his article “On an Ordinary African-American Citizen Negotiating Voting Rights and Voter Intimidation in Ohio 2012” was published on the *Cardozo Journal of Conflict Resolution* blog, and “The 9/11 Military Commission Motion Hearings: An Ordinary Citizen Looks at Comparative Legitimacy” was published in the *Southern Illinois University Law Journal*. His book chapter titled “State Criminal Prosecution of a Former United States President in U.S. Domestic State Courts: A Thought–Experiment on Limits to the United States President’s Constitutional Powers Regarding Armed Conflict” was published in “Essays in Honor of Augusto Sinagra.” Professor Davis taught a contracts course at the University of Szeged in Hungary in fall 2013, and served as a visiting professor at Albany Law School for the spring 2014 term, where he taught public international law and international business transactions. During the last academic year, he presented to lawyers of the International Chamber of Commerce, International Court of Arbitration Secretariat in Paris, and at the ABA Section of Dispute Resolution 11th Annual Mediation and Advocacy Skills Institute in Nashville. Professor Davis delivered the keynote address at the 12th International Litigation and Arbitration Conference of the Florida Bar Association International Law Section. He also presented at

the Albany Government Law Review Symposium, the Mississippi College Law Review Symposium, and moderated a panel at the Law and Society Association Annual Meeting. As co-chair of the ABA Diversity Committee, Section of Dispute Resolution, he organized and spoke at a day-long workshop on “Broadening and Deepening the Participation of Underrepresented Groups in Dispute Resolution.” In addition, Professor Davis participated as a council member at the council meeting of the ABA Section on Dispute Resolution. He was named co-chair of the section’s Diversity Committee and served as the liaison for the section to the ABA Council on Racial and Ethnic Diversity in the Educational Pipeline. He continued as a board member of the Society of American Law Teachers. He has agreed to serve on the founding editorial board for the *International Journal of Online Dispute Resolution*. He also was named adviser to the executive secretary/CEO of the Lagos Court of Arbitration in Lagos, Nigeria, a new regional arbitration center.

**Jelani Jefferson Exum**, associate professor of law, published “Reflections of a First-Time Expert Witness” in the *Federal Sentencing Reporter* and “Forget Sentencing Equality: Moving from the ‘Cracked’ Cocaine Debate Toward Particular Purpose Sentencing” in the *Lewis & Clark Law Review*. She also edited and introduced the second edition of the “Turkish Criminal Procedure Code.” She delivered presentations at Bowling Green State University and Cleveland-Marshall College of Law.

**Maara Fink**, clinical professor of law, coached the College of Law Mediation Team, which won the 2014 Great Lakes Regional Mediation Tournament with a perfect score. She served as secretary for the Toledo Bar Association ADR Committee, immediate past-president of the Ohio Mediation Association, statewide co-chair of the Community Leadership

Councils for Planned Parenthood of Greater Ohio, and board member of The University of Toledo College of Law Alumni Affiliate. Professor Fink was a panelist for the Toledo Women’s Bar Association luncheon series on work/life balance and helped organize the 2014 Ohio Mediation Association Annual Conference.

**Llewellyn Joseph Gibbons**, professor of law, published “Then, You Had it, Now It’s Gone: Interspousal or Community Property Transfer and the Termination of an Illusory Ephemeral State Law Right or Interest in Copyright” in *Fordham Intellectual Property, Media and Entertainment Law Journal*. He continues to work on his book “Mastering Intellectual Property Licensing, Valuation, and Management” with co-author Lars S. Smith. He presented at the Zhongnan University of Economics and Law, Intellectual Property Rights Center, Drake University, and Indiana Tech Law School. Professor Gibbons also serves as the chair of the Board of Directors of the Confucius Institute at The University of Toledo and is the faculty adviser to several College of Law student groups.

**Gregory M. Gilchrist**, associate professor of law, published “The Special Problem of Banks and Crime” in the *University of Colorado Law Review* and “Counsel’s Role In Bargaining for Trials” in the *Iowa Law Review*. He presented the latter article at the University of Iowa College of Law Symposium marking the 50th anniversary of the Supreme Court decision in *Gideon v. Wainwright*. Last spring, the Democratic Staff for the Committee on Oversight and Government Reform of the U.S. House of Representatives invited and published Professor Gilchrist’s opinion on the propriety of contempt proceedings against Internal Revenue Service official Lois Lerner. He has been interviewed and had his work discussed in national media outlets, including *Fortune*, *The Huffington Post*, *Sirius*

Radio, and *ABC Radio Australia*. Professor Gilchrist served as the faculty adviser for the College of Law’s Criminal Law Moot Court Team.

**Jessica Knouse**, professor of law, published “Mediating among Multiple Liberties in the Context of Posthumous Reproduction” with the Cleveland-Marshall College of Law’s *Journal of Law and Health*. She presented at the Fourth Annual Constitutional Law Colloquium at Loyola University Chicago School of Law and at the Law and Society Association’s Annual Meeting.

**Susan Martyn**, the Stoepler Professor of Law and Values and Distinguished University Professor, published the 2014-2015 edition of her book “The Law Governing Lawyers: Model Rules, Standards, Statutes, and State Lawyer Rules of Professional Conduct,” and a book chapter titled “Can Luther Help Modern Lawyers Understand Fiduciary Duty?,” which will appear in “So Much Good Fruit: Lutheran Interpretations of Contemporary Legal Issues.” Professor Martyn delivered the inaugural lecture titled “Understanding Ethics in Context: The Synergy of Teaching, Research & Practice” in The University of Toledo’s Distinguished University Professor Lecture Series. On the CLE circuit, Professor Martyn offered the ethics portion for events sponsored by the Judicial College of the Ohio Supreme Court, the Annual AON Law Firm Symposium, the Annual Meeting of the American Law Institute (ALI), and the ALI CLE. Professor Martyn was awarded the 2014 Toledo YWCA Milestones Award in Education.

**Elizabeth McCuskey**, assistant professor of law, supervised two new health law programs at the College of Law, the Certificate of Concentration in Health Law and the College’s team for the national Health Law Transactional Competition. She served as faculty adviser to the College’s Health Law Society and participated in the

development of the University’s new Population Health Track in the Master of Science program. She spoke at the American Society for Law, Medicine, & Ethics Annual Health Law Professors Conference and presented her current research on “Submerged Precedent” at Marquette University Law School’s Works-in-Progress Conference and at Case Western Reserve University School of Law. Professor McCuskey serves on the Advisory Group to the U.S. District Court for the Northern District of Ohio. With Professor Evan Zoldan, she submitted commentary to the Rules Committee on proposed changes to the Federal Rules of Civil Procedure. In April 2014, Professor McCuskey taught American Civil Procedure at the University of Szeged in Hungary. She received the Beth Eisler Award for First-Year Teaching, an award voted on by the 1L class.

**Kelly A. Moore**, associate professor of law, will publish his article “Rubik’s Cube and Tax Policy: Proposed Solutions for Puzzling Components of Estate Planning With Life Insurance” in an upcoming issue of the *Virginia Tax Review*. In April 2014, he led a discussion on tax policy with a group of Toledo Public High School AP students. He served as the College of Law’s representative on The University of Toledo Faculty Senate and was a member of the program review team examining the University’s Paralegal Studies Program.

**Dan Nathan**, clinical professor of law, served on the board of directors of Court Appointed Special Advocates and the Medical-Legal Partnership for Children. He is treasurer of the board of directors of Student Legal Services, Inc. Professor Nathan also is a member of ABLE/LAWO’s Emerging Leaders’ Council, and he is secretary of the Toledo Bar Association’s Committee on Continuing Legal Education. Professor Nathan volunteers in Lucas County Juvenile Court as an advocate for children in

neglect/abuse cases and in private custody cases. In addition, he volunteers for the Children’s Rights Council as a supervisor of visits between children and parents.

**Nicole B. Porter**, professor of law, had several articles accepted for publication in the past year, including “The New ADA Backlash” in the *Tennessee Law Review*; “Mutual Marginalization: Individuals with Disabilities and Workers with Caregiving Responsibilities” in the *Florida Law Review*; “Caregiver Conundrum Redux: The Entrenchment of Structural Norms” in the *Denver University Law Review*; “Women, Unions, and Negotiation” in the *Nevada Law Journal*; “Finding a Fix for the FMLA: A New Perspective, A New Solution,” which appeared in the *Hofstra Labor & Employment Law Journal*; and “Choices, Bias, and the Value of the Paycheck Fairness Act: A Response Essay,” to be published in the *ABA Journal of Labor & Employment Law*. She presented her scholarship at the following this past academic year: the Eighth Annual Labor and Employment Law Colloquium at Hofstra University School of Law; Ohio Northern University Pettit College of Law; the Disability Law Section of the 2014 Association of American Law Schools Annual Meeting; and the University of Denver Sturm College of Law. Professor Porter also presented for the Labor Law Group, which is a consortium of preeminent labor and employment law professors from across the country.

**Geoffrey C. Rapp**, a Harold A. Anderson Professor of Law and Values, was named the 2013 Outstanding Faculty Member by the College of Law Alumni Affiliate. He served on panels on whistleblowing law at the Institute for Investor Protection Conference and the Institute for Law and Economic Policy Conference. Professor Rapp’s article on Dodd-Frank whistleblower bounties, “Mutiny by the Bounties,” was named one of the 10 most noteworthy articles

on employee benefits issues by *Tax Notes* and was included in “Securities Law Review 2013,” a book collecting the most important articles on securities law published in the prior year. Professor Rapp was quoted in USA Today, the Detroit News, the Chicago Tribune, Yahoo Sports, the Baltimore Sun, the ABA Journal, the (Toledo) Blade, and by Reuters, and he was interviewed by several radio stations around the country. Professor Rapp was an invited participant in the 2013 Capital Access Innovation Summit sponsored by the U.S. Department of Treasury and federal Small Business Administration.

**Robert S. Salem**, clinical professor of law, presented “Advanced Issues in Safe School Law and Policy” at the Lavender Law Conference. He also presented “Creating Bully-Free Schools: A Focus on School Climate” at the 2013 Mental Health and Addiction Conference, sponsored by the Ohio Department of Jobs and Family Services. Professor Salem worked closely with several local school systems to improve their policies and practices regarding bullying prevention, and was featured on a WGTE-TV program on the topic. He also lectured on health care privacy and confidentiality to second-year medical students at The University of Toledo. He and his students conducted workshops on prison reentry for inmates at the Northwest Ohio Correctional Institute and on advance health care directives at area assisted living facilities. He delivered presentations on marriage equality at a Toledo Bar Association CLE program and for the Lucas County Bar Association. Professor Salem was recently appointed to the board of directors for the Toledo Fair Housing Center, and he continues to serve on the boards of the Toledo Bar Association, Equality Toledo, and the National Gay and Lesbian Task Force.

**Joseph E. Slater**, the Eugene N. Balk Professor of Law and Values, will be

inducted as a Fellow of the College of Labor and Employment Lawyers in November after being elected by colleagues in recognition of his sustained outstanding performance in the profession. He also published “Teaching Private-Sector Labor Law and Public Sector Labor Law Together” in the *Saint Louis University Law Review*; “Public Sector Bargaining: Tumultuous Times” in the book “Collective Bargaining Under Duress: Case Studies of Major North American Industries;” “Attacks on Public-Sector Bargaining as Attacks on Employee Voice: A (Partial) Defense of the Wagner Act Model” in the *Osgoode Hall Law Journal*; “The Strangely Unsettled State of Public-Sector Labor Law in the Past Thirty Years” in the *Hofstra Labor & Employment Law Journal*; and “Are Public-Sector Employees ‘Overpaid’ Relative to Private-Sector Employees? An Overview of the Studies” in the *Washburn Law Journal*. Professor Slater also presented at the 38th Annual Meeting of the Social Science History Association, ABA Section of Labor and Employment Law Seventh Annual Conference, Bernard Gottfried Memorial Labor Law Symposium, and Annual Colloquium on Labor and Employment Law. He has made several local media appearances to discuss labor issues, and was quoted in the national journal Education Week.

**Lee J. Strang**, professor of law, published “Cases and Materials on Federal Constitutional Law: The Fourteenth Amendment,” Volume 5 in the LexisNexis Modular Casebook Series, and the book chapter “Originalism’s Limits: Interposition, Nullification, and Secession” in “Union and States’ Rights: 150 Years after Sumter, Interposition, Nullification, and Secession.” He also placed several articles for publication. His article “Originalism’s Subject Matter: Why the Declaration of Independence is Not Part of the Constitution” will appear in the *Southern California Law Review*;

“The Forgotten Jurisprudential Debate: Catholic Legal Thought’s Response Legal Realism,” in the *Marquette Law Review*; and “Originalism’s Promise and Limits,” in the Cleveland State Law Review. Professor Strang presented at thirteen law schools, including the University of Pennsylvania, in the course of the year.

**Rebecca E. Zietlow**, the Charles W. Fornoff Professor of Law and Values, has entered into an agreement with Cambridge University Press to publish her book titled “The Forgotten Emancipator: James Mitchell Ashley and the Ideological Origins of Reconstruction.” She published the chapter “The Other Citizenship Clause” in the book “‘The Greatest and the Grandest Act’: The Civil Rights Act of 1866 from Reconstruction to Today,” chapters on “Fourteenth Amendment: Citizenship Clause,” and “Federal Powers, Civil Rights,” in the “Encyclopedia of American Governance,” and two book reviews. She presented at the Law and Society Annual Meeting, at the Work and Vulnerabilities Conference at Emory University School of Law, at the Annual Meeting of the Midwest Political Science Association, at the Association of American Law Schools (AALS) Annual Meeting, at the Loyola University Chicago School of Law Constitutional Law Colloquium, at IU McKinney School of Law, and at the Labor and Employment Law Colloquium. Professor Zietlow is a member of the Planning Committee for the AALS Workshop on Forty Years of Equality, the secretary of the AALS Section on Constitutional Law, and the secretary of the AALS Section on Women in Legal Education.

**Evan C. Zoldan**, assistant professor of law, published “Targeted Judicial Activism” in *The Green Bag*. His forthcoming article, “Reviving Legislative Generality,” has been accepted for publication in the *Marquette Law Review*, and his essay,

“Primary Sources and Ambiguity in Legal History” was accepted for publication in the book “Teaching Legal History: Comparative Perspectives.” Professor Zoldan gave the keynote address, entitled “The Forgotten Bill of Rights,” at Bowling Green State University’s Constitution Day celebrations. He also spoke to the Toledo Bar Association Federal Courts Committee. Professor Zoldan presented his current research, which relates to legislation and the political process, at a number of academic conferences and workshops, including the Loyola University Chicago School of Law Constitutional Law Colloquium, Northeastern University School of Law, Valparaiso University Law School, and Michigan State University College of Law. Professor Zoldan also served as the faculty adviser for the Regional Moot Court Team. ■

## ALUMNI NEWS

## MOHLER '73 TAKES OFFICE AS OSBA PRESIDENT



Martin E. Mohler, a 1973 graduate of the College of Law, began his term as president of the Ohio State Bar Association July 1, 2014. He was elected as the OSBA president-elect at the organization's annual convention last spring.

Mohler is a partner in the Toledo firm of Shindler, Neff, Holmes, Worline and Mohler, LLP. His general practice covers both criminal and civil law.

"Marty Mohler is at least the third Toledo Law grad to head the OSBA," said Dean Steinbock. "We are very proud of him and our other graduates who serve at all levels of bar association leadership."

Mohler is a former president of the Toledo Bar Association, and a life member of the Sixth Circuit Judicial Conference. He also is a Fellow of the Ohio State Bar Foundation. He has been an active member of the OSBA, most recently having chaired the Government Affairs Committee of the OSBA Board of Governors.

Mohler has a history of service to the Toledo community. He volunteers at a local soup kitchen and serves on the Toledo Bar Association Pro Bono Board. He also chairs the Facility Governing Board for the Correctional Treatment Facility for Lucas County. In addition, he is a former member of the board of trustees of the Toledo Legal Aid Society and Advocates for Basic Legal Equality/Legal Aid of Western Ohio.

Mohler earned his bachelor's degree from John Carroll University.

## FOUR OUTSTANDING ALUMNI HONORED DURING ANNUAL AWARDS GALA



(From left to right) Karl Strauss '06, Professor Geoffrey Rapp, Julia Bates '76, Randall Samborn '82, and Michael DiLauro '80.

Toledo Law and the Law Alumni Affiliate recognized four alumni and one faculty member at a reception and ceremony held during Homecoming Weekend Oct. 3, 2013.

Julia Bates '76 and Randall Samborn '82 received Distinguished Alumni Awards; Michael DiLauro '80 was honored with the Commitment Award; and Karl Strauss '06 was given the Outstanding New Exemplar Award. Professor Geoffrey Rapp also was recognized at the event.

## MITTEN '84 SERVES AS ARBITRATOR AT WINTER OLYMPICS



Matthew Mitten '84, professor of law and director of the National Sports Law Institute at Marquette University Law School, was in Sochi, Russia, to serve as an arbitrator at the 2014 Winter Olympic Games.

He was on a team of nine arbitrators, all lawyers, judges, or law professors from around the world who specialize in sports law and arbitration. This special international tribunal, called the Court of Arbitration for Sport ad hoc Division, settled any dispute related to the Winter Games and has operated at every Summer and Winter Olympic Games since 1996.

"I appreciate this once-in-a-lifetime opportunity very much," Mitten said from Sochi. "It's been an incredible experience meeting people from all over the world—especially our Russian hosts, who've been so welcoming—and seeing firsthand the power of international sports competition to unite the world's diverse cultures."

"Arbitrating at the Winter Olympics is just one of the amazing and unanticipated places a Toledo Law degree has taken our graduates," said Dean Steinbock.

"Professor Mitten is universally regarded as one of the most knowledgeable sports law experts in the country," said Professor Geoffrey Rapp, who teaches sports law. "It's no surprise that he's been selected to play such a prominent role at a time when the whole world will be watching."

Professor Mitten has authored *Sports Law in the United States* (Wolters Kluwer 2011), and co-authored a law school textbook, *Sports Law and Regulation: Cases, Materials and Problems* (Wolters Kluwer 2013), which is in its third edition, and an undergraduate and graduate textbook, *Sports Law: Governance and Regulation* (Wolters Kluwer 2013). He has published articles in several of the nation's leading law reviews, as well as in medical journals such as *The New England Journal of Medicine*. He is a member of the Court of Arbitration for Sport, the American Arbitration Association's Commercial Arbitration, Olympic Sports, and United States Anti-Doping Agency panels, and the Ladies Professional Golfers Association's Drug Testing Arbitration panel.

"I received an outstanding, well-rounded education from the College of Law that well-prepared me for a variety of professional experiences as an attorney, law professor, and international sports arbitrator," Mitten said. "The guidance and support I received as a law student and throughout my career from faculty members such as Ron Raitt, Rhoda Berkowitz, Marshall Leaffer, and Howard Friedman—and others—have been invaluable."

## 2013-2014 DISTINGUISHED ALUMNI SPEAKER SERIES

The College of Law regularly invites alumni back to campus to lecture in its Distinguished Alumni Speaker Series. Last year, Jeffrey H. Kay '69 and Justice Marc Kantrowitz '84 returned to present in the series. This year, Howard Levine '79, a partner at Sussman Shank LLP in Portland, Oregon, will visit on October 30 to present a lecture titled "A Catholic Archdiocese in Chapter 11: Causes, Controversies, and Legal Challenges."

## KAY '69 SHARES HIGHLIGHTS FROM DISTINGUISHED CAREER AS ASSISTANT UNITED STATES ATTORNEY

Jeffrey H. Kay '69, a former Assistant United States Attorney, shared lessons learned during a 40-plus year career prosecuting white-collar crime Sept. 19, 2013, in a talk titled "How a Lawyer Earns a 'Go Directly to Jail' Card." As an Assistant United States Attorney in New York and then in Florida, Kay built a celebrated career prosecuting white-collar crime, including mortgage, tax, and government contracting fraud. His investigations took him around the globe – and regularly implicated dishonest lawyers. During his lecture, Kay pointed out the ethical pitfalls that await new attorneys and identified the mistakes of lawyers he prosecuted during his career.

## 'OLD WHISKEY AND YOUNG WOMEN: TALES OF ONCE FAMOUS CASES' TOPIC OF LECTURE BY KANTROWITZ '84

Marc Kantrowitz '84, associate justice on the Massachusetts Appeals Court and author, explored some of the most notorious criminal cases in American history March 20, 2014, at Toledo Law. During the lecture titled "Old Whiskey and Young Women: Tales of Once Famous Cases Now Nearly Forgotten," Justice Kantrowitz, who handled two dozen first-degree murder cases before joining the bench, brought to life infamous cases from the past.

HENRY B. HERSCHEL  
1942-2013

Henry B. Herschel, '67, known as Hank to his loved ones, passed away

on Monday, December 9, 2013. He had long served as Chief Public Defender in Toledo and as a member of Herschel and Accettola. Henry was President of the Toledo Bar Association 1987-1988 and received the Order of the Heel award from the Junior Bar. He served as Treasurer and President of The University of Toledo Alumni Association, as President of the UT Foundation Board, and as a member of the Executive Committee of the Law Alumni Association. He taught Trial Practice at the College of Law for many years. Henry was a great friend of Dean John W. Stoepler, and he and his wife Pam were the moving force behind the John W. Stoepler Memorial Golf Tournament.

## IN MEMORIAM

Francis J. O'Connor '49	4/11/14
Dale K. Anderson '50	5/27/14
Richard T. Secor '50	5/7/14
Howard E. Shoup '54	1/21/14
Henry B. Herschel '67	12/9/13
William J. Peters '67	11/7/13
Sander H. Simen '69	11/16/13
Nancy Short '71	1/20/14
Hon. Warren J. Lotz '72	2/4/14
Max E. Rayle '76	10/31/13
David W. Gatwood '78	12/4/13
David L. Duffey '79	12/4/13
Penelope S. McCabe '79	12/17/13
Linda C. Brinkman '84	11/23/13

## ALUMNI

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## WASHINGTON, D.C. ALUMNI RECEPTION (October 2013)



Class notes are now online.  
Check out "Alumni in the News," at [utoledo.edu/law](http://utoledo.edu/law)!



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## ANN ARBOR ALUMNI RECEPTION

Thursday, Nov. 13, 5:30 p.m.

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## WASHINGTON, D.C. ALUMNI RECEPTION

Wednesday, Dec. 3, 5:30 p.m.

**Van Scoyoc Associates**

Washington, D.C.

To RSVP, email Heather Karns at [Heather.Karns@utoledo.edu](mailto:Heather.Karns@utoledo.edu).

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