

2009

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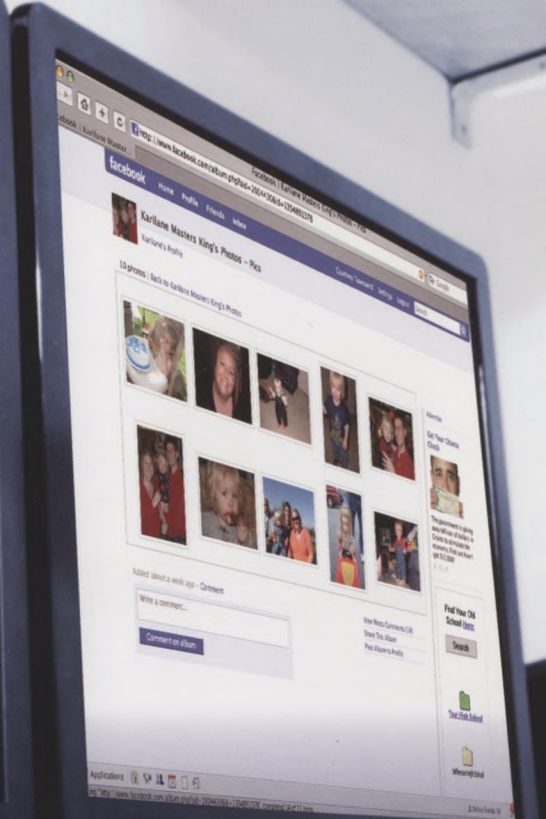
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# In Brief

THE MAGAZINE OF CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW



## WE, THE PAPARAZZI: PRIVACY IN THE FACEBOOK GENERATION

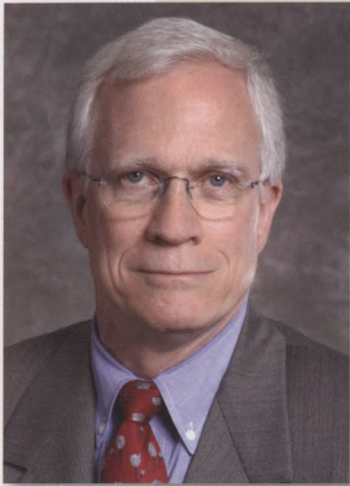
TWO FULBRIGHT SCHOLARS WORK TO CREATE A WORLD WHERE ALL HAVE ACCESS TO JUSTICE

REVOLUTIONIZING THE WAY WE TEACH LAW STUDENTS

MEMO TO THE NEW PRESIDENT: END THE SEPARATION OF CORPORATE OWNERSHIP AND CONTROL



## FROM THE DEAN'S DESK



To state first things first: I am extraordinarily grateful to President Barbara R. Snyder for according me the privilege and the opportunity to serve as Interim Dean. I have admired the School of Law from the time my wife, Judy, attended and graduated in the Class of 1976. This School trains leaders, enlightens minds on and off campus, and celebrates and supports our system of justice.

This issue of In Brief offers only a sampling of the activity at the School. I invite you to read our feature article, which provides new insight into a digital world that has blurred the line between public and private, and offers an in-depth look at adapting the law to protect individual privacy rights.

Our faculty and students are taking big steps to positively influence the communities in which we live, and the nation at large. As you will learn in this issue, two recent Fulbright Scholars at our Clinic are changing the way law is taught in Argentina and Botswana. Our faculty and students have assisted with the prosecution of five former leaders of the Khmer Rouge for the notorious "Killing Fields" trials in Cambodia, and students are working in our neighborhoods to provide legal assistance to those in most need, as well as spending their spring breaks rebuilding New Orleans.

We are blessed to work with outstanding colleagues; we are inspired by curious and talented students; we enjoy the support of willing and able staff, and of loyal alumni. Working together, our School of Law family will continue to have a positive impact on our profession and on all of our citizens.

I look forward to working with you to realize fully the School's potential. I hope you enjoy reading about the accomplishments of our alumni, faculty and students. My faculty colleagues and our students are grateful to you for supporting Case Western Reserve University School of Law.

Best wishes,

A handwritten signature in black ink that reads "Robert H. Rawson, Jr." in a cursive script.

Robert H. Rawson, Jr.  
Interim Dean



# In Brief

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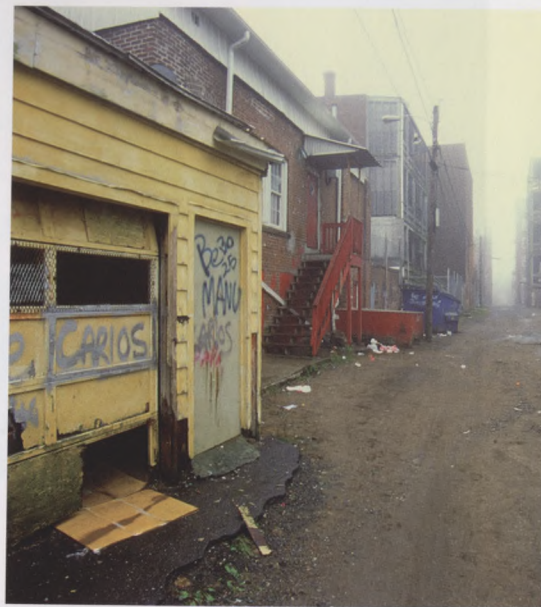
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# WE, THE PAPARAZZI: PRIVACY IN THE FACEBOOK GENERATION

How do we protect individual privacy rights in a digital world?



JACQUELINE D. LIPTON  
Professor of Law, Co-Director, Center for Law, Technology and the Arts, Associate Director, Frederick K. Cox International Law Center, Case Western Reserve University School of Law

"We, the Paparazzi": Developing a Privacy Paradigm for Digital Video, 95 Iowa Law Review \_\_\_\_ (forthcoming 2009).



The age of ubiquitous cellphone cameras and social networking websites – such as Facebook and MySpace – brings challenges for online privacy. The unbridled sharing of video images and multi-media files, in particular, creates challenges that domestic and international legal systems have not had to face before. While some existing laws deal with unauthorized collection and dissemination of personal data, and some deal with intrusive photography, we do not yet have a legal system that effectively puts the two together. In other words, we do not have laws that directly regulate the taking and wholesale sharing of pictures and videos of other people without their consent. Today's youth are growing up in a society where everything they do is fair game. Drunken parties, and intimate moments with partners may be captured on video and posted to YouTube for all to see.

The law has lagged behind these technological changes. Laws that limit intrusive photography are aimed largely at the media — notably intrusions by the paparazzi, into individual's private lives. Law-makers have not appreciated that the public has now become the paparazzi due to the ever-present cellphone cameras tucked into each of our belts, pockets, and purses. At the same time, laws that provide at least some comfort against unauthorized collections and dissemination of personal data are also a poor fit for the realities of the online video sharing generation. They are geared at regulating collections of health, financial, or transactional data about individuals by corporations and governments. They do not contemplate friends snapping candid videos of their peers and sharing them online.

American privacy tort law is also ill-suited to the realities of online social networking. The four privacy torts in the Second Restatement covers matters as diverse as: offensive physical intrusion into another's seclusion; commercial appropriation of another's name or likeness; public disclosure of private facts if the disclosure would be highly offensive to the subject and is not of legitimate public

concern; and, false light publicity. In the online social networking context, it is usually difficult, if not impossible, to establish the requisite degree of offense or intrusion when photographs and videos posted online are merely embarrassing or humiliating. Showing a picture of someone being unfaithful to their partner, or of drinking and smoking, or even simply being intimate with a good friend may well affect an individual's reputation. However, such images would unlikely rise to the level of offense or intrusion required for relevant privacy torts. Such images also would be unlikely to support a false light publicity claim. They would also generally not be distributed for commercial profits so would not support a misappropriation claim.

Outside of general embarrassment, individuals may face more specific harms. People may find prospective employers, trading partners, educational institutions, insurance providers, or health care providers looking at them negatively as a result of a simple Internet search for background information. A picture of an individual smoking a cigarette may be enough to convince a health insurer to charge a higher premium. A picture of a person cavorting at a strip club may convince a prospective employer to pass on an interview. A picture of a woman failing to clean up after her dog on a South Korean subway carriage, and the attendant Internet publicity it received, actually led to the woman having to quit her job. A highly popular and highly embarrassing video of a teenage youth playing with a golf ball retriever as if it was a light saber from the Star Wars movies ultimately led to the hospitalization of the young man in a psychiatric institution.

Nevertheless, there is little legal recourse for those who fall victim to online disseminations of video and multi-media files depicting

private moments. Much of the reason for this is the law's traditional insistence on delineating between "public" and "private" conduct. Conduct that is deemed by the law to be public is generally fair game, while conduct deemed to be private is more easily protected. The problem in the digital age is that the borders between public and private are much less clear than they once were. Even in the age when long distance listening devices and telephoto camera lenses were invented, it was still relatively easy to establish what a person's reasonable expectation of privacy was. In other words, if someone was standing on the balcony of her private residence fifty feet behind a high fence, she would regard herself as being in a private place. Thus, a paparazzo taking a photograph with a telephoto lens could be seen as intruding into her seclusion.

Today, however, the person on the secluded balcony may be with a group of friends who

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**The problem in the digital age is that the borders between public and private are much less clear than they once were.**

are all snapping pictures of each other with cellphone cameras. In one sense the situation is private because the balcony-owner has control of who she invited onto the balcony with her. In another sense, the situation becomes potentially public because any one of those invitees could snap an embarrassing photograph and post it online. Prior to cellphones and online social networking sites, this was much less likely to occur. To bring the private into the public sphere, the photographer would have had to develop the photograph, run it through a scanner to ▶



create a digital file, register a domain name, and set up a webpage on which to post the picture. The webpage may or may not be picked up by a search engine if an Internet user posted a search query looking for pictures of the image subject.

In the MySpace generation, however, a photograph snapped on a cellphone camera can be instantly uploaded to a social networking site without the photographer ever leaving the secluded balcony. Provided that the photographer has a data plan, and therefore Internet access on her cellphone, she can post any video file she likes immediately onto a site like MySpace, Facebook, Flickr, or YouTube. Some of these sites are generally accessible by the public, and others are restricted to "friends." But the concept of "friend" here does not mean someone who actually knows you in the physical world. Rather, it contemplates anyone – anonymous as they may be – who has emailed you to ask for permission to view the content of your social networking profile. This is another problem with the cellphone/Internet age. Not only does the boundary between public and private potentially collapse, but also the concept of "friend" loses all the gradations of

meaning that it has in the real world. The choice to allow someone access to all of your personal information on Facebook or MySpace is effectively binary. Someone is either your "friend" or they are not. There is nothing in between. In other words, you cannot say, "Gee – I like this person, but I don't know them very well, and I don't know if I can really trust them. So I'll only give them access to photographs of myself, but not of my kids." Either they get access to everything on your profile, or nothing.

There has been a lot of talk both in legal literature and in the popular press about better protecting privacy online. However, much of the discussion to date has focused on things like protecting the privacy of health or financial records in the hands of health care providers and financial institutions. There are also concerns in much recent literature about protecting individual privacy against government intrusions, largely with respect to the interception of email communications and other Internet activities in the war on terror. Little serious attention has been paid to privacy problems arising from the exponentially growing popularity of online social networking, particularly with respect to video and multi-media files shared over such services. Now is the time to start thinking about protection of individual privacy from peer-based incursions into each other's lives.

It is unlikely that the law will be a complete answer to these problems. While the privacy torts could be expanded or reworked to better protect individual privacy in online social networks, it is likely that we will require additional forms of regulation to better protect us from ourselves. We need to start thinking about the development of a

multi-modal regulatory approach to these issues that involves a combination of laws, social norms, technological and market solutions, and public education. All of these avenues can contribute something to the privacy matrix. The identification of appropriate social norms in online networks can inform the development of privacy-protecting products offered in social networking markets. Laws can be developed to encourage conformity with identified norms. In this sense, laws can play both a communicative role and an enforcement role

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Little serious attention has been paid to privacy problems arising from the exponentially growing popularity of online social networking, particularly with respect to video and multi-media files shared over such services.

– in both broadcasting relevant conduct and enforcing it if need be. Public education, spearheaded by groups such as the Electronic Frontier Foundation and the Electronic Privacy Information Center, as well as academic institutions, will also be an important piece of the privacy puzzle going forward. In developing a multi-modal approach to privacy regulation, it is important to keep in mind that our existing conceptions of "public versus private" and "friend versus stranger" have changed forever in digital worlds. We can no longer rely on laws that were drafted with these distinctions in mind. ■







## CLINICAL EDUCATION GIVES EVERYONE A VOICE

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Two Fulbright Scholars, Professors Timothy Casey and Louise McKinney, work to create a world where all have access to justice

Both Louise McKinney and Timothy Casey are professors in the Milton A. Kramer Law Clinic Center at Case Western Reserve University School of Law, as well as Fulbright Scholars. Currently the only law school in the country to have two clinical Fulbright Scholars, both share a devotion to the professional obligation of lawyers to engage in public interest work. This devotion has expanded to Africa and Argentina, where they have worked at the University of Botswana and the University of San Andres, respectively. In their efforts to promote social justice, they use the clinical system at the School of Law as a guide. "It's the same thing we do here at the Clinic. It is a sequential building of skills each year to prepare students to be the strongest and most honorable lawyers," said Casey. He added: "it is important for law schools to teach more than how to think like lawyers. We teach how to act like a lawyer."

Professor McKinney is a two-time Fulbright recipient, the maximum that any one person can receive this scholarship. Her work has been focused in Africa since 1989, when she worked to form a Legal Aid Clinic in Botswana. In 1988-89, she spent a year establishing the first legal education program at the University of Botswana, with a focus on clinical work. She returned in 2007-2008 to upgrade the three semesters of required clinical legal education, which included providing legal advice and consultation to very low income civil litigants.

McKinney also served as an advisor to the Attorney General in Botswana and worked with a team to create a report and recommendations that, if approved, would provide government funding for an integrated system of access to justice through various legal services. This includes a legal education system that works closely with legal aid organizations throughout the country. Her ultimate goal is for the government to fund a sustainable legal aid system for the needy in both criminal and civil settings. ▶



“Botswana is aware of the poverty that afflicts them but does not have a strong legal system to support them. My work involved creating a pro-bono and social justice ethic within the legal system, including encouraging law students to serve those who are underserved,” said McKinney.

It is rare to have two Fulbright Scholars from the same university, but McKinney gives credit to the School of Law. “This is very similar to our focus at the Clinic, where students receive experiential learning opportunities. Once law students are exposed to the plight of the under-represented and poor, they get a sense of obligation to give back.”

## It is rare to have two Fulbright Scholars from the same university, but McKinney gives credit to the School of Law.

For Professor Timothy Casey, his challenge is to incorporate this obligation into the curriculum at the University of San Andres in Buenos Aires for fifth-year law students. The university implemented its undergraduate law program three years ago, but does not have an emphasis on clinical legal education. He will

spend three months working with the faculty to incorporate course materials from the School of Law’s *CaseArc* program, and make the legal program more clinically and social justice oriented.

“The pedagogical foundation of clinical education lies in the idea that traditional teaching methods—such as lecture and reading—standing alone, cannot develop the skills that a lawyer needs in order to practice law. Clinical programs provide necessary legal services to clients in the local community and expose students to difficult and indeterminate problems, which stimulate critical problem solving. Students obtain ethical training by confronting practical realities and recognize the importance of access to justice in democratic governance,” said Casey.

Casey explains that the legal structure at the University of San Andres is very different from the legal structure in the United States. Most notably, they do not have a single national bar association; rather there are several different bar associations. He will work with these bar associations and several non-governmental organizations in an effort to facilitate relationships between law students and the community, and to advance the capacity of teachers in the clinical education programs. “The rule of law starts with a legal education system, and I stress to my students the importance that everyone has equal representation and a voice. In the United States lawyers have an ethics code to serve the underserved, and this is what I hope to bring to Argentina.” ■





# Revolutionizing the way we teach law students

CaseArc Integrated  
Lawyering Skills Program  
provides 21st century  
legal training

It began in 2003 with a discussion to enhance the legal writing program at the law school. What evolved was the *CaseArc* Integrated Lawyering Skills Program, one of the first and most intensive practical lawyering skills programs in the country. Case Western Reserve University School of Law remains in the forefront of a revolutionary new style of law school instruction.

School of Law Professor Kenneth Margolis, Director of the *CaseArc* Integrated Lawyering Skills Program and Co-Director of the Milton A. Kramer Law Clinic Center, spearheaded this program and said, "we made a primary commitment to do this. Ours is very ambitious, comprehensive skills training that begins in the first year. Most law schools offer Clinical training to third-year students, but we moved ahead by focusing on practical lawyering skills training throughout their legal education."

The *CaseArc* Integrated Lawyering Skills Program integrates lawyering skills training with legal theory and doctrine, and examines the professional roles of lawyers. The goal of the program is to prepare students to be more effective practicing lawyers by providing the necessary skills and knowledge needed to enter the legal world. *CaseArc* provides a sequence of courses built into the curriculum with a four semester series of classes in the first and second year focused on legal research, writing and lawyering skills training. Students learn to research and draft memos and briefs, interview and counsel clients, negotiate and draft transactional documents,

engage in legal problem solving, make presentations to courts, and negotiate the resolution of a civil or criminal matter. These classes explore a lawyer's role as well as ethics and professionalism in the context of a simulated legal problem. A capstone program includes the option to work in the Clinic, or participate in externships and labs. This provides students with the opportunity to participate in lawyering roles with clients and work in a real legal setting. For the 2007-2008 academic year, 58 students worked in the Clinic with over 160 clients. Over 75 students participated in externships, and many students participated in labs.

The Report of the Carnegie Foundation for the Advancement of Teaching, released in 2007, critiqued legal education and stated there was a greater need to train better lawyers through practical learning. The School of Law's *CaseArc* program is now receiving much attention from law faculty across the country interested in creating a similar lawyering skills program.

"This is a comprehensive, sequenced program designed to teach what it means to be a lawyer. It combines doctrine, theory and practical teaching. Most are amazed at what we do here. Case Western Reserve University is a 21st century law school, on our way to becoming leaders in practical legal education," said Margolis.

For over five years *CaseArc* has engaged practicing lawyers from the community with the primary teaching faculty to help teach

students the essential skills necessary for effective practice. Using members of the practicing bar to teach lawyering skills is becoming increasingly popular in law schools around the country. ■

As part of the *CaseArc* Capstone program, this past academic year, the School of Law Clinical faculty worked with students in the Milton A. Kramer Law Clinic Center on real client cases such as:

#### CRIMINAL JUSTICE CLINIC

- Criminal defense - mostly misdemeanors

#### COMMUNITY DEVELOPMENT CLINIC

- Nonprofit organizations (including tax exempt status) and small business formation
- Contract and compliance matters for nonprofit and small business clients
- Intellectual property, nondisclosure agreements and licensing agreements

#### CIVIL LITIGATION AND MEDIATION CLINIC

- Consumer claims (including predatory lending)
- Contract disputes
- Real estate transactions and disputes involving low income homeowners
- Collection matters
- Mediation as neutrals

#### HEALTH LAW CLINIC

- Social security disability/supplemental security income cases
- Medicaid eligibility claims
- Disability discrimination
- Health insurance disputes
- Special education matters

#### URBAN DEVELOPMENT LAB

- Research related to urban development projects





# *Memo to the New President:*

End the Separation of Corporate Ownership and Control

– George W. Dent, Jr.  
Schott-van den Eynden  
Professor of Business Organizations Law







**T**ransition to a new president is traditionally an occasion for recommending new policy initiatives. Here is my offering. In the current financial collapse most advice is for quick action to revive the economy. However, people also want to know how this collapse occurred in the first place. We have a window of opportunity in which people are amenable to systemic reforms that could prevent such catastrophes from recurring.

Certainly capitalism has suffered a black eye. The invisible hand that should avert a boom and bust proved not just invisible but nonexistent, or at least ineffective. Fortunately, almost no one is seeking to trash the market economy. Rather, there is renewed appreciation that private enterprise inevitably functions within the law—a system of rules and regulation set by the government. Almost everyone agrees that the rules need to change. But how?

The answer to that question raises myriad issues. Here I want to address just one: corporate governance. At least since Adolf Berle and Gardiner Means published *The Modern Corporation and Private Property* in 1932 an axiom of the governance of public companies has been the separation of ownership and control. That is, public firms are not controlled by their ostensible owners—their shareholders—but by their executive officers who, in theory, are just high level hired hands, agents of the company.

Separation of ownership and control is one of many factors that triggered the current recession. In recent years executive compensation grew far faster than corporate profits. Worse, compensation was often poorly correlated with corporate performance. Many bonuses were tied to current income, which soared when risky ventures blossomed during the boom. When the bubble burst and the risky ventures generated huge losses, however, executives did not have to return their bonuses based on illusory profits.

Much executive compensation was tied to stock price. In theory, this is just what shareholders want. The problem is that many managers either exploited broad discretion in accounting and disclosure rules, or simply violated those rules, in order to mislead investors about their firms' performance and risks. ►



Clearly shareholders do not benefit from this system. In a little over a year from mid-2007 to late 2008 major stock indexes fell by nearly 50%. Sadly, there is little investors can do now to change individual firm governance. Ostensibly they elect the corporate directors, but the voting is rigged against them. The proxy solicitation for incumbent directors is paid for by the corporate treasury—i.e., the shareholders' own

money. Anyone wishing to back a rival slate must pay from his own pocket. Since even the largest shareholders rarely own more than 1% of a firm's stock, it makes no sense to fight. Most investors follow the Wall Street Rule—vote with management or sell.

Of course, most directors today are supposedly independent. In practice, however, independent directors are usually dominated by the chief executive officer. The CEO typically wields at least a veto over new board nominations, and no CEO accepts a nominee who is likely to rock the boat. Most outside directors devote only 1-2 days per month to their tasks, and they are limited to information they get from the CEO—the very one they are supposed to oversee. As a result, boards rarely cross the CEO.

This system is not inevitable. Unlike citizen voters, shareholders have remarkably uniform desires. All stockholders want to maximize share value, so a subset of shareholders could stand in for the whole body.

In each public company directors could be nominated by a committee comprised of the ten or twenty largest shareholders. Nominees would be subject to shareholder vote, but challenges would be even rarer than they are now. Large stockholders would have strong incentives to enhance stock value by choosing knowledgeable, prudent directors.



More important, directors so chosen would know that they were answerable to investors, not to management, and would have every reason to behave accordingly.

Some critics claim institutional investors are obsessed with quarterly earnings, not long-term performance. The charge is dubious, but in any case shareholder committees would hardly be less

attentive to the big picture than have been executives striving to maximize profits on stock options before they expire.

Investors have never seriously sought true corporate democracy, but that could change. Some institutional investors have become more assertive, but for most the desire for governance reform lay dormant while the stock market soared. Why start a nasty political fight when everyone was making money? After the recent stock market plunge investors may become less complacent.

Better corporate governance is needed not merely to improve returns to American investors but to maintain the soundness of the American economy. For 50 years after World War II America was unrivaled as a place for wise investment. It no longer is. In 2006 the Committee on Capital Markets Regulation, headed by Henry Paulson (now Secretary of the Treasury), found that "shareholders of U.S. companies have fewer rights...than do their foreign competitors" and that this situation was impairing investment in the U.S. If we continue to abuse shareholders, investors—foreign and domestic—will take their money elsewhere, denying American businesses the capital they need to grow and innovate. Preventing that plight is an important project for the new administration. ■



# Ashcroft v. Iqbal

Will the Supreme Court hold high-level officials accountable for detainee violations in a post-9/11 world?



– B. Jessie Hill  
Associate Professor of Law  
and Associate Director of  
the Center for Social Justice

In order to decide the case of *Ashcroft v. Iqbal*, the Supreme Court this term will have to weigh individuals' interest in holding high-level officials to account for violations that occur on their watch against the need to protect government officials from the time-consuming burden of defending against frivolous lawsuits in the post-9/11 context, as well as to decide whether and to what extent its 2007 decision in *Bell Atlantic Corp. v. Twombly* revised pleading standards for plaintiffs. These issues are also before my Civil Procedure class this semester, as they read the original complaint in that case and prepare to argue whether it should be allowed to go forward, with some students playing the role of the plaintiff's lawyers, some playing the role of the defendant's lawyers, and others playing the role of the Justices.

Javid Iqbal's case started out as an ordinary criminal prosecution. A cable company employee and Pakistani national living and working on Long Island, Iqbal was arrested in November 2001, ultimately pleaded guilty to identity theft, and was deported. What happened before and after the disposition of his criminal case was hardly ordinary, however. According to a civil complaint filed by Iqbal and one of his fellow prisoners in 2004 against prison administrators and high-level government officials, including then-Attorney General John Ashcroft and then-FBI Director Robert Mueller, Iqbal was arbitrarily singled out as a prisoner of "high interest" to the federal government in the wake of the September 11, 2001 terrorist attacks, isolated in a special federal prison unit, and subjected to severe maltreatment, including verbal and physical abuse, unnecessary strip searches and body-cavity searches, denial of food and medical



treatment, solitary confinement for 23 hours a day, and interference with his right to practice Islam. All this, Iqbal claims, was based solely on his race, national origin, and religion.

Given the extraordinary nature of Iqbal's case, then, can it be treated like any other lawsuit working its way through the federal system? Or should the judge be required to take into account the unique post-9/11 environment and the importance of these defendants in deciding whether Iqbal's case can proceed to the discovery phase? This is the central issue the Supreme Court will grapple with when it decides *Iqbal*, which is one of the most closely-watched cases of this Supreme Court term.

Lawsuits against executive officials for civil rights violations – even those of relatively high rank – are not unheard of, and the Supreme Court has long made it clear that they may proceed, subject only to those officials' defense of "qualified immunity," according to which they are spared the burdens of going to trial if they can show that they did not violate a clearly established right of which a reasonable person would have known. But the lawyers for Ashcroft and Mueller argue that, given how removed they are from day-to-day federal prison operations, they should not be required to defend against Iqbal's lawsuit based on his bare allegations that they crafted a policy resulting directly in discrimination against Arab and Muslim individuals. Whatever the outcome, it could have significant repercussions for the numerous pending lawsuits over post-9/11 detainee treatment, as well as for any future plaintiff seeking to hold government officials to account for violations of their civil and constitutional rights. ■



# FACULTY PROFILE

Former Nuremberg Prosecutor, Professor Henry King,  
Honored for 65 Years of Public Service



Henry King, Case Western Reserve University School of Law Professor and Chair of the Canada-United States Law Institute, was honored at an event recognizing his 65 years of public service. The U.S. Department of Justice's Office of Special Investigations championed Professor King's service as a prosecutor at the Nuremberg trials and his later role in the creation of the International Criminal Court. The Consul General of Canada presented remarks detailing King's service as the chair of the ABA-CBA-Barra Mexicana joint working group on the settlement of international disputes, and his leadership as Chair of the Canada-United States Law Institute.

Representatives from the offices of Senator George Voinovich, Ohio Governor Ted Strickland, Cleveland mayor Frank Jackson, and Case Western Reserve University President Barbara Snyder issued proclamations to commemorate the exceptional achievements of Professor King. ■



National Archives –  
Major Nuremberg Trials,  
1945 - 1946

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# FACULTY NEWS

## Professor Gerhart receives contract to publish book on tort theory



Professor Peter Gerhart has been given a contract by Cambridge University Press to publish his book on tort theory. In this book, Professor Gerhart

presents a theory that explains why and when one person is responsible for the well-being of others, and the limits of that responsibility. The book presents a detailed justification for the imposition and withholding of liability that seeks to bring doctrinal and theoretical unity to tort law. Drawing on both economic and philosophical literature to develop an integrated theory of responsibility, Professor Gerhart portrays law as derived from the need to provide social cohesion by specifying the circumstances under which an actor must make the well-being of another a part of the actor's own well-being.

## Professor Berg named Ohio Health Policy Researcher of the Year



Jessica Berg, Professor of Law and Biomedical Ethics; Associate Director of the Law-Medicine Center, was named Ohio Health Policy

Researcher of the Year. The award is given annually by the Health Policy Institute of Ohio, a nonprofit nonpartisan organization whose purpose is to serve as a health policy resource for the state. Professor Berg was

selected based on her article, "Population Health and Tax-Exempt Hospitals: Putting the Community Back Into the Community Benefit Standard."

## Professor Jensen submits invited statement to Senate Finance Committee



Several casinos operated by American Indian nations have been extraordinary financial successes, but the overall poverty level in Indian country remains high. Potential investors, who could help turn things around, are leery of investing for many reasons, one of which is uncertainty about the tax situation they would face. Understanding taxation in Indian country requires knowledge not only of traditional tax law, which involves multiple taxing jurisdictions, it also requires understanding American Indian law principles, some of which date from the founding period (e.g., tribal sovereignty). In an article entitled "Taxation and Doing Business in Indian Country," which was supported by a grant from the American Tax Policy Institute, Erik M. Jensen, David L. Brennan Professor of Law, considered this subject in detail with two goals: to make as much intellectual sense of the mass of material as possible, and to make the tax situation for potential investors as transparent as possible. Because of the article, published in the *Maine Law Review*, he was invited to testify and sent a written statement to the Senate Finance Committee on: "Indian Governments and the Tax Code: Maximizing Tax Incentives for Economic Development."

The article was cited in a report prepared for the hearings by the staff of the Joint Committee on Taxation.

## Professor Strassfeld's study looks at the historical significance of Cleveland's African American bar



While legal historians and biographers have investigated the lives of a small number of prominent lawyers, usually either political figures or members of

the elite corporate bar, we know very little about the day-to-day lives and practices of most lawyers. This is especially true of minority lawyers. Robert Strassfeld, Professor of Law; Associate Director of the Frederick K. Cox International Law Center; Director of the Institute for Global Security Law and Policy, conducted research for a book that looks closely at the professional lives and communal contributions of one such group of lawyers: Cleveland's African American bar. Professor Strassfeld covered the period from 1870, when John P. Green became Cleveland's first black lawyer, until the election of Carl Stokes (also a Cleveland lawyer along with his brother Louis Stokes) as Cleveland's first black mayor in 1967.

To date, Professor Strassfeld's work has focused on the late-19th and early-20th centuries. One of the striking discoveries of his research was the extent to which African American lawyers during this early period were truly integrated into Cleveland's bar. Black lawyers opened offices alongside white lawyers in the downtown office buildings on



# FACULTY NEWS

or near Public Square, entered into partnerships with white lawyers (a practice that would not recur until late in the twentieth century), and depended for their livelihoods on a client base that numbered far more white Clevelanders than African Americans. The institutions of the bar remained open to them, and they enjoyed full professional lives. From a database that he compiled of over 1500 cases brought by African American lawyers in Cuyahoga County's Court of Common Pleas in the years 1900-1907 and 1920-1926, he traced the shifting character of these lawyers' practice and the shifting demographics of their client base. By the 1920's in a variety of important ways the opportunities for African American lawyers in Cleveland, especially for new lawyers, were narrowing. Drawing on the disciplines of legal and social history, as well as geography, his research both documented and explained the changing prospects for Cleveland's African American lawyers during this period.

## Professor Giannelli appointed American Bar Association Advisor



Paul Giannelli, Albert J. Weatherhead III and Richard W. Weatherhead Professor of Law, has been appointed American Bar Association Advisor to

the drafting committee on the electronic recordation of custodial interrogations of the National Conference of Commissioners on Uniform State Laws. He previously served as co-chair of the ABA Ad Hoc Committee on Innocence, which studied the causes of wrongful convictions, including false

confessions. He also served as Reporter for the ABA Criminal Justice Standards on DNA Evidence.

## Professor Gordon appointed Visiting Scholar at the University of Sydney



School of Law Associate Professor Richard Gordon served as Visiting Scholar at the Faculty of Economics and Business at the University of Sydney

from November 7-21, 2008. He led faculty seminars and presented a keynote paper at an international symposium on money laundering and taxation.

## Two Professors receive Women Spotlight Awards



Professors Juliet Kostritsky, John Homer Kapp Professor of Law and Martha Woodmansee, Professor of English and Law, received the Mather Spotlight Prize for Women's Scholarship. This award is given to female faculty for exemplary research and scholarship. Professors Kostritsky and



Woodmansee were recognized at the Annual Women of Achievement Luncheon on Friday, September 26, 2008. ■

## CALLING ALL BIG BUDDIES.

Big Brothers Big Sisters of Greater Cleveland is interested in re-connecting with you. Please call Mitch Wasserman at 216/621-8223, ext. 518 or email him at [mitch.wasserman@bbbs.org](mailto:mitch.wasserman@bbbs.org)






## Prosecuting War Lord & Khmer Rouge

# Leaders

War-Crimes expert assists prosecutors in “Killing Fields” trials in Cambodia and works for justice in Uganda while government troops hunt down dreaded war lord. ►





Michael Scharf, a war-crimes expert who has helped shape trials in the former Yugoslavia, Iraq and Sierra Leone, is lending his expertise to the upcoming trials of five former leaders of the Khmer Rouge.

The trials of the accused, believed responsible for the deaths of 1.7 million Cambodians, will take place before a U.N. war-crimes tribunal and began in March.

Professor Scharf, who directs Case Western Reserve University School of Law's Frederick K. Cox International Law Center and its War Crimes Research Office, is the only law professor in the world to have been invited to serve as special assistant to the prosecutor for these proceedings. He was called on to draft a prosecution brief in response to a defense motion to exclude joint criminal enterprise liability, considered key to obtaining convictions of the Khmer Rouge leaders.

"This could be the most important of the pre-trial decisions the tribunal will render," said Robert Petit, the tribunal's international prosecutor, who approached Scharf this summer for assistance.

Scharf arrived in the Cambodian capital, Phnom Penh, in early November with binders of Nuremberg-era cases and relevant decisions from the Yugoslavia and Rwanda Tribunals, as well as the Special Court for Sierra Leone.

With the assistance from two Case Western Reserve University law students, Margaux Day and Niki Dasarathy, who spent five months interning at the tribunal, a 30-page brief was submitted to the judges before the court's December 30, 2008 deadline. A decision on the joint criminal enterprise liability issue should be announced shortly.

In addition to drafting the brief on joint criminal enterprise liability, Scharf lectured to the tribunal's staff, including its judges and defense counsel, on "avoiding chaos in the courtroom."

"Members of the tribunal need to expect the unexpected, be prepared for disruptive defendants and defense counsel, and avoid inflating public expectations," Scharf says. "War crimes trials have traditionally been among the messiest of the great trials in history."

Maintaining control of the Khmer Rouge trials is likely to be a challenge, Scharf warns. The lead defense attorney is Jacques Verges, known for his unconventional tactics in high-profile cases involving

accused terrorists and war criminals, including Slobodan Milosevic and Saddam Hussein. Scharf points to the accounts in his recently released book *ENEMY OF THE STATE: THE TRIAL AND EXECUTION OF SADDAM HUSSEIN*, in which he describes the courtroom theatrics firsthand.

After a short stay in the United States, Scharf traveled to Kampala to help the government of Uganda establish a domestic war crimes tribunal and truth commission. It was after a 30-hour flight from Cleveland when the news of the joint military strike by Uganda, Southern Sudan, and the Democratic Republic of Congo against the jungle bases of the Lords Resistance Army (LRA) was announced. News of the coordinated attack, code-named "Operation Lightning Thunder," meant that Scharf's work would take on an unexpected urgency. For his first assignment, the Chief Justice of the High Court of Uganda asked Scharf to critique Uganda's pending International Criminal Court (ICC) legislation, scheduled to be voted on by the Ugandan parliament. Scharf provided the Chief Justice and members of the government's Justice Law and Order Sector Working Group on Transitional Justice with a lengthy legal memorandum containing dozens of specific recommended revisions to the legislation. Most of these concerned the establishment of Uganda's new Special War Crimes Chamber. Meanwhile, day-by-day the joint forces were closing the noose on Joseph Kony and the other leaders of the LRA, who will, if captured alive, either be transferred to the International Criminal Court in The Hague or become the first defendants before Uganda's newly-established Special Chamber.

According to Scharf, "Kony and his followers have committed some of the worst international crimes imaginable." For 20 years, Kony's guerilla forces have terrorized the population of northern Uganda, including frequent raids in which tens of thousands of children have been kidnapped and transformed into sex slaves and child soldiers. Peace negotiations between the government and LRA leaders broke down when Kony failed to show up to sign the Juba Peace Accord, and the government decided the time had come to implement the military option.

If Kony is killed or turned over to the ICC, the big question remains as to whether the government will still want to hold domestic war crimes trials. According to Scharf, "under what is known as the principle of complementarity, the ICC's main purpose is not to prosecute war criminals in The Hague but to induce governments to conduct their own local prosecutions. Because the ICC Assembly of State Parties have decided to hold their review conference in Kampala in 2010, Uganda is seen as the crucial test case for the Court. Therefore, even after Kony is no longer an issue, the ICC will keep the



pressure on the Ugandan government by expanding its investigations and indictments.”

After two days of high-level meetings about the ICC Bill and Special War Crimes Chamber, Scharf was asked to critique another piece of pending legislation, the National Reconciliation Bill, which would set up a Truth Commission for Uganda.

“The Truth Commission and traditional justice mechanisms will be for lower level members of the LRA, including child soldiers, as a means of facilitating national healing,” Scharf says.

Scharf returned to Uganda in February for another round of high-level meetings on implementation of the two Bills. ■

Michael Scharf meets with James Ogoola, the Chief Justice of the High Court of Uganda.



Professor Scharf with Margaux Day and Niki Dasarathy, who interned at the U.N. war-crimes tribunal.



Michael Scharf in front of Uganda Parliament with statue of Edward Muteesa II, the first president of Uganda.



# Helping minority students become lawyers

Case Western  
Reserve  
University  
School of Law  
funds diversity  
outreach  
program for  
high school  
students

The Stephanie Tubbs Jones Summer Legal Academy began with a series of discussions six years ago among several local attorneys, the Cuyahoga County Bar Association (now the Cleveland Metropolitan Bar Association), the Norman S. Minor Bar Association, Case Western Reserve University School of Law, and Cleveland State University Cleveland-Marshall College of Law. The Academy was developed to support disadvantaged students to ensure the racial composition of the legal community more nearly matches the composition of the community at large. It seeks to instill in young minority high school students the confidence and desire to seek baccalaureate and law school educations with a resulting career in law or a law-related field. In 2005, its first academic season, students from East Cleveland's Shaw High School attended a two-week course at Case Western Reserve University School of Law. From that first year, the project has expanded to numerous other high schools.

Stated Judge Ronald Adrine, one of the co-founders of the program, "Frequently, young minority students labor under the mistaken notion that a career in law is beyond their reach. The Academy serves to expand their vision and broaden their horizon. The number of minority youth in general, and young African American males in particular, that are going to law school is shrinking alarmingly. Initiatives like the Academy are crucial to reversing this trend."

The mission of the Academy is a simple one: reduction of the overwhelming racial inequity in membership of the local bar and bench by introducing minority students to their potential to succeed in college and law school. The Academy offers an intensive two-week law school experience for minority students entering the twelfth grade. It aims to attract young minority students from inner-city and first-ring

suburban high schools, as well as the greater Cleveland area public and parochial high schools. This two week program held at the School of Law invites students with a minimum 3.0 GPA who are nominated by their high school to learn about the legal profession, including how to prepare and execute a mock trial. Local attorneys, judges and faculty volunteer their time to participate in this event. Students learn discovery techniques, interview witnesses, develop a prosecution and a defense, and participate in a final trial. The two weeks are celebrated with students and their families at a graduation ceremony held at Case Western Reserve University School of Law. At the end of the two-week program, students are offered the opportunity to serve a half-time, one month paid internship with a law or law-related sponsor. The Ohio State Bar Foundation recognized the Academy as its statewide project of the year for 2006.

"In observing the program last summer, it was so exciting to see how engaged the students were, how much they were learning, and to watch their confidence in the material and in their public speaking ability grow over the two week period," stated Sarah Polly, Associate Dean for Student Services at Case Western Reserve University School of Law.

Sarah Polly and Professor Jennifer Cupar are the School of Law liaisons to the program. Polly is also chair of the Summer Legal Academy program for the



Cleveland Metropolitan Bar Association. The Cleveland Bar Association hosts a variety of diversity initiatives, including the High School Internship Program and two programs for law students, the Minority Clerkship Program and the Minority Judicial Externship Program.

This year's program will take place at the School of Law during the weeks of June 15 and 22. For more information about this program or to inquire about volunteer opportunities, contact Associate Dean Sarah Polly at [sarah.polly@case.edu](mailto:sarah.polly@case.edu) ■





# FACULTY BRIEFS

## JONATHAN H. ADLER

Professor of Law and Director of the Center for Business Law and Regulation

### Publications

"God, Gaia, the Taxpayer and the Lorax: Standing, Justiciability, and Separation of Powers after Massachusetts and Hein," Symposium on Standing, 20 *Regent University Law Review* 175 (2008).

"An Animal to Save the World," *The New Atlantis* (Summer 2008).

"Hothouse Flowers: The Vices and Virtues of Climate Federalism," 17 *Temple Political & Civil Rights Law Review* 443 (2008).

"A More Modest Court: The Ohio Supreme Court's Newfound Judicial Restraint" (with Christina Adler), Federalist Society for Law & Policy Studies White Paper (October 2008).

"Environment," *The Encyclopedia of Libertarianism*, R. Hamowy ed. (2008).

"Green Bridge to Nowhere," (Review of J.G.Speth, *The Bridge at the Edge of the World: Capitalism, the Environment, and Crossing from Crisis to Sustainability*), *The New Atlantis*, (Fall 2008).

### Presentations

"The Future of Federalism and Environmental Protection," American Enterprise Institute, Washington, D.C., September 12, 2008.

Comment, "Viewpoint Diversity and Media Consolidation: An Empirical Study," 3rd Annual Conference on Empirical Legal Studies, Cornell University School of Law, Ithaca, NY, September 13, 2008.

"Compelled Commercial Speech and the Consumer Right-to-Know," Penn State University Dickinson School of Law, Carlisle, PA, September 18, 2008.

"Hot Times in the High Court," Federalist Society Student Chapter, University of Pennsylvania School of Law, Philadelphia, PA, October 1, 2008.

"Conservation without Regulation: Property Rights and Environmental Protection," Federalist Society Student Chapter, University of Virginia School of Law, Charlottesville, VA, October 28, 2008.

## Media

From August through December 2008, Professor Adler was quoted in numerous publications, including *The New York Times* (August 19), *Newsweek* (August 29), *The Plain Dealer* (September 12 and October 2), *National Law Journal* (September 29), *The Legal Intelligencer* (October 27), and *The Washington Post* (December 8).

## ARTHUR D. AUSTIN

Edgar A. Hahn Professor of Jurisprudence

### Publications

"Parsing the Plagiarism Scandals in History and Law," 5 *Pierce Law Review* 367 (2007).

"A Price-Fixer's Memoir—Exculpation and Revenge While Confronting the Antitrust Abyss: An Essay on Threshold Resistance by Alfred Taubman," *The AntiTrust Source* (October 2008).

## JESSICA BERG

Professor of Law and Biomedical Ethics and Associate Director of the Law-Medicine Center

### Publications

"Human Subjects Protections in Biomedical Enhancement Research: Assessing Risk and Benefit and Obtaining Informed Consent," (with Max Mehlman) 36 *Journal of Law, Medicine & Ethics* 2 (2008).

"Making All the Children Above Average: Ethical and Regulatory Concerns for Pediatricians in Pediatric Enhancement Research," (with M Mehlman, D Rubin and E Kodish) *Clinical Pediatrics* (forthcoming 2009).

"Ethical Issues Raised by Detection Strategies," Hastings Center Working Group on Genetic Enhancement in Sport (forthcoming 2009).

### Presentations

"Tax-exempt Hospitals and Community Benefit," Annual Health Law Professor's Conference, Philadelphia, PA, June 6, 2008.

"Medical Confidentiality and its Limits," Case Western Reserve University Continuing Education Conference, Cleveland, OH, September 12, 2008.

"Health Care Reform, Ethics and Universities," American Association of University Presidents (AAUP), Cleveland, OH, October 20, 2008.

"Building Better Humans," American Society of Bioethics and Humanities Annual Meeting, Cleveland, OH, October 23, 2008.

"Role of International Law in Promoting Global Public Health," American Public Health Association Annual Meeting, San Diego, CA, October 27, 2008.

"Conundrum of Community: An Analysis of Ethical Guidelines for Genetic Research and Community Engagement," American Public Health Association Annual Meeting, San Diego, CA, October 28, 2008.

### Activities

Professor Berg was named Ohio Health Policy Researcher of the Year. The award, including a monetary prize, is given annually by the Health Policy Institute of Ohio, a nonprofit nonpartisan organization whose purpose is to serve as a health policy resource for the state. Professor Berg was selected based on her article, "Population Health and Tax-Exempt Hospitals: Putting the Community Back into the Community Benefit Standard."

Invited participant in MacArthur Foundation Aging Society Network working group on "Intergenerational issues in an Aging Society" (January 17-18, 2009).

### Media

Professor Berg discussed the "Personhood Amendment on Colorado Ballot" on NPR's *All Things Considered* on October 29, 2008.

### Appointments

Appointed to the Editorial Board of the *American Journal of Bioethics* (two year term 2009-2011).

## KARLA L. BELL

Visiting Professor of Law

### Presentations



# FACULTY BRIEFS

"Recent Decisions Impacting College Students' First Amendment Rights," American Constitution Society's Northeast Ohio Chapter, April 16, 2008.

## Activities

Professor Bell was appointed by the Honorable Lesley Wells to the Advisory Group for the United States District Court for the Northern District of Ohio. The Advisory Group comprises more than 40 attorneys representing all areas of practice and each of the law schools within the district. The Advisory Group's mission is to bring matters of interest to the bar and the community to the attention of the court and to assist in the implementation of court adopted programs.

The 2007 Dean Dunmore Competition problem prepared by Professor Bell and Sonja C. Rice was selected by the Chicago Bar Association as the basis for their 2009 Moot Court competition. More than 90 competitors from the Midwest argued the problem before panels of practitioners and sitting judges in Chicago.

## TIMOTHY M. CASEY

Professor of Law

## Publications

"Electronic Surveillance and the Right to be Secure," *UC Davis Law Review* (May 2008).

## Presentations

Professor Casey gave presentations at the GAJE Global Conference in Manila, Philippines in December 2008.

## Activities

Professor Casey is on leave for the Spring semester with a Fulbright grant to assist the development of a clinical legal education program in Buenos Aires, Argentina.

## JENNIFER CUPAR

Assistant Professor of Law

## Presentations

Professors Cupar and Kenny created and presented a full-day seminar entitled "Judicial

Legal Writing" for a group of Cleveland Housing Court Magistrates on November 21, 2008.

## GEORGE W. DENT, JR.

Schott-van den Eynden Professor of Business Organizations Law

## Publications

"Racial Preferences: Doubt in the Priesthood," *Academic Questions* (review essay Summer 2008).

"Business Lawyers as Enterprise Architects," *The Business Lawyer* (February 2009).

## Activities

"Business Lawyers as Enterprise Architects," was recently listed on SSRN's Top Ten download list for PLAW: Legal Theories, Policies & Practices, Law & Society.

## Media

"Ohio State University program may lead to the hiring of unqualified faculty," *The Plain Dealer* (October 26, 2008).

## JONATHAN ENTIN

Professor of Law and Political Science and Associate Dean for Academic Affairs

## Publications

"Parents Involved and the Meaning of Brown: An Old Debate Renewed," *Seattle University Law Review* (2008).

"Environmental and Natural Resource Regulation," *Developments in Administrative Law and Regulatory Practice, 2006-2007* (Jeffrey S. Lubbers ed., 2008).

Entries on "*Brown v. Mississippi*," "Commerce Clause," "Concurring Opinions," "*Kelo v. City of New London*," "Rational Basis Test," and "*Raymond Motor Transportation, Inc. v. Rice*," *ENCYCLOPEDIA OF THE SUPREME COURT OF THE SUPREME COURT OF THE UNITED STATES* (David S. Tanenhaus et al., eds., 2008).

## Presentations

Professor Entin spoke on the impact of the Supreme Court's ruling in *Parents Involved in Community Schools v. Seattle School District No. 1* on public education at Seattle University, February 2008.

Professor Entin participated in a discussion of

diversity and desegregation sponsored by the American Constitution Society, February 2008.

Professor Entin debated Edward Whelan of the Ethics and Public Policy Center on "The Presidential Election and the Supreme Court" at a Federalist Society program, October 2008.

Professor Entin spoke on the Supreme Court and race at the University of Western Ontario, November 2008.

## Activities

Professor Entin was re-elected vice-chair of the Environmental and Natural Resource Regulation Committee of the ABA Section of Administrative Law and Regulatory Practice.

## Media

"By 1968 King Was Facing Bigger Problems," *The Plain Dealer* (April 4, 2008).

Review of Egil Krogh, *Integrity: Good People, Bad Choices, and Life Lessons from the Nixon White House* (2008), *The Plain Dealer* (September 16, 2008).

Professor Entin was quoted by the Associated Press, CNN, ABC News, *The Plain Dealer*, and other outlets on such issues as subprime lending, the nomination of Eric Holder to serve as Attorney General, home rule in Ohio, federal obscenity law, access to public records, judicial retirement, and the appointment of Nancy Hardin Rogers as interim attorney general of Ohio.

## PETER B. FRIEDMAN

Associate Professor, Legal Analysis and Writing

## Activities

Professor Friedman is blogging daily at "Ruling Imagination: Law and Creativity" on the ways law governs creative endeavors and the ways creativity informs the practice of law. Online at <http://blogs.geniocity.com/friedman/>.

Professor Friedman lectured for one week in December on selected topics in U.S. Contract Law at Nalsar University of Law in Hyderabad, India.

Professor Friedman has been asked to participate in a COSE Arts Network educational program on May 14, 2009. The topics will be intellectual property, copyright,



# FACULTY BRIEFS

and trademark, and how they intersect with the arts and music communities.

For the third consecutive year, Professor Friedman will be teaching selected topics in U.S. Contract Law at the Universiteit van Amsterdam in May and June 2009.

Professor Friedman is in the process of writing a law review article on "Tortious Interference with Contract and the Moral Value of the Contractual Promise."

## PETER M. GERHART

Professor of Law

### Publications

Cambridge University Press has agreed to publish Professor Gerhart's book on tort theory.

## PAUL C. GIANNELLI

Albert J. Weatherhead III and Richard W. Weatherhead Professor of Law

### Publications

"Nontestimonial Orders For DNA Testing," 44 *Criminal Law Bulletin* 590 (2008).

"Pretrial Discovery of Expert Testimony," 44 *Criminal Law Bulletin* (2008).

"Forensic Science: Under the Microscope," 34 *Ohio Northern University Law Review* 315 (2008) (invited presentation).

"Forensic Science and the ABA Innocence Report," *Southwestern Law Review* (2008) (symposium).

OHIO CRIMINAL LAWS AND RULES (2008) (with Katz).

OHIO TRIAL OBJECTIONS (2008) (with Snyder).

2008 Supplement, *Scientific Evidence* (Lexis Co. 4th ed. 2007) (2 volumes) (with Ed Imwinkelried).

*Ohio Juvenile Law* (West 2008 rev.) (with Yeomans).

2008 Supplement, *Courtroom Criminal Evidence* (Lexis Co.) (4th ed. 2005) (2 volumes) (with Ed Imwinkelried, Fran Gilligan, and Fred Lederer).

"The Innocent Man," 22 *Criminal Justice* 50 (Winter 2008).

DNA Profiling, in "AND JUSTICE FOR ALL?" LESSONS LEARNED FROM THE DUKE UNIVERSITY LACROSSE PLAYERS' RAPE CASE (Michael Seigel, ed.) (in press).

PROBLEMS IN EVIDENCE (West Co. 5th ed.) (with Broun at U.N.C. & Mosteller at Duke) (in preparation).

2008 Supplement, *Baldwin's Ohio Practice, Evidence* (West Co. 2d ed. 2001) (2 volumes) (with Snyder) (in press).

*Rules of Evidence Handbook* (West 2008 rev.) (with Snyder) (in press).

*Baldwin's Ohio Practice, Criminal Law* (West Co. 2d ed. 2001) (4 volumes) (with Katz, Lipton, and Crocker) (new edition in preparation).

### Presentations

"Forensic Science and the ABA Innocence Report," Innocence Conference, Southwestern Law School, Los Angeles, CA, February 8, 2008.

"Scientific Evidence," Cuyahoga County Public Defender, Cleveland, OH, May 14, 2008.

"Forensic Science Paradox," Association of American Law Schools Conference on Evidence, Cleveland, OH, June 4, 2008.

### Activities

Professor Giannelli has been asked by the Federal Judicial Center and the National Academy of Sciences to write a chapter on forensic science for the 3rd edition of the Reference Manual on Scientific Evidence. The coauthor of his text on Scientific Evidence, Professor Imwinkelried, with University of California at Davis, is also the coauthor on this project.

## RICHARD GORDON

Associate Professor of Law

### Presentations

"Terrorism Financing: International Standards and International Law," The Intellectual Series, The Watson Institute for International Studies, Brown University, Providence, RI.

While serving as a Visiting Scholar at the Faculty of Economics and Business Law, University of Sydney in Australia, November 3-13, 2008, Professor Gordon made two presentations: the keynote address entitled "Sharing the Enforcement of Economic Crime Between the Public and Private Sectors: Anti-Tax Evasion and Anti-Money Laundering Policies Compared," to the International Symposium on Money Laundering, Tax Evasion, and Tax Havens, November 9, 2008, as well as "Indicators and Methodologies for Terrorism Financing through Financial Institutions: Problems and Solutions?" to the Faculty of Economics and Business Law, November 11, 2008.

## B. JESSIE HILL

Associate Professor of Law and Associate Director of the Center for Social Justice

### Presentations

"Supreme Court Preview: Key Cases to Watch in the 2008-2009 Term," American Constitution Society Northeast Ohio Lawyers' Chapter, October 23, 2008.

"Of Christmas Trees and Corpus Christi: The Establishment Clause and Change in Meaning Over Time," University of Cincinnati College of Law Faculty Colloquia Series, October 24, 2008.

"Reproductive Rights as Health Care Rights," Columbia University Law School symposium on New Research on Reproductive Rights,

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# FACULTY BRIEFS

October 20, 2008. Papers will be published in the *Columbia Journal of Gender and Law*, July 2009.

## SHARONA HOFFMAN

Professor of Law and Bioethics, Senior Associate Dean for Academic Affairs, and Co-Director of the Law-Medicine Center

### Publications

"Finding a Cure: The Case for Regulation and Oversight of Electronic Health Record Systems" (with Andy Podgurski), 22 *Harvard Journal of Law & Technology* 103 (2008).

"Title I of the ADA: What We Know and Don't Know About Its Impact in the Workplace," 33 *Administrative Law News* (Summer 2008).

"Law, Liability, and Public Health Emergencies," *Disaster Medicine and Public Health Preparedness* (March 2009).

"Preparing for Disaster: Protecting the Most Vulnerable in Emergencies," *UC Davis Law Review* (forthcoming June 2009).

### Presentations

"HIPAA – What Primary Care Physicians Need to Know," American College of Legal Medicine Conference, Chicago, IL, September 27, 2008.

"Finding A Cure: The Case for Regulation and Oversight of Electronic Health Record Systems," Tenth Annual Meeting of the American Society for Bioethics and Humanities, Cleveland, OH, October 26, 2008.

"The Impact of Electronic Health Record Systems on Health Disparities," Association of American Law Schools 2009 Annual Meeting, San Diego, CA, January 7, 2009.

"Preparing for Disaster: Individuals with Disabilities in Emergencies," Association of American Law Schools 2009 Annual Meeting, San Diego, CA, January 9, 2009.

### Activities

Professor Hoffman has become a member of The Center for Child Health and Policy at Rainbow Babies & Children's Hospital in Cleveland.

## ERIK M. JENSEN

David L. Brennan Professor of Law

### Publications

"The Intellectual History of The Shortest Article in Law Review History," 59 *Case Western Reserve Law Review* (forthcoming).

### Presentations

On September 13, 2008, Professor Jensen spoke in San Francisco at a program of the ABA Section of Taxation's Committee on Sales, Exchanges, and Basis, and on January 10, 2009, he spoke to the same committee at meetings in New Orleans.

### Media

On October 26, 2008, Professor Jensen was quoted in *The Olympian* (Olympia, WA) about a property tax dispute in Indian country ("Great Wolf Lodge Owners Sue to Keep Thurston County from Collecting Property Tax").

## LEWIS R. KATZ

John C. Hutchins Professor of Law and Director of the Master of Laws in U.S. and Global Legal Studies Program

### Publications

OHIO ARREST SEARCH AND SEIZURE (Thomson/West 2008 edition).

OHIO FELONY SENTENCING LAW (with Burt Griffin) (Thomson/West 2008 edition).

NEW YORK SUPPRESSION MANUAL (with Jay Shapiro) (Lexis Nexis 2008 supplement).

OHIO CRIMINAL LAWS AND RULES (with Paul Giannelli) (Thomson/West 2008 edition).

## MAUREEN SHERIDAN KENNY

Associate Professor, Legal Analysis and Writing

### Presentations

Professor Kenny created and was the sole presenter at a half-day seminar entitled "Advanced Legal Writing" for approximately 70 associates from the Cleveland, Columbus, and Cincinnati offices of the law firm Ulmer & Berne LLP.

Professor Kenny conducted presentations on "The Importance of Legal Writing in the Day of the Vanishing Trial" and "News Flash: Think Like a Lawyer to Improve Your Legal Writing" as part of a full-day CLE entitled "Effective Legal Writing" on March 28, 2008.

Professors Kenny and Cupar designed and presented a full-day seminar entitled "Judicial Legal Writing" for a group of Cleveland Housing Court Magistrates on November 21, 2008.

### Activities

In 2008, Professor Kenny co-founded and became the Director of The Legal Writing Academy at Case Western Reserve University School of Law. This new organization was formed with the primary purpose of addressing the critical skills gap in the area of legal writing by offering programs and services for both law students and practitioners.

As Director of The Legal Writing Academy, Professor Kenny (along with Co-Directors Professors Cupar and Carney), created the launch event for the Academy on March 28, 2008. The launch event was a full-day CLE entitled "Effective Legal Writing" and included presentations by Academy Members, Judge Mark Painter (author of *40 Rules for the Art of Legal Writing*), Mark Herrmann (author of *The Curmudgeon's Guide to Practicing Law*), and Professors Kenny, Cupar, and Carney. This event drew attorneys from Cleveland, Columbus, and Cincinnati and approximately 100 attorneys, faculty, and students were in attendance.

### Media

Professor Kenny (along with Professors Cupar and Carney) was featured by Crain's Cleveland Business in an article about The Legal Writing Academy entitled "Helping Lawyers Get Writing Right" on March 24, 2008.



# FACULTY BRIEFS

## JULIET P. KOSTRITSKY

John Homer Kapp Professor of Law

### Publications

"Uncertainty, Reliance, Preliminary Negotiations and the Hold Up Problem," 61 *SMU Law Review* 1377-1439 (Fall 2008).

### Activities

Professor Kostritsky is chairing the Legal Theory Workshop Series. Speakers for the spring term include: Professors Jules Coleman (Yale), Lee Fennell (University of Chicago) and Liza Vertinsky (Emory).

The National Conference of Bar Examiners has re-appointed Professor Kostritsky to a new term as a member of the Contracts Drafting Committee.

Professor Kostritsky received an award for her research from the Flora Stone Mather Center for Women at Case Western Reserve University.

## JACQUELINE D. LIPTON

Professor of Law, Co-Director of the Center for Law, Technology and the Arts, and Associate Director of the Frederick K. Cox International Law Center

### Publications

"A Winning Solution for YouTube and Utube? Corresponding Trademarks and Domain Name Sharing," 21 *Harvard Journal of Law and Technology* 509 (2008).

"Celebrity in Cyberspace: A Personality Rights Paradigm for a New Personal Domain Name Dispute Resolution Policy," 65 *Washington and Lee Law Review* 1445 (2008).

"Secondary Liability and the Fragmentation of Digital Copyright Law," *Akron Intellectual Property Journal* (forthcoming 2009; solicited symposium edition).

"From Domain Names to Video Games: The Rise of the Internet in Presidential Politics," *Denver University Law Review* (January 2009).

### Presentations

Professor Lipton presented a paper entitled "From Domain Names to Video Games: The Rise of the Internet in Presidential Politics" at

"Obama Phenomena: Facets of a Historic Campaign," a symposium held at the University of Denver Sturm College of Law on August 29, 2008 to coincide with the closing of the Democratic National Convention. The symposium papers were published in January 2009 in the *Denver University Law Review*.

"To © or Not to ©? The Question for the Digital Font Industry," Sixth Annual Works in Progress Intellectual Property Colloquium, Tulane Law School, New Orleans, LA, October 3-4, 2008.

"Smile: You're on Cellphone Camera: Six Modalities of Regulation for Online Video Privacy," Villanova Law School, Fall Faculty Colloquium Speaker Series, October 10, 2008.

### Media

Professor Lipton was quoted in *The Plain Dealer* on September 19, 2008, in an article about the use of trademark infringement and dilution actions online and a case brought by Jones Day relating to this issue.

Professor Lipton was quoted on January 15, 2009 in the *San Antonio Express* "Cell phone hoax making the Internet rounds—again" regarding an email hoax about cell phone numbers being reported to telemarketers.

## KENNETH R. MARGOLIS

Professor of Law, Director of the CaseArc Integrated Lawyering Skills Program and Co-Director of the Milton A. Kramer Law Clinic Center

### Presentations

"Innovations Across the Entire Curriculum: The CaseArc Integrated Lawyering Skills Program," Legal Education at the Crossroads, Ideas to Accomplishments: Sharing New Ideas for an Integrated Curriculum, University of Washington School of Law, Seattle, WA, September 6, 2008.

Professor Margolis gave an overview of the CaseArc program to the faculty of the University of North Carolina School of Law, who are considering innovations to their curriculum.

"Teaching for Competence" (also focusing on the CaseArc program), ABA Conference on Bar Passage in Chicago, IL.

### Activities

Professor Margolis was appointed to the Ohio State Bar Association's Task Force on the Reform of Legal Education. The task force consists of representatives from all Ohio law schools and practitioners around the state.

## KATHRYN S. MERCER

Professor, Legal Analysis and Writing

### Appointments

Appointed Judge and U.S. Delegate to the International Negotiation Competition, London, Great Britain, June 2008.

Appointed to the Editorial Board of PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING, Thompson/West.

Appointed to the Board of Reviewers and Contributors of THE REDBOOK: A MANUAL ON LEGAL STYLE, by Bryan A. Garner, Thompson/West.

## DALE A. NANCE

Professor of Law

### Publications

"The Weights of Evidence," 5:3 *Episteme: A Journal of Social Epistemology* (2008).

"Adverse Inferences About Adverse Inferences: The Roles of Judge and Jury in Responding to Evidence Suppression," *International Commentary on Evidence* (forthcoming 2009).

### Presentations

On September 26, 2008, Professor Nance presented a talk entitled "The Weights of Evidence," at a Faculty Workshop at Case Western Reserve University School of Law. He argued that lawyers can learn something important from the concept of evidentiary "weight" developed by John Maynard Keynes in his treatise on probability.



## FACULTY BRIEFS

On January 9, 2009, Professor Nance was a featured speaker for the Section on Evidence at the Annual Meeting of the Association of American Law Schools. In his talk, "Evidentiary Foul Play: The Roles of Judge and Jury in Addressing Litigative Misconduct," he argued that judges should not abdicate their responsibility for controlling evidence suppression and other forms of evidentiary misconduct by handing such problems to juries for them to draw an "adverse inference" against the responsible party.

### ANDREW POLLIS

Visiting Assistant Professor of Law

#### Publications

Professor Pollis co-authored the 2008-09 edition of Baldwin's OHIO APPELLATE PRACTICE (Thomson/West) with Judge Mark P. Painter.

### CASSANDRA BURKE ROBERTSON

Assistant Professor of Law

#### Publications

"Judging Jury Verdicts," 83 *Tulane Law Review* 157 (2008).

### MICHAEL P. SCHARF

Professor of Law, Director of the Frederick K. Cox International Law Center, and Director of the Cox Center War Crimes Research Office

#### Publications

Professor Scharf recently published two books, ENEMY OF THE STATE (St. Martin's Press, 2008)(with Michael Newton) and THE THEORY AND PRACTICE OF INTERNATIONAL CRIMINAL LAW (with Leila Sadat) (Martinus Nijhoff Publishers, 2008).

"No Way Out: The Question of Unilateral Withdrawals of Referrals to the ICC and other Human Rights Courts," (with Patrick Dowd) *Chicago Journal of International Law* (2009).

#### Activities

During his fall 2008 sabbatical, Professor Scharf lectured in Buenos Aires, Argentina; Phnom Penh, Cambodia; Kampala, Uganda;

Chatham House and Cambridge University, UK; Duke University, Vanderbilt University, and the Wilson Center in Washington, D.C.; and served as Special Assistant to the Prosecutor of the Khmer Rouge Tribunal. Under a USAID grant, he also served as a consultant to the government of Uganda with respect to the establishment of a Special War Crimes Chamber and Truth Commission.

Professor Scharf was recently selected, along with former ICJ President Rosalyn Higgins and former State Department Legal Adviser William Taft, as the Counselors of the American Society of International Law.

#### Media

Professor Scharf was the subject of a one-hour interview on Cleveland Public Radio on December 30, 2008, available at: [wcpn.org/index.php/WCPN/soi/15840](http://wcpn.org/index.php/WCPN/soi/15840). He also was interviewed on Voice of America (December 24, 2008), "Good Company" (December 9, 2008), WDOK Radio (December 8, 2008), WKSU Radio (November 25, 2008), and BBC News (September 1, 2008).

### CAROLYN SEYMOUR

Assistant Professor, Legal Analysis and Writing

#### Presentations

Professor Seymour spoke about harassment law at the Ohio State Bar Association's 45th Annual Midwest Labor and Employment Law Seminar, October 16, 2008, and at the Cleveland Bar Association's New Developments in Labor Law Seminar, November 11, 2008.

### ROBERT N. STRASSFELD

Professor of Law, Associate Director of the Frederick K. Cox International Law Center, and Director of the Institute for Global Security Law and Policy

#### Presentations

"Lawyers, Doctors, and Torture," CWRU chapter of Physicians for Human Rights, September 2008.

Professor Strassfeld moderated "Election Day: Behind the Scenes," American Constitution Society, Cleveland Chapter, November 2008.

#### Media

Professor Strassfeld was interviewed by WKSU regarding a U.S. soldier who served in Iraq and was seeking asylum in Germany, December 2008.

Professor Strassfeld's Letter to the Editor was printed in *The New York Times* "The Laws on Piracy" regarding the applicability of law regarding piracy to terrorism suspects, December 14, 2008.

### MARTHA WOODMANSEE

Professor of English and Law

#### Activities

Dr. Woodmansee co-authored a chapter with American University Law School Professor Peter Jaszi, "Copyright in Transition," which appeared in the American Antiquarian Society's ambitious multi-volume *History of the Book in America*, Vol. 4: *The Expansion of Publishing and Reading in the United States, 1880-1940* (Chapel Hill: U North Carolina P, 2009), pp. 90-101.

In keeping with her research interest in the history of copyright, Dr. Woodmansee has been working with an international group of IP scholars to develop a scholarly society devoted to the history and theory of intellectual property in interdisciplinary perspective (ISHTIP). In addition to fund raising for the organization, of which she is co-director (with Cambridge University Professor Lionel Bently), she has been collaborating with ISHTIP colleagues at Bocconi University in the planning of a summer workshop to investigate the variety of "Practices of Appropriation in the Genealogy of Intellectual Property" (see:<http://www.ishtip.org/conferences.cfm>).

The extra-legal practices and conventions by which individuals and groups control information were the focus of a recent IP seminar in which Dr. Woodmansee was an invited discussant. Organized by NYU legal scholar Rochelle Dreyfuss and Harvard historian of science Mario Biagioli, "IP Without IP" was held at the Radcliff Institute for Advanced Study at Harvard University. ■



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# Rebuilding New Orleans

Four years later, School of Law students continue to help the victims of Hurricane Katrina

In the aftermath of Hurricane Katrina in 2005, twenty-two School of Law students decided they needed to help. They spent their spring break assisting with legal work as well as repairing homes devastated by the storm. While that tragedy seems so long ago in terms of years, the devastation still rules the day for the estimated 30,000 families that are still relegated to substandard housing.

One New Orleans charity recently declared the region “halfway home,” indicating how much had been accomplished by volunteers and government agencies, but also how much still needed to be done.

Over the past three trips, with the help of many generous donors at Case Western Reserve University and in the surrounding community, fifty-four students have volunteered more than 1,800 hours in a variety of home rehabilitation and community development projects. Now in its fourth year, students have continued in their mission to help. Chris Schmitt, a member of the Student Bar Association at the School of Law, and his wife, Melissa, have been organizing the trips for the past two years. This involves pursuing fundraising opportunities, as students are responsible for paying for the complete trip, including the cost of transportation to the homes in need of repair. Thanks to their fundraising efforts, last year the fees went from \$1,500 per person to \$600 per person.

Students have undertaken different projects on each trip, focusing on legal assistance and disaster recovery work in 2006, gutting several homes in 2007, and installing drywall and flooring in 2008. The legal infrastructure of the region has mostly recovered, so the bulk of the

volunteer efforts have turned to aiding homeowners in the reconstruction of their properties. The need for volunteers is emphasized this year due to the relocation of most first-responder organizations to Texas to aid in the recovery from Hurricane Ike.

“You feel so connected to the people emotionally and to their experience that we now feel a sense of pride in making the city become what it once was,” said Schmitt.

Twenty students signed up to assist from March 8-15, and some recruited alumni and family to participate. This year they focused on rebuilding New Orleans City Park. Located on the banks of Lake Pontchartrain, the storm left over 90% of the park – 1,300 acres – covered with over five feet of water for days and caused an estimated \$43 million in damages. Students worked in the reconstruction of buildings that were damaged by the storm, as well as planted vegetation along the shoreline to prevent erosion.

“I have always been committed to public service and this is really just one small way to give back for a week. I am graduating this year, but I think this work will go on. There will always be a desire to help. Someone else will take over,” said Schmitt. ■





# Alumni Spotlight

Fred and Lois Weisman

Photo by Mike Sands



## WHY I GIVE...

When Fred Weisman (ADL '48, LAW '51) founded Weisman, Goldberg & Weisman LPA—now Weisman, Kennedy & Berris Co., LPA—in 1963, the graduate of Case Western Reserve University School of Law vowed that his firm would “show compassion for those who need help.”



"I try to make it plain to our grandkids that making money is fine, but our lifetime goal is the preservation of our good name—without that, you're broke."

He has demonstrated this dedication in the courtroom, in his philanthropic efforts, and in his daily life. It is a belief that was undoubtedly inspired by his modest upbringing during the Great Depression.

"Nobody had money," Weisman says of his humble beginnings. "We certainly had values, but they weren't greenbacks. They were helping each other out...bringing your neighbor chicken soup when they were sick, singing a little harmony, encouraging each other."

When he was 17, Weisman enlisted in the U.S. Navy during World War II. The G.I. Bill paid for his undergraduate education at Adelbert College. Then, determined to be a lawyer since the age of 10, Weisman enrolled at the School of Law, where he was granted the John Rufus Ranney Scholarship. The scholarship, supplemented by his campus dry cleaning route, paid for his final year and a half of law school, enabling him to be admitted to the Bar of the State of Ohio.

In appreciation of the financial assistance he received, Weisman, a personal injury trial lawyer and his wife, Lois, have made it a point to give to the university almost every year since he graduated—even while he was earning \$1,800 per year in the early 1950s. In 1988 the Weismans established the Fred Weisman Endowment Fund, which grants scholarships to third-year law students who demonstrate financial need and a special interest in litigation.

Weisman says his father's background probably instilled in him a sense of the importance of education and hard work.

His father, Max David "Lefty" Weisman, was forced to leave school in the fifth grade to support his mother and five siblings. He worked as a

newsboy in Boston, where he became friends with Tris Speaker, player-manager for the Boston Red Sox. In 1921, while Speaker was player-manager of the Cleveland Indians, he hired Lefty as the team's trainer, a position he retained until his death in 1949.

"He didn't know beans about being a trainer when he started with the Indians," Weisman says of his father. "But he worked hard—went to night classes at Cleveland College, worked with physicians and surgeons at University Hospital, and ultimately became one of the best, if not the best, trainer in baseball."

His father's legacy remains an inspiration for the lifelong Cleveland resident, who at 82 years young continues his practice of law. He laughingly explains, "I'm still *practicing* because I never got it right"—though beneath this modest exterior is a former president of both the Cuyahoga County Bar Association and the Cleveland Academy of Trial Attorneys, and a fellow in the International Academy of Trial Lawyers who has been listed in every edition of *The Best Lawyers in America* since 1987.

Humility aside, what Weisman has "gotten right" is his commitment to education, his dedication to his alma mater, and his steadfast belief in "helping out the little guy."

"I try to make it plain to our grandkids that making money is fine, but our lifetime goal is the preservation of our good name—without that, you're broke," Weisman says. ■

by Melissa Evans





## Retirement Savings – Is There Another Way?

Attorneys and other professionals tend to save for retirement in just two ways. One is old-fashioned personal saving. This has a lot of potential, but even highly-paid professionals find it hard to do, and there are almost no tax benefits associated with it.

You have to start with what's left after you've paid income tax on your professional earnings, and you usually pay state and federal income tax every year on the ordinary income and capital gains generated by what you've saved.

The other way is to save as much money as possible through tax-qualified retirement plans associated with the attorney's practice. These plans come in a variety of forms, but all share two important benefits:

- Money going into the plans is typically not subjected to income tax. Plan contributions, in other words, are "pre-tax."
- Dividends, interest, capital gains, and growth in the value of plan assets are not subject to income tax while they remain in the plan. Earnings thus compound tax-free until they're distributed, perhaps years later.

This second approach sounds better, and in many ways it is. Unfortunately:

- Federal law imposes tight limits on the amounts that can be set aside in such plans, limits which have not come close to keeping up with changes in the cost of living.
- With very limited exceptions, every dollar paid out of such plans is taxed as ordinary income (often at the highest possible income tax rate), even if most of those dollars resulted from capital gains or simple appreciation in the value of securities held by the plan.
- When the plan participant dies, money held in such plans can be subjected to both income *and* estate tax.
- Payments from such plan are typically not guaranteed for life.

These factors have caused increasing numbers of attorneys and other professionals to supplement their traditional retirement savings with charitable life income arrangements. These programs, too, come in a number of different forms, but they share some common characteristics.

- The arrangements generate significant income tax deductions when funded.
- The income stream paid to the donor receives favorable income tax treatment.
- The arrangements reduce or eliminate estate taxes.
- They permit tax-free or tax-deferred diversification of an existing investment portfolio or single stock holding.
- Some of these arrangements provide an income stream which the attorney and his spouse (or other beneficiary) cannot outlive.
- Some of these arrangements provide far higher income yields than can be obtained elsewhere.
- At the death of the last income beneficiary, any remaining funds will benefit the School of Law or another charity of the attorney's choice.

Could such a charitable life income arrangement make sense for you? For further information, please contact John F. Shelley, Executive Director of Planned Giving • (216) 368-4460 • [john.f.shelley@case.edu](mailto:john.f.shelley@case.edu) ■

by John F. Shelley

## GIFT ANNOUNCEMENT

Great universities are fortunate to benefit from the generosity of their graduates, whether those from recent years or those from decades ago. The Law School has received a particularly important expression of generosity. Paul C. Breidenbach, who graduated from our School of Law over sixty years ago, in 1948, passed away on February 17, 2008. Over the years, Mr. Breidenbach has been a quiet participant and observer of the progress of his alma mater. He has made a significant statement concerning the importance of the School of Law to his life by bequeathing to it an unrestricted gift of \$120,000. In Mr. Breidenbach's honor, the Law School will dedicate \$100,000 to establish the Paul C. Breidenbach Scholarship Fund. The remaining \$20,000 will be allocated to the Annual Fund. His thoughtful gift will help current students to achieve a success similar to that achieved by a graduate of over six decades ago. The School of Law is grateful for Mr. Breidenbach's visionary generosity.



# Events



Class Receptions '58, '83, '03  
Saturday, October 4, 2008



## The Forty-Sixth Annual Meeting of the Society of Benchers

Friday, September 12, 2008

### Inductees:

Margaret A. Cannon, Class of 1973	David A. Kutik, Class of 1980
Laura B. Chisolm, Class of 1981	Patricia Oliver, Class of 1980
James C. Diggs, Class of 1973	John S. Pyle, Class of 1974
Allan D. Kleinman, Class of 1952	President Barbara R. Snyder
Herschel Kozlov, Class of 1972	Randall L. Solomon, Class of 1973

## Barristers Golden Circle Dinner

FRIDAY, OCTOBER 3, 2008





# ALUMNI CLASS NOTES

1990 -----

**David A. Bell** was named Vice President of Government and Community Relations at Case Western Reserve University.

**Anja M. Reinke** was the recipient of the 2008 Harvester of Faith Award from St. Finbar Parish School in Burbank, California.

1991 -----

**Christina D'Eramo Evans** was named one of the 2009 "Ohio Super Lawyers" by *Law & Politics* magazine.

1992 -----

**Corine Reebe Corpora** joined Ulmer & Berne LLP.

**Jennifer K. Luitjens** of Jarrett Law Office PLC, presented at a National Business Institute seminar on "Estate Planning and Recovery for Elderly Clients."

**Renee M. Reed** joined Halloran & Sage LLP.

1993 -----

**Andrew A. Zashin**, family law attorney at Zashin & Rich Co., L.P.A. and adjunct professor at Case Western Reserve University School of Law, was included for the second consecutive year in *Worth* magazine's list of the "Top 100" attorneys in the United States. He was also included in the prestigious lawyer guides *The Best Lawyers in America*, *Super Lawyers*, and *Inside Business* magazine's list of "Leading Lawyers."

1994 -----

**Robert S. Frost** joined Tucker Ellis & West LLP as Counsel in the firm's Cleveland office.

1995 -----

**James M. Drozdowski** was named an "Ohio Rising Star" by *Law & Politics* magazine in 2009.

**Donald D. Gamburg** was elected partner at Blank Rome LLP in the firm's Philadelphia office.

**Timothy Puin** was invited to participate in Class XIII of the Cincinnati Academy of Leadership for Lawyers. He is a partner in the Ohio office of McCormick Barstow LLP,

specializing in insurance coverage and bad faith litigation. He divides his time between Cincinnati and his home in Hudson, where he resides with his wife, Sarah, and their three daughters.

**Michael A. Spielman** has authored U.S. INTERNATIONAL ESTATE PLANNING (published by Thomson Reuters). He also completed an update of the 2007 edition of the Bank Income Tax Return Manual for WG&L and is a Senior Manager at Ernst & Young.

**Catherine Corrigan Tompkins** was named partner at Squire, Sanders & Dempsey LLP.

**Mark R. Zolfaghari** was named partner at Blank Rome LLP in the firm's Philadelphia office.

1996 -----

**Howard J. Bobrow** was elected to the Board of Trustees of the Ohio Venture Association.

**Arthur E. Gibbs, III** was named an "Ohio Rising Star" by *Law & Politics* magazine in 2009.

**Erica Williams** was named an "Ohio Rising Star" by *Law & Politics* magazine in 2009.

1997 -----

**Matthew W. Kurlinski** has joined the firm Michael Best & Friedrich LLP.

1998 -----

**Monica L. Gearding** was named partner at Taft Stettinius & Hollister LLP in the firm's Cincinnati office.

**Stephanie E. Kennedy** was named partner at Ulmer & Berne LLP.

**F. Peter Lehr** was named a Pennsylvania "Rising Star" by *Philadelphia Magazine* and *Law & Politics* magazine in 2008.

1999 -----

**Yelena Boxer** was named partner at Ulmer & Berne LLP.

**William C. Daroff** heads the Washington operation of United Jewish Communities.

**Adam D. Marshall** has been elected to McDonald Hopkins LLC as an associate attorney in the firm's West Palm Beach office.

**Lucy K. O'Shaughnessy** has been elected to McDonald Hopkins LLC as an associate attorney in the firm's Cleveland office.

2000 -----

**Nicholas E. Fairweather** was elected Chair of the General Practice Section of the State Bar of Wisconsin.

**Brian Farkas** was named partner at Vorys, Sater, Seymour and Pease LLP in the firm's Cleveland office. He was featured "On the Rise" in the August 2008 issue of *Cleveland Jewish News* and was recognized for his accomplishments in the business world as one of Cleveland's young professionals.

**Daniel M. Ford** was named partner at Hahn & Hessen LLP in the firm's Business Finance and Bankruptcy Group.

**Michelle M. Hervey** was elected to partnership at Baker & Hostetler LLP in the firm's Cleveland office.

**Patrick J. Krebs** was named partner at Taft Stettinius & Hollister LLP in the firm's Cleveland office.

**Anthony E. Kuhel, Jr.** was named partner at Thompson Hine LLP.

**William R. Post** was elected to partnership at Baker & Hostetler LLP in the firm's Columbus office.

2001 -----

**John J. Allotta** was elected to partnership at Baker & Hostetler LLP in the firm's Cleveland office.

**Athena Rudolph Arguello** was sworn into the United States Supreme Court Bar on October 6, 2008. She also received a medallion from the White House (the President's Intelligence Oversight Board) in December 2008 for her work in Intelligence Oversight.

**Michael E. Mumford** was elected to partnership at Baker & Hostetler LLP in the firm's Cleveland office.

**Rennie Caryn Rutman** has joined Tucker Ellis & West LLP.



# ALUMNI CLASS NOTES

## 2002 -----

**Dorian L. Eden** was elected a shareholder with the law firm of Tiffany & Bosco, P.A. in Phoenix, Arizona.

**Kimya S. P. Johnson** has joined Cozen O'Connor as an associate in the labor and employment group in their Philadelphia office.

**Kenneth E. McVey III** has joined Fleschner, Stark, Tanoos & Newlin.

**Brian D. Wright** was named one of the 2009 "Ohio Super Lawyers" by *Law & Politics* magazine in 2009.

## 2004 -----

**The Honorable Josh Mandel** was elected to serve a second term as Ohio State Representative.

**Andres Y. Perez** has served as Legal Adviser to the President of the Rwanda Tribunal in Arusha. He was recently promoted to serve as Legal Adviser to the Appeals Chamber of the Yugoslavia and Rwanda Tribunals in The Hague.

**Christine M. Przybysz** was named an "Ohio Rising Star" by *Law & Politics* magazine in 2009.

## 2005 -----

**Philip E. Hamilton** has joined Dykema as an associate in the firm's Detroit office.

## 2006 -----

**Allison L. Carr** joined Spilman Thomas & Battle, PLLC.

**Joseph B. Edlow** was appointed an assistant chief counsel with the U.S. Immigration and Customs Enforcement, a federal law enforcement agency under the Department of Homeland Security.

## 2008 -----

**Brent E. Culhane** has joined Tucker Ellis & West LLP.

**Jordane-Christine-Fura** passed the July 2008 New York State Bar exam, and joined the firm Yormick & Associates Co., LPA as an associate.

**Pingshan Li** has joined Ulmer & Berne LLP as an associate in the firm's Cleveland office.

**Jennifer M. Novotny** was appointed an associate at Cohen & Grigsby, P.C. in the Business & Tax Practice Group.

**Natasha Vernon** joined Hahn Loeser + Parks LLP in the firm's Cleveland office.

**John Charles Weber** has joined Ulmer & Berne LLP as an associate in the firm's Cleveland office.

## Alumni in the News

**Seth A. Jacobs**, Class of 1981, was featured in the December 2008 issue of *GC California* magazine. To read the complete article visit: <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1202426576556>

**Mary A. Rabin**, Class of 1978, was featured in the January 2009 article of BlockShopper. To read the complete article visit: <http://cleveland.blockshopper.com/news/story/208230/>

**Andrew A. Zashin**, Class of 1993, was quoted in *The New York Times* on December 29, 2008. To read the complete article visit: <http://www.nytimes.com/2008/12/30/us/30divorce.html?pagewanted=2&th&emc=th>. ■

Send recent accomplishments  
for Class Notes to [lawalumni@case.edu](mailto:lawalumni@case.edu)

# CONNECT WITH US



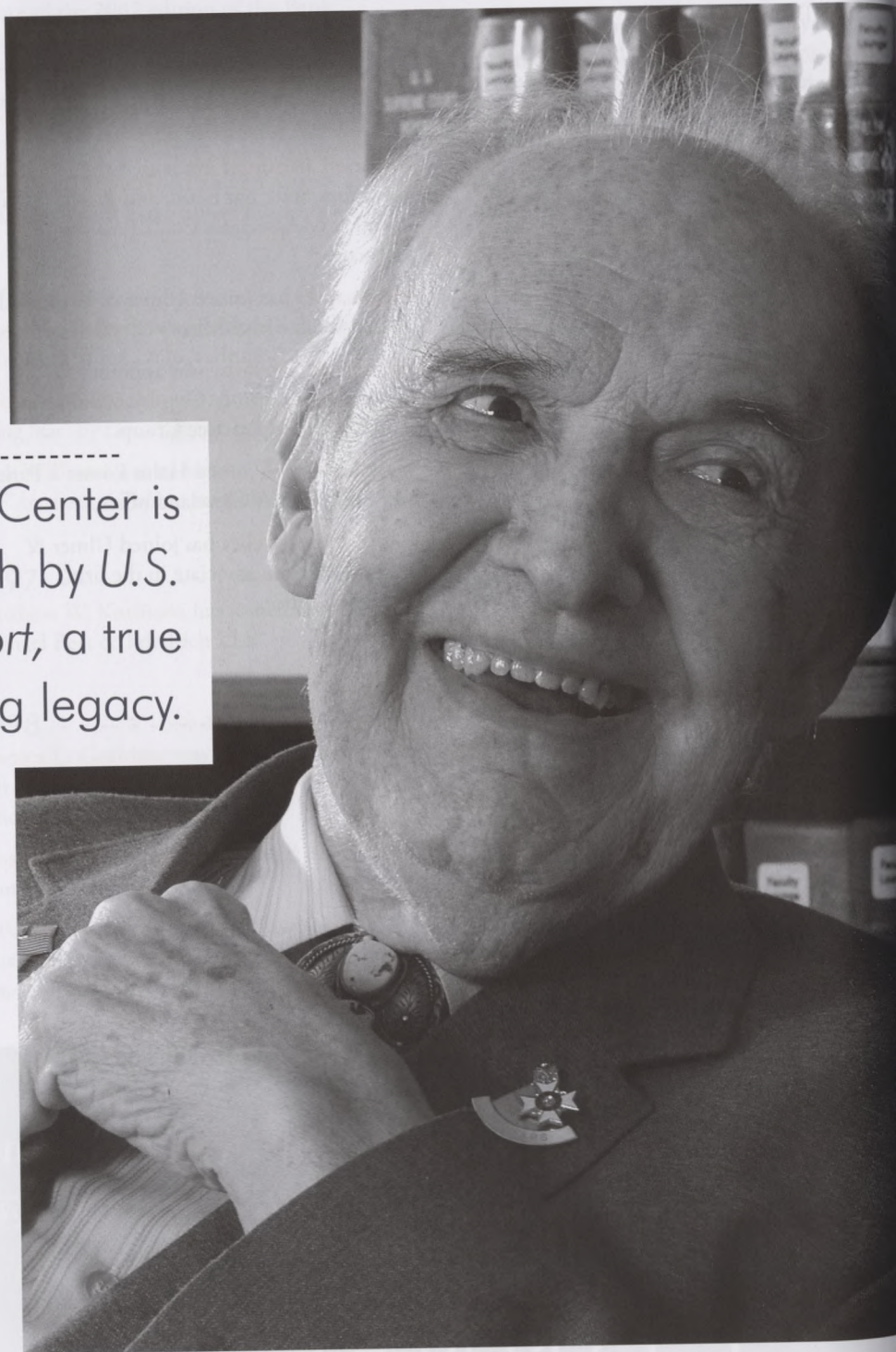
# In Memoriam

## The Legacy of Emeritus Law Professor Oliver C. Schroeder, Jr.

Oliver C. Schroeder, Jr., who died in September at age 92, leaves behind a far-reaching legacy to his hometown of Cleveland, Ohio, to Case Western Reserve University and to the field of health law. Schroeder grew up in East Cleveland and received his undergraduate degree from Case Western Reserve University's Adelbert College in 1938. After graduating from Harvard Law School, he returned to his hometown to practice law and to teach. He joined the School of Law full time in 1948.

-----  
The Law-Medicine Center is currently ranked 4th by *U.S. News & World Report*, a true testament to his lasting legacy.

In 1953, as a young law professor just beginning his long and very distinguished career, he founded the Law-Medicine Center with Dr. Samuel Gerber, a coroner with a national reputation as a forensic professional, and Dr. Alan Moritz, a forensic pathologist from Harvard University. The oldest law school-based center for the study of legal medicine and health law in the United States, its creation within Western Reserve University law school effectively began the field of health law. With Professor Schroeder as director, the Center offered classes in forensic sciences to law and medical students, police officers, coroners, prosecutors, judges, and practicing attorneys. Students could also earn a graduate degree, making it the first LL.M. program in the country in law and medicine.



Emeritus Law Professor Oliver C. Schroeder, Jr.



# In Memoriam

During his 38 years on the law faculty, Oliver Schroeder, Jr. served as a professor and as acting dean for five years. He retired in 1986 and was named Professor Emeritus. At that time, generous gifts from law school alumni, friends, and colleagues enabled the School of Law to create the Oliver C. Schroeder, Jr. Scholar-in-Residence lecture endowment, in recognition of his dedicated service and to benefit the Law-Medicine Center.

— by Alice Simon



A Memorial was held at the School of Law to celebrate his life and incredible contributions to the field of health law. In attendance were his daughter and grand-daughter, as well as faculty and staff who remarked on the impact he made not only in the legal field, but in their own lives. The Law-Medicine Center is currently ranked 4th by *U.S. News & World Report*, a true testament to his lasting legacy.

In Memoriam includes names of deceased alumni forwarded to Case Western Reserve University School of Law in recent months.

- Michael E. Berry '73
- Neal E. Bowers '54
- Robert G. Brack '62
- Lawrence A. Brock '50, '53
- Wilson Chockley, Jr. '49
- George Robert Cretney '48, '49
- Thomas Dean '59
- Benjamin J. Di Marco '35, '37
- Hon. Robert Joseph Grogan '51
- George Hall '52
- William L. Havemann '70
- William J. Hentges '48
- David W. Jones '66
- Robert A. Kates '62
- Linda L. Leasure '75
- John A. McAndrew '66, '69
- Glenn T. Piercy '74
- Richard W. Portmann '48, '50
- Bernard E. Rand '30, '32
- Joseph F. Shekleton, Ph.D. '64
- Frederick Porter Vergon, Jr. '69
- Janet Stakel Wanser '84
- Ronald E. Wilkinson '64
- Matthew A. Zidar '54





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SCHOOL OF LAW

To Prepare Leaders in the Practice of Law, Public and Community Service, and Commerce; To Provide Enlightenment to the Profession and Our Larger Society; and To Foster an Accessible, Fair, and Reliable System of Justice.

## LECTURE SERIES 2009-2010

All lectures will be held at Case Western Reserve University School of Law  
11075 East Boulevard Cleveland, Ohio.

Sept.2.09 - Center for Law, Technology & the Arts lecture, cosponsored with the Council of Smaller Enterprises (COSE) Arts Network: "COSE Arts Network Forum: Intellectual Property and the Arts"

Sept.2.09 - Frederick K. Cox International Law Center Lecture in Global Legal Reform with Judge & U.N. High Commissioner for Human Rights, Navanethem Pillay

Sept.23.09 - Distinguished Interdisciplinary Lecture, presented by the Center for Interdisciplinary Study of Conflict & Dispute Resolution

Sept.25.09 - Frederick K. Cox International Law Center War Crimes Research Daylong Symposium: "After Guantanamo"\*

Oct.09 - (date TBD) - Institute for Global Security Law & Policy Daylong Symposium: "Surveillance"\*

Nov.13.09 - Center for Law, Technology & the Arts Daylong Symposium: "Internet Domain Name Issues," co-sponsored by the Frederick K. Cox International Law Center and the Cyberspace Law Policy Office\*

\*\$200 fee for CLE credit. More events will be added to the schedule and programs are subject to change. For the most up to date information and fees for the 2009-2010 lectures and symposia, visit [law.case.edu/lectures](http://law.case.edu/lectures)





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# In Brief

THE MAGAZINE OF CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW

## IS FORENSIC EVIDENCE INFALLIBLE?

PROFESSOR PAUL GIANNELLI  
EXAMINES THE HISTORY AND  
FUTURE OF FORENSIC SCIENCE

HEALTH CARE REFORM—  
WHAT IS THE ANSWER TO  
THE HEALTH CARE CRISES?

DOES RELIGION BELONG  
IN PUBLIC SCHOOLS?

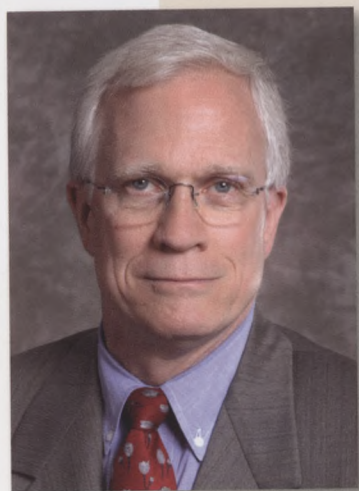
DOES COPYRIGHT LAW  
PROMOTE CREATIVITY?

REFLECTIONS ON  
SUPREME COURT  
JUSTICE SOUTER

CWRU LAW LIBRARY



## FROM THE DEAN'S DESK



The formal mission of the School of Law has been for many years the following: "The Case Western Reserve University School of Law seeks to achieve and be recognized for excellence in preparing leaders in the practice of law, public and community service, and commerce; providing enlightenment to the profession and the global legal community; and fostering an accessible, fair, and reliable system of justice."

During my service as Interim Dean, I have seen that mission being put into practice on a daily basis. Our faculty, students and alumni, respectively, carry our mission into service. You will read some examples of the work they are doing to influence the communities in which we live and the nation at large in this issue of In Brief.

Other scholars, media commentators and practitioners regularly seek out our faculty for their insights on everything from the Cuyahoga River fire forty years ago to the nomination of Judge Sotomayor to the Supreme Court. For example, as you will read in this issue, our faculty are currently examining the way forensic evidence is used in our criminal justice system, and making advances in copyright law and changes in new copyright registrations.

Our students continue to excel at international moot court competitions, most recently winning the Niagara International Moot Court Competition in Toronto, and ranking as one of the top sixteen teams at the Willem C. Vis International Arbitration Moot Court Competition in Hong Kong. The School of Law is also credited with winning the 2008 Philip C. Jessup International Law Moot Court Competition, the world's largest and most prestigious international law moot court competition, and in 2009 the team won the Dillard Award for writing one of the top ten briefs in the world, in addition to winning Best Oralist and Best Brief Awards.

Inside you will see that our recent graduating class is working for international justice and in our local communities to assist those in most need.

This is a place where ideas matter; where debate is encouraged; where scholarship and teaching are valued and where new generations of professionals prepare for a life in the law. I hope you will use this issue to learn more about what makes the School of Law a leader in legal education.

Sincerely,

Robert H. Rawson, Jr.  
Interim Dean



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