

Faculty Focus

March 2007



FACULTY PUBLICATIONS

On March 20, **David Barnhizer** posted two working papers on the Legal Scholarship Network (LSN): (1) The “Delicately Constituted Fiction” of the Rule of Law and (2) Ideology, Propaganda and Legal Discourse in the Argument Culture.

Dena Davis's brief essay, "Public Bioethics across the Pond" has been accepted for posting by the peer-reviewed Bioethics Forum (run by the Hastings Center). The essay describes some of the public bioethics education activities Davis observed during her semester in London. It can be found at <http://www.bioethicsforum.org/>

David Forte, *Encicliche Sociali, Capitalismo e Socialismo*, in ATLANTIDE, December 2006.

Dennis Keating co-authored the following recently published article: "The Long-Term Impact of CDCs on Urban Neighborhoods: Case Studies of Cleveland's Broadway-Slavic Village and Tremont Neighborhoods." COMMUNITY DEVELOPMENT: Journal of the Community Development Society, Vol. 37, No. 4 (Winter 2006): 33-52.

Dennis Keating's co-authored article on fighting suburban decline in Cleveland will be published in the June 2007 issue of *Opolis*: an international journal of Suburban and

Metropolitan Studies.

On February 26, **Milena Sterio** posted her accepted paper, "Clash of the Titans: Collisions of Economic Regulations and the Need to Harmonize Prescriptive Jurisdiction Rules" (to be published in the U.C. Davis Journal of International Law and Policy this spring) on LSN.

Mark Sundahl posted his working paper, entitled Iraq, Secured Transactions & the Promise of Islamic Law, on LSN on March 2.

Alan Weinstein, "Exactions, Dedications and Impact Fees," THE COMMISSIONER: A PUBLICATION OF THE AMERICAN PLANNING ASSOCIATION (Winter 2007).

SPEAKING ENGAGEMENTS

Michael Borden presented his article, "Mistake and Disclosure in a Model of Two-Sided Informational Inputs" at the Third International Conference on Contracts on February 23. The Conference was hosted by the South Texas College of Law and was co-sponsored by the South Texas College of Law and the Texas-Wesleyan University School of Law.

On March 29, **Kathleen Engel's** co-authored paper, "State and Local Anti-Predatory Lending Laws: The Effects of Assignee Liability" will be presented at the Federal Reserve's Conference titled Financing Community Redevelopment: Learning from the Past, Looking to the Future in Washington, D.C. The papers' co-authors are Raphael Bostic, University of Southern California, Patricia McCoy, University of Connecticut School of Law, Anthony Pennington-Cross, Marquette University, and Susan Wachter, University of Pennsylvania.

In April, **Kathleen Engel** will be presenting a paper entitled "From Credit Denial to Predatory Lending: The Challenge of Sustainable Minority Homeownership" at the International Association of Consumer Law: 11th Internal Conference on Consumer Law in Cape Town, South Africa.

Kathleen Engel has been invited to give the keynote address at the Consumer Law Roundtable in September 2007. The Roundtable is sponsored by the Faculty of Economics and Business at the University of Sydney in Australia.

David Forte's public speaking engagements for February:

- "How Justice Cardozo Nearly Saved the Commerce Clause," University of St. Thomas School of Law, Minneapolis, Minnesota.
- Debate: "Is Islam Compatible with Democracy?" with Professor Abdi Sheikhsman, University of Minnesota School of Law, Minneapolis, Minnesota.
- "Originalism and the New Supreme Court," University of Missouri at Kansas City School of Law, Kansas City, Missouri.

- “Islam and Pluralism,” University of Kansas School of Law, Lawrence, Kansas.
- “The Ten Commandments and the Establishment Clause,” Washburn University School of Law, Topeka, Kansas.

Deborah Geier will be speaking at the ABA Tax Section Meeting in May in Washington D.C. on the *Murphy* case (before the Teaching Taxation Committee).

Dennis Keating will be presenting a paper on Inclusionary Housing and participating in a panel on the Right to Housing at the annual meeting of the Urban Affairs Association in Seattle in April 2007.

On March 26, **Steve Lazarus** presented a lecture on "Governmental Lawyers' Ethical Obligations Under the New Ohio Rules of Professional Conduct" to the Cleveland Bar Association.

On March 15, **Geoffrey S. Mearns** spoke on “The Oklahoma City Bombing Trials: A Prosecutor's Perspective” in Conway Hall on the Lower School Campus of University School. Geoff is participating in the Cleveland Alumni/AE Clubs of the Ivy 15’s 2007 Distinguished Scholar Lecture Series.

Michael Slinger did a presentation for the Baldwin-Wallace Institute on Adult Learning on the subject: *"Ohio Congressman Clement Vallandigham, the Copperheads, and Lincoln's Assault of Civil Liberties"*, on February 20.

Alan Weinstein spoke at the Ohio Township Association's Winter Conference in Columbus on February 2nd. In his presentation, “Implementing H.B. 23: New Rules for Township Regulation of Adult Entertainment Businesses,” he discussed a statute that went into effect in August 2006 that authorizes townships to regulate the operational aspects of adult entertainment businesses. The model township adult entertainment regulations adopted by the Ohio Attorney General are based on regulations that Alan drafted for West Chester Township in 2003.

Alan Weinstein, “The Socioeconomic Effect of Land Use Regulation in Northeast Ohio: Where Have All the Developers Gone?” CLE International Land Use Law Conference, Cleveland, OH (March 6, 2007). The panel discussion, with Sheldon Berns, Esq., Roger Rittley, D.B. Hartt, and David Hart, was reported on by the Plain Dealer in a story headed "Is NE Ohio saying, 'Keep out?' Panelists contend policy stomps down potential growth," on March 7.

DID YOU KNOW?

David Forte has spoken at **87** academic universities, law schools, and institutes:

(1) The Acton Institute, (2) American University, (3) Amherst College, (4) Amman University, Jordan, (5) Ashland University, (6) Ave Maria School of Law, (7) Barry

University Law School, (8) Boston College Law School, (9) Boston University School of Law, (10) Brigham Young University School of Law, (11) Capital University Law and Graduate Center, (12) Case University, (13) Case-Western Reserve Law School, (14) Chapman University School of Law, (15) Claremont Institute, (16) Claremont-McKenna College, (17) Columbia University, (18) Creighton University School of Law, (19) Cumberland Law School, (20) Dickenson Law School, (21) Duquesne University School of Law, (22) Florida A&M Law School, (23) Florida Intercoastal University School of Law, (24) Florida State University, (25) Foreign Policy Research Institute, (26) Franciscan University of Steubenville, (27) George Mason University, (28) Georgetown University, (29) Georgetown University Law School, (30) Harvard Law School, (31) The Hawken School, (32) Hillsdale College, (33) John Jay Institute for Public Policy, (34) John Marshall College of Law, (35) Lakeland Community College, (36) Lakeridge Academy, (37) Lewis & Clark Law School, (38) Louisiana State University Law School, (39) Loyola School of Law, New Orleans, (40) Marshall University, (41) Maryville University, (42) Mississippi College of Law, (43) National Democratic Institute, (44) New England School of Law, (45) Northwestern School of Law, (46) Notre Dame School of Law, (47) NYU Law School, (48) Ohio State University School of Law, (49) Oklahoma City University School of Law, (50) Princeton University, (51) Saint Vincent College, (52) St. Louis University School of Law, (53) St. Thomas University Law School, Miami, (54) Texas Tech Law School, (55) University of Akron, (56) University of Chicago Law School, (57) University of Florida, (58) University of Kansas School of Law, (59) University of Lund, Sweden, (60) University of Miami School of Law, (61) University of Michigan School of Law, (62) University of Minnesota School of Law, (63) University of Missouri at Kansas City School of Law, (64) University of Oklahoma Law School, (65) University of Oregon School of Law, (66) University of Richmond School of Law, (67) University of Seattle School of Law, (68) University of St. Thomas Law School, Minneapolis, (69) University of Texas Law School, (70) University of Toledo School of Law, (71) University of Trento, Trento, Italy, (72) University of Tulsa School of Law, (73) University of Utah School of Law, (74) University of Washington Law School, (75) Valparaiso Law School, (76) Villanova Law School, (77) Wake Forest Law School, (78) Washington & Lee University School of Law, (79) Washington University School of Law, (80) Washburn University School of Law, (81) Wayne State School of Law, (82) Western State University Law School, (83) Whittier Law School, (84) Willamette School of Law, (85) William Mitchell Law School, (86) Witherspoon Institute, and (87) Yale Law School.

Deborah Geier's article on the *Murphy* case from the fall (*Murphy and the Evolution of Basis*, 113 TAX NOTES 576 (2006)) was cited by the government in its brief for a rehearing of *Murphy*. The panel will hear new oral arguments in the case in April.

Carole Heyward and Peter Lawson Jones are being honored by the Housing Research & Advocacy Center for their commitment to fair housing at a reception on April 12.

Michael Slinger was a member of the ABA Inspection Team for the University of Missouri-Kansas City School of Law on February 25-28.

Our former colleague, **David V. Snyder**, has accepted a permanent appointment at the American University, Washington College of Law.

Alan Weinstein spent two days in Los Angeles as a litigation consultant to the office of the L.A. City Attorney on planning law issues as they prepare for trial on the remand of an adult entertainment case that was previously before the Supreme Court, *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002).

Miscellany:

Ellen S. Podgor, *Jose Padilla and Martha Stewart: Who Should Be Charged with Criminal Conduct?*, 109 PENN ST. L. REV. 1059 (2005) (“The author thanks **Cleveland-Marshall College of Law** where an earlier draft of this paper served as the basis for a speech given as part of its **Criminal Justice Forum.**”)

Cleveland-Marshall was mentioned in the dissent in the Supreme Court opinion of *Roper v. Simmons*, 543 U.S. 551 (2005). (“ ... Stanford, supra, at 373, 106 L. Ed. 2d 306, 109 S. Ct. 2969 (citing V. Streib, Imposition of Death Sentences for Juvenile Offenses, January 1, 1982, Through April 1, 1989, p 2 (paper for **Cleveland-Marshall College of Law**, April 5, 1989))...”)

IN THE NEWS

In the March 24 edition of the *Plain Dealer*, higher education writer Janet Okoben reports on Porter Wright Morris & Arthur's generous \$75,000 gift to the Wolstein Scholarship Fund at **Cleveland-Marshall**. Her remarks follow the heading, "Boost to CSU's law school" on the link below
<http://www.cleveland.com/search/index.ssf?/base/isedu/117473595622450.xml?isedu&coll=2&thispage=2>

On March 17, **Kathleen Engel** joined others participating in a nationwide audio webblog, meetthebloggers.net. The group discussed the market for subprime home mortgage loans and the long-term effects of predatory lending practices.

On March 5, **Kathleen Engel** spoke on predatory lending on WCPN Ideastream during drivetime (7:00 a.m. - 9:00 a.m.). She provided insight on predatory lending practices and remedies, which are often subjects of her research and writing.

David Forte's address to the Mercer County Annual Pro-life Conference, Hermitage, Pennsylvania, in January was featured in a front-page story in the PENNSYLVANIA HERALD.

Associated Press reporter Tom Sheeran's story on the Secretary of State's demand that all four members of the Cuyahoga County Board of Elections resign their posts is circulating regionally and perhaps nationally. **Candice Hoke** is quoted and the Center for Election Integrity is mentioned in the article below from the March 22 issue of the *Columbus Dispatch*: "1 elections board member resigns, but 3 defy order: Legal battle likely in

Cuyahoga County. " You may read the article on the link below.

http://www.dispatch.com/dispatch/content/local_news/stories/2007/03/22/z-apoh_cuyahogaelections_032.ART_ART_03-22-07_E7_9C65EPD.html

In an article in the March 22 edition of the *Plain Dealer*, "Democrat quits Board of Elections: Other three members vow to fight," *PD* reporter Joan Mazzolini quotes **Candice Hoke**, Director of CSU's Center for Election Integrity. You may read the article on the link below.

<http://www.cleveland.com/plaindealer/stories/index.ssf?/base/isele/1174561041175450.xml&coll=2>

On March 20, **Candice Hoke** participated in the 9:00 a.m. call-in program on WCPN (90.3 FM), which examined the Secretary of State's decision to ask for the resignations of all four members of the Cuyahoga County Board of Elections. You may listen on the podcast below.

<http://www.wcpn.org/podcast/audio/2007/03/0320soi.mp3>

On March 19, **Candice Hoke** was featured on the 6:00 p.m. news hour on Channel 8. Professor Hoke responded to questions regarding Secretary of State Jennifer Brunner's request for the resignations of all members of the Cuyahoga County Board of Elections.

The Associated Press newswire circulated a story by AP reporter Tom Sheeran about the Public Monitor's report on failings in Cuyahoga County's electoral system. The CSU Center for Election Integrity, under the direction of **Candice Hoke**, is the Public Monitor, appointed by the County Commission and the Cuyahoga County Board of Elections. You may read the article on the link below

<http://www.law.csuohio.edu/public/announcements/PublicMonitorReport.doc>

On March 7, the *Akron Beacon Journal online* picked up an associated press article on Ohio's past voting problems; the article predicts greater problems in the 2008 Presidential election. **Candice Hoke** is quoted in the article, "Expect 2008 scrutiny, ex-elections chief says," which you may read on the link below:

<http://www.ohio.com/mld/ohio/news/16850092.htm>

Kenneth Kowalski participated in the 9:00 a.m. call-in program on WCPN (90.3 FM) on March 23. Professor Kowalski addressed the effect that distractions such as sports (e.g., "March Madness"), political or celebrity news have on the workplace.

Channel 3 interviewed **Geoffrey S. Mearns** for the 6:00 PM news on March 23. Geoff was questioned about the recent release of Cindy George, whose murder conviction was overturned on March 21.

Geoffrey S. Mearns is quoted in the March 23 edition of the *Akron Beacon Journal* in an article by Phil Trexler and Dennis Ward regarding the release of Cynthia George from prison. You may read the article, "George returns home to wait for high court: Mother of 7 leaves prison in tears after judges grant release," on the link below
<http://www.ohio.com/mld/ohio/16959112.htm>

Brian Ray is featured among alumni of Ohio State University College of Law who have elected careers in teaching. You may read the article, "Teaching Teachers: Recent Moritz Alumni Shine in Academia," which appeared in the March 2007 edition of *This Month@Moritz*, the Ohio State University College of Law online newsletter, on the link below:
<http://moritzlaw.osu.edu/alumni/newsletter/2007/march/teachers.html>

Adam Thurschwell is quoted in an article by Jonathan D. Glater in the March 11 edition of the *New York Times*: "Jury Pool Untainted, Barbeque and All," which you may read on the link below.
<http://www.nytimes.com/2007/03/11/weekinreview/11basics.html?ref=washington>

On March 7, *Plain Dealer* reporter Thomas Ott quoted **Alan Weinstein** in an article, "Is NE Ohio saying, 'Keep out?' Panelists contend policy stomps down potential growth," regarding local city and suburban policies and regulations that inhibit economic growth. The article is on the link below:
<http://www.cleveland.com/news/plaindealer/index.ssf?base/cuyahoga/1173260192235700.xml&coll=2>

Patrik Jonsson, *Video billboards spur concerns about driving safety*, THE CHRISTIAN SCIENCE MONITOR, March 6, 2007 ("These electronic billboards create no more of a traffic safety hazard than a vinyl-wrap board with a stationary image," says **Alan Weinstein**, a land-use expert at Cleveland-Marshall College of Law in Cleveland.")

ARTHUR LANDEVER PLANS RETIREMENT



“February 26, 2007

To All:

Patti asked me to write a few paragraphs about my thoughts on retirement. At my request, she suggested some questions that I might want to address. Here they are, with my responses.

Generally, my time here has been a great joy. I want to thank all of you, and my students, over the years, for making it so.

1. What are the highlights of your teaching career here at Cleveland-Marshall?

Obviously, *the* highlight-- the one I know I share with you all of you-- is teaching our law students, and at the same time, learning from them. (We all seek to encourage them to think and act like lawyers in the best sense, and we are proud when they blossom). Just as you have, in my time I've seen my students go on to fine careers (and I treasure the notes they have sent to me from time to time). Whether it has been teaching students in Constitutional Law, the First Amendment, Interviewing, Counseling, & Negotiation, the Legal Profession, Jurisprudence, Social Science & the Law, or Torts, I've always looked forward to coming to school early each day and staying late.

That said, I can identify a number of more specific joys of teaching at Cleveland-Marshall. (1) seeing my daughter Michelle attend here--talking with her daily about “the law,” anything else law students talk about, and life--having the honor of awarding her our JD degree, and then having the joy of writing a law review article with her, 2) teaching that wondrous subject of constitutional law, in particular, in all its dimensions, a

subject constantly changing yet reflecting, in its essence, the same tension between order and liberty; and reflecting that never-ending contest between theories of originalism and notions of a “living constitution.” (Perhaps the best approach lies somewhere in the middle). In 1972, my students and I had a grand time, as the nation unfortunately suffered the agony of “Watergate.” This year, my students and I gloriously debated whether our current President has sought to reassert legitimate Presidential authority in a “just war” or to “out-Nixon Nixon,” in an unjust and unjustified war, producing horrendous suffering, 3) preparing comprehensive and thematic materials in Constitutional Law, 4) writing about the Articles of Confederation, and beginning my love affair with Constitutional history 5) learning about early women lawyers in Ohio, while researching and writing about the Cronise sisters of Tiffin, Ohio, Cleveland’s Florence Allen, and Cleveland Law School’s own “Hard-Boiled Mary,” 6) serving twice on the Dean Search Committee, 7) serving on quite a few PAC subcommittees, 8) serving on the Bar Passage Committee, 9) interacting with colleagues on matters important to them and to the law school, 10) being invited to Chief Justice Burger’s chambers to meet with him, 11) interacting (along with my wife Debbie) with Justice Blackmun and his wife, 12) interviewing (along with Debbie) Lord Denning, England’s premier judge and legal thinker at the time. (He was Law Lord and Master of the Rolls.), 13) challenging Justice Scalia, on his visit here, to demonstrate that his originalism approach in interpreting the 14th Amendment meaningfully protects women’s rights, (I am dubious, as well, that originalism can justify the desegregation mandate of Brown.), 14) being involved in our “Great Stories” program, 15) participating in the development of our moot court “Street Law” program for the area’s high schools, and 16) spending a year teaching at the Polytechnic of Central London. (Debbie, our four children and I lived in Reading, England, frequented London’s marvelous theaters, made many friends, and traveled around Europe). All these highlights suggest I’ve had truly a fun ride in teaching at Cleveland-Marshall.

2. What has been your greatest contribution here at Cleveland-Marshall?

I’m the wrong person to ask. I think that is for others to say. I suppose everybody looks at the “Landever elephant” from a different perspective.

3. What are you planning to do in retirement?

I plan to continue to have fun. I will be doing more traveling with Debbie and spending more time with our grandchildren. Plus I hope to do much more. I see retirement as not leaving the arena, just recharging my batteries and trying something a little bit different. I plan to continue teaching and learning. One track I am pursuing is teaching constitutional law or constitutional history to honors undergraduates here at CSU. (Before coming to Cleveland Marshall, I taught for eight years in undergraduate schools). Another is taking courses. (I expect to take a course in Greek history). I plan to continue my involvement in the “Great Stories” program, with Louise M. I want to continue to present papers in Michael Slinger’s program. (I told him I wanted to give a talk on “Everything you wanted to know about Justice Scalia’s approach in judging but were afraid to ask”). I plan to

read, and perhaps to write more creatively than I have in the past. I suspect I'll compose more children's songs (I'm undiscovered in that respect), and perhaps do a little singing.

4. What will you miss most in retirement?

I'll miss my students, for sure. (I told the Dean that if he needs a "utility infielder" to teach constitutional law or constitutional history, I'm his man). Certainly I'll miss all of you—faculty, administrators, librarians, and clerical staff. It's been a great privilege to teach our C-M students and to be associated with such an able, helpful, and nice group in the Cleveland-Marshall community. Of course, I hope still to be around the place.

5. How has the law college changed since you first started?

Basically, in important ways, it's been the same, a great group of students and faculty, administrators, librarians, and staff. But there have been some changes. In 1972, during my first year, I walked into a war between faculty supporters of the then Dean, and the "loyal opposition." Thank goodness our faculty has been a collegial one for a long time. While we have more women on our faculty now, than when I first came, still, even when I arrived, Ann Aldridge and Liz Moody were already exercising leadership positions on the faculty, quite unusual for the time. Of course, today, we are a better, stronger place, with all our exciting programming, and our many student and faculty accomplishments. Old-timers and "new-timers" together have contributed to those successes.

I've always been proud to be associated with Cleveland-Marshall during these past 35 years here. I know that all of you will continue to make me proud.

Thanks to all. And best wishes.
Arthur Landever"