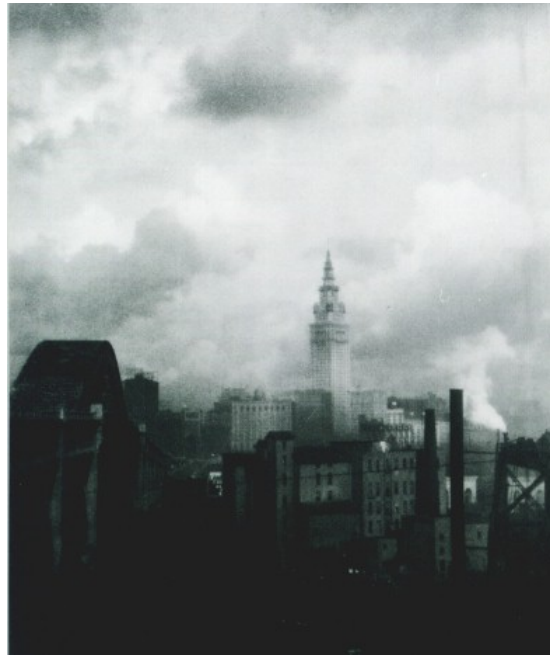


Anril 2007

# Faculty Focus

Cleveland State  
University  
Cleveland-Marshall College of Law



*Skyline*, Margaret Bourke-White, silver gelatin print. Collection of the George Arents Research Library for Special Collections of the Syracuse University Library.

## FACULTY PUBLICATIONS

On April 16, **David Barnhizer** posted the following working paper on the Legal Scholarship Network: *Reverse Colonization: Islam, Honor Cultures and the Confrontation between Divine and Quasi-Secular Natural Law*.

**Susan Becker, Lloyd Snyder**, and Jack Guttenberg, Capital University Law School, have completed the manuscript of their book, *THE LAW OF PROFESSIONAL RESPONSIBILITY IN OHIO*. The anticipated date of publication is September 2007.

**Michael Borden's** article, *The Role of Financial Journalists in Corporate Governance*, was recently published at 12 *FORDHAM JOURNAL OF CORPORATE & FINANCIAL LAW* 311 (2007).

**Kathleen Engel's** article, *Turning a Blind Eye: Wall Street Finance of Predatory Lending*, co-authored with Patricia A. McCoy, was recently published at 75 *FORDHAM LAW*

REVIEW 2039 (2007).

On April 25, **Lolita Buckner Inniss** posted the following accepted paper on the Legal Scholarship Network: *A Domestic Right of Return? Race, Rights, and Residency in New Orleans in the Aftermath of Hurricane Katrina*. The article will be published at 27 BOSTON COLLEGE THIRD WORLD LAW JOURNAL 1 (2007).

**Dennis Keating** authored two entries (Frederic Howe, Tenant Unions) in the recently published: ENCYCLOPEDIA OF AMERICAN URBAN HISTORY (2 volumes). Sage Publications. Ed., David Goldfield.

On April 27, Howard E. Katz, Charlotte School of Law, and **Kevin O'Neill** posted their co-authored working paper, *Strategies and Techniques of Law School Teaching: A Primer for New Teachers* on the Legal Scholarship Network.

**Mark Sundahl** has accepted an offer of publication for his article, *Iraq, Secured Transactions & the Promise of Islamic Law*, by the VANDERBILT JOURNAL OF TRANSNATIONAL LAW.

## SPEAKING ENGAGEMENTS

On April 11, **Veronica Dougherty** and Law Student Claude Hill discussed “Blood, Sweat & Tears -- American Corporations and the Silent Tragedy of Exploited Labor” as part of the 2006 *Cleveland-Marshall Faculty Speaker Series*, organized by Michael Slinger.

**David Forte** spoke on “Justice Cardozo and the Commerce Clause,” at the Ohio State Law School, in Columbus, Ohio, on March 30, 2007.

**David Forte** gave a Bill of Rights Institute Seminar for high school teachers on the First Amendment, at the Western Reserve Historical Society, in Cleveland, Ohio, on March 20, 2007.

**Arthur Landever** and Louise Mooney have organized another Great Stories Discussion to be held on Saturday, June 9. The stories to be discussed are “When the Emperor was Divine” “In a Stranger’s Backyard,” and “The Porcelain Monkey.” The cases are *Yick Wo v. Hopkins*, *Chae Chan Ping v. United States*, *Plyer v. Doe*, and *Korematsu v. United States*.

On April 18, in an event sponsored by the student Criminal Law Society, **Geoffrey Mearns** discussed “The Terror Within: The Bombing of the Alfred P. Murrah Federal Building.” He spoke about the trial and the motivations prompting Timothy McVeigh and Terry Nichols to commit an act of terrorism, the key evidence leading to their convictions, and the stories of the victims and survivors of the bombing.

**Brian Ray** was invited to participate in a conference at Creighton University School of Law on Current Trends in Japanese Law and the Legal Profession in mid-May. The conference will bring together most of the leading scholars of Japanese law.

In late July, **Brian Ray** will present a paper titled "Striking A Balance: The South African Constitutional Court's Socioeconomic Rights Jurisprudence" as part of a panel on comparative constitutional law at the Law & Society Association's annual conference in Berlin, Germany. The paper analyzes recent developments in the interpretation and enforcement of socioeconomic rights by South African courts and proposes a framework for understanding the Constitutional Court's approach to these rights.

On March 30, **Lloyd Snyder** gave a presentation in Toledo on the new Ohio Rules of Professional Conduct. The attorneys in attendance were legal aid lawyers serving clients in Western Ohio.

On April 16, **Alan Weinstein** presented "Eminent Domain for Economic Development after *Kelo*" at the American Planning Association National Conference in Philadelphia.

On April 10, **Jim Wilson** moderated a panel of distinguished judges, who discussed the question: "Should We Change the Way We Elect Judges in Ohio?" The panel included Judge William O'Neill, Judge Nancy Margaret Russo, Judge David Matia, and Judge Dick Ambrose. Cleveland-Marshall's chapter of the American Constitution Society sponsored the event.

## DID YOU KNOW?

At the faculty meeting on April 12, the faculty voted unanimously to recommend to the University administration and the Board of Trustees that **David Barnhizer** and **Arthur Landever** each be honored as an *Emeritus* Professor of Law. At the faculty meeting on April 26, the faculty voted unanimously to recommend to the University administration and the Board of Trustees that **Barbara J. Tyler** be honored as an *Emerita* Professor of Law.

**Susan J. Becker** and **Kenneth Kowalski** helped to organize the "Women Rock: Celebrating 35 Years of Sport & Title IX Academia and Legal Conference," which was held March 28-31 at the Wolstein Center and other downtown Cleveland locations. Approximately 240 people from all over the U.S. and several foreign countries attended. All of the programming on Friday, March 30 was dedicated to legal issues and featured speakers included former Indiana Senator Birch Bayh, J.D., who co-authored Title IX; Dr. Bernice Sandler, Senior Scholar at the Women's Research and Education Institute in Washington, D.C. and a pioneer in the area of women's rights; and Marcia Greenberg, J.D., Co-President of the National Women's Law Center, also located in D.C. Billie Jean King was the keynote luncheon speaker for the legal conference. Susan and Ken spent over a year helping to plan the legal conference and we served as hosts during the conference. **Steve Steinglass** was a presenter for a break out panel

titled "Title IX and Legal Theory." The Cleveland State Law Review is publishing a symposium issue related to the conference.

**Steve Lazarus** has won the Cleveland State University 2007 Distinguished Faculty Awards for Teaching.

On March 21, **Candice Hoke** testified before the United States House Administration Committee, Elections Subcommittee. The hearing was dedicated to exploring election-auditing issues. Additional witnesses included Lawrence Norden of the Brennan Center for Justice of New York University, Pamela Smith of Verified Voting (National Org, for Accountability in Elections), and Doug Lewis, The Election Center, Washington, D.C. Each witness testified individually and then all four witnesses answered questions as a panel.

In March, **Patricia Falk** was appointed to the Board of Directors of the Cleveland Rape Crisis Center.

**Lloyd Snyder** has had an impressive array of expert witnesses in his course on Scientific Evidence this term, including psychiatrist Dr. Phillip Resnick, Dr. Frank Miller, who will take over as Cuyahoga County Coroner in August, and forensic computer expert Don Wochna.

In recognition of **Barbara Tyler's** seven years as an advisor to the JOURNAL OF LAW AND HEALTH and as a general advisor to all students with concerns about legal writing and getting their articles published, members of the Journal voted to create the **Barbara J. Tyler Award** in her honor. The Award will be presented to the Journal member who has written the Best Note each year and includes a \$500 prize. This spring, Angela Ferneding was the first recipient of the Barbara J. Tyler Award for her article "*Regional Health Information Organizations: Lower Health Care Costs, Fewer Iatrogenic Illnesses, and Improved Care--What Are We Waiting For?*"

## IN THE NEWS

**Michael Davis** is quoted in an article by Ernie Suggs in the April 10 issue of the *Atlanta Journal-Constitution*, "King papers offer another glimpse into leader's mind," regarding ownership of a bundle of documents written by Martin Luther King, which are scheduled for auction in Atlanta. You may read the article on the link below.  
<http://www.ajc.com/news/content/metro/atlanta/stories/2007/04/09/0410metkingpapers.html>

On April 20, *New York Times* reporter Bob Driehaus published a story on the audit of the November 2006 general election commissioned by the County Board of Elections and headed by Cleveland-Marshall Professor of Law **Candice Hoke**, Director of the university's Center for Election Integrity, which serves as the Public Monitor. Candice is quoted throughout the article, "Audit Finds Many Faults in Cleveland's 06 Voting," which you may read on the link below.

[http://www.nytimes.com/2007/04/20/us/20ohio.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/04/20/us/20ohio.html?_r=1&oref=slogin)

On April 22, NPR's Debbie Elliott interviewed Professor **Candice Hoke** on *Weekend All Things Considered* regarding the Cuyahoga Audit. You may listen on the link below:

**Ohio Vote Audit Turns Up Duplicates, Deletions**

<http://www.npr.org/templates/story/story.php?storyId=9762066>

**Arthur Landever** had a letter to the editor in the April 14<sup>th</sup> edition of the *New York Times* responding to an April 11 editorial regarding a Senate proposal to deal with the immigrant labor. Arthur's letter is the second on the link below.

[http://www.nytimes.com/2007/04/14/opinion/14immig.html?\\_r=1&oref=slogin](http://www.nytimes.com/2007/04/14/opinion/14immig.html?_r=1&oref=slogin)

## 2006 LAW REVIEW CITATIONS TO OUR WORK

Matthew L.M. Fletcher, *Same-Sex Marriage, Indian Tribes, and the Constitution*, 61 U. MIAMI L. REV. 53 (2006) (citing **Janice Aitken**, *The Trust Doctrine in Federal Indian Law: A Look at Its Development and How Its Analysis Under Social Contract Theory Might Expand Its Scope*, 18 N. ILL. U. L. REV. 115, 148 (1997)).

Sarah Elizabeth Saucedo, Note: *Majority Rules Except in New Mexico: Constitutional and Policy Concerns Raised by New Mexico's Supermajority Requirement for Judicial Retention*, 86 B.U.L. REV. 173 (2006) (citing **David Barnhizer**, "On the Make": *Campaign Funding and the Corrupting of the American Judiciary*, 50 CATH. U. L. REV. 361, 369 (2001)).

James B. Levy, *As a Last Resort, Ask the Students: What They Say Makes Someone an Effective Law Teacher*, 58 ME. L. REV. 49 (2006) (citing **Susan J. Becker**, *Advice for the New Law Professors: A View From the Trenches*, 42 J. LEGAL EDUC. 432, 435, 445 (1992)).

Joseph E. La Rue, Symposium on Law & Politics as Vocation: Note: *Redeeming the Lawyer's Time: A Proposal for a Shift in How Attorneys Think About--and Utilize--Time*, 20 ND J. L. ETHICS & PUB POL'Y 473 (2006) (citing **Gordon J. Beggs**, *Laboring Under the Sun: An Old Testament Perspective on the Legal Profession*, 28 PAC. L.J. 257 (1996)).

C. Scott Pryor, "May It Please the Court": *If I Had Been at Oral Argument in Rousey v. Jacoway Part II*, 24-2 ABIJ 18 [American Bankruptcy Institute Journal] (2005) (citing **Borden, Michael J.**, *PSLRA, SLUSA and Variable Annuities: Overlooked Side Effects of a Potent Legislative Medicine*, 55 MERCER L. REV. 681, 712 (2004)).

Lynne Marie Kohm, *Special Feature: Women as Perpetrators of Crime: Women as Perpetrators: Does Motherhood Have a Reformatory Effect on Prostitution?*, 33 FORDHAM URB. L.J. 407 (2006) ("For a comprehensive review of this area of law, about which there is a litany of law journal literature, see **April L. Cherry**, *Nurturing in the*

*Service of White Culture: Racial Subordination, Gestational Surrogacy, and the Ideology of Motherhood*, 10 TEX. J. WOMEN & L. 83 (2001).”)

Samuel R. Gross, Correspondence: *Jurisdictional Competition in Criminal Justice: How Much does it Really Happen?*, 104 MICH. L. REV. 1725 (2006). (“Professor **Phyllis Crocker** of the Cleveland-Marshall College of Law has written a useful and informative article about her personal experiences as the foreperson of a Cuyahoga County grand jury in Cleveland, Ohio - a temporary, part-time, appointive position.”).

Lisa Biedrzycki, Comment: *"Conformed to this World": A Challenge to the Continued Justification of the Wisconsin v. Yoder Education Exception in a Changed Old Order Amish Society*, 79 TEMP. L. REV. 249 (2006) (citing **Dena S. Davis**, *The Child's Right to an Open Future: Yoder and Beyond*, 26 CAP. U. L. REV. 93, 93-105 (1997)).

Mandy Barbara Seuffert, Comment: *Soft-Science Examiners at the USPTO: A Non-Obvious Solution to Reduce Erroneous Patent Grants*, 10 MARQ. INTELL. PROP. L. REV. 111 (2006) (“n81. Interview with Professor **Michael Henry Davis**, Professor of Law, Cleveland-Marshall College of Law, in Cleveland, Ohio (Feb. 2005)”).

William B. Ortman, Comment: *Parents, Subsidiaries, and RICO Distinctiveness*, 73 U. CHI. L. REV. 377 (2006) (citing **Veronica M. Dougherty**, *Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation*, 44 AM U L REV 127, 128-30 (1994)) and Jonathan P. Solomon, Comment: *Resolving RESPA's @ 8(b) Circuit Split*, 73 U. CHI. L. REV. 1487 (2006) (citing **Veronica M. Dougherty**, *Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation*, 44 AM U L REV 127, 128 (1994)).

Lloyd T. Wilson, Jr., *A Taxonomic Analysis of Mortgage Broker Licensing Statutes: Developing a Programmatic Response to Predatory Lending*, 36 N.M.L. REV. 297 (2006) (citing **Kathleen C. Engel** & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255, 1268-70 (2002)).

Heather S. Murr, *The Continuing Expansive Pressure to Hold Employers Strictly Liable for Supervisory Sexual Extortion: An Alternative Approach Based on Reasonableness*, 39 U.C. DAVIS L. REV. 529 (2006) (citing **Patricia J. Falk**, *Rape by Fraud and Rape by Coercion*, 64 BROOK. L. REV. 39 (1998)).

Frank E. Vandervort, *Criminal Law: Videotaping Investigative Interviews of Children in Cases of Child Sexual Abuse: One Community's Approach*, 96 J. CRIM. L. & CRIMINOLOGY 1353 (2006) (citing **Joel Jay Finer**, *Therapists' Liability to the Falsely Accused for Inducing Illusory Memories of Childhood Sexual Abuse – Current Remedies and a Proposed Statute*, 11 J.L. & HEALTH 45, 64-66 (1997)).

William R. Corbett, *The Narrowing of the National Labor Relations Act: Maintaining*

*Workplace Decorum and Avoiding Liability*, 27 BERKELEY J. EMP. & LAB. L. 23 (2006) (citing **Joan Flynn**, *A Quiet Revolution at the Labor Board: The Transformation of the NLRB, 1935-2000*, 61 OHIO ST. L.J. 1361, 1372 n.41 (2000)).

Patrick McKinley Brennan, Special Spring 2006 Symposium: *The "Right" of Religious Liberty of the Child: Its Meaning, Measure, and Justification*, 20 EMORY INT'L L. REV. 129 (2006) (citing **David F. Forte**, *Family, Nurture, and Liberty*, in NATURAL LAW AND CONTEMPORARY PUBLIC POLICY 79, 79-106 (**David F. Forte** ed., 1998)).

Norman T. Deutsch, *Professor Nimmer Meets Professor Schauer (and Others): An Analysis of "Definitional Balancing" as a Methodology for Determining the "Visible Boundaries of the First Amendment"*, 39 AKRON L. REV. 483 (2006) (citing **Stephen W. Gard**, *Fighting Words As Free Speech*, 58 WASH. U. L. Q. 531, 542 (1980)).

Theodore P. Seto & Sande L. Buhai, *Tax and Disability: Ability to Pay and the Taxation of Difference*, 154 U. PA. L. REV. 1053 (2006) (citing **Deborah A. Geier**, *The Taxation of Income Available for Discretionary Use 4* (Cleveland State Univ., Research Paper No. 05-107, 2005), available at <http://ssrn.com/abstract=696221>).

Stephen A. Talmadge, *Who Should Determine What Is Best for Children in State Custody Who Object to Psychotropic Medication?*, 15 ANN. HEALTH L. 183 (2006) (citing **Sheldon Gelman**, *Medicating Schizophrenia: A History* 24 (1999)).

Michael S. Greve & Jonathan Klick, *Preemption in the Rehnquist Court: A Preliminary Empirical Assessment*, 14 U. CHI. S. CT. ECON. REV. 43 (2006) (citing **S. Candice Hoke**, *Preemption Pathologies and Civic Republican Virtues*, 71 B U L REV 685 (1991)).

Miranda Oshige McGowan & James Lindgren, Symposium: *The First Century: Celebrating 100 Years of Legal Scholarship: Essay: Testing the "Model Minority Myth"*, 100 NW. U.L. REV. 331 (2006) (citing **Lolita K. Buckner Inniss**, *Bicentennial Man - The New Millennium Assimilationism and the Foreigner Among Us*, 54 RUTGERS L. REV. 1101, 1115-16 (2002)).

Justin D. Forlenza, Note: *CAFA and Erie: Unconstitutional Consequences?*, 75 FORDHAM L. REV. 1065 (2006) (citing our adjunct **Daniel R. Karon**, *"How Do You Take Your Multi-State, Class Action Litigation? One Lump or Two?" - Infusing State Class-Action Jurisprudence into Federal, Multi-State Class Certification Analyses in a "CAFA-Nated" World*, 46 SANTA CLARA L. REV. 567 (2006)).

Megan J. Ballard, *Legal Protections for Home Dwellers: Caulking the Cracks to Preserve Occupancy*, 56 SYRACUSE L. REV. 277 (2006) (citing **W. Dennis Keating**, *Commentary on Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 1223, 1229 (1989)).

Judith Resnik & Lane Dilg, Symposium: *The Chief Justice and the Institutional Judiciary: Responding to a Democratic Deficit: Limiting the Powers and the Term of*

*the Chief Justice of the United States*, 154 U. PA. L. REV. 1575 (2006) (citing **Arthur R. Landever**, *Chief Justice Burger and Extra-Case Activism*, 20 J. PUB. L. 523, 523 (1971)).

Ezra Rosser, Essay: *This Land Is My Land, This Land Is Your Land: Markets and Institutions for Economic Development on Native American Land*, 47 ARIZ. L. REV. 245 (2005) (citing **Karin Mika**, *Private Dollars on the Reservation: Will Recent Native American Economic Development Amount to Cultural Assimilation?*, 25 N.M. L. REV. 23, 33 (1995)).

Jessica B. Lyons, Note: *Defining Freedom of the College Press After Hosty v. Carter*, 59 VAND. L. REV. 1771 (2006) (citing **Kevin Francis O'Neill**, *Disentangling the Law of Public Protest*, 45 LOY. L. REV. 411, 438 (1999)).

Paul Spruhan, *A Legal History of Blood Quantum in Federal Indian Law to 1935*, 51 S.D. L. REV. 1 (2006) (citing **Kunal M. Parker**, *Making Blacks Foreigners: The Legal Construction of Former Slaves in Post-Revolutionary Massachusetts*, 2001 UTAH L. REV. 75 (2001)).

*Law Review Digest: Law Review Digests -- Articles, Notes and Commentary Primary and Secondary*, 35 J.L. & EDUC. 373 (2006) (summarizing Justice Richard J. Goldstone & **Brian Ray**, *The International Legacy of Brown v. Board of Education*, 35 McGEORGE L. REV. 105 (2004)).

Matthew D. Fortney, Comment: *Devolving Control over Mildly Contaminated Property: The Local Cleanup Program*, 100 NW. U.L. REV. 1863 (2006) (citing **Heidi Gorovitz Robertson**, *Legislative Innovation in State Brownfield Redevelopment Programs*, 16 J. ENVTL. L. & LITIG. 1, 15 (2001)).

Benjamin H. Barton, *The ABA, The Rules, and Professionalism: The Mechanics of Self-Defeat and a Call for a Return to the Ethical, Moral, and Practical Approach of the Canons*, 83 N.C.L. REV. 411 (2005) (“My friend and reviewer, Professor **Chris Sagers** criticizes my lapse into "post hoc ergo propter hoc" causation here, and argues that at best I have established a correlation between any crisis and the change in regulation, and at worst I have established nothing. ...”).

Michael H. LeRoy and Peter Feuille, *Reinventing the Enterprise Wheel: Court Review of Punitive Awards in Labor and Employment Arbitrations*, 11 HARV. NEGOTIATION L. REV. 199 (2006) (citing **ALAN MILES RUBEN**, *HOW ARBITRATION WORKS* 171 (6th ed. 2003)).

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William P. Marshall, *The Most Dangerous Branch? Mayors, Governors, Presidents, and the Rule of Law: A Symposium on Executive Power: Essay: Break Up the Presidency? Governors, State Attorneys General, and Lessons from the Divided Executive*, 115 YALE L.J. 2246 (2006) (citing STEVEN H. STEINGLASS & GINO J. SCARSELLI, THE OHIO STATE CONSTITUTION: A REFERENCE GUIDE 163 (2004)).

Donald G. Gifford & Paolo Pasicolan, *Market Share Liability Beyond DES Cases: The Solution to the Causation Dilemma in Lead Paint Litigation?*, 58 S.C. L. REV. 115 (2006)(citing **Mark J. Sundahl**, Note, *Unidentified Orbital Debris: The Case for a Market-Share Liability Regime*, 24 HASTINGS INT'L & COMP. L. REV. 125, 132-33 (2000)).

J.J. Prescott & Sonja Starr, *Improving Criminal Jury Decision Making After the Blakely Revolution*, 2006 U. ILL. L. REV. 301 (citing **Adam Thurschwell**, *After Ring*, 15 FED. SENT'G REP. 97 (2002)).

Symeon C. Symeonides, *Symposium: International Legal Dimensions of Art and Cultural Property: A Choice-of-Law Rule for Conflicts Involving Stolen Cultural Property*, 38 VAND. J. TRANSNAT'L L. 1177 (2005) (citing **Barbara J. Tyler**, *The Stolen Museum: Have United States Art Museums Become Inadvertent Fences for Stolen Art Works Looted by the Nazis in World War II?*, 30 RUTGERS L.J. 441, 458-59 (1999)) and Jennifer Anglim Kreder, *Symposium: International Legal Dimensions of Art and Cultural Property: The Choice between Civil and Criminal Remedies in Stolen Art Litigation*, 38 VAND. J. TRANSNAT'L L. 1199 (2005) (citing **Barbara J. Tyler**, *The Stolen Museum: Have United States Art Museums Become Inadvertent Fences for Stolen Art Works Looted by the Nazis in World War II?*, 30 RUTGERS L.J. 441, 458-59 (1999)).

D.S. Pensley, Note: *Real Cities, Ideal Cities: Proposing a Test of Intrinsic Fairness for Contested Development Exactions*, 91 CORNELL L. REV. 699 (2006) (citing Brian W. Blaesser et al., LAND USE AND THE CONSTITUTION: PRINCIPLES FOR PLANNING PRACTICE 41 (Brian W. Blaesser & **Alan C. Weinstein** eds., 1989)).

Michael Kahlenberg, Note & Comment: *Broken Record Lawmaking and Stare Decisis: The Unconstitutionality of Ohio's Latest Tort Reform Effort*, 37 U. TOL. L. REV. 1087 (2006) (citing **Stephen J. Werber**, *Ohio Tort Reform in 1998: The War Continues*, 45 CLEV. ST. L. REV. 539, 539-42 (1997)).

Daniel O. Conkle, *Three Theories of Substantive Due Process*, 85 N.C.L. REV. 63 (2006) (citing **James G. Wilson**, *The Role of Public Opinion in Constitutional Interpretation*, 1993 BYU L. REV. 1037, 1137-38).