

Faculty Focus

November 2007



Patrick Corrigan, *Playhouse Square Reflection*

FACULTY PUBLICATIONS

On October 16, **David Barnhizer** posted a working paper on the Legal Scholarship Network entitled *Myth, Magic and Mystery: Defending the Hidden Order of the Rule of Law*.

On the same day, **Dena Davis** posted her article, *The Changing Face of "Misidentified Paternity,"* 32 J. MEDICINE & PHIL. 359 (2007) on the Legal Scholarship Network.

Deborah Geier published a short essay entitled "Expensing and the Interest Deduction" at 116 TAX NOTES 1069 (2007).

Deborah Geier had a 7-page, 15-footnote Letter to the Editor published at 117 TAX NOTES 389 (Oct. 22, 2007). The editors entitled the Letter "Another Take on the Mortgage Debt Relief Situation."

Karin Mika had a Teaching Tip published in the Fall 2007 AALS Newsletter for the

Section on Legal Writing and Research.

Lloyd Snyder had an article entitled *Lawyer Deception to Uncover Wrongdoing* in the October issue of the CLEVELAND BAR JOURNAL.

On October 24, **Alan Weinstein** posted a working paper to the LSN called *Avoiding a RLUIPA Claim*. The paper is a chapter for a forthcoming book on RLUIPA to be published jointly by the American Bar Association and American Planning Association.

SPEAKING ENGAGEMENTS

Phyllis Crocker spoke at the Rotary Club of Cleveland on October 25.

On October 29, **Phyllis Crocker** participated in a nationwide roundtable discussion of the results of the ABA Death Penalty Studies done in eight states (Ohio, Pennsylvania, Alabama, Arizona, Georgia, Indiana, Tennessee, and Florida) over the past eighteen months. The roundtable discussion took place at the ABA headquarters in D.C. Phyllis was one of the presenters, summarizing and commenting on the results of all the studies regarding the provision of Defender Services.

On October 3, **Dena Davis** gave a presentation on "The Legal History of Patients' Rights in the U.S. from a Case Law Perspective" to the Hem-Oncology Fellows at the Cleveland Clinic.

On October 24, **Dena Davis** gave a presentation on the ethics of stem cell research at the University of Toledo College of Medicine.

Joel Finer gave a lecture at the law college on *Quartermaster v. Panetti*, in which the Supreme Court expanded the definition of "mental incompetence" to be executed.

At the American Bar Association's *Advisory Commission on Election Law*, which was held on October 12-13, **Candice Hoke** gave a short presentation on voting systems technical studies concerning their security and accuracy; she was appointed to several subcommittees to develop election reform policy recommendations at the federal level.

Candice Hoke was a panelist at invitation-only *Post-Election Audit National Summit*, held on October 25-27, in Minneapolis.

On December 3, **Candice Hoke** will be a panelist at an election issues conference in Chicago designed exclusively for journalists, which is being held by the Pew Charitable Trusts. She will speak on *Voting Systems Issues for 2008*.

Steve Lazarus spoke to the CSU Undergraduate Honors Program students on October 18. The topic was "Not An Oxymoron: Lawyers' Ethics."

Dennis Keating and **Kermit Lind** spoke on "The Vacant Properties Problem in U.S. Cities and State and Municipal Responses" on October 22 at the International Partners conference at the Levin College.

On September 24 and 25, **Kermit Lind** moderated a panel presentation entitled "Residential Property Nuisance Abatement and Receiverships" at a national conference held in Pittsburgh, PA on *Reclaiming Vacant Properties: Strategies for Rebuilding America's Neighborhoods*, which was co-sponsored by the National Vacant Properties Campaign and the Federal Reserve Bank of Cleveland.

On September 25 and 26, **Kermit Lind** participated in an invitational policy roundtable held in Pittsburgh, PA on "Designing a Model Action Plan for Right Sizing Shrinking Cities," sponsored by The Urban Design Center of Northeast Ohio and the National Vacant Properties Campaign.

On September 28, **Kermit Lind** made a presentation entitled "Introduction to Nuisance Abatement by Receivership Under Ohio Revised Code 3767.41" to a group of nearly 100 local code enforcers and public officials convened at the Center for Regional Cooperation by the Center for Urban and Public Affairs at Wright State University in Dayton, Ohio.

Ken Kowalski presented at an Ohio State Bar Association EEO Seminar on September 28 in Columbus. His presentation was *Federal/State Update on EEO Cases*.

On October 22, **Geoffrey Mearns** spoke about his experience on the Oklahoma City bombing case at the Intown Club. The talk was by invitation from Dr. Joanne Schwartz, the spouse of President Michael Schwartz.

Karin Mika made a presentation at the Central States Legal Writing Conference on *Teaching Research Skills*.

As part of our junior faculty exchange program, **Brian Ray** spoke at Capital University Law School on October 22. His talk was entitled "Striking a Balance: The South African Constitutional Court's Socioeconomic Rights Jurisprudence."

On October 18, **Heidi Gorovitz Robertson** spoke at the Investiture of Judge Jane M. Beckering of the Michigan Court of Appeals.

In late October, **Heidi Gorovitz Robertson** presented a paper at the First Annual Conference on Law, Ethics and the Life Sciences at the University of Louisville in Louisville, Kentucky.

On October 17, in an event sponsored by the Federalist Society, Michael Greve of the American Enterprise Institute delivered a speech entitled "Does the Court Mean Business?" which looked at the Roberts Court docket and what some commentators have seen as an imbalance of business cases and a possible pro-business slant. **Christopher Sagers** provided commentary on Greve's speech.

IN THE NEWS

Janet Okoben, *Cleveland State University Law Grads Excel at Bar Exam*, CLEVELAND PLAIN DEALER, October 31, 2007 (discussing that the law school's class of 2007 had the highest bar passage rate in the region and the second highest in the state on the July 2007 Ohio bar exam, quoting **Geoffrey Mearns**, and mentioning **Steven Steinglass**.) You may read the article on the link below.

<http://www.cleveland.com/news/plaindealer/index.ssf?/base/cuyahoga/119381994074330.xml&coll=2>

Andrew Welsh-Huggins, *Suspend Death Penalty, Bar Says*, CINCINNATI POST, September 25, 2007 (quoting **Phyllis Crocker**).

As Chair of the American Bar Association Ohio Death Penalty Assessment Team, **Phyllis Crocker** participated in two call-in talk shows on public radio: The first was in Cleveland on September 28 and the second was in Oxford, Ohio, on October 12 (the latter with **Geoff Mearns**).

The law school's Pro Bono Program, under the direction of **Pamela Daiker-Middaugh**, hosted the Second Annual Teen Law and Public Policy Forum on October 20. The program, sponsored by the Partnership for a Safer Cleveland, the Cuyahoga County Department of Health, and the Cuyahoga County Board of Commissioners, brought together youngsters, ages 12 to 18, from across the county to discuss public policy issues and laws that directly affect young people. **Stephen R. Lazarus** and a number of Cleveland-Marshall students participated in the program and acted as facilitators. *Plain Dealer* reporter Stan Donaldson published an article about the event in the October 22 issue of the paper. You may read it on the link below.

<http://www.cleveland.com/news/plaindealer/index.ssf?/base/cuyahoga/1192955933222120.xml&coll=2>

James Ewinger, *No-Snitch Culture on Trial in Akron, Teenager Sent to Jail for Refusing to Testify*, CLEVELAND PLAIN DEALER, October 20, 2007 (quoting our adjunct **Gordon Friedman**).

Joyce Gannon, *No PC Privacy: Snooping Service Teaches May Make Home Computers Unsafe Havens for Personal Files*, PITTSBURGH POST-GAZETTE, October 3, 2007 (quoting our adjunct **Ian Friedman**).

Candice Hoke was interviewed by Fox 8 Cleveland's I-Team for their voting systems security report (to be aired in late October).

Andrew Welsh-Huggins, *Death Penalty Study Couldn't Get Traction*, CINCINNATI POST, October 1, 2007 (quoting **Geoffrey Mearns**).

On October 23, **Geoffrey Mearns** spoke on Ideastream (90.3 FM), discussing whether politics has unduly compromised the United States Department of Justice. With him was former U. S. Attorney John Larkin McKay, one of the United States Attorneys dismissed by Attorney General Alberto Gonzales in 2006.

DID YOU KNOW?

Gordon Beggs provided a consultation to Ohio State Senator Shirley Smith regarding possible revisions to SB 197, her proposed comprehensive reform of Ohio's criminal records sealing law.

Sheldon Gelman has organized a “Lunch Club” for Cleveland State University undergraduate honor students. He has invited **Dena Davis, Chris Sagers, Steve Lazarus,** and **Peter Garlock** to speak to the “Club.”

Kathleen Engel is a member of Barack Obama’s Housing Policy Committee.

Kermit Lind is engaged as one of four national experts recruited by the National Vacant Properties Campaign to conduct an assessment and provide advice to a neighborhood organization and the City of Atlanta regarding vacant and abandoned houses in one of Atlanta’s inner-city neighborhoods.

Karin Mika judged at the John Marshall Information, Technology, and Privacy Law Moot Court Competition in Chicago.

2007 LAW REVIEW CITATIONS TO OUR WORK

Frank V. Williams, III, *Reinventing the Courts: The Frontiers of Judicial Activism in the State Courts*, 29 CAMPBELL L. REV. 591 (2007) (citing **David Barnhizer**, *The Virtue of Ordered Conflict: A Defense of the Adversary System*, 79 NEB. L. REV. 657 (2000)).

Kathi Westcott & Rebecca Sawyer, *Silent Sacrifices: The Impact of “Don’t Ask, Don’t Tell” on Lesbian and Gay Military Families*, 14 DUKE J. GENDER L. & POL’Y 1121 (2007) **and** Mary Patricia Byrn, *From Right to Wrong: A Critique of the 2000 Uniform Parentage Act*, 16 UCLA WOMEN’S L.J. 163 (2007) (citing **Susan J. Becker**, *Many Are Chilled, but Few Are Frozen: How Transformative Learning in Popular Culture, Christianity, and Science Will Lead to the Eventual Demise of Legally Sanctioned Discrimination Against Sexual Minorities in the United States*, 14 AM. U.J. GENDER SOC. POL’Y & L. 177 (2006)).

Austen L. Parrish, *Storm in a Teacup: The U.S. Supreme Court’s Use of Foreign Law*, 2007 U. ILL. L. REV. 637 (2007) (citing **Gordon J. Beggs**, *Novel Expert Evidence in Federal Civil Rights Litigation*, 45 AM. U. L. REV. 1 (1995)).

Rebecca J. Cook & Susannah Howard, *Accommodating Women’s Difference’s Under the Women’s Anti-Discrimination Convention*, 56 EMORY L.J. 1039 (2007) (citing **April**

Cherry, *Maternal-Fetal Conflicts, the Social Construction of Maternal Deviance, and Some Thoughts About Love and Justice*, 8 TEX. J. WOMEN & L. 245 (1999)).

Jeffrey J. Pokorak, *Rape Victims and Prosecutors: The Inevitable Ethical Conflict of De Facto Client/Attorney Relationships*, 48 S. TEX. L. REV. 695 (2007) (citing **Phyllis L. Crocker**, *Is the Death Penalty Good for Women?*, 4 BUFF. CRIM. L. REV. 917 (2001)) and **Phyllis L. Crocker**, *Crossing the Line: Rape-Murder and the Death Penalty*, 26 OHIO N.U. L. REV. 689 (2000)).

Laura A. Rosenbury, *Between Home and School*, 155 U. PA. L. REV. 833 (2007) (citing **Dena S. Davis**, *The Child's Right to an Open Future: Yoder and Beyond*, 26 CAP. U. L. REV. 93 (1997)).

William M. Sage, *Some Principles Require Principals: Why Banning "Conflicts of Interest" Won't Solve Incentive Problems in Biomedical Research*, 85 TEX. L. REV. 1413 (2007) (citing Peter S. Arno & **Michael H. Davis**, *Why Don't We Enforce Existing Drug Price Controls? The Unrecognized and Unenforced Reasonable Pricing Requirements Imposed upon Patents Deriving in Whole or in Part from Federally Funded Research*, 75 TUL. L. REV. 631 (2001)).

Daniel Schwarcz, *Beyond Disclosure: The Case for Banning Contingent Commissions*, 25 YALE L. & POL'Y REV. 289 (2007) and Deanne Loonin, *The Life and Debt Cycle: The Growing Debt Burdens of Older Consumers and Related Policy Recommendations*, 44 HARV. J. ON LEGIS. 167 (2007) (citing **Kathleen C. Engel** & Patricia McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255 (2002)).

Rebecca R. Zubaty, *Foreign Law and the U.S. Constitution: Delimiting the Range of Persuasive Authority*, 54 UCLA L. REV. 1413 (2007) (citing **Patricia J. Falk**, *The Prevalence of Social Science in Gay Rights Cases: The Synergistic Influences of Historical Context, Justificatory Citation, and Dissemination Efforts*, 41 WAYNE L. REV. 1 (1994)).

James J. Brudney, *Recrafting a Trojan Horse: Thoughts on Workplace Governance in Light of Recent British Labor Law Developments*, 28 COMP. LAB. L. & POL'Y J. 193 (2007) and Adam Mossoff, *Who Cares What Thomas Jefferson Thought About Patents? Reevaluating the Patent "Privilege" in Historical Context*, 92 CORNELL L. REV. 953 (2007) (citing **Joan Flynn**, *A Quiet Revolution at the Labor Board: The Transformation of the NLRB, 1935-2000*, 61 OHIO ST. L. J. 1361 (2000)).

Lubna A. Alam, *Keeping the State Out: The Separation of Law and State in Classical Islamic Law*, 105 MICH. L. REV. 1255 (2007) (citing **DAVID F. FORTE**, *STUDIES IN ISLAMIC LAW: CLASSICAL AND CONTEMPORARY APPLICATION* (1999)).

Michael S. Kirsch, *Taxing Citizens in a Global Economy*, 82 N.Y.U. L. REV. 443 (2007) (citing **Deborah A. Geier**, *Time to Bring Back the 'Benefit' Norm?*, 33 TAX NOTES INT'L 899 (2004)).

April L. Cherry, *The Detention, Confinement, and Incarceration of Pregnant Women for the Benefit of Fetal Health*, 16 COLUM. J. GENDER & L. 147 (2007) (citing **Sheldon Gelman**, “Life” and “Liberty”: *Their Original Meaning, Historical Antecedents, and Current Significance in the Debate over Abortion Rights*, 78 MINN. L. REV. 585 (1994)).

Garrick B. Pursley, *The Structure of Preemption Decisions*, 85 NEB. L. REV. 912 (2007) (citing **S. Candice Hoke**, *Preemption Pathologies & Civic Republican Values*, 71 B.U. L. REV. 685 (1991)) and **S. Candice Hoke**, *Transcending Conventional Supremacy: A Reconstruction of the Supremacy Clause*, 24 CONN. L. REV. 829 (1992)).

Kerry Abrams, *Immigration Law and the Regulation of Marriage*, 91 MINN. L. REV. 1625 (2007) (citing **Lolita Buckner Inniss**, *Dutch Uncle Sam: Immigration Reform and Notions of Family*, 36 BRANDEIS J. FAM. L. 177 (1997)).

Tim Iglesias, *Our Pluralist Housing Ethics and the Struggle for Affordability*, 42 WAKE FOREST L. REV. 511 (2007) (citing Peter Marcuse & **W. Dennis Keating**, *Federally-Assisted Housing in Conflict: Privatization or Preservation?*, in A RIGHT TO HOUSING (2006)).

Mary Patricia Byrn, *From Right to Wrong: A Critique of the 2000 Uniform Parentage Act*, 16 UCLA WOMEN'S L.J. 163 (2007) (citing **Karin Mika** & Bonnie Hurst, *One Way to Be Born? Legislative Inaction and the Posthumous Child*, 79 MARQ. L. REV. 993 (1996)).

Benjamin C. Fishman, *Binding Corporations to Human Rights Norms Through Public Law Settlement*, 81 N.Y.U. L. REV. 1433 (2007) (citing **Reginald Oh**, *Discrimination and Distrust: A Critical Linguistic Analysis of the Discrimination Concept*, 7 U. PA. J. CONST. L. 837 (2005)).

Daniel LaChance, *Last Words, Last Meals, and Last Stands: Agency and Individuality in the Modern Execution Process*, 32 LAW & SOC. INQUIRY 701 (2007) (citing **Kevin Francis O'Neill**, *Muzzling Death Row Inmates: Applying the First Amendment to Regulations That Restrict a Condemned Prisoner's Last Words*, 33 ARIZ. ST. L.J. 1159 (2001)).

Ariela Gross, “Of Portuguese Origin”: *Litigating Identity and Citizenship Among the “Little Races” in the Nineteenth-Century America*, 25 LAW & HIST. REV. 467 (2007) (citing **Kunal M. Parker**, “State, Citizenship, and Territory: The Legal Construction of Immigrants in Antebellum Massachusetts,” LAW & HIST. REV. 19 (2001)).

Brian H. Potts, *Trading Grandfathered Air – A New, Simpler Approach*, 31 HARV. ENVTL. L. REV. 115 (2007) (citing **Heidi Gorovitz Robertson**, *If Your Grandfather Could Pollute, So Can You: Environmental “Grandfather Clauses” and Their Role in Environmental Inequity*, 45 CATH. U. L. REV. 131 (1995)).

Stephen A. Plass, *Privatizing Antidiscrimination Law with Arbitration: The Title VII Proof Problem*, 68 MONT. L. REV. 151 (2007) and Mitchell H. Rubinstein, *Assignment of*

Labor Arbitration, 81 ST. JOHN'S L. REV. 41 (2007) (citing Frank Elkouri & Edner Asper Elkouri, HOW ARBITRATION WORKS (Alan M. Ruben ed., 6th ed., BNA Books 2003)).

Jeffrey D. Jackson, *Beyond Quality: First Principles in Judicial Selection and Their Application to a Commission-Based Selection System*, 34 FORDHAM URB. L.J. 125 (2007) (citing Lloyd B. Snyder, *The Constitutionality and Consequences of Restrictions on Campaign Speech by Candidates for Judicial Office*, 35 UCLA L. REV. 207 (1987)).

Lee C. Buchheit, et al., *The Dilemma of Odious Debts*, 56 DUKE L.J. 1201 (2007) (citing Milena Sterio, *Implications of the Altmann Decision on Former Yugoslav States*, 20 CONN. J. INT'L L. 39 (2004)).

Amelia H. Boss, *The Future of the Uniform Commercial Code Process in an Increasingly International*, 68 OHIO ST. L.J. 349 (2007) (citing Mark J. Sundahl, *The "Cape Town Approach": A New Method of Making International Law*, 44 COLUM. J. TRANSNAT'L L. 339 (2006)).

Joshua E. Perry, *Biopolitics at the Bedside*, 28 J. LEGAL MED. 171 (2007) (citing Adam Thurschwell, *Cutting the Branches for Akiba: Agamben's Critique of Derrida in POLITICS, METAPHYSICS, & DEATH, ESSAYS ON GIORGIO AGAMBEN'S HOMO SACER* 173 (Andrew Norris ed., 2005) and Adam Thurschwell, *Specters of Nietzsche: Potential Futures for the Concept of the Political in Agamben and Derrida*, 24 CARDOZO L. REV. 1193 (2003)).

Ronald D. Rotunda, *Remembering Robert F. Drinan, S.J.*, 20 GEO. J. LEGAL ETHICS 203 (2007) (citing LEGAL PUB. PREV. 55 (Mar.-April 1990) (reviewing BRIAN W. BLAESSER & ALAN C. WEINSTEIN, LAND USE AND THE CONSTITUTION: PRINCIPLES FOR PLANNING PRACTICE (1989)).

Leora F. Eisenstadt, *Privileged But Equal? A Comparison of U.S. and Israeli Notions of Sex Equality in Employment Law*, 40 VAND. J. TRANSNAT'L L. 357 (2007) (citing Stephen J. Werber, *Cloning: A Jewish Law Perspective With a Comparative Study of Other Abrahamic Traditions*, 30 SETON HALL L. REV. 1114 (2000)).

Corinna Barrett Lain, *Furman Fundamentals*, 82 WASH. L. REV. 1 (2007) and N.J. Schweitzer, et al., *Rule Violations and the Rule of Law: Factorial Survey of Public Attitudes*, 56 DEPAUL L. REV. 615 (2007) (citing James G. Wilson, *The Role of Public Opinion in Constitutional Interpretation*, 1993 B.Y.U. L. Rev. 1037 (1993)).