

Faculty Focus



February 2008



Jennie Jones*

FACULTY PUBLICATIONS

David Barnhizer has contracted with Vandephas Publishing for publication of a book, *MYTH, MAGIC AND MYSTERY: DEFENDING THE HIDDEN ORDER OF THE RULE OF LAW*, scheduled for Fall 2008.

Dena S. Davis, *A Tale of Two Daughters: Jewish Law and End-of-Life Decision Making*, JOURNAL OF CLINICAL ETHICS, Winter 2007.

Dena S. Davis, *A Thoughtful Look at Disability*, HASTINGS CENTER REPORT, March-April 2008.

Patricia McCoy and **Kathleen Engel**, *From Credit Denial to Predatory Lending: the Challenge of Sustainable Minority Homeownership*, in SEGREGATION: THE RISING COSTS FOR AMERICA (2008).

A paper **Kathleen Engel** wrote with Raphael Bostic, Anthony Pennington-Cross, Pat McCoy, and Susan Wachter, *The Impact of Predatory Lending Laws: Policy Implications and Insights*, was just accepted for publication in a book, UNDERSTANDING

CONSUMER CREDIT, to be published by Harvard University's Joint Center for Housing Studies and the Brookings Press.

Reginald Oh, *The Constitution Forbids Integration? Parents Involved in Community Schools v. Seattle School District and the Mis-interpretation of Brown I and II*, forthcoming in the University of Louisville Law Review.

Reginald Oh's article, *Regulating White Desire: Anti-miscegenation, Racial Segregation and the Protection of White Supremacy*, was recently published in the Wisconsin Law Review (2007 Wis. L. Rev. 463).

Cambridge University Press has accepted for publication **Kunal Parker's** manuscript, "Custom and History: Common Law and the Historical Imagination in Nineteenth-Century America" for its series—Cambridge Historical Studies in American Law and Society.

Harry Cornett, Tucker Ellis & West LLP and Chair of the Cleveland Bar Association Ethics and Professionalism Committee, and **Lloyd Snyder**, Vice Chair of the Committee, wrote an article published in the February 2008 edition of the Cleveland Bar Journal entitled *The Duty to Report Violations of the Rules of Professional Conduct: Alternative Views*.

In February, Thomson/West published the 2008 edition of *Federal Land Use Law & Litigation*, a one-volume treatise that **Alan Weinstein** co-authors with Brian Blaesser, a land-use practitioner with the Boston office of Robinson & Cole.

SPEAKING ENGAGEMENTS

Kathleen Engel, Panelist, "*Predatory Lending: Do's and Dont's*," National Council of Negro Women, Cleveland, OH (February 2008).

Kathleen Engel, "*The Foreclosure Crisis and the Potential for Loan Modifications*," Cleveland-Marshall College of Law Faculty Speaker Series, Cleveland, OH (February 2008).

Kathleen Engel, "*The Impact of Predatory Lending Laws: Policy Implications and Insights*," Northeastern University School of Law, Boston, MA (February 2008)

David Forte, "*Justice Cardozo, Justice Thomas, and the Commerce Clause*," Willamette University School of Law, Salem, Oregon, February 9, 2008.

David Forte, "*Abortion: the Future Litigation*," debate with Professor Paula Abrams, Lewis & Clark Law School, Portland, Oregon, February 7, 2008.

David Forte, "*The Ten Commandments as Iconography*," University of Oregon School of Law, Eugene, Oregon, February 7, 2008.

David Forte presented an all-day seminar on the First Amendment entitled “*The Expansion of Expression*” to 65 high school teachers at the Western Reserve Historical Association on January 29. The event was sponsored by the Bill of Rights Institute.

David Forte spoke on “*Why Do We Have A Constitution?*” at the Admissions Open House on January 24.

On February 13, the student Democratic Law Organization (D-LO) sponsored an event at which **Candice Hoke**, “a nationally recognized and widely cited election law expert,” explained the ballot box rights each of us has at the polls on March 4, 2008.

On January 31, the U.S. State Department brought 18 journalists from around the globe to Cleveland to discuss Ohio and Cuyahoga elections. The law school's *Center for Election Integrity* was selected as a host for part of their time; the journalists also visited with the *Plain Dealer* editorial board and with WCPN. **Candice Hoke** and **Geoffrey Coryell**, our former adjunct, were among a distinguished group of speakers.

Lolita Buckner Inniss will serve as a Clason Speaker at Western New England College School of Law in Springfield, Massachusetts. Her April 3 public lecture is titled “*A 'Ho New World: Raced and Gendered Insult as Ersatz Carnival and the Corruption of Freedom of Expression Norms,*” and is based upon an article of the same name which is pending publication in Volume 32 of the NEW YORK UNIVERSITY REVIEW OF LAW AND SOCIAL CHANGE. Since 1988, the Clason Speaker Series has provided a venue for legal experts to present work on current legal topics through public lectures to the Western New England College School of Law community and through presentation of works in progress to the faculty. Previous Clason speakers have included Anita Hill, Edward G. Rubin, Charles Ogletree, Austin Sarat, and Lani Guinier.

On February 28, **Lolita Buckner Inniss** will be a speaker at the Honorable James J. Gilvary Symposium on Law, Religion & Social Justice at the University of Dayton School of Law. The title of her talk is “*Through the Side Door: Legal Rhetorical Constructions of Black Immigrants.*”

Kermit Lind spoke at the January 23, meeting of the Dayton First Suburbs Consortium in Dayton, Ohio on “*How the Mortgage Crisis Impacts Neighborhoods and What Can Be Done About It.*” The First Suburbs Consortium membership consists of suburban municipalities; meetings are attended by elected officials and senior staff of the member municipalities.

On February 22, **Kermit Lind** spoke at the Main Street Institute, a program of Heritage Ohio, on the topic “*Nuisance Abatement of Distressed Residential Property by Receivership in Ohio.*”

On February 8, **Reginald Oh** presented a paper “*Voluntary Integration and the School District as Passive Participant in Racial Segregation*” at a conference entitled “Brown

Undone? The Future of Integration in Seattle After *Parents Involved in Community Schools v. Seattle School District No. 1*." The conference took place at Seattle University School of Law.

Reginald Oh participated in a conference "The Future of School Integration in America: The Supreme Court Decision in *Meredith v. Jefferson County Board of Education*." It took place on January 18, at University of Louisville, Brandeis School of Law, and was hosted by the University of Louisville Law Review. Reggie presented his paper, "*The Constitution Forbids Integration? Parents Involved in Community Schools v. Seattle School District and the Mis-interpretation of Brown I and II*." The paper will be published in the University of Louisville Law Review.

Kunal Parker gave a paper on "*Spaces, Times, Legal Pluralism: Some Lessons from History*" at the Symposium on Legal Pluralism at the University of Oregon on February 14-16.

On February 21, **Kunal Parker** spoke at Yeshiva University, Benjamin N. Cardozo School of Law. The title of his talk was "*Time as Spirit: Common Law Thought and the Historical Imagination in the Early Republic*."

On March 14, **Brian Ray** will make a presentation, "*Sexual Orientation in Comparative Perspective: The Story of South Africa's Civil Union Act*," at the 2008 SALT Teaching Conference at the University of California, Berkeley School of Law (Boalt Hall). The theme of the conference is "Teaching for Social Change."

As part of our junior faculty exchange program, **Milena Sterio** presented on "*The Evolution of International Law*" at Capital University Law School on February 15. <http://www.law.capital.edu/>

Alan Weinstein is part of a panel in a session titled "Addressing the Rising Tide of Foreclosures," at the American Planning Association National Conference in Las Vegas on April 28. The session examines how "Rust Belt" cities have been dealing with the problems caused by high numbers of foreclosures and abandoned and vacant properties for years and explores how these strategies can be adapted to assist other cities in the wake of the subprime-lending debacle. Other speakers on the panel are: Joseph M. Schilling, Virginia Technical University Dept. of Urban Affairs and Planning; Jim Rokakis, Cuyahoga County Treasurer; and Daniel Kildee, Genesee County (Flint, MI) Treasurer and Chair, Genesee County Land Bank.

IN THE NEWS

On February 5, **Michael Davis** was featured in a segment on the 6:00 p.m. news hour on WKYC TV, Channel 3. Mickey spoke with WKYC education reporter Kim Wheeler on the issue of students posting comments about their teachers on You Tube. You may find the clip on: <http://www.wkyc.com/>

Kathleen C. Engel was joined by PLAIN DEALER reporter Elizabeth Auster and CWRU Weatherhead Professor Susan Helper in a discussion of the three main presidential candidates' economic stimuli programs and their proposals for dealing with the foreclosure crisis on February 25 at 9:00 a.m. during WCPN's (90.3 FM) drive-time call-in program.

On February 4, **Kathleen Engel** was quoted in an article by Shawn A. Turner, "Legal Sharks circling Nat City with class actions," in CRAIN'S CLEVELAND BUSINESS. You may read the article on the link below:

<http://crainscleveland.com/article/20080204/FREE/961989874>

On February 1, an on-line publication, CNNMoney.com, a service of CNN, *Fortune*, and *Money*, quoted **Kathleen Engel** in an unsigned Associated Press article, "Knowledge of debt risk key to loan probe," which you may read on the link below:

<http://money.cnn.com/news/newsfeeds/articles/newstex/AFX-0013-22722125.htm>

On January 30, PLAIN DEALER reporter Jim Nichols quoted **Kathleen Engel** in an article entitled "Ohio foreclosure filings jumped 88 percent last year: Report: Foreclosure filings third-most," which you may read on the link below:

<http://www.cleveland.com/plaindealer/stories/index.ssf?/base/news/1201685502303840.xml&coll=2#continue>

Plain Dealer reporter Jim Nichols quoted **Heidi Robertson** in a January 10 story that appeared in the CHICAGO TRIBUNE—"Contractor and owner feud over treasure trove; Depression-era cash wrapped in newspapers emerges during bathroom remodeling project."

Reporter Nora Lockwood Toohar quoted **Alan Weinstein** in an article, "Municipalities nationwide defending against alleged violations of federal religious land-use act," that appeared in the February 11 edition of LAWYERS USA.

Alan Weinstein was quoted in the January 17 issue of the PHOENIX NEW TIMES NEWS in an article by Sarah Fenske, "Michael Salman wants to build a church in his backyard. His neighbors aren't buying it," which you may read on the link below:

http://www.phoenixnewtimes.com/sendtofriend/?ref_id=672103&type=story&sub_type=news

DID YOU KNOW?

David Barnhizer has founded a consulting company named Practical Strategies Institute, LLC., engaged in strategic consulting, research and writing. In the legal area, he is working with a Cleveland-area union and a law firm based in New York to develop a toxic tort case on behalf of employees exposed to PCBs and dioxin in the workplace; is serving as legal counsel for a high-tech company focusing on technologies for alternative energy production from industrial waste sources, and on nano-technology for rapid

detection of toxic substances, including anthrax. He is also involved in an array of legal matters including arbitration to recover funds diverted by former corporate directors, patent and intellectual property rights, and SEC issues involving de-registering a public company. Recently, he celebrated his shift to emeritus professor status with a trip to an eco-lodge deep in the Pacific rainforest of Costa Rica at the tip of the Osa Peninsula.

Gordon Beggs has been appointed to the Awards Committee of the AALS Section on Clinical Legal Education.

Dena Davis has accepted an invitation to join the Editorial Board of Kennedy Institute of Ethics Journal.

Last year, five students in **Mickey Davis's** Copyright, Trademark and Patent class filed a trademark opposition with the U. S. Patent and Trademark Office against Redux, a soft drink manufacturer, seeking to trademark "cocaine" as the name of its new high-energy drink. National media, including the *New York Times*, featured the five Cleveland-Marshall students and their professor in stories throughout the country. The students' work is now one of 15 cases that will be cited and debated on the merits of its ethical content in the 17th Annual Ethics Bowl in San Antonio on February 23. The "bowl," sponsored by the Center for the Study of Ethics in the Professions at the Illinois Institute of Technology, pits regional winners of undergraduate schools against one another in a competition for the national championship. You may read about the competition and the cocaine case in item 14 on the link below:

<http://ethics.iit.edu/eb/national.html>

David Forte has been appointed Senior Visiting Fellow for the 2008-2009 academic year at the Center for Religion and the Constitution of the Witherspoon Institute at Princeton, New Jersey.

David Forte is a reviewer for the refereed publication, THE JOURNAL OF LAW AND RELIGION.

David Forte reports: "[T]he United States Department of State has nominated me for the position of Special Rapporteur for Human Rights Defenders for the United Nations Human Rights Council, but it should be noted that the chances of being chosen for this position among all the nominees from various countries by the Human Rights Council Secretariat is not high."

As part of her work on the ABA Election Law Standing Committee Advisory Commission, **Candice Hoke** participated in developing the program for an ABA Conference entitled "The Evolution of Voting Technology: From Paper Ballots to Touch Screens and Back Again?," which was held on February 8, in Beverly Hills, California.

Stephen R. Lazarus and Fair Housing Law Clinic student Christopher Germano submitted a memorandum report to the Fund for the Future of Shaker Heights. The report formed conclusions as to the legality of the Fund's voluntary, pro-integrative secondary-

mortgage program in light of the June, 2007 decision of the U.S. Supreme Court in *Parents Involved in Community Schools v. Seattle School District*. The Fund had asked for analysis and recommendations, which were provided through the report and through an in-person appearance before the Fund's board of trustees.

Karin Mika graded briefs for the ABA's National Appellate Advocacy Competition and for the Jessup Midwest Regional. Karin also judged oral rounds for Jessup's Midwest Regional Competition in Chicago.

Karin Mika was part of a site evaluation team reviewing the University of Denver Law School's upper-level writing program.

Brian Ray drafted an amicus curiae brief in the Sixth Circuit Court of Appeals for the Tennessee Justice Center responding to arguments by the Attorneys General of Ohio, Michigan, and Tennessee that state officials should enjoy special protections against electronic discovery in federal court.

Steven Steinglass has been appointed to the "Blue Ribbon Panel" that will be responsible for selecting the officers and trustees of the new Cleveland Metropolitan Bar Association, the organization that will be formed as a result of the planned merger of the Cleveland Bar Association and the Cuyahoga County Bar Association.

RECENT GOOGLE BOOK CITATIONS

RICHARD PIERRE CLAUDE & BURNS H. WESTON, HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION (2006) (citing **David R. Barnhizer** (ed.), EFFECTIVE STRATEGIES FOR PROTECTING HUMAN RIGHTS (2001)).

EDNA SELAN EPSTEIN, THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK-PRODUCT DOCTRINE (2007) (citing **Susan J. Becker**, *Conducting Informal Discovery of a Party's Former Employees: Legal and Ethical Concerns and Constraints*, 51 MD. L. REV. 239, 308 (1992)).

VERNELLIA RANDALL, DYING WHILE BLACK (2006) (citing **April L. Cherry**, *Social Contract Theory, Welfare Reform, Race, and the Male Sex-Right*, 75 OR. L. REV. 1037 (1996)).

GARY B. MELTON & NORMAN G. PYTHRESS, PSYCHOLOGICAL EVALUATIONS FOR THE COURTS: A HANDBOOK OF MENTAL HEALTH PROFESSIONALS AND LAWYERS (2007) (citing **Phyllis L. Crocker**, *Concepts of Culpability and Death-worthiness: Differentiating Between Guilt and Punishment in Death Penalty Cases*, 66 FORDHAM L. REV. 21 (1997)).

DERYCK BEYLEVELD & ROGER BROWNSWORD, CONSENT IN THE LAW (2007), (citing **Dena S. Davis**, *Genetic Dilemma's and the Child's Right to an Open Future*, 28 RUTGERS L.J. 561-67 (1997)).

PAUL TORREMANS, SHAN HAILING & JOHAN ERAUW, INTELLECTUAL PROPERTY AND TRIPS COMPLIANCE IN CHINA: CHINESE AND EUROPEAN PERSPECTIVES (2007) (citing **Michael H. Davis**, *Some Realism About Indigenism*, 11 CARDOZO J. INT'L & COMP. L. 815 (2003)).

WILLIAM D. POPKIN, STATUTES IN COURT: THE HISTORY AND THEORY OF STATUTORY INTERPRETATION (1999) (citing **Veronica Dougherty**, *Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation*, 44 AM. U. L. REV. 127 (1994)).

WILLIAM M. RODGERS, HANDBOOK ON THE ECONOMICS OF DISCRIMINATION (2006) (citing **Kathleen C. Engel** & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80(6) TEX. L. REV. 1255-1382 (2002)).

GARY B. MELTON & NORMAN G. PYTHRESS, PSYCHOLOGICAL EVALUATIONS FOR THE COURTS: A HANDBOOK OF MENTAL HEALTH PROFESSIONALS AND LAWYERS (2007) (citing **Patricia J. Falk**, *Lesbian Mothers: Psychological Assumptions in Family Law*, 44 AM. PSYCHOL. 941, 942-43 (1989)).

EMILY JACKSON, REGULATING REPRODUCTION: LAW, TECHNOLOGY AND AUTONOMY (2001) (citing **Joel Jay Finer**, *Towards Guidelines for Compelling Cesarean Surgery: Of Rights, Responsibility, and Decisional Authenticity*, 76 MINN. L. REV. 239-94 (1991)).

TOM ZWART & L.F.M. VERHEY, AGENCIES IN EUROPEAN AND COMPARATIVE PERSPECTIVE (2003) (citing **Joan Flynn**, *Expertness for What?: The Gould Years at the NLRB and the Irrepressible Myth of the Independent Agency*, 52 ADMIN. L. REV. 498-99 (2000)).

CHARLES WILLIS PICKERING, A PRICE TOO HIGH: THE JUDICIARY IN JEOPARDY (2007) (citing **David F. Forte**, *The Rule of Law and the Rule of Laws*, 38 CLEV. ST. L. REV. 97 (1990)).

WILLIAM M. WIECEK, THE BIRTH OF THE MODERN CONSTITUTION: THE UNITED STATES SUPREME COURT, 1941-1953 (2006) (citing **Stephen W. Gard**, *Fighting Words as Free Speech*, 58 WASH. U. L.Q. 531, 536 (1980)).

WILLIAM A. NISKANEN, AFTER ENRON: LESSONS FOR PUBLIC POLICY (2005) (citing **Deborah A. Geier**, *A Proposal for Taxing Corporate Reorganizations*, TAX NOTES, February 10, 1997).

CHRISTOPHER SLOBOGIN, MINDING JUSTICE: LAWS THAT DEPRIVE PEOPLE WITH MENTAL DISABILITY OF LIFE AND LIBERTY (2006) (citing **Sheldon Gelman**, *Looking Backward: The Twentieth Century Revolutions in Psychiatry, Law and Public Mental Health*, 29 OHIO N. U. L. REV. 531, 541-44 (2003)).

EDWIN MEESE, III, THE HERITAGE GUIDE TO THE CONSTITUTION (2005) (citing both **Candice Hoke**, *Preemption Pathologies and Civil Republican Values*, 71 B.U.L. REV. 685 (1991) and **Candice Hoke**, *Transcending Conventional Supremacy: A Reconstruction of the Supremacy Clause*, 24 CONN. L. REV. 829 (1992)).

VICTOR C. ROMERO, ALIENATED: IMMIGRANT RIGHTS, THE CONSTITUTION AND EQUALITY IN AMERICA (2005) (citing **Lolita Buckner Inniss**, *California's Proposition 187—Does It Mean What It Says? A Textual and Constitutional Analysis*, 10 GEO. IMMIGR. L.J. 577-622 (1996)).

ALAN C. ORNSTEIN, FRAGILE RIGHTS WITHIN CITIES: GOVERNMENT, HOUSING AND FAIRNESS (2007) (citing Rachel Bratt & **W. Dennis Keating**, *Federal Housing Policy and HUD: Past Problems and Future Prospects of a Beleaguered Bureaucracy*, 29(1) URBAN AFFAIRS QUARTERLY 3-27 (1993)).

CHARLES H. WHITEBREAD & CHRISTOPHER SLOBOGIN, CRIMINAL PROCEDURE: AN ANALYSIS OF CASES AND CONCEPTS (2000) (citing **Arthur R. Landever**, *Electronic Surveillance, Computers and the Fourth Amendment – The New Telecommunications Environment Calls for Reexamination of the Doctrine*, 15 U. TOL. L. REV. (1984)).

TERRY LEE ANDERSON & THOMAS FLANAGAN, SELF DETERMINATION: THE OTHER PATH FOR NATIVE AMERICANS (2006) (citing **Karin Mika**, *Private Dollars on the Reservation: Will Recent Native American Economic Development Amount to Cultural Assimilation*, 25 N.M. L. REV. 23-24 (1995)).

MARTHA MINNOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE (1998) (citing **Reggie Oh** & Frank Wu, *The Evolution of Race in the Law: The Supreme Court Moves from Approving Internment of Japanese Americans to Disapproving Affirmative Action for African Americans*, 1 MICH. J. RACE & L. 165 (1996)).

AMANDA J. WEIDMAN, SINGING THE CLASSICAL, VOICING THE MODERN: THE POSTCOLONIAL POLITICS OF MUSIC IN SOUTH INDIA (2006) and ASSAF LIKHOVSKI, LAW AND IDENTITY IN MANDATE PALESTINE (2006) (both citing **Kunal Parker**, “A Corporation of Superior Prostitutes”: *Anglo-Indian Legal Conceptions of Temple Dancing Girls 1800-1914*, MODERN ASIAN STUDIES 32:559-633 (1998)).

WIM WIEWEL, PARTNERSHIPS FOR SMART GROWTH: UNIVERSITY-COMMUNITY COLLABORATION FOR BETTER PUBLIC PLACES (2005) (citing **Heidi Gorovitz Robertson**, *Methods for Teaching Environmental Law: Some Thoughts on Providing Access to the Environmental Law System*, 23 COLUM. J. ENVTL. L. 237 (1998)).

D. BARLOW BURKE, LAW OF TITLE INSURANCE (2000) (citing **Christopher Sagers**, *An Implied Cause of Action under the Real Estate Settlements Procedures Act*, 95 MICH. L. REV. 1381 (1997)).

MARY MASSARON ROSS & EDWIN P. VOSS, SWORD AND SHIELD: A PRACTICAL APPROACH TO SECTION 1983 LITIGATION (2007) (citing both **Steven H. Steinglass**, *Section 1983 Litigation in the Ohio Courts: An Introduction for Ohio Lawyers and Judges*, CLEV. ST. L. REV. 407, 409 (1993) and **Steven H. Steinglass**, *The Emerging State Court § 1983 Action: A Procedural Review*, U. MIAMI L. REV. 381, 383, 435 (1984)).

MADELEINE FAGAN, DERRIDA: NEGOTIATING THE LEGACY (2007) (citing **Adam Thurschwell**, *Spectators of Nietzsche Potential Futures for the Concept of the Political in Agamben and Derrida*, 24 CARDOZO L. REV. 8-9 (2003)).

NEAL PEIRCE & DAVID C. SOULE, REMAKING AMERICAN COMMUNITIES: A REFERENCE GUIDE TO URBAN SPRAWL (2007) (citing Brian W. Blaesser & **Alan C. Weinstein**, (eds.), *LAND USE AND THE CONSTITUTION: PRINCIPLES FOR PLANNING PRACTICE – AN AICP PRACTICE HANDBOOK*).

ROBERT F. BARSKY, THE CHOMSKY EFFECT: A RADICAL WORKS BEYOND THE IVORY TOWER (2007) (citing **James G. Wilson**, *Noam Chomsky and Judicial Review*, 44 CLEV. ST. L. REV. 439-472 (1996)).

*To read more about the artist, Jennie Jones, please visit the link below.

<http://www.artistsarchives.org/archive.aspx?CLASS=2000&ARTIST=Jennie Jones>