

Faculty Focus

Cleveland State
University
Cleveland-Marshall College of Law

January 2009



Martin Linsey, *Cleveland Public Square*

FACULTY PUBLICATIONS

David Forte's review, entitled *The States and Abortion*, of PAUL BENJAMIN LINTON, *ABORTION UNDER STATE CONSTITUTIONS: A STATE-BY-STATE ANALYSIS*, Carolina Academic Press, 2008, was just published on Ashbrook.org. Here is the link.

<http://www.ashbrook.org/publicat/oped/forte/09/abortion.html>

David Forte also published a piece on Gaza.

<http://www.ashbrook.org/publicat/oped/forte/09/gaza.html>

Stephen W. Gard, *Bearing False Witness: Perjured Affidavits and the Fourth Amendment*, 41 SUFFOLK U. L. REV. 445 (2008).

Carole Heyward published an article, *Hope for Homeowners: Too Little, Too Late*, in the Fall Issue of the JOURNAL OF AFFORDABLE HOUSING & COMMUNITY DEVELOPMENT LAW. The article discusses a new Federal Housing Administration program called the Hope for Homeowners Program which was created by the Housing

and Economic Recovery Act of 2008 (passed by Congress on July 24, 2008 and signed by President Bush on July 30, 2008).

Candice Hoke & David Jefferson, *Voting and Registration Technology Issues: Lessons from 2008* in the Supplement to AMERICA VOTES! A GUIDE TO MODERN ELECTION LAW AND VOTING RIGHTS (Benjamin E. Griffith, ed. 2008).

Kunal Parker, *Progressive Era Immigration and Naturalization*, in David Tanenhaus *et al.* eds, ENCYCLOPEDIA OF THE SUPREME COURT OF THE UNITED STATES (Garland Publishing 2008).

Kunal Parker, *U.S. Citizenship and Immigration law (1800 – 1924): Resolutions of Membership and Territory* in Michael Grossberg and Christopher Tomlins eds., THE CAMBRIDGE HISTORY OF LAW IN AMERICA, Vol. II (Cambridge University Press 2008).

Mark Sundahl has posted his article, *The Living Constitution of Ancient Athens: A Comparative Perspective on the Originalism Debate* to be published in the JOHN MARSHALL LAW REVIEW, on SSRN's Legal Scholarship Network. You may read the article on this link. <http://ssrn.com/abstract=1332030>

Eric Tucker, *Shareholder and Director Liability for Unpaid Workers' Wages in Canada: From Condition of Granting Limited Liability to Exceptional Remedy*, 26 LAW & HIST. REV. 57 (2008) (“Eric Tucker is a professor at Osgoode Hall Law School <etucker@yorku.ca>. The Social Sciences and Humanities Research Council, Canada generously funded this project. Joshua Dougherty, Christopher Donovan, Kevin MacDonald, students at Osgoode Hall Law School, and Laurent Gloerfelt, a student at **Cleveland-Marshall College of Law**, provided research assistance. He has benefited from comments by the journal's anonymous reviewers, as well as from those of Judy Fudge, Harry Glasbeek, and Paddy Ireland. Earlier versions of the article were presented at the Toronto Legal History Group and **Cleveland-Marshall College of Law**, where the first draft was written during a visiting appointment.”)

SPEAKING ENGAGEMENTS

Kathleen Engel, “The Impact of State Anti-Predatory Lending Laws: Policy Implications and Insights” Suffolk University Law School (January 2009).

Kathleen Engel, “Liability at the Top of the Subprime Lending Food Chain,” Hofstra Law School (December 2008).

On December 11, **Candice Hoke** gave oral testimony to the Ohio House Committee on State Government and Elections, regarding pending SB 380 that would modify early election opportunities, institute additional procedures regarding the statewide registration database, and other legal changes. (Candice reports that the bill passed but the Governor vetoed it.)

On December 9, **Candice Hoke** made a panel presentation on “Lawyers’ Roles in Elections” at the COGEL (Council on Government Ethics Laws) Annual meeting in Chicago. She also toured the Cook County Election Offices on the same morning that the Illinois Governor was arrested.

On December 8, **Candice Hoke** was solicited to testify before the U.S. Election Assistance Commission, in Washington, DC. She orally testified on Tracking Voting System Performance and submitted written testimony that is published on the EAC website.

Kunal Parker, “Law and History in the English Utilitarian Imagination of India,” at *Law and Social Sciences Research Network Inaugural Conference*, Centre for the Study of Law and Governance, Jawaharlal Nehru University, New Delhi, India (January 2009).

Kunal Parker, “African-Americans as Immigrants? Some Thoughts on a Historical Relation,” at *Migrants and Migrations: Immigrations and the Notions of Citizenship in a Changing World*, University of Miami, Miami, Florida (October-November 2008).

Brian Ray’s paper *A Tale of Two Countries: Constitutions, Social Change and the Story of South Africa’s Civil Union Act* has been selected as part of The Global Arc of Justice: Sexual Orientation Law Around the World conference sponsored by UCLA School of Law’s Williams Institute on March 11-14, 2009.

On January 13, **Steve Steinglass** made a presentation at a CLE program at Jones Day on “What Every Federal Litigator Should Know about Removal.”

Mark Sundahl has been invited to chair the panel on Ancient Greek Law at the 2009 Meeting of the American Society of Legal History in Dallas.

IN THE NEWS

Peter Krouse, *Lawyers may split millions in probe*, PLAIN DEALER, November 23, 2008 (“‘Yes, it is a business opportunity,’ but that’s not the lawyers’ only motivation, said **Geoffrey Mearns**, dean of the Cleveland-Marshall College of Law at Cleveland State University. ...”)

Choice Bits, CRAIN’S CLEVELAND BUSINESS, November 17, 2008 (“**Kathleen Engel**, a professor at Cleveland Marshall College of Law, told ABC News that many home loan companies -- specifically, mortgage servicers that are in charge of collecting payments on loans -- haven’t had the resources necessary to cope with requests for help from homeowners. ...”)

Alison Grant, *Law Town shaky? Globalization, decline of industry threaten Cleveland’s reputation as a bustling law town*, PLAIN DEALER, November 9, 2008 (“Local firms successfully pitched rates hundreds of dollars per hour lower than clients pay on the East and West coasts, said **Geoffrey Mearns**, dean of the Cleveland-Marshall College of Law

at Cleveland State University. ...”)

DID YOU KNOW?

Charles E. Cohen, *The Abstruse Science: Kelo, Lochner, and Representation Reinforcement in the Public Use Debate*, 46 DUQ. L. REV. 375 (2008) (“Associate Professor of Law, Capital University Law School; J.D., University of California, Hastings College of the Law, 1999; B.A., Harvard University, 1987. I am grateful to Capital University Law School for its generous research grant. I also wish to acknowledge the valuable comments provided by Mark Poirier and Mark Fenster, members of the Ohio Legal Scholars Workshop and **the Capital University Law School - Cleveland Marshall Law School Young Scholars Exchange Program.** ...”)

The Federal Reserve Board has appointed **Kathleen Engel** Vice Chair of the Consumer Advisory Council's Consumer Credit Committee.

On January 6, 2009, **Carole Heyward** (with assistance from clinic students) completed a major project. Since 2006, Carole had been assisting Fairfax Renaissance Development Corporation (“FRDC”) with the acquisition, renovation, and construction of the Langston Hughes Center. Carole writes: “The original Langston Hughes Center on the site was a brick Andrew Carnegie Library Building that had been abandoned and vacant for many years. The new Langston Hughes Center has 25,000 square feet of space (including the renovated original building as well as a newly constructed addition). The Center will serve as the headquarters of Senior Outreach Services, Inc. (a senior service provider) and a Cleveland Clinic Wellness Center (see attached picture). The project is in the process of receiving a Silver LEED certification from the U.S. Green Building Council identifying it as a project which is environmentally responsible and sustainable.”

“We began assembling land for the project in 2006. Actual construction project began in January of 2008 and was substantially completed on December 1, 2008 at a cost of \$5.5 million. In October of 2008, we began assisting FRDC with the final phase of the project – permanent financing. On January 6, 2009, we closed a \$5.1 million structured finance transaction which included a new market tax credit loan with National City Community Development, an economic development loan with the City of Cleveland and permanent financing from Village Capital Corporation. The project made a valuable contribution to our community and continues to provide wonderful learning opportunities for our students.”

Lolita Buckner Inniss posted this entry on her blog: “He Is (Or, We Are)” at <http://innissfls.blogspot.com/2009/01/he-is-or-we-are.html>.

Kristina Niedringhaus was elected to the CALI Board of Directors while at AALS.

Brian Ray was selected by the medical journal the *Lancet* to serve as an external referee on a law-related study.

Brian Ray was asked by Aspen Press to review part of a forthcoming Civil Procedure textbook.

Cleveland-Marshall law student Patrick J. Charles, whose paper on the right to bear arms for **Steve Steinglass's** course in Ohio Constitutional History was selected for the John. R. Brown Excellence in Legal Writing Award (and a \$10,000 stipend), has reached another milestone. He has adapted his paper for a book, which will be published later this spring by McFarland & Company Inc. The title will be: THE SECOND AMENDMENT: THE INTENT AND ITS INTERPRETATION BY THE STATES AND THE SUPREME COURT.

Mark Sundahl has teamed up with the Ohio Aerospace Institute to organize a monthly luncheon meeting for executives in the Ohio aerospace industry where attendees will discuss current legal and business issues that affect their businesses. The meeting will reach out to executives throughout the state through OAI's state-of-the-art teleconferencing technology and will occasionally showcase speakers from the CSU faculty.

2008 LAW REVIEW CITATIONS TO OUR WORK

Holly Doremus, *Scientific and Political Integrity in Environmental Policy*, 86 TEX. L. REV. 1601 (2008) (citing **David Barnhizer**, *Waking from Sustainability's "Impossible Dream": The Decisionmaking Realities of Business and Government*, 18 GEO. INTL. ENVTL. L. REV. 595, 656 (2006)).

Carol M. Bast, *Surreptitious Recording by Attorneys: Is It Ethical?* 39 ST. MARY'S L.J. 661 (2008) (citing **Susan J. Becker**, *Discovery of Information and Documents from a Litigant's Former Employees: Synergy and Synthesis of Civil Rules, Ethical Standards, Privilege Doctrines, and Common Law Principles*, 81 NEB. L. REV. 868, 885 n.80 (2003)).

M. Neil Browne & Ronda R. Harrison-Spoerl, *Putting Expert Testimony in Its Epistemological Place: What Predictions of Dangerousness in Court can Teach Us*, 91 MARQ. L. REV. 1119 (2008) (citing **Gordon J. Beggs**, *Novel Expert Evidence in Federal Civil Rights Litigation*, 45 AM. U. L. REV. 1, 34 n.246 (1995)).

Daniel Keating, *Harsh Realities and Silver Linings for Retirees*, 15 AM. BANKR. INST. L. REV. 437 (2007) (citing **Michael J. Borden**, *PSLRA, SLUSA, and Variable Annuities: Overlooked Side Effects of a Potent Legislative Medicine*, 55 MERCER L. REV. 681, 709 (2004)).

B. Jessie Hill, *The Constitutional Right to Make Medical Treatment Decisions: A Tale of Two Doctrines*, 86 TEX. L. REV. 277 (2008) (citing **April L. Cherry**, *Roe's Legacy: The Nonconsensual Medical Treatment of Pregnant Women and Implications for Female Citizenship*, 6 U. PA. J. CONST. L. 723, 727, 727-28 (2004)).

Stephen F. Smith, *The Supreme Court and the Politics of Death*, 94 VA. L. REV. 283 (2008) (citing **Phyllis L. Crocker**, *Childhood Abuse and Adult Murder: Implications for the Death Penalty*, 77 N.C. L. REV. 1143, 1166-67 (1999)).

Radhika Rao, *Equal Liberty: Assisted Reproductive Technology and Reproductive Equality*, 76 GEO. WASH. L. REV. 1457 (2008) (citing **Dena S. Davis**, *Genetic Dilemmas and the Child's Right to an Open Future*, 28 RUTGERS L.J. 549, 570 (1997)).

Margreth Barrett, *Finding Trademark Use: The Historical Foundation for Limiting Infringement Liability to Uses "In the Manner of a Mark"*, 43 WAKE FOREST L. REV. 893 (2008) (citing **Michael H. Davis**, *Death of a Salesman's Doctrine: A Critical Look at Trademark Use*, 19 GA. L. REV. 233, 246 (1985)).

Eric M. Fraser, Comment, *Reducing Fraud Against the Government: Using FOIA Disclosures in Qui Tam Litigation*, 75 U. CHI. L. REV. 497 (2008) (citing **Veronica M. Dougherty**, *Absurdity and the Limits of Literalism: Defining the Absurd Result Principle in Statutory Interpretation*, 44 AM U L REV 127 (1994)).

Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1 (2008) (citing **Kathleen C. Engel** & Patricia A. McCoy, *Turning a Blind Eye: Wall Street Finance of Predatory Lending*, 75 FORDHAM L. REV. 2039, 2058 (2007)).

Mark A. Hall & Ronald F. Wright, *Systematic Content Analysis of Judicial Opinions*, 96 CAL. L. REV. 63 (2008) (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. 18, n.25 (1994)).

Carol M. Langford, *Barbarians at the Bar: Regulation of the Legal Profession Through the Admissions Process*, 36 HOFSTRA L. REV. 1193 (2008) (citing **Joel Jay Finer**, *Gay and Lesbian Applicants to the Bar: Even Lord Devlin Could Not Defend Exclusion, Circa 2000*, 10 COLUM. J. GENDER & L. 231, 242 (2000)).

Neal Devins & David E. Lewis, *Not-So Independent Agencies: Party Polarization and the Limits of Institutional Design*, 88 B.U. L. REV. 459 (2008) (citing **Joan Flynn**, *A Quiet Revolution at the Labor Board: The Transformation of the NLRB, 1935-2000*, 61 OHIO ST. L.J. 1361, 1392-98 (2000)).

Thomas B. McAfee, *Overcoming Lochner in the Twenty-First Century: Taking Both Rights and Popular Sovereignty Seriously as We Seek to Secure Equal Citizenship and Promote the Public Good*, 42 U. RICH. L. REV. 597 (2008) (citing **David F. Forte**, *Ideology and History*, 13 GEO. L. REV. 1501, 1507 (1979)).

Amanda L. Houle, *From T-Shirts to Teaching: May Public Schools Constitutionally Regulate Antihomosexual Speech?* 76 FORDHAM L. REV. 2477 (2008) (citing **Stephen W. Gard**, *Fighting Words as Free Speech*, 58 WASH. U. L.Q. 531, 536 (1980)).

Leandra Lederman, *Tax Appeal: A Proposal to Make the United States Tax Court More Judicial*, 85 WASH. U. L. REV. 1195 (2008) (citing **Deborah A. Geier**, *The Tax Court, Article III, and the Proposal Advanced by the Federal Courts Study Committee: A Study in Applied Constitutional Theory*, 76 CORNELL L. REV. 985, 993 (1991)).

Frederic M. Bloom, *State Courts Unbound*, 93 CORNELL L. REV. 501 (2008) (citing **Sheldon Gelman**, *The Hedgehog, The Fox, and the Minimalist*, 89 GEO. L.J. 2297, 2350 (2001)).

David E. Adelman & Kirsten H. Engel, *Adaptive Federalism: The Case against Reallocating Environmental Regulatory Authority*, 92 MINN. L. REV. 1796 (2008) (citing **S. Candice Hoke**, *Preemption Pathologies and Civic Republican Values*, 71 B.U. L. REV. 685, 760-63 (1991)).

Kevin R. Johnson, *A Handicapped, Not "Sleeping," Giant: The Devastating Impact of the Initiative Process on Latina/o and Immigrant Communities*, 96 CAL. L. REV. 1259 (2008) (citing **Lolita K. Buckner Inmiss**, *Tricky Magic: Blacks as Immigrants and the Paradox of Foreignness*, 49 DEPAUL L. REV. 85 (1999)).

Daphna Lewinsohn-Zamir, *More is not Always Better than Less: An Exploration in Property Law*, 92 MINN. L. REV. 634 (2008) (citing **W. DENNIS KEATING** et al., *RENT CONTROL: REGULATION AND THE RENTAL HOUSING MARKET* (1998)).

Frances H. Foster, *Individualized Justice in Disputes over Dead Bodies*, 61 VAND. L. REV. 1351 (2008) (citing **Browne Lewis**, *Children of Men: Balancing the Inheritance Rights of Marital and Non-Marital Children*, 39 U. TOL. L. REV. 1 (2007)).

Rosalind Dixon, *Feminist Disagreement (Comparatively) Recast*, 31 HARV. J. L. & GENDER 277 (2008) (citing **Karin Mika**, *Self-Reflection Within the Academy: The Absence of Women in Constitutional Jurisprudence*, 9 HASTINGS WOMEN'S L.J. 273 (1998)).

R.A. Lenhardt, *Beyond Analogy: Perez v. Sharp, Antimiscegenation Law, and the Fight for Same-Sex Marriage*, 96 CAL. L. REV. 839 (2008) (citing both **Reginald Oh**, *Interracial Marriage in the Shadows of Jim Crow: Racial Segregation as a System of Racial and Gender Subordination*, 39 U.C. DAVIS L. REV. 1321 (2005) and **Reginald Oh**, *Regulating White Desire*, 2007 WISC. L. REV. 463 (2007)).

Nat Stern, *The Certainty Principle as Justification for the Group Defamation Rule*, 40 ARIZ. ST. L.J. 951 (2008) (citing **Kevin Francis O'Neill**, *A First Amendment Compass: Navigating the Speech Clause with a Five-Step Analytical Framework*, 29 SW. U. L. REV. 223, 230-31 (2000)).

Rick Su, *A Localist Reading of Local Immigration Regulations*, 86 N.C. L. REV. 1619 (2008) (citing **Kunal M. Parker**, *State, Citizenship, and Territory: The Legal Construction of Immigrants in Antebellum Massachusetts*, 19 LAW & HIST. REV. 583, 638-39 (2001)).

Oni N. Harton, *Indiana's Brownfields Initiatives: A Vehicle for Pursuing Environmental Justice or Just Blowing Smoke?*, 41 IND. L. REV. 215 (2008) (citing **Heidi Gorovitz Robertson**, *One Piece of the Puzzle: Why State Brownfields Programs Can't Lure Businesses to the Urban Cores Without Finding the Missing Pieces*, 51 RUTGERS L. REV. 1075, 1079 (1999)).

Laura J. Cooper, *Privatizing Labor Law: Neutrality/Card-Check Agreements and the Role of the Arbitrator*, 83 IND. L.J. 1589 (2008) (citing ELKOURI & ELKOURI, HOW ARBITRATION WORKS (**Alan Miles Ruben** ed., 6th ed., 2003)).

Darren Bush, *Thirty Years of Airline Deregulation: A Structure, Conduct and Performance Review—Introduction*, 45 HOUS. L. REV. 287 (2008) (citing **Chris Sagers**, *Raising the Price of Pork in Texas: A Few Thoughts on Gosh, Bush, and the Future of the Antitrust Immunities*, 45 HOUS. L. REV. 395, 401-02 (2008)).

Nat Stern, *The Looming Collapse of Restrictions on Judicial Campaign Speech*, 38 SETON HALL L. REV. 63 (2008) (citing **Lloyd B. Snyder**, *The Constitutionality and Consequences of Restrictions on Campaign Speech by Candidates for Judicial Office*, 35 UCLA L. REV. 207, 214 (1987)).

Richard B. Saphire & Paul Moke, *The Ideologies of Judicial Selection: Empiricism and the Transformation of the Judicial Selection Debate*, 9 U. TOL. L. REV. 551 (2008) (citing **STEVEN H. STEINGLASS**, 1 SECTION 1983 LITIGATION IN STATE COURTS §§ 8-1 to 8-21 (1987 & Supp. 2003)).

Matthias Lehmann, *Liberating the Individual from Battles between States: Justifying Party Autonomy in Conflict of Laws*, 41 VAND. J. TRANSNAT'L L. 381 (2008) (citing **Milena Sterio**, *The Globalization Era and the Conflict of Laws: What Europe Could Learn from the United States and Vice Versa*, 13 CARDOZO J. INT'L & COMP. L. 161, 178 (2005)).

Luc Thévenoz, *Intermediated Securities, Legal Risk, and the International Harmonization of Commercial Law*, 13 STAN. J.L. BUS. & FIN. 384 (2008) (citing **Mark J. Sundahl**, *The "Cape Town Approach": A New Method of Making International Law*, 44 COLUM. J. TRANSNAT'L L. 339, 345 (2006)).

Jay A. Soled, *Tax Shelter Malpractice Cases and Their Implications for Tax Compliance*, 58 AM. U. L. REV. 267 (2008) (citing **William L. Tabac**, *Crossfire at the Bar*, N.Y. TIMES, May 3, 1987, § 6 (Mag.), at 30)).

Daniel N. Lerman, *Taking the Temple: Eminent Domain and the Limits of RLUIPA*, 96 GEO. L.J. 2057 (2008) (citing **Alan C. Weinstein**, *Land Use Regulations of Religious Institutions*, in PROTECTING FREE SPEECH AND EXPRESSION: THE FIRST AMENDMENT AND LAND USE LAW 145, 158 (Daniel R. Mandelker & Rebecca L. Rubin eds., 2001)).

Christopher D. Vanderbeek, *An Untimely Death of Wrongful Death Claims: Ohio Removes Decedent-Employee Wrongful Death Claims from the Arbitral Forum*, 2008 J. DISP. RESOL. 621 (citing **Stephen J. Werber**, *Ohio Tort Reform in 1998: The War Continues*, 45 CLEV. ST. L. REV. 539, 542 n.11 (1997)).

Marin Roger Scordato, *Reflections on the Nature of Legal Scholarship in the Post-Realist Era*, 48 SANTA CLARA L. REV. 353 (2008) (citing **James G. Wilson**, *The Morality of Formalism*, 33 UCLA L. REV. 431, 460 (1985)).

2008 LAW REVIEW CITATIONS TO OUR WORK ON SSRN

Gregory W. Bowman, *The Comparative and Absolute Advantages of Junior Law Faculty: Implications for Teaching and the Future of American Law Schools*, 2008 B.Y.U. EDUC. & L.J. 171 (citing Howard E. Katz & **Kevin Francis O'Neill**, *Strategies and Techniques of Law School Teaching: A Primer for New (and Not so New) Professors* 50-51, (Cleveland-Marshall College of Law, Research Paper No. 07-144, 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=982234).

Marci Hoffman & Katherine Topulos, *Tyranny of the Available: Under-Represented Topics, Approaches, and Viewpoints*, 35 SYRACUSE J. INT'L. L. & COM. 175 (2008) (“For a discussion of how libraries are dealing with new, technologically-driven formats, see **Jan Ryan Novak** & Leslie A. Pardo, *The Evolving Nature of Faculty Publications*, Cleveland-Marshall Research Paper No. 07-134, 26 Legal Reference Services Q. 1 & 2 (2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=961879 (last visited Mar. 18, 2008)”).