

# Faculty Focus



February 2009



Brian Glassman, *Salmo Gairdneri*

## FACULTY PUBLICATIONS

**Dennis Keating** has written two book reviews: one on ROBERT CLIFTON WEAVER AND THE AMERICAN CITY: THE LIFE AND TIMES OF AN URBAN REFORMER, a biography of the pioneering African-American housing advocate, written by University of Pennsylvania law professor and historian Wendell Pritchett and the other on a collection called SEGREGATION: THE RISING COSTS FOR AMERICA, which includes a co-authored chapter by **Kathleen Engel**. The reviews will be published in upcoming 2009 issues of the URBAN AFFAIRS REVIEW.

**Kristina L. Niedringhaus** has signed a contract with Carolina Academic Press for a book tentatively entitled *Advanced Legal Research: A Context and Practice Textbook*. The book is part of the Michael Hunter Schwartz series designed to implement the ideas in *Best Practices in Legal Education* and should be published in 2010.

**Kris Niedringhaus** has also been asked to write an article, about innovative ideas for teaching legal research, to be published in *Perspectives: Teaching Legal Research and Writing* in the fall of 2009.

**Alan Weinstein's** essay, *Current and Future Challenges to Local Government Posed by the Housing and Credit Crisis*, has been published in 2 ALBANY GOV. L. REV. 259 (2009).

## **SPEAKING ENGAGEMENTS**

From March 12 to 15, **Janice Aitken** and **Karin Mika** will attend the 2009 Rocky Mountain Legal Writing Conference at the Arizona State University College of Law. Janice will present on "Go with the Flow: The Heuristic Value of Flow Charts in Teaching and Learning Legal Analysis;" Karin will present on "Word Processing versus Hand Grading: A Statistical Study."

On January 29, **Susan Becker** and **Steve Lazarus** spoke before the faculty on "Incorporating Quizzes, Midterms, and Other Feedback Mechanisms into Your Classes."

**Dena Davis** has been invited to give the 2009 Philippa Harris endowed lecture at the Princess Margaret Hospital in Toronto on October 21. The Philippa Harris lecture on ethical issues in cancer care was established by Mr. and Mrs. Pat and Bill Harris in 1981 to celebrate the life of their daughter, Pippa, who died from cancer at the age of twenty years. The lecture is shared between Princess Margaret Hospital (University Health Network) and the Joint Centre for Bioethics, University of Toronto, Canada.

On February 4, **Kunal Parker** presented on "Time as Spirit: Common Law Thought and the Historical Imagination in the Early Republic" at the Center for Law, Culture, & History at the University of Southern California School of Law.

On February 12, **Heidi Gorovitz Robertson** presented "Public Access to Private Land: England's CROW Act, Scandinavia's Allemansrätt, and Legal and Cultural Impossibility in the U.S." at the International Academic Association for Planning, Law, and Property Rights, Third Conference, in Aalborg, Denmark.

**Heidi Gorovitz Robertson** recently received word that she will receive a Fulbright Senior Specialist grant to serve as a Guest Lecturer and Researcher at Uppsala University (in Sweden) faculty of environmental law for four weeks in April and May. Heidi will be conducting seminars for students and workshops for faculty, and will be working with some faculty members to help develop a practice orientation in their environmental law program. She will also be leading public roundtable discussions on issues concerning public access to private land.

**Heidi Gorovitz Robertson** has had an abstract accepted and will be presenting on "Environmental Inconsistency and Resulting Environmental Injustice in the U.S.: Approaches Beyond Bush" at the Nordic Environmental Law, Governance, and Science Network Workshop at the University of Oslo, Norway, on April 27-29, 2009. Heidi will travel to the Oslo conference during her visit to Uppsala.

On April 30-May 2, **Chris Sagers** will attend the Loyola Chicago Antitrust Colloquium and present his paper “Rules, Standards, and De Facto Immunity in Antitrust.”

On May 29-31, **Chris Sagers** will attend the Law & Society Association Annual Meeting in Denver and present his paper “Faith Based Financial Regulation: A Primer on Oversight of the Credit Rating Agencies.”

On February 17, **Alan Weinstein** presented to the Justices of the Ohio Supreme Court the findings and recommendations of a study he conducted, with Professor Bob Wade (Capital University), on the issue of what should be the U.S. legal education requirements to allow foreign-educated lawyers to sit for the Ohio bar examination.

## IN THE NEWS

In the Tip Off column of the February 23 issue of the PLAIN DEALER, reporter Michael McIntyre saluted Cleveland-Marshall's Black History Month program held on February 19:

Legal precedent: A month after America inaugurated its first black president, Ohio witnessed its first ever three-judge panel of African-American appeals court members.

Judges Patricia Blackmon, Melody Stewart and Larry Jones of the 8th Ohio District Court of Appeals heard oral arguments over three days last week, including a special session Thursday at the **Cleveland-Marshall College of Law** at Cleveland State University.

Cuyahoga County Public Defender Bob Tobik, whose office presented one of the cases, said the school did a fine job honoring the historic occasion. The hearing was attended by a large crowd of law school students, and featured an inspirational introduction by moderator **Phyllis Crocker**, and emotional remarks by Blackmon, a Cleveland-Marshall graduate and Ohio's first black appeals court judge.

**Kathleen C. Engel** was quoted in an article by Mary Kane in the February 9 issue of THE WASHINGTON INDEPENDENT: “Borrowers to Keep Legal Rights Under Foreclosure Plan: Fannie, Freddie Requirement That Forced Mortgage Holder to Sign Legal Waivers Eliminated.” You may read the article on the link below.

<http://washingtonindependent.com/29751/bailout-and-waivers>

## DID YOU KNOW?

Ann C. McGinley, *Creating Masculine Identities: Bullying and Harassment “Because of Sex”*, 79 U. COLO. L. REV. 1151 (2008) (“I also presented a version of this paper at **Cleveland Marshall College of Law** as a Visiting Scholar, 2008 Littler Mendelson Employment and Labor Law Speaker Series and on a panel at the Southeastern

Association of Law Schools 2008 Annual Meeting.”)

On February 7, a Moot Court team consisting of Carrie Lewine, Danja Therecka, and April Stephenson, and coached by **Janice Aitken**, won the North American (Atlantic) Rounds of the 13th Annual Stetson International Environmental Law Competition. The team also wrote the first place Memorial. As a result of this victory, the team will compete against teams from around the world in the International Finals at Stetson in March.

**Phyllis Crocker** is on a Judicial Panel accepting applications to fill a vacancy on the Cuyahoga County Domestic Relations Court.

The following colleagues made presentations to students studying for the Ohio State Bar Exam in February: **Veronica Dougherty** on Corporations, **Patti Falk** on Criminal Law, **Joel Finer** on Criminal Procedure, **Steve Gard** on Commercial Paper, **Steve Lazarus** on Evidence, **Kevin O'Neill** on the First Amendment, **Christopher Sagers** on Agency, **Lloyd Snyder** on Ethics, **Steve Steinglass** on Ohio Civil Procedure, and **Mark Sundahl** on Secured Transactions.

After winning the regionals last November, our “nationals” Moot Court team, consisting of Megan Miller, Callie Modic, and Alex Reich, and coached by **Steve Gard**, won two preliminary rounds and qualified for the "sweet sixteen" in the national championship competition in New York in early February. Although the team was not able to advance, their brief was ranked fifth in this competition -- only 0.75 points behind the top brief in the country.

**Lolita Buckner Inniss** posted a new blog entry "Of PDA and PDA (Or, Welcome to the Synopticon)" at <http://innissfls.blogspot.com/>.

Michael Hunter Schwartz of Washburn University School of Law (our speaker at last year's Teaching Retreat) is soliciting nominations for his new book "What the Best Law Teachers Do" (Harvard University Press). Our colleague, **Steve Lazarus**, has already been nominated. Here is the web page for the project, on which you may see all the nominees and read Steve's nomination.

<http://washburnlaw.edu/bestlawteachers/nominees/index.php>

On February 6, **Steve Lazarus**, Chair of the Ohio Supreme Court Commission on Professionalism, moderated the panel discussion on Mentor Orientation in the Ohio Lawyer to Lawyer Mentoring Program at the Justice Center in Cleveland, Ohio.

**Kathleen Engel** reports: “I am writing to tell those who missed the Governor's signing of the Cuyahoga County Land Bank legislation at the Levin School that **Kermit [Lind]** was given a lot of credit for his role putting together the vacant properties campaign in Cleveland and in crafting and driving through the land bank legislation. The new land bank is not only great for Cleveland, but also a model for cities throughout the country.”

**Kermit Lind** was a participant in a workshop on "Redesigning the Policy Framework for Shrinking Cities" held at the Brookings Institute in Washington, D.C. on February 13, 2009. The workshop was co-sponsored by Brookings, the National Vacant Property Campaign, and the Kent State School of Architecture and Environmental Design. It was attended by invited officials from several midwest cities and public policy experts from institutions working on city and neighborhood stabilization strategies.

The bepress version of **Brian Ray's** article *Policentrism, Political Mobilization and the Promise of Socioeconomic Rights*, \_\_ STANFORD J. INT'L LAW \_\_ (2009) is cited in MARK KENDE, *CONSTITUTIONAL RIGHTS IN TWO WORLDS: SOUTH AFRICA AND THE UNITED STATES* (Cambridge University Press 2009).

**Mark Sundahl's** recent article *The Living Constitution of Ancient Athens: A Comparative Perspective on the Originalism Debate* received a favorable review on Larry Solum's *Legal Theory Blog*, which called Mark's article "a very interesting piece." The blog entry can be found here:  
<http://lsolum.typepad.com/legaltheory/2009/01/sundahl-on-originalism-the-constitution-of-ancient-athens.html>

**Barb Tyler** coached Lake Catholic High School to a first place finish in the Mock Trial competition in early February. Her advocates took seven of the eight available awards.

**Alan Weinstein** is serving as an Expert Witness for the Civil Rights Division of the U.S. Department of Justice in a housing discrimination case in Alabama involving an alleged failure of a local government to provide a reasonable accommodation in the application of its land use regulations to a group home housing mentally retarded adults.

## **JUDICIAL CITATIONS TO OUR WORK: 2005-2009\***

Barrett v. W. Chester Univ., 2006 U.S. Dist. LEXIS 15332 (E.D. Pa. 2006) (citing **Gordon J. Beggs**, *Novel Expert Evidence in Federal Civil Rights Litigation*, 45 AM. U. L. REV. 2, 7 n.38 (1995)).

Cooper v. Pac. Life Ins. Co., 229 F.R.D. 245; 2005 U.S. Dist. LEXIS 9226 (S.D. Ga. 2005) (citing **Michael J. Borden**, *PSLRA, SLUSA, and Variable Annuities: Overlooked Side Effects of a Potent Legislative Medicine*, 55 MERCER L. REV. 681, 735 (2004)).

Congrove v. McDonald's Corp. (In re Congrove), U.S. Bankruptcy Appellate Panel for the Sixth Circuit, 2005 Bankr. LEXIS 1599; 45 Bankr. Ct. Dec. 59 (2005) (citing **Thomas D. Buckley**, *The Use of Ohio's Preference Law in Bankruptcy: An Alternative to Section 547 With a Longer "Reach-Back" Period*, 20 CAP. U. L. REV. 863, 879 (1991)).

Nelson v. Dretke, 442 F.3d 282; 2006 U.S. App. LEXIS 5272 (5<sup>th</sup> Cir. 2006) (citing **Phyllis L. Crocker**, *Concepts of Culpability and Deathworthiness*, 66 FORDHAM L. REV. 21, 35-36 (1997)).

Holladay v. Campbell, 463 F. Supp. 2d 1324; 2006 U.S. Dist. LEXIS 81050 (N.D. Ala. 2006) (citing **Phyllis L. Crocker**, *Child Abuse and Adult Murder*, 77 N.C. L. REV. 1143, 1158 (1999)).

Commonwealth v. Wilson, 2006 PA Super 313; 911 A.2d 942; 2006 Pa. Super. LEXIS 3774 (2006) (“*See* Black's Law Dictionary 406-407 (8th ed. 2004) (citing **Phyllis L. Crocker**, *Concepts of Culpability and Deathworthiness*, 66 FORDHAM L. REV. 21, 35-36 (1977)”).

Bah v. Mukasey, 529 F.3d 99; 2008 U.S. App. LEXIS 12407 (2nd Cir. 2008) (citing **Dena S. Davis**, *Male and Female Genital Alteration: A Collision Course with the Law?*, 11 HEALTH MATRIX 487, 487-93 (2001)).

Finley v. Astrue, 372 Ark. 103; 270 S.W.3d 849; 2008 Ark. LEXIS 2 (2008) (citing **Dena S. Davis**, *The Puzzle of IVF*, 6 HOUS. J. HEALTH L. & POL'Y 275 (2006)).

State ex rel. Z.C., 2007 UT 54; 165 P.3d 1206; 582 Utah Adv. Rep. 34; 2007 Utah LEXIS 136 (2007) (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)).

Salley v. Option One Mortgage Corp.; et al., 592 Pa. 323; 925 A.2d 115; 2007 Pa. LEXIS 1195, (2007) (“*See* Brief of Amici Curiae at 12 (citing **Kathleen C. Engel** & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255, 1270-97 (2002) ...”).

People v. Tenorio, 2007 Guam 19; 2007 Guam LEXIS 24 (2007) (citing **Patricia J. Falk**, *Rape by Fraud & Rape by Coercion*, 64 BROOK. L.REV. 39, 92 (1998)).

Sullivan v. Am. Airlines, Inc., 424 F.3d 267; 2005 U.S. App. LEXIS 19714; 177 L.R.R.M. 3349; 151 Lab. Cas. (CCH) P10,539 (2<sup>nd</sup> Cir. 2005) (citing **S. Candice Hoke**, *Preemption Pathologies and Civic Republican Values*, 71 B.U. L. REV. 687, 747 (1991)).

Lomack v. City of Newark, 463 F.3d 303; 2006 U.S. App. LEXIS 23707; 98 Fair Empl. Prac. Cas. (BNA) 1453; 88 Empl. Prac. Dec. (CCH) P42,527 (3<sup>rd</sup> Cir. 2006) (citing **Reginald Oh**, *Race Jurisprudence and the Supreme Court: Where Do We Go From Here?: Discrimination and Distrust*, U. PA. J. CONST. L. 837, 859-860 (2005)).

McCabe v. Macaulay, 515 F. Supp. 2d 944; 2007 U.S. Dist. LEXIS 65289 (N.D. Iowa 2007) (citing **Kevin Francis O'Neill**, *Privatizing Public Forums to Eliminate Dissent*, 5 FIRST AMEND. L. REV. 201 (2007)).

Dempsey v. People, 117 P.3d 800; 2005 Colo. LEXIS 622 (2005) (citing **Kevin Francis O'Neill** & Raymond Vasvari, *Counter-Demonstration as Protected Speech: Finding the Right to Confrontation in Existing First Amendment Law*, 23 HASTINGS CONST. L.Q. 77, 78 (1995)).

Zayas v. Bacardi Corp., 524 F.3d 65; 2008 U.S. App. LEXIS 8387; 184 L.R.R.M. 2009; 155 Lab. Cas. (CCH) P11,013 (1<sup>st</sup> Cir. 2008) (citing **Alan Miles Ruben**, ELKOURI & ELKOURI: HOW ARBITRATION WORKS § 15.3.F.vi, at 982 (6th ed. 2003)).

Adams v. Indep. Sch. Dist. No. 316, 2008 Minn. App. Unpub. LEXIS 755 (2008) (citing FRANK ELKOURI & EDNA ELKOURI, HOW ARBITRATION WORKS, ch. 5.4.A, at 208 (**Alan Miles Ruben** ed., 6th ed. 2003)).

Garza v. Phelps Dodge Ref. Corp., 262 S.W.3d 514; 2008 Tex. App. LEXIS 6342 (2008) (citing FRANK ELKOURI & EDNA ASPER ELKOURI, HOW ARBITRATION WORKS 1460 (**Alan Miles Ruben**, ed., 6th ed., 2003)).

Racine County v. Int'l Ass'n of Machinists & Aero. Workers, 2007 WI App 162; 303 Wis. 2d 744; 735 N.W.2d 193; 2007 Wisc. App. LEXIS 415 (2007) (citing FRANK ELKOURI & EDNA ELKOURI, HOW ARBITRATION WORKS 333 n.195 (**Alan Miles Ruben** ed., 6th ed. 2003)).

New Jersey Turnpike Authority v. Local 196, I.F.P.T.E., 190 N.J. 283; 920 A.2d 88; 2007 N.J. LEXIS 446; 181 L.R.R.M. 2978 (2007) (citing FRANK ELKOURI & EDNA A. ELKOURI, HOW ARBITRATION WORKS 493 (**Alan Miles Ruben** ed., 6th ed. 2003)).

City of E. Providence v. USW, Local 15509, 925 A.2d 246; 2007 R.I. LEXIS 89; 154 Lab. Cas. (CCH) P60,446 (2007) (citing ELKOURI & ELKOURI, HOW ARBITRATION WORKS (**Alan Miles Ruben** ed., 6th ed. 2003)).

Collins v. Royal Sch. Dist. No. 160, 2006 Wash. App. LEXIS 564 (citing ELKOURI & ELKOURI, HOW ARBITRATION WORKS 879-80 (**Alan Miles Ruben** ed., 6th ed. 2003)).

Kinn v. Alaska Sales & Serv., 144 P.3d 474; 2006 Alas. LEXIS 149 (2006) (citing ELKOURI & ELKOURI, HOW ARBITRATION WORKS 333 (**Alan Miles Ruben** ed., BNA Books 2003)).

Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment v. Union Pac. R.R. Co., 522 F.3d 746; 2008 U.S. App. LEXIS 7532; 183 L.R.R.M. 3217; 156 Lab. Cas. (CCH) P11,053 (7<sup>th</sup> Cir. 2008) (citing **Christopher L. Sagers**, Note, *Due Process Review Under the Railway Labor Act*, 94 MICH. L. REV. 466, 469 (1995)).

City of Dayton v. State, 176 Ohio App. 3d 469; 2008 Ohio 2589; 892 N.E.2d 506; 2008 Ohio App. LEXIS 2179 (2008) (citing **STEVEN H. STEINGLASS** & GINO J. SCARSELLI, THE OHIO STATE CONSTITUTION, A REFERENCE GUIDE, Prager Publishers (2004), at p. 152)).

Bauknight v. Monroe County, 994 So. 2d 362; 2008 Fla. App. LEXIS 14233; 33 Fla. L. Weekly D 2212 (2008) (citing 1 **STEVEN H. STEINGLASS**, SECTION 1983 LITIGATION IN STATE COURTS § 3:30, at 3-154 (2007)).

French v. Hines, 182 Md. App. 201; 957 A.2d 1000; 2008 Md. App. LEXIS 124 (2008) (citing **STEVEN H. STEINGLASS**, SECTION 1983 LITIGATION IN STATE COURTS § 3:1 (2007-2008 Supp.)).

Haywood v. Drown, 2007 NY Slip Op 9308; 9 N.Y.3d 481; 881 N.E.2d 180; 851 N.Y.S.2d 84; 2007 N.Y. LEXIS 3356 (Ct. App. 2007) (citing **Steven H. Steinglass**, *An Introduction to State Court Section 1983 Litigation*, in SWORD AND SHIELD: A PRACTICAL APPROACH TO SECTION 1983 LITIGATION, at 153 [ABA 3d ed. 2006])).

Baker v. Rolnick, 210 Ariz. 321; 110 P.3d 1284; 2005 Ariz. App. LEXIS 63; 451 Ariz. Adv. Rep. 22 (2005) (citing **STEVEN H. STEINGLASS**, SECTION 1983 LITIGATION IN STATE COURTS § 17:6 (2001)).

Shaw v. Leatherberry, 2005 WI 163; 286 Wis. 2d 380; 706 N.W.2d 299; 2005 Wisc. LEXIS 949 (2005) (citing **STEVEN H. STEINGLASS**, SECTION 1983 LITIGATION IN STATE COURTS § 1:1, at 1-1, 1-4 (2002)).

Robertson v. Hecksel, 420 F.3d 1254; 2005 U.S. App. LEXIS 17201; 18 Fla. L. Weekly Fed. C 842 (11<sup>th</sup> Cir. 2005) (citing **Steven H. Steinglass**, *Wrongful Death Actions and Section 1983*, 60 IND. L.J. 559, 621 (1985)).

State v. Hirsch, 338 Ore. 622; 114 P.3d 1104; 2005 Ore. LEXIS 341 (2005) (citing **STEVEN H. STEINGLASS** & GINO J. SCARSELLI, THE OHIO STATE CONSTITUTION: A REFERENCE GUIDE 16 (2004)).

Centro Familiar Cristiano Buenas Nuevas v. City of Yuma, 2009 U.S. Dist. LEXIS 7225 (D. Ariz. 2009) (citing BRIAN W. BLAESSER & **ALAN C. WEINSTEIN**, FEDERAL LAND USE LAW & LITIGATION § 7:36 at 694 (2008)).

Town of Rhine v. Bizzell, 2008 WI 76; 311 Wis. 2d 1; 751 N.W.2d 780; 2008 Wisc. LEXIS 328 (2008) (citing 5 **ALAN C. WEINSTEIN**, ANDERSON'S AMERICAN LAW OF ZONING § 34.23, at 574-75 (4th ed. 1997)).

Bd. of Dirs. of the Indus. Dev. Bd. of the City of Gonzales, La., Inc. v. All Taxpayers, 2005-2298 (La. 9/06/06); 938 So. 2d 11; 2006 La. LEXIS 2312 (2006) (citing **Alan C. Weinstein** & Maxine Goodman Levin, *Tax Increment Financing*, in 6 ZONING AND LAND USE CONTROLS, ch. 33B, p. 33B-3 (Eric Damian Kelly, ed., Matthew Bender & Co.)).

Denham Springs Econ. Dev. Dist. v. All Taxpayers, 05-2274 (La. 10/17/2006); 945 So. 2d 665; 2006 La. LEXIS 2881 (2006) (citing **Alan Weinstein** & Maxine Goodman Levin, *Tax Increment Financing*, 6 ZONING AND LAND USE CONTROLS, ch. 33B, 33B-3 (Eric Damian Kelly, ed., Matthew Bender & Co. 2006)).



\* I searched the federal/state case database on Lexis/Nexis using faculty members' full names in quotation marks and also using faculty members' first names within three words of their last names.