THE UNIVERSITY OF TOLEDO COLLEGE OF LAW

TRANSCRIPT

WINTER 2014

PATHWAY TO PRACTICE:
College of Law expands experiential learning to all three years of law school

On the cover:
Clinical Student Reem Subei '14 and Clinical Professor Robert Salem in the Wood County Court of Common Pleas.

Inside covers:
Details from the Wood County Court of Common Pleas.

I hope this message finds you well and reasonably warm. It has been a rough winter so far here in Toledo and, I know, in many other places. The Transcript, you may recall, usually comes out in the fall, so this one is a bit late. It is not the weather, though, and when you read what we have been up to I trust you will have a better understanding of why. As a result, this edition covers about a year and a half, starting in the fall of 2012.

Socrates famously said, "The unexamined life is not worth living." If the converse is true, the College of Law should certainly thrive, because the last year or so has been a time of self-examination in the extreme. Last spring came a program review by the University, with a visit from three outside legal academics. This fall semester we had our joint ABA accreditation/Association of American Law Schools (AALS) membership review. I can happily report that all seemed to go very well. The ABA team was particularly impressed by our faculty and students. We are now awaiting the ABA site team's fact-finding report, which we are able to review before it goes to the ABA accreditation council.

A strategic planning effort also occupied many hours of faculty and staff time this fall. A newly appointed Strategic Planning Committee provided draft after draft for hours of faculty discussions and reaction. The result is a strategic plan that was submitted to the Provost in November. It proposes a number of improvements to the law school, but the main directions are enhancing experiential learning, bolstering academic support, and seeking ways to increase revenue. The experiential learning piece of the plan is the theme of this Transcript issue.

In addition to these necessary exercises in introspection, we have worked to improve the physical and virtual presence of the College of Law. New carpeting and furniture were installed in the Forum this fall, and, over winter break, the stairway to the LaValley Law Library was renovated. In the electronic realm, we have a totally redesigned web site – check it out at utoledo.edu/law.

There have been several personnel developments in the last few months. New hires, Kirsten Winek in the Office of Professional Development and Maryanne Mussett in the Library, started in December. In our Admissions Office, both Assistant Dean for Admissions Jessica Mehl and her Assistant Director, Tara Thompson, decided to leave this fall, opting to stay home with small children. We recently hired Brian Miller, the Associate Director of Admissions at Willamette University School of Law (and a Michigan native), for the Assistant Dean position, and Michelle Dyer, who headed the Admissions Office at Wyoming Law School, as Assistant Director.

As you can see, change is in the air at the College of Law. It can be challenging and difficult at times, but in both law practice and legal education transformation seems to be unavoidable, accelerating, and exciting. We will continue to adapt to the times and keep our law school vibrant and successful.

Very best wishes,

Daniel J. Steinbock
Dean and Harold A. Anderson Professor of Law and Values

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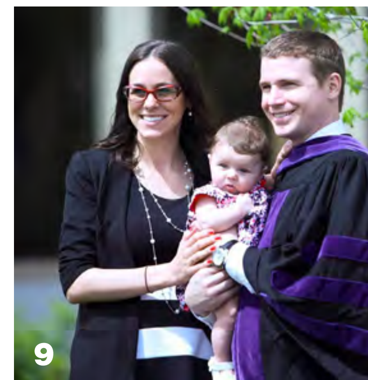
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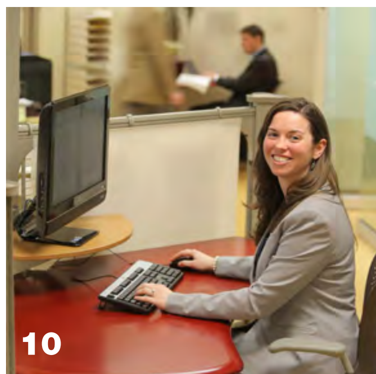
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SUPREME COURT OF OHIO TO HOLD SESSION AT TOLEDO LAW IN APRIL

The Supreme Court of Ohio will hold session in the College of Law's McQuade Law Auditorium on Wednesday, April 9, 2014, as part of the court's Off-Site Court Program. The Supreme Court last sat in Lucas County in 1987, the first year of the Off-Site Court Program, and has never appeared at The University of Toledo College of Law.

"We are honored to have been selected for the Off-Site Program. This will be a wonderful opportunity for lawyers, students, and other members of the public to observe the state's highest court in person," said Dean Steinbock. "It will also give alumna Justice Judith Ann Lanzinger a chance to hear cases in the law school she attended."

The Off-Site Court Program was founded in 1987 by the late Chief Justice Thomas J. Moyer and is designed to teach Ohioans about the state's judicial system. Twice each year, once in the spring and once in the fall, the Supreme Court relocates from Columbus to hold session in another city, selecting a different county each time.

Toledo Law will host the court in conjunction with the Toledo Bar Association, the Ohio Sixth District Court of Appeals, and the Lucas County Court of Common Pleas. Area high school students will be invited to attend, and volunteers from the Toledo Bar Association will brief students on the cases to be argued before the session.

Background information and a video illustrating the program, including footage from past off-site court sessions, are available on the Supreme Court's web site *supremecourt.ohio.gov*.

BARONE '94 SUPPORTS PROFESSIONALISM SERIES FOR 1L STUDENTS

Jim Barone '94 returned to his alma mater last January to share networking tips with Toledo Law students. The "Networking How To" session was a part of the Office of Professional Development's first annual 1L Professionalism Conference, which also included panels on interviewing and summer employment options.

During a lively session in which he engaged the audience with questions and encouraged students to role-play with him, Barone stressed that students must be authentic in any networking situation. He also shared stories from his own career and directed students in how to establish relationships quickly in professional networking settings. Immediately following the talk, students were encouraged to put Barone's networking advice into action at a reception with friends and alumni of Toledo Law in the Law Center Forum.

"Everything Barone did was connected to teaching students how to interact, network, and succeed in the professional world," said Scott Miller '15. "It was neat to see that he made a point to remember the name of each person whom he spoke to before, during, and after the presentation."

The 1L Professionalism Conference is a part of the Barone Professional Development Series, established in 2009 by Barone to support and highlight important issues of professionalism initiated by the Office of Professional Development.

Barone, who is the national vice president for business development at Ameritas, is a member of the College of Law Advisory Board and serves on the College of Law Campaign Committee. Before joining Ameritas, he was vice president of marketing, sales, and media relations at Curtis Inc. Visual Communications, a visual arts/media company in Cincinnati, Ohio. He also worked in sales and marketing at the insurance companies ARAG North America and Anthem, and at Luxottica Retail.

"Jim's career path is an example of how a law degree can be used to bring value to other professional fields," said Heather Karns, assistant dean for law career services and alumni affairs.

"We appreciate Jim's enthusiasm for supporting initiatives that showcase skills valued in all professions." The Barone Professional Development Series has supported past programs on business etiquette and alternative careers, and brought national experts Ari Kaplan and Susan Gainen to the College of Law to speak to students.

TOLEDO LAW FACULTY RECOGNIZED FOR QUALITY SCHOLARLY PRODUCTION

The College of Law recently ranked 90 of 176 law schools, as measured by publication in top law journals, in the 2013 Roger Williams University School of Law study on faculty productivity. This places Toledo Law third among Ohio's five state-supported law schools and fourth among Ohio's nine total law schools.

"No ranking is perfect, but what makes this one more meaningful to me than the USNEWs.com ranking is that it focuses on output, what schools are doing, rather than on inputs, like what they spend," said Geoffrey C. Rapp, Harold A. Anderson Professor of Law and Values.

"This study confirms what many of us have known for a long time—that the Toledo Law faculty has a solid lineup of outstanding legal scholars," said Dean Steinbock.

Toledo Law faculty scholarship has been cited in recent years in multiple United States Supreme Court briefs and several federal trial and appellate court decisions. Faculty members have penned Supreme Court amicus briefs and testified in state legislative and judicial proceedings and in U.S. Congressional hearings. Three of the College of Law's faculty members have been elected to the American Law Institute.

Also, as experts in their fields, faculty members are regularly consulted for analysis and opinion by the media. Many faculty members are interviewed for local television and newspaper articles, and several comment frequently in national publications such as The New York Times and USA Today. Additionally, faculty members edit two top law blogs.

Gregory M. Gilchrist, associate professor of law, sees the faculty's dual commitments to scholarship and teaching as highly complementary. "Deep engagement with teaching generates better scholarship and careful scholarship generates better teaching," he said.

The University has singled out individual College of Law faculty members for recognition on several occasions. Faculty members have received UT's Outstanding Research and Scholarship Award, and two faculty members are Distinguished University Professors, the University's highest honor.

PROF. BRUCE SERVES AS AMERICAN BANKRUPTCY INSTITUTE'S RESIDENT SCHOLAR

Kara Bruce, associate professor of law, served as the Robert M. Zinman American Bankruptcy Institute Resident Scholar for the fall 2013 semester. She was the ABI's only resident scholar this fall.

Bruce teaches bankruptcy and commercial law courses at Toledo Law, including Secured Transactions and Commercial Paper, and her research focuses on bankruptcy law. Last semester she was based in the ABI's Alexandria, Va., office, and joined an ongoing ABI project to study the reform of business bankruptcy laws.

"I am delighted to have the opportunity to assist the ABI with their important educational and policy work," said Bruce. "While it would be an honor to work for the ABI at any time, I am particularly excited to join their ongoing study of United States Bankruptcy Code Chapter 11 reform."

She also assisted ABI with its educational programming and in its role as a source of bankruptcy information and analysis for Congress, the media, and the public. In early September, Bruce hosted a media teleconference featuring the major players in the Lehman Brothers' bankruptcy case.

Before joining the College of Law faculty, Bruce worked as an attorney in the Bankruptcy and Restructuring Group of Locke Lord Bissell & Liddell LLP in Chicago, where she represented clients in complex business reorganizations and commercial litigation matters. She also maintained an active pro bono practice, handling matters in the fields of consumer bankruptcy, immigration, and appellate law.

The American Bankruptcy Institute was founded in 1982 to provide Congress and the public with unbiased analysis of bankruptcy issues. The ABI membership includes more than 13,000 attorneys, accountants, bankers, judges, professors, lenders, turnaround specialists, and other bankruptcy professionals.

PROF. GIBBONS RECEIVES UNIVERSITY'S OUTSTANDING RESEARCH AND SCHOLARSHIP AWARD

Llewellyn Joseph Gibbons, a professor of law who has been teaching at The University of Toledo since 1998, has been named the winner of one of three Outstanding Research and Scholarship Awards presented by the University for the 2012-2013 year. The award recognizes outstanding research, scholarship, and creative activity at UT's multi-campus university.

Professor Gibbons attributes his success to a culture at the College of Law that encourages research and scholarship. "I am extremely proud to follow in the footsteps of such distinguished Toledo Law scholars as Rebecca Zietlow, Susan Martyn, and William Richman," he said.

Gibbons's scholarship is at the intersection of law, contracts, and technology. A pioneering professor in the area of cyberlaw, he penned one of the first law review articles to review the theoretical legal principles on which the Internet could be governed.

"Llew Gibbons has compiled an enviable record of scholarship in intellectual property law, often on the cutting-edge of emerging issues," said Dean Steinbock. "He has also been a tremendous resource for the University and the community on intellectual property topics."

Professor Gibbons's recent scholarship focuses on the response of law to breakthrough technologies as well as the role of the international intellectual property regime in promoting global economic development. His article titled "Crowdsourcing A Trademark: What The Public Giveth, The Courts May Taketh Away," published in *Hastings Communications and Entertainment Law Journal* in 2013, examines the use of social media to "bestow" trademarks on often unwilling recipients and whether the crowdsourcing of a trademark creates legal rights in that designation.

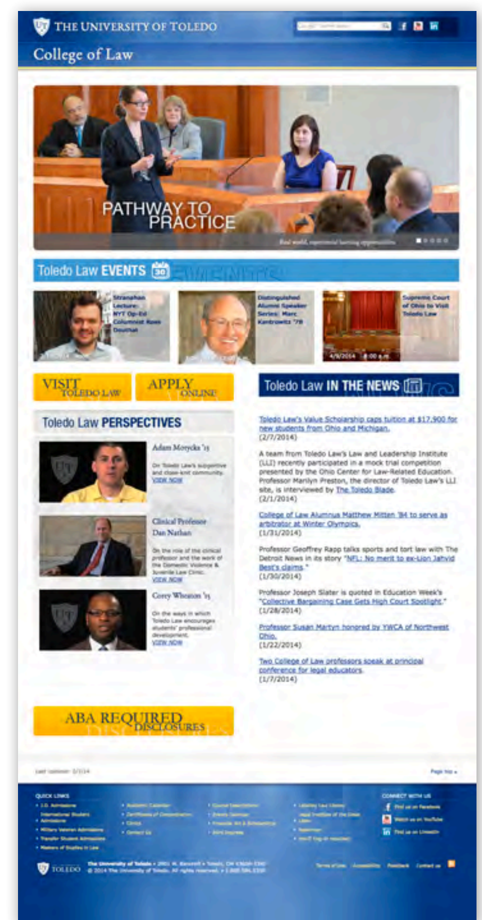
Professor Gibbons's new treatise on trademark law, "Mastering Trademark and Unfair Competition Law," with Lars S. Smith, was recently released. He has also published numerous law review articles, three book chapters, and one encyclopedia entry. Gibbons is currently working on books about intellectual property licensing, and trademark myths and the law.

As a Fulbright scholar and after having delivered invited lectures in Argentina, England, China, Finland, Hong Kong, Italy, and Singapore, Professor Gibbons has earned an international reputation. His articles have been republished in India, and translated into Chinese and Japanese. He is also a fellow at the Center for the Study of Intellectual Property Rights at Zhongnan University of Economics and Law in Wuhan, China, and an elected member of the American Law Institute and the American Bar Foundation.

TOLEDO LAW UNVEILS NEW WEB SITE

The College of Law launched a redesign of its web site in January, at *utoledo.edu/law*.

If you have comments or questions, please contact Rachel Phipps, assistant dean for communications, at Rachel.Phipps@utoledo.edu. Any and all feedback welcome!



High school participants in Toledo Law's Law and Leadership Institute (LLI). Supported by the Ohio State Bar Foundation, the Supreme Court of Ohio, Ohio's nine law schools, and others, LLI is a state-wide initiative to help prepare students from underserved communities for post-secondary success through a four-year academic program in law, leadership, analytical thinking, and writing skills.

Ohio Secretary of State Jon Husted delivers the keynote address at the 2012 Law Review Symposium, which tackled issues surrounding the 2012 state and federal election.

The grandsons of Richard and Jane McQuade assist UT President Lloyd Jacobs in cutting the ribbon to the newly renovated McQuade Law Auditorium during the auditorium's September 2012 dedication.

Toledo Law's new student ambassadors pose in the Law Center Forum.

Nancy Gertner, professor of practice at Harvard Law School and former United States District Judge, delivers the Cannon Lecture in September 2012.

Monica Solt '14, a finalist in the 41st Annual Charles W. Fornoff Appellate Advocacy Competition, presents argument in the competition final.

Graduates from the first class to enter the Law and Leadership Institute (LLI) at Toledo Law. Justice Judith Ann Lanzinger '77 of the Supreme Court of Ohio was the keynote speaker during the commencement ceremony.

The four 2012 Fornoff finalists pose with the final panel of judges, Judge Patricia A. Gaughan of the U.S. District Court for the Northern District of Ohio, Chief Judge Alice M. Batchelder of the U.S. Court of Appeals for the Sixth Circuit, and Justice Terrence O'Donnell of the Ohio Supreme Court. (From left to right) Carl Peterson '14, Monica Solt '14, Judge Gaughan, Chief Judge Batchelder, Justice O'Donnell, Alexandria Heinonen '14, and Samuel Harden '14.

(Back row, from left to right) Professor Ronald C. Brown '68, Rabbi Alan M. Sokobin '96, Professor Lee J. Strang, (front row, from left to right) Justice Judith Ann Lanzinger '77, Major Michael R. Renz '02, and Professor Rebecca E. Zietlow were honored by the College of Law and its Law Alumni Affiliate at the 2012 Law Alumni Affiliate Award Reception.

COLLEGE OF LAW COMMENCEMENT

Toledo Law salutes the Class of 2013

During the College of Law commencement ceremony on May 4, 2013, more than 1,000 friends and family members gathered to celebrate the Class of 2013. Those 119 candidates eligible for law degrees in December 2012, May 2013, and August 2013 marched in the ceremony held in the Student Union Auditorium. The Glass City Brass Quintet's melodies led the processional of faculty and graduates into the auditorium.

Richard B. McQuade Jr. '65, former United States District Court Judge and former University trustee, delivered the commencement address. "The two things in my career that I think I have enjoyed the most are my stint on the federal bench doing naturalizations to swear in new citizens and my participation in [University] graduations," said Judge McQuade, who recently stepped down after 12 years on the University's Board of Trustees. "Both groups exhibit the same joy, gratitude, and relief that it's over and 'I'm moving on'."

Judge McQuade shared advice gleaned from a long and accomplished career and entreated the graduates to find the humor in the practice of law. "Maintain a sense of humor—and if you don't have one, go out and buy one," he said. "[The practice of law] is a stressful job. It is an important job, and you need to maintain a sense of humor to work through it."

Nominated by President Reagan, McQuade served on the U.S. District Court for the Northern District of Ohio from 1986-89. Before that, he practiced with his father and brother in Swanton, Ohio, and served as prosecuting attorney and Common Pleas judge in Fulton County, Ohio. He left the federal bench in 1989 to become the president of Blue Cross/Blue Shield of Ohio. McQuade now has a dispute resolution practice in Swanton. In recognition of a generous donation by McQuade and his wife, the Law Center auditorium, renovated during summer 2012, has been named the Richard and Jane McQuade Law Auditorium.

During the commencement ceremony, several graduates addressed their class. Samuel E. Marcellino III, the 2012-2013 Student Bar Association president, delivered the Student Welcome, and Katherine M. Greene gave the Valedictorian Address. Greene began clerking for Chief Justice Jean Hoefer Toal of the South Carolina Supreme Court following graduation.

Marcellino, whom Dean Steinbock presented with the Dean's Award during the ceremony, now lives in Columbus, Ohio, where he practices with a firm that specializes in labor and employment law. Dean Steinbock, in presenting Marcellino with the award, praised him for his "tremendous contribution" to the student experience at the College of Law and for handling his position as SBA president "with an impressive level of competence, responsibility, and professionalism."

In addition, Professors Robin M. Kennedy and William M. Richman delivered a joint Faculty Welcome. The two retired last spring (with a combined 77 years on the College of Law faculty!), but both returned as professors emeriti to teach this fall.

Nancy A. Miller '88, chief magistrate in the Lucas County Probate Court and the immediate past president of the Law Alumni Affiliate, welcomed the new alumni. During the reception at the Law Center following the commencement ceremony, the Law Alumni Affiliate presented each graduate with a diploma frame.

UNIVERSITY OF TOLEDO

Law Center
1925

PATHWAY TO PRACTICE: College of Law expands experiential learning to all three years of law school

RACHEL PHIPPS '07

My two semesters in the College of Law legal clinics were the most terrifying of all of law school. They meant the possibility of public speaking (worse than death!), in a courtroom, on the record—so posterity had proof of my stupidity. But I received more training on how to be a lawyer in my clinic classes than at any other stage of my legal education, including a summer job at a law firm, where my days consisted almost entirely of research and writing.

Since I attended the College of Law just a few years ago, practical learning opportunities have exploded, and more and more students are taking advantage of them. Seventy-two percent of the Class of 2013 participated in a clinic or an externship while at Toledo Law.

Now the College is planning to revamp its curriculum to integrate practical skills throughout all three years of law school. The new strategic plan, as presented in November, calls for legal simulations in small sections of first-year courses, for a required upper-level drafting course, and for every student to participate in a live-client clinic or externship during law school.

"We have come up with an integrated pathway to practice that is unique among American law schools," said Dean Daniel Steinbock. "The goal is to provide students with significantly more marketable practice-oriented experience before graduation."

Clinical Professor Robert Salem and Reem Subei '14 in the Wood County Court of Common Pleas in Bowling Green, Ohio.

"We have come up with an integrated pathway to practice that is unique among American law schools."

— Dean Daniel Steinbock

Clinical Professor Dan Nathan and Rebecca Facey '14 participate in a mock client interview.

Clinical Professor Robert Salem and Nicholas Laue '14 in the Law Center's legal clinic.

THE BEGINNING

Toledo Law has long valued experiential learning, and the new strategic plan bolsters an already strong experiential curriculum. Opportunities to develop practical lawyering skills have been a part of the curriculum for nearly 50 years.

The College's first live-client clinic opened its doors in the late 1960s. "The early days were exciting," said Robin Kennedy, one of the first professors to teach in the College's legal clinics. "The College raised hundreds of thousands of dollars in start-up grants. We placed students at Toledo Legal Aid, Advocates for Basic Legal Equality (ABLE), the Public Defender, and in-house clinics representing walk-in clients at the Law Center, at the Toledo Mental Health Center, and at community mental health centers. Students who are now leading lawyers in Toledo and Ohio and the nation had their first lawyering experiences in our clinics."

Other clinic offerings eventually followed, including the current line-up of the Civil Advocacy Clinic (formerly known as the Legal Clinic), Domestic Violence and Juvenile Law Clinic, Dispute Resolution Clinic, and the Criminal Law Practice Program. The Public Service Externship Clinic, which places students with government or nonprofit organizations, where they perform legal work under the supervision of an attorney, was added in 2000.

In addition, Toledo Law traditions such as the annual Charles W. Fornoff Appellate Advocacy Competition, Moot Court, and The University of Toledo Law Review have, for many years, permitted students to try on the role of advocate and hone their research and writing skills. Students are also exposed to the job of lawyering through the robust legal writing program and service opportunities identified by the College's public service coordinator, the Student Bar Association Pro Bono Committee, and the Public Interest Law Association.

In recent years, many forces—including a depressed job market and advances in technology—are pushing legal educators across the nation to reconsider the law school curriculum and the skills graduates require. Several studies, including the Carnegie Foundation's 2007 report on legal education, call for the expanded use of experiential learning in law schools. The Carnegie Report recommends integrating practical legal skills education into each of law school's three years.

Skills training is certainly not a new idea. Before the modern law school model was developed in the 1800s, legal

"Trying the case forced me to face the unknown, and familiarized me with court procedures, as well as some of my own strengths and weaknesses as a representative of my client."

— Jennifer Thacker '13

Allison Roach '13 prepares for a hearing in Toledo Municipal Court.

Elijah Welenc '13 delivers a presentation as part of the Prison Reentry Program.

apprenticeship was the norm. Aspiring lawyers worked under experienced members of the bar to learn the practical skills of the profession. And, of course, experiential learning is regularly deployed in the education of physicians, teachers, and engineers, among other professions.

THE PRESENT

Walk into the legal clinic on the first floor of the Law Center on most mornings and the place is humming. The space was renovated five years ago with a generous gift from Jeff Bixler '72 and his wife, Kathy. Students and clinical professors work in the open space in the center of the clinic, with conference rooms walled off in glass around the perimeter.

For many students, the clinic is the first time they participate in a client interview or meeting. Representing a real person allows students to learn firsthand their capacity to help a client achieve results that require legal assistance. Arline Laurer '13 was able to obtain a dismissal in the very first case assigned to her in the Civil Advocacy Clinic, an automobile insurance defense case. Her client had been named as a defendant after a serious car accident left the client in a coma for weeks.

"I really felt for the client, who had suffered some adversity and really needed help in his case," said Laurer. She was able to subpoena title for the vehicle from the Bureau of Motor Vehicles, and, when documentation showed the car was not in her client's name, the case was dismissed.

"It was an 'easy' case in that all I had to do was prove my client was not the owner of the vehicle involved in the accident, but to the client, the dismissal was huge," said Laurer, who felt grateful to be able to put her training to work to reach a successful and speedy outcome in the case.

During the past few years, College of Law clinic students have handled trials and appeals, helped draft legislation, worked with non-profits as they drafted bylaws, trained teachers and administrators on appropriate bullying prevention efforts, and partnered with a coalition of organizations to help prisoners re-enter society. Students have worked on behalf of the poor, children, victims of domestic violence and school bullying, and other marginalized groups.

Allison Thomas '13 had amassed plenty of work experience by her last semester in law school—at a law firm, a municipal court, and in federal court. But she found her semester in the Civil Advocacy Clinic to be "unique and valuable" and an important complement to her previous legal experience.

In one of Thomas's cases, she and Rockwell Gust '13 represented a young family fleeing war-torn Syria in the family's political asylum application. The pair gathered evidence for the petition and handled the asylum officer hearing. A decision may not be reached for months, but Thomas is proud of her work on the case and impressed with the attorneys and professors from the University and Toledo community who volunteered their time and expertise. Attorneys from ABLE helped prepare Thomas and Gust for the asylum officer's questions, and two UT professors drafted a report submitted as evidence in the case describing Syria's civil war.

Clinic students often discover that their abilities and confidence grow exponentially over the course of a semester in the legal clinic. Jennifer Thacker '13 signed up for the Domestic Violence and Juvenile Law Clinic ready "to flex the muscles" she had been building up until that point in law school. She topped off her experience with a trial to a magistrate in a custody case.

> *"Clinical pedagogy uses theory, doctrine, skills, and values instruction in one shot. Students finally get to experience the legal profession in all its complexity—not as students or law clerks, but as lawyers—and, as a result, they improve their skills and their confidence."*
>
> *— Clinical Professor Robert Salem*

"I think that most law students are a little nervous about appearing before a judge or magistrate for the very first time," said Thacker, a teacher in her pre-law school life. "No matter how well you know the law, no matter how familiar you are with the facts of the case, it can be intimidating to actually open your mouth and speak before the person with the capacity to determine the outcome of your case."

During the one and a half day trial she examined witnesses and delivered closing argument. Clinical Professor Dan Nathan served as co-counsel. "Trying the case forced me to face the unknown, and familiarized me with court procedures, as well as some of my own strengths and weaknesses as a representative of my client," Thacker said. "I also had the opportunity to write a great deal for the case, which challenged my legal research and writing skills, and enabled me to be involved in every step of the case." The experience left Thacker confident in her ability to try cases and effectively represent clients.

And Thacker's experience is not unique. "Clinical pedagogy uses theory, doctrine, skills, and values instruction in one shot," said Clinical Professor Robert Salem, who has taught the Civil Advocacy Clinic for nearly 20 years. "Students finally get to experience the legal profession in all its complexity—not as students or law clerks, but as lawyers—and, as a result, they improve their skills and their confidence."

Robert Haley '14 during a mock trial in the Cubbon Courtroom at the Law Center.

THE FUTURE

The innovative new curriculum outlined in Toledo Law's strategic plan challenges students to jump into lawyering skills training from Day One instead of merely sticking a toe in at the end of law school.

"Students are anxious to be exposed to lawyer's work. This curriculum does that," said Dean Steinbock.

The new plan calls for students to be placed in small sections of a required first-year course, where professional skills will be integrated with legal rules during practice simulations. There will be multiple evaluations and students will receive feedback throughout the semester instead of on one final exam.

Upper-level courses with similar simulation components have been added to course offerings in the past few years with much success. In Professor Rebecca Zietlow's Constitutional Litigation class, students prepare and role-play in front of their classmates during weekly practice simulations that include oral argument, a strategy meeting, and client counseling. The course was offered for the first time last spring and received glowing feedback from both professor and students. Zietlow found that the simulation component of the course aided students in gaining an in-depth understanding of the material. Student Stephanie Green '14 agreed.

"The simulations were helpful to entrench the lessons learned in class," said Green, "and encouraged students to think broadly about the real-life considerations that go into this type of litigation."

In addition to simulation components in first-year courses, the strategic plan recommends that all upper-level courses include at least one week's worth of simulation. With a typical course load of four or five classes a semester, that's over two months of simulation work a year, in addition to any clinic or simulation-focused course in which the student is enrolled.

In the new plan, students will also be required to complete a clinic or externship course before graduation. Current clinic offerings will be expanded. The legal research and writing program will be beefed up too. In addition to Lawyering Skills I and II in the first year, students will complete Lawyering Skills III, which will focus on drafting and transactional work, as a 2L.

"Much thought and discussion went into these proposals for expanding the practical training portion of our curriculum, and we believe we have produced a combination of simulation and live-client experiences that is second to none," said Dean Steinbock.

To be sure, it is an exciting time for the Toledo Law community. The new strategic plan reinforces the school's long-standing commitment to practical skills training—and promises to give law students (anxiety-addled like me or otherwise) significant and marketable practice-oriented experiences from which to launch their careers. ■

FACULTY Q&A

Dan Nathan '04

Clinical Professor, Domestic Violence & Juvenile Law Clinic

Clinical Professor Dan Nathan, a 2004 graduate of Toledo Law, teaches in the Domestic Violence & Juvenile Law Clinic, where second- and third-year students have the opportunity to handle juvenile and domestic litigation under Nathan's supervision. A graduate of the University of Chicago (master's in teaching) and the University of Michigan (bachelor's degree), Nathan taught high school English and was an investigator and caseworker for Lucas County Children Services before law school. Nathan joined the College of Law faculty after six years in private practice.

He sat down to discuss the role of the clinical professor and his work in the Domestic Violence & Juvenile Law Clinic with the Transcript.

TRANSCRIPT: HOW DID YOU BECOME INTERESTED IN JUVENILE AND DOMESTIC LITIGATION?

Dan Nathan: In the mid-1990's, I worked as a social worker for Lucas County Children Services (LCCS), the agency charged with protecting children from abuse and neglect. That work regularly took me into juvenile court as a witness. After leaving LCCS, as a volunteer Guardian ad Litem, I conducted independent investigations on child neglect and abuse cases and made recommendations to the court regarding the child's best interest. It was these experiences that motivated me to go to law school and to practice in juvenile court.

T: How did you become involved in legal education and clinical teaching?

DN: I took two semesters of the Civil Advocacy Clinic during my third year at The University of Toledo College of Law. The clinic was my most interesting and most valuable law school course. After I graduated from UT, I told then-Associate Dean Beth Eisler and Clinical Professor Rob Salem that I would love to come back to the clinic as a professor in the future. During my six years in private practice, I never applied for a job until the clinic job opened up. I had taught before and loved it, and as a clinician I could continue to practice law, which I also enjoy immensely.

T: How do you see your role in the legal clinic?

DN: In the clinic, I see myself as both a teacher and a lawyer, and I see my students both as students and as co-counsel. Because of my background as a practicing attorney, I sometimes have the impulse to perform tasks myself because I enjoy working cases. However, as a teacher, it is my job to step back and allow my students to take ownership of their cases and to learn by doing.

"Our students make the clinics successful. Students understand that what happens here is real. Our work affects people's lives. What our students lack in experience they make up for in preparation."

T: How have your legal experiences aided you in the classroom and clinic setting?

DN: In the classroom setting, I am able to illustrate points by referring to past cases that I have handled. In the clinic setting, my experience allows me to give students good guidance. On the flip side, it has been fun to handle cases in the clinic somewhat outside my area of expertise. In those cases, my students and I learn together.

T: What do you enjoy most about work in Toledo Law's legal clinics?

DN: In clinics, students are eager to learn and to perform well. Clinic students actively participate in their learning, and the people involved in our cases are flesh and blood rather than letters on a page. For these reasons, the clinic is both an exciting and a scary place for students. For me, as a student, this setting was most effective, and I feel that it is effective for many of my students as well. I remember well the student who told me that until she took my course, she had been worried that coming to law school was a big mistake. After her clinic experience, she believed that she would enjoy being a lawyer.

T: What do you hope every student learns in Toledo Law's legal clinics?

DN: I hope every student

- Develops compassion for clients, despite their mistakes and flaws.
- Feels the pleasure of using her skills to help people with important matters.
- Gains confidence interacting with clients, attorneys, and judges.
- Learns the organizational skills crucial to competent representation.
- Understands that ethical issues will arise frequently and that maintaining one's integrity is crucial to life satisfaction.
- Is able to imagine herself practicing law.

T: Why is public service and pro bono work so critical?

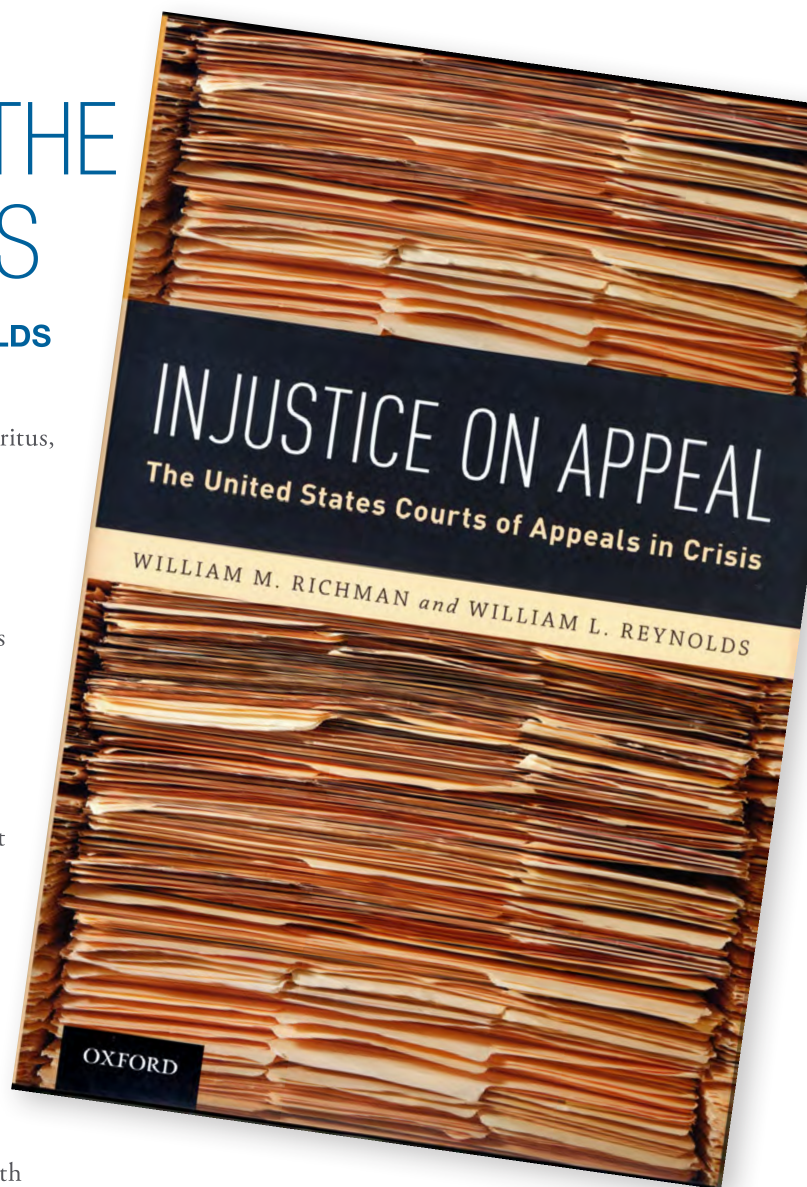
DN: Legal representation is often essential even when there is no right to a court-appointed attorney. Imagine a mother who believes that her child is unsafe visiting with the child's father, who has court-ordered visits. The mother wants the visits to be terminated or supervised, but she cannot afford an attorney. What could be more crucial to a parent than her child's safety? Yet she must go to court unrepresented. She doesn't know the rules of evidence, how to file motions, or any of the other basic skills necessary to represent herself competently. People in this type of situation are desperate for help.

T: What makes our legal clinics a success?

DN: Our students make the clinics successful. Students understand that what happens here is real. Our work affects people's lives. What our students lack in experience they make up for in preparation.

CENTRAL STAFF IN THE U.S. CIRCUIT COURTS

WILLIAM M. RICHMAN AND WILLIAM L. REYNOLDS



William M. Richman, distinguished university professor of law emeritus, and his co-author Professor William L. Reynolds of the University of Maryland have spent more than 30 years studying and critiquing the revolutionary changes that the United States Courts of Appeals have made to the process of deciding appeals. Overwhelmed by a geometrically increasing caseload beginning in the 1960s, the courts had many strategies to choose from to address the glut. They might have vigorously petitioned Congress to create and fund additional judgeships, but in fact they have done the opposite, using all means within their control to restrict the size of the federal appellate judiciary. With too few judges and too many cases, the judges might have chosen to decrease proportionately the amount of time spent on each case, but they have not done that either.

Instead, they have instituted a system of appellate triage, dividing their caseload into two separate tracks. The "important" cases (now less than 20 percent of the total) get the traditional appellate process (track one): oral argument, a face-to-face conference of the panel judges, and a written, fully reasoned, published, precedential opinion drafted by the judges themselves with the help of their law clerks. The "trivial" cases (the other 80 percent) get a far different treatment (track two). In most of these, there is no oral argument, the judges confer minimally and mostly by email, opinions (if written at all) are short and conclusory; moreover, they are not formally published and do not count as precedent for future appellate panels or the lower courts. The most distressing feature of this truncated appellate process, however, is the role of central staff in sorting the cases to the two tracks and in preparing the opinions that ultimately dispose of the ones on track two.

In their recent book, "Injustice on Appeal", Richman and Reynolds address separate chapters to each of the differences in the appellate process afforded the track one and track two cases. The following is an edited version of their chapter on the use of central staff attorneys.

Central staff attorneys differ from traditional law clerks in that they work for the court as a whole rather than for a single judge. Typically, they work at the headquarters of the circuit, rather than being scattered around the circuit, as the judges' chambers usually are. Also unlike law clerks, staff attorneys are a relatively recent development; beginning in the sixties, when the Fourth and Fifth Circuits began hiring "habeas clerks" to deal with the explosion of cases brought by state prison inmates seeking habeas corpus relief or relief under the civil rights statutes. Moreover, their caseloads differ from those of law clerks. Clerks work in a broad range of subject matter areas and on cases deemed "important" or "novel." Staff attorneys, by contrast, devote most of their effort to a narrower range of subject matters and to cases deemed to be "routine" or "repetitive." Staff attorneys also differ from law clerks in that hardly anyone is willing to claim that their use produces any benefit other than efficiency. Further, unlike use of traditional law clerks, no one maintains that the strategy of hiring steadily increasing brigades of staff attorneys produces better justice or provides sounding boards or fresh perspectives to the judges. Pure necessity drives the practice; the judges simply could not keep abreast of the steadily increasing caseload without them. Or put differently, the judges could not devote the time and effort to the relatively few important cases unless the corps of staff attorneys was there to handle the larger, but more prosaic, group of cases.

STAFF ATTORNEYS AND "SCREENING"

It is difficult and probably pointless to consider the role of central staff attorneys without considering it in the context of the entire regime of Appellate Triage. The Appellate Triage regime requires, of course, some method for determining which track a particular case belongs on. Practically, the decision is made by placing the case on the "argument" or "non-argument" calendar. The statutory authority to deny oral argument comes from the Federal Rules of Appellate Procedure, which provide in part that "[o]ral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary [because] … the appeal is frivolous or the dispositive issue or issues have been authoritatively decided [by binding precedent]…". The rule is clear that oral argument is to be denied only if the panel members determine unanimously that it is unnecessary, but it is silent about the process of culling or screening the cases in order to suggest to the panel that a particular case does not warrant argument.

The several circuits differ, at least formally, on this question. In all but one, pro se cases are almost always decided without oral argument. In most, the screening of counseled cases is done by staff attorneys, subject of course to later panel approval. Within the staff-screening model, there are variations. In some circuits, the screening is done by attorneys assigned to the central staff, in others by supervising staff attorneys, and in still others by attorneys assigned to the clerk's office. In some circuits, particular types of cases are not subject to screening at all.

Used in a few circuits, the other main screening model—judge-screening—calls for the judges to play a much larger role in the process. In the Tenth Circuit, the judges are divided into three-judge screening panels, with each judge primarily responsible for one-third of the cases assigned to the panel. In the Third Circuit, judges do the screening, but there are no separate screening panels; rather, regular argument panels determine which cases will be argued and which will not. The Second Circuit does not screen counseled cases, hearing argument on all such cases unless argument is waived or the appellant is a prisoner filing pro se.

Staff-screening is highly problematic. As one commentator has remarked, staff-screening means "the bureaucracy is deciding what the bureaucracy can decide and what needs to be passed on to the judges, which amounts to a self-fulfilling or self-denying prophecy." Moreover, whether a case is assigned to the argument or non-argument docket has an important effect on how it is processed and, perhaps, how it is ultimately decided. Screened cases, of course, are not argued, and most of the work on them is done by central staff rather than by judges and clerks in chambers. They are decided in short,

"If a senior appellate attorney has spent scores of hours (and thousands of her client's dollars) preparing a brief, it is disconcerting to suspect that the decision in the case and the decision as to what process the case will receive will be made by a lawyer a year or two out of law school, and perhaps one her firm would not consider hiring. And think how much worse it is for the pro se litigant who — if she only knew — has had her appeal effectively rejected by such a person."

unpublished, nonprecedential opinions that often give the litigants little or no insight into the court's reasoning. They seldom produce dissents or concurrences, and they affirm rather than reverse the lower courts at very high rates. In argued cases, the parties appear before the panel and learn and can respond to the judges' difficulties with their arguments. The panel members typically confer face-to-face for as long as it takes, and most argued cases are decided in fully precedential published opinions, some of which are long and closely reasoned, and may be the result of hundreds of hours of judge and clerk time.

Given that federal appellate justice is a societal good, assigning a case to one of the two calendars is a high-level allocation of scarce resources to some and not to others. If any piece of case processing requires the wisdom of age and experience and the political investiture of presidential appointment and senatorial confirmation, it is this one. A staff attorney may be able to research a case and write a short conclusory opinion as well as a judge; these are technical skills for which recent law graduates are trained, but they are ill equipped and politically unauthorized to make decisions involving such major allocations of scarce societal resources.

STAFF ATTORNEYS AND THE "SCREENED" CASES

Once the cases are screened into "important" and "routine" categories, it is the staff attorneys' job to dispose of the second group. Exactly how do they go about that task; to whom do they report; and to what extent do the judges review their work? While staff attorneys also decide motions, create and maintain issue inventories, and screen cases, the great bulk of their work consists of writing memoranda in the non-argument cases. Each memo typically summarizes the facts and relevant legal authorities and suggests a disposition. Often a draft of a proposed opinion accompanies the memo, and almost as often the court adopts the staff attorney's proposed disposition and draft opinion with minor changes.

The staff attorney's memo's fate varies considerably by circuit. In some, the case, accompanied by the memo, goes to each of the three panel judges in series. In other circuits, the memo is distributed to each judge, and then they "confer" in person, by telephone, or by memo. In still others, the memo is not distributed to the panel members at all. The panel meets and hears brief oral presentations by the staff on each case. What all the circuits have in common is that the cases handled by the staff get very little judge time. While some judges insist they read the briefs and relevant record excerpts in all non-argument cases, others candidly admit that they do not.

Moreover, there seems to be little disagreement among the judges on how much time it takes to "confer" on non-argument cases. Some report that a decision can take no more than half a minute, while others might require as much as twenty minutes. In the Ninth Circuit, a non-argument panel can dispose of up to sixty cases in a day, three hundred in a week.

Although some judges have qualms, most judges report considerable satisfaction with the use of staff to screen and handle the substantial portion

of the cases deemed "routine." One measure of satisfaction is that the judges often adopt the staff attorney's proposed opinion with little editing. Nevertheless, they are not willing to warrant the work, which explains why almost all circuits deny precedential effect to unpublished opinions—most of which have been prepared by the staff.

Not merely content to deny precedential effect to the opinions, many courts had forbidden their citation. New Rule 32.1 of the Federal Rules of Appellate Procedure now prohibits local rules forbidding citation. It caused an astoundingly contentious reaction, given its very limited effect. After all, the rule does not control the precedential weight to be given to unpublished opinions; it merely forbids the courts to prohibit citation of them. Given the rule's minimal content, why did it provoke so much opposition? One reason advanced for opposition to the rule was judges' lack of confidence in the quality of many of the unpublished opinions. Judge Kozinski famously remarked that unpublished opinions are metaphorically "not safe for human consumption." He and other judges fear that they may be "*wrong.*" Moreover, again according to Judge Kosinski they are drafted in "loose, sloppy language [inappropriate for] "binding precedent" . . . .

To the same effect is the comment of the anonymous circuit judge J9-21 quoted in an attitude study undertaken by the Federal Judicial Center:

> [W]e have two kinds of unpublished decisions—those issued in calendared cases before regular panels (not all of which are argued), and those issued in "screening" cases, in which drafts are prepared by central staff and approved by three-judge panels after oral presentations and brief reviews of documents. I would be comfortable having the first group cited, as long as they are not precedential, because a substantial amount of chambers work, by both law clerks and judges, go into them. As to the second group—screened cases—the dispositions are exceedingly short, and I have much less confidence in whatever reasoning does appear.

Thus it is clear that the attitude of some judges is schizophrenic or at least hypocritical. They are satisfied with the central staff's handling of a large portion of the docket because those cases are routine or trivial; however, they are not sufficiently confident in the opinions *that they have supposedly approved* to consider them precedent or even to encourage their citation.

While the judges seem content with the extensive role played by clerks and staff attorneys, the appellate bar is not. The principal problems that lawyers have with the extensive use of central staff are delegation and transparency, concerns that are interrelated. The delegation worry is simple; in the words of an elite ABA committee, practitioners "may . . . believe, sometimes correctly, that cases are decided effectively by someone other than an Article III judge." Appellate advocates "find it troubling that judges would not read the briefs and the record in the case, but only a staff memorandum." One prominent attorney has commented that he and his colleagues "regard screening as a device to push the lawyer out of the law entirely. We just don't count anymore." If a senior appellate attorney has spent scores of hours (and thousands of her client's dollars) preparing a brief, it is disconcerting to suspect that the decision in the case and the decision as to what process the case will receive will be made by a lawyer a year or two out of law school, and perhaps one her firm would not consider hiring. And think how much worse it is for the pro se litigant who—if she only knew—has had her appeal effectively rejected by such a person.

The lack of transparency compounds the problem. If not skeptical about the role of staff attorneys, it makes sense for the bar at least to be "agnostic" because lawyers simply do not know what role staff attorneys play in the disposition of cases. Although Congress, in response to concerns about the use of staff, has required the circuits to publish their "operating procedures," the results have been vague. The Federal Judicial Center's prediction that "litigants and counsel in an appeal decided without argument seldom [will] know what role, if any, a staff attorney played in the handling of their appeal" surely will remain accurate for a long time to come.

When constructing an argument, it is an advocate's first instinct to consider the audience. If a staff attorney first must be convinced before the case even gets to a judge, the arguments might well differ from those used if access to the judge were guaranteed. Moreover, lawyers want to know everything a judge considers before making a decision. The idea that there is a secret memo from an unknown bureaucrat that will determine the fate of the case is anathema to most of the bar. Thus the American Bar Association has recommended that a copy of the staff memo be distributed to counsel so any objection by counsel could be responsive to the real premises of the decision. Given the disproportionate judicial response to the relatively minor change wrought by the adoption of Rule 32.1, adoption of a staff-memo-disclosure rule, or even a recommended practice, seems highly unlikely.

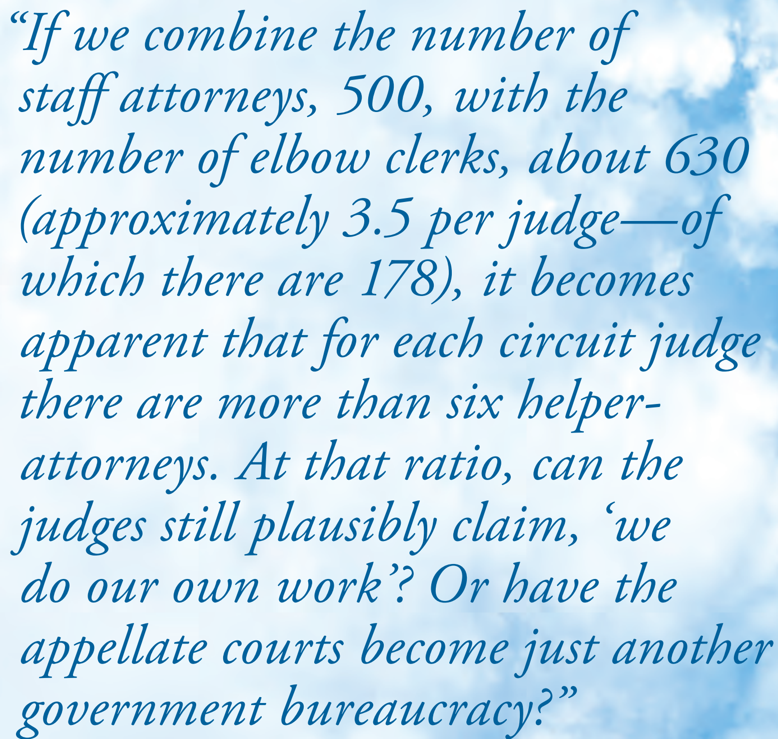
There is a delicious irony here. Federal magistrates, a superbly qualified group, must issue a written report disposing of cases assigned by the district court. If a litigant objects to that report, the district court must review the magistrate's report de novo. Moreover, it is grounds for reversal if the district judge simply adopts the magistrate's opinion, as opposed to writing his own. Congress and the appellate courts, in other words, have adopted procedures to assure effective supervision of the work of the magistrates. In contrast, no rule requires any notice to the parties or judicial revision of the drafts suggested by staff. In short, the circuit courts, not surprisingly, are more demanding of the trial courts than they are of themselves.

OMINOUS DEVELOPMENTS: CAREER APPOINTMENTS, SPECIALIZATION, AND PROLIFERATION

The first of these three developments was almost inevitable. Originally, staff attorneys, like law clerks, were hired for short terms (one or two years). But if the staff attorney wished to stay and her performance satisfied the court, why not extend the term? Several benefits accrued immediately. Productivity went up as interviewing, hiring, and training time went down. Moreover, experienced staff attorneys work faster and with more confidence.

From the staff attorney's point of view, the arrangement made good sense. Not every able young lawyer wants to work for a high-pressure firm. Not only is the lifestyle (hours and pressure) better than in most firms, but staff attorney pay is roughly competitive with other government work; a very senior supervising staff attorney can earn 80 percent of a circuit judge's salary. The job is sufficiently desirable that several staff attorney's offices include attorneys who began their careers as circuit court or district court elbow clerks.

In some circuits, all staff attorneys have career appointments; in others, most are careerists along with a few short-term appointments; in still others, the majority of appointments are limited to relatively short terms (two to five years), with only supervisory staff attorneys having career positions. The trend, however, is clear; the percentage of staff attorneys serving in career positions is



"If we combine the number of staff attorneys, 500, with the number of elbow clerks, about 630 (approximately 3.5 per judge—of which there are 178), it becomes apparent that for each circuit judge there are more than six helper-attorneys. At that ratio, can the judges still plausibly claim, 'we do our own work'? Or have the appellate courts become just another government bureaucracy?"

increasing steadily. Moreover, the trend is ominous because career appointments increase the risk of over-delegation as judges become more confident in the capabilities of the staff.

Specialization, the second alarming development, was a feature of the institution of central staff from its inception; the first staff attorneys worked almost exclusively on prisoners' cases. But now the specialization has spread geographically and topically. In some circuits, staff attorneys do not specialize, except for the de facto specialization that results from their being assigned "routine" and pro se cases. In others, there are multiple divisions devoted to motions, jurisdictional issues, pro se cases, immigration cases, and asylum cases. In an intermediate group, there is no formal specialization, but de facto some staff attorneys acquire a reputation for expertise in a particular area; and cases in that area tend to flow to that attorney.

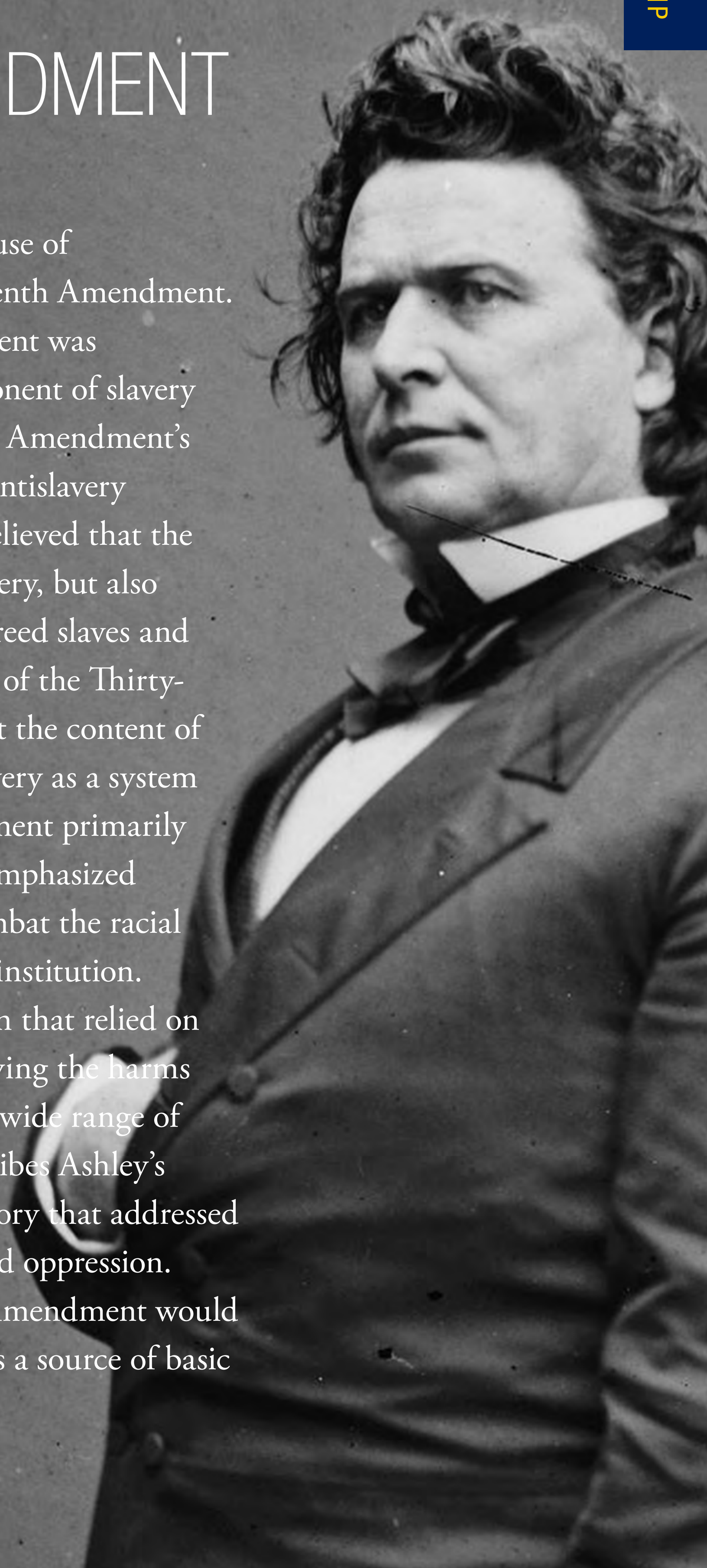
The benefit of specialization, again, is efficiency, and its danger is, again, over-delegation. The over-delegation problem is perfectly natural from the standpoint of the judge. Most did not have careers devoted to pro se cases, immigration cases, or prisoners' cases. After arriving at the circuit court, they have little exposure to these case types because they are screened for staff treatment. Having little experience in the area, it seems sensible for a new judge to trust the expert.

The final and most significant of the three ominous developments is the proliferation of staff. Staff attorneys began as groups of two or three recent law school graduates in each of a few circuits. By 1981, Judge McCree complained that "cancerous" growth had increased the total to 136. Though compiling a total is no easy matter, it is safe to conclude that today there are about 500 staff attorneys employed in the twelve regional circuit courts of appeals. The growth in the numbers of staff has been steady and shows no signs of tapering off; it closely follows the rate of increase in appellate filings and vastly exceeds the growth in the number of authorized judgeships. Between 2000 and 2008 central staff has grown in every circuit by percentages ranging from about 10 to nearly 90. If we combine the number of staff attorneys, 500, with the number of elbow clerks, about 630 (approximately 3.5 per judge—of which there are 178), it becomes apparent that for each circuit judge there are more than six helper-attorneys. At that ratio, can the judges still plausibly claim, "we do our own work"? Or have the appellate courts become just another government bureaucracy?

There is a sad irony in reading commentary written ten or fifteen years ago by scholars or judges who offer reassurance about the level of delegation occurring at that time. A very common way to end such a discussion is for the author to opine, "I think on balance that the delegation to clerks and staff and the other appellate shortcuts have not fundamentally damaged the traditional appellate process; but I am sure that if we proceed farther in this direction, they will." Then, of course, we do proceed farther and cross the author's line in the sand. How long can we continue to cross those lines, drawn by the best and most responsible thinkers of their time, and still believe we retain anything resembling traditional appellate justice? ■

JAMES ASHLEY'S THIRTEENTH AMENDMENT

REBECCA E. ZIETLOW



http://upload.wikimedia.org/wikipedia/commons/4/43/James_Mitchell_Ashley_-_Brady-Handy.jpg

On January 31, 1865, the United States House of Representatives voted to approve the Thirteenth Amendment. Chairing the final debate over the Amendment was Representative James Ashley, a lifelong opponent of slavery from Toledo, Ohio who led the fight for the Amendment's approval in the House. For Ashley and his antislavery colleagues, it was a triumphant day. They believed that the Thirteenth Amendment not only ended slavery, but also established fundamental human rights for freed slaves and other people in the United States. Members of the Thirty-Eighth Congress held differing visions about the content of those rights. Some focused primarily on slavery as a system of labor and viewed the Thirteenth Amendment primarily as a source of workers' rights, while others emphasized the Amendment as a source of power to combat the racial subordination that legitimated the peculiar institution. James Ashley viewed slavery as an institution that relied on both racial and class subordination. Remedying the harms of slavery would require the restoration of a wide range of fundamental human rights. This essay describes Ashley's theory of the Thirteenth Amendment, a theory that addressed the relationship between race and class-based oppression. James Ashley believed that the Thirteenth Amendment would create a more egalitarian society and serve as a source of basic rights that could be enjoyed by all.

"Class is bifurcated from race in our dialogue over civil rights. This was not always the case. In the first half of the twentieth century, the Thirteenth Amendment played a leading role in rights consciousness."

Scholars of the Thirteenth Amendment tend to differentiate between issues of race and class, focusing either on the Amendment's potential as a source of workers' rights or as a source of racial equality. These scholars have played a valuable role in restoring attention to the Amendment as a source of workers' and equality rights. However, they have by and large overlooked James Ashley's insight about the relationship between racial equality and workers' rights. This oversight is not a surprise. It is largely due to the fact that the paradigm for civil rights in the twenty-first century simply does not include a place for workers' rights. Class is bifurcated from race in our dialogue over civil rights. This was not always the case. In the first half of the twentieth century, the Thirteenth Amendment played a leading role in rights consciousness. At first, advocates focused almost exclusively on the Amendment's protections of workers' rights. Reconstruction protections for racial equality were not enforced, and Jim Crow flourished in the south. In the 1940s, however, as the nation gradually became conscious of the racial injustice permeating society, advocates synthesized the protections for race and class in an approach mirroring James Ashley's vision of intersectionality. Sadly, the primacy of the Thirteenth Amendment faded after the Court's ruling in *Brown v. Board of Education*, which enforced the Fourteenth Amendment's protection against state-mandated race discrimination. While the *Brown* ruling was obviously a major victory for human rights in this country, the *Brown* paradigm of rights does not adequately address the economic inequality that continues to plague racial minorities. Despite making significant advances in combating race discrimination, people of color continue to lag behind whites as measured by major economic indicators. They have failed to benefit from the Thirteenth Amendment's promise of economic empowerment even as they come closer to achieving the racial equality protected by the Amendment.

The Thirteenth Amendment protects workers' rights. Above all, slavery was an oppressive system of labor under which slaves had no control over their working conditions. The Thirteenth Amendment addressed working conditions by abolishing not only slavery, but also involuntary servitude. The key to the scope of the labor vision of the Thirteenth Amendment is the breadth of types of involuntary servitude that were barred by the Amendment. Some congressional supporters of the Thirteenth Amendment focused primarily, if not exclusively, on improving the conditions of labor. Congress has used its power to enforce the Thirteenth Amendment to abolish peonage, prohibiting employers from holding their employees in either voluntary or involuntary servitude. In the Trafficking Victims Protection Act of 2000, Congress amended the act to prohibit employers from using psychological, as well as physical coercion, to hold employees in their jobs.

These are examples of the Thirteenth Amendment serving as a potent source of workers' rights. For workers, the Amendment guarantees a degree of liberty and autonomy and control over the conditions of the workplace. However, the labor vision of the Thirteenth Amendment alone runs the risk of disregarding the role that racial subordination played in perpetuating the system of chattel slavery in our country. The Thirteenth Amendment is a source of economic rights, but not economic rights alone. The Amendment guarantees not only liberty, but also equality in the exercise of liberty rights. A pure labor theory of the Thirteenth Amendment is incomplete because it does not acknowledge the intersectionality of racial and class subordination in the institution of chattel slavery and in the racial and class-based stratification that still plagues our society.

The Thirteenth Amendment also promises racial equality. Slavery would not have been possible without the virulent racism underlying the system of white supremacy in slave states. Thus, some antislavery activists argued that remedying the institution of slavery would require eradicating race

discrimination. The most prominent congressional champion of the equal rights vision of the Thirteenth Amendment was Massachusetts Senator Charles Sumner. When Congress was considering abolishing slavery, Sumner proposed a version of the Thirteenth Amendment which would have declared all persons "equal before the law," a message he continued to promote while giving a speech the following year at the Massachusetts Republican state convention. While Sumner's language did not make its way into the Thirteenth Amendment, it foreshadowed the Equal Protection Clause of the Fourteenth Amendment. Other abolitionists advocated an even broader view, maintaining that the Amendment should establish equal rights not just for racial minorities, but also for women. The equal rights theory of the Thirteenth Amendment thus holds that freedom entailed the right to equal treatment under the law. Congress has fully embraced the equal rights theory of the Thirteenth Amendment, enacting the 1866 Civil Rights Act, which prohibits race discrimination in economic transactions, as well as the 1968 Fair Housing Act. The Supreme Court agrees, holding that the Amendment extends Congress's power to remedy the "'badges or incidents of slavery.'"

As a source of equal rights, the Thirteenth Amendment has significant advantages over the more widely cited Fourteenth Amendment. Unlike the Fourteenth, the Thirteenth Amendment enforcement power is not limited to state action, but extends to private discrimination. However, viewing the Thirteenth Amendment as a sort of Equal Protection Clause without a state action limitation understates the revolutionary scope of the Thirteenth Amendment's positive promise of freedom and equality. That scope can

only be achieved by addressing both race and class-based subordination. James Ashley recognized this fact in his theory of the Thirteenth Amendment.

James Ashley advocated a synthesis of the free labor and equality visions of the Thirteenth Amendment, recognizing the connection between the exploitation of labor and race discrimination. Ashley believed that slavery violated fundamental human rights. He maintained that ending slavery would restore those rights, not only to slaves, but also to all free blacks and workers of all races. Ashley believed that the fundamental rights that would be restored by freedom included both workers' rights and the freedom from race discrimination and that all of those rights required enforcement in order for any of them to be effective.

James Ashley was an outspoken supporter of workers' rights. He argued that slavery was a class issue. Slavery enabled the Southern aristocracy to oppress white workers who could not afford to own slaves and therefore competed with slaves in the labor market. Prior to the Civil War, Ashley claimed that class antagonism was "the real point of danger to the ruling class of the South." Thus, ending slavery would help all workers by bringing up the bottom and acknowledging the value of free labor. According to Ashley, abolishing slavery would accomplish more than simply ending the peculiar institution — it would establish the right to free labor for all workers in society, by guaranteeing their right to work free of undue coercion.

Introducing the Amendment for the vote before the House of Representatives, Ashley explained that he believed the Amendment would create a constitutional right to free labor, "a pledge that the labor of the country shall hereafter be unfettered and free." Ashley felt this system of free labor would have a beneficial impact on the nation's economy as a whole. To Ashley, then, the Thirteenth Amendment did more than simply abolish one form of exploitation of labor. The Amendment contained a substantive promise of free labor for workers throughout the country.

Many of Ashley's colleagues agreed that the Thirteenth Amendment established a positive right to free labor. For example, Representative Ebon Ingersoll argued that the Amendment established the right of a worker to "enjoy the rewards of his own labor." Senator Henry Wilson claimed that after the Amendment, the freeman had a right to "work when and for whom he pleases." During debates over the Amendment, Representative William Higby insisted that the decision to vote on the Amendment represented a choice between slavery and "free institutions and free labor." These members of Congress expressed the Free Soil ideology that ending slavery would improve the conditions of all workers by creating a positive right to a system of free labor. A system of free labor entitles workers to the empowerment necessary to improve their conditions of labor. The Amendment established this system by ending not only slavery, but also involuntary servitude.

In his speeches both before and after the adoption of the Amendment, Ashley elaborated on what a system of free labor would mean in relation to other employment practices. Ashley's economic critique went beyond criticizing the institution of chattel slavery. In an 1856 campaign speech, Ashley said, "I am opposed to all forms of ownership of men, whether by the state, by corporations, or by individuals. . . . If I must be a slave, I would prefer to be the slave of one man, rather than a slave of a soulless corporation, or the slave of a state."

Ashley was also a strong proponent of racial equality. Throughout his career, Ashley championed the rights of free blacks to receive equal treatment of the laws. In an 1856 campaign speech, he decried the impact of the "slave barons" on the state of Ohio, reflected in laws that had prohibited slaves from entering into contracts, including marriage. Referring to those laws as "barbarous enactments," Ashley stated, "these accursed laws might have been on our statute books today but for the demand of the old antislavery guard for their repeal." In his speech introducing the Amendment to a vote in January 1865, Ashley argued that the "Slave Power" had "so constituted its courts that the complaints and appeals of these people could not be heard, by reason of the decision 'that black men had no rights which white men were bound to respect.'" Thus, Ashley's system of free labor would entail removing racial barriers to the exercise of free labor rights.

Well before the Equal Protection Clause of the Fourteenth Amendment was adopted, Ashley insisted that all people, including slaves, were entitled to the equal protection of the government. He argued that "every human soul within our gates" was entitled to "the equal protection of the law." In 1863, as evidence of his continued commitment to this cause, Ashley introduced a resolution to authorize the enlistment of freed slaves in the rebellious districts that would have required black soldiers to be paid at the same rate as their white counterparts. In January 1865, Ashley added a measure to his Reconstruction bill that would have guaranteed "equality of civil rights

"As we engage in that dialogue over the meaning of rights in the twenty-first century, the Thirteenth Amendment will play an important role. James Ashley's vision of the Thirteenth Amendment is valuable not only for understanding its history, but also because it resonates in the twenty-first century and provides a useful model for rethinking equality rights."

before the law . . . to all persons in said states." This bill reflected Ashley's view that the Thirteenth Amendment guaranteed equal rights for freed slaves and others. Although Ashley's measure failed, Congress later adopted similar language in the 1866 Civil Rights Act, the first statute enforcing the Thirteenth Amendment.

But Ashley did not merely advocate either the labor or equality vision of the Thirteenth Amendment. He supported a synthesis of the two, buttressed by his belief in natural rights. James Ashley believed that slavery violated fundamental natural rights protected by the Constitution. He had a broad view of the scope of those rights, which he believed would be restored when slavery was abolished. Introducing the Amendment on January 31, 1865, Ashley argued that the Amendment would embody a "constitutional guarantee of the Government to protect the rights of all, and secure the liberty and equality of its people." Ashley expressed the philosophy of antislavery constitutionalism, believing that slavery was unconstitutional even before the Thirteenth Amendment because it violated fundamental natural rights and the constitutional provisions that protected them. As his ally in the House of Representatives, Representative Kelley, put it, "let us establish freedom as a permanent institution, and make it universal." These men made it clear that the Thirteenth Amendment promised positive rights, the rights to which a free person is entitled.

Ashley's theory of the rights of the free person included the right to participate in a democratic government, which he believed to be protected by the Article IV guaranty of a republican form of government. He explained, "Both these governments, the State and Federal, derive all the power they possess directly from the people." Ashley's belief in both democracy and natural rights led him to maintain that the right to vote was also a fundamental right of a free person. He called the right to vote "a natural right, a divine right if you will, a right to which the Government cannot justly deprive any citizen except as punishment for a crime," and he repeatedly reaffirmed the right to vote. Proclaiming the right of freed slaves to vote eventually became a rallying cry of radicals in the Reconstruction Congress. However, Ashley was one of the first to embrace this cause. As early as 1856, in speeches that he gave on the campaign trail, Ashley called for free blacks to have the right to vote, preceding his radical brethren by almost a decade. Ashley believed that expanding the franchise was key to making society more equitable.

Most importantly, Ashley's theory of the rights of the free person was based on his understanding of the relationship between race and class-based subordination. In a campaign speech in 1856, Ashley argued that northern "hostility to the black man" was based just on race. "[B] ecause he is a slave. It is the hatred born of the spirit of caste, and not the hatred of color. Wherever the negro is free and is educated and owns property, you will find him respected and treated with consideration." Here, Ashley showed that he understood the intersectionality of race and class discrimination and how it served to subordinate slaves and free blacks. This subordination harmed all workers by creating a subclass of workers who were easily exploited against whom they had to compete, lowering the bottom of the labor market.

Ashley maintained that the Thirteenth Amendment would protect both workers' and equality rights. Because slavery had depended on both class and race-based subordination, undoing the damage of slavery would require measures to empower workers and to remedy race discrimination. He believed that free people were not only entitled to be free from race discrimination, but also to the positive rights of workers that would empower them to assert their right to

http://commons.wikimedia.org/wiki/File:Hon._James_M._Ashley,_Ohio_-_NARA_-_527103.tif

equal treatment. Ashley repeatedly asserted that both race and class could make people vulnerable to being enslaved. He denied "the right of the majority to enslave the minority, merely because they were poor, or because they were black."

As a fierce advocate of democracy, Ashley argued that the democratic branches played an important role in defining constitutional meaning. In a stump speech in 1856, Ashley claimed that proslavery courts had distorted the meaning of the Constitution by upholding the institution of slavery, confounding of the word "person" with the word "slave," resulting in a "perverted and dishonest construction of our national Constitution." Ashley asserted his own authority to interpret the Constitution as a member of Congress, explaining that he would "follow in the footsteps of General Jackson" when doing so. In this speech, Ashley made it clear that although his antislavery interpretation was diametrically opposed to that of the United States Supreme Court, he believed that his interpretation was correct. Many of Ashley's colleagues in the Reconstruction Congress agreed. With Section 2 of the Thirteenth Amendment, Ashley and his colleagues empowered themselves to make those precedents, to determine the scope of the rights protected by that Amendment, and to enact measures to enforce those rights. The Amendment thus invites political actors to engage in constitutional dialogue over its scope and meaning through the process of democratic constitutionalism.

James Ashley's theory of the Thirteenth Amendment was an idealistic vision based on a pragmatic view of the way in which race and class-based oppression interact to contribute to the subordination of all workers. It is reflected in the broad measures enacted by the Reconstruction Congress to enforce the Amendment. Ashley's theory of the Thirteenth Amendment was not the only view held by its supporters. Nor is this essay calling on courts to enforce Ashley's vision. Indeed, the enforcement of the Thirteenth Amendment has taken place primarily not in the courts, but through the political process. The meaning of the Thirteenth Amendment is thus defined not through litigation, but through the process of constitutional dialogue and democratic constitutionalism. As we engage in that dialogue over the meaning of rights in the twenty-first century, the Thirteenth Amendment will play an important role. James Ashley's vision of the Thirteenth Amendment is valuable not only for understanding its history, but also because it resonates in the twenty-first century and provides a useful model for rethinking equality rights. ■

Rebecca E. Zietlow, the Charles W. Fornoff Professor of Law and Values, teaches and writes in the areas of constitutional law, federal courts, and constitutional litigation. This excerpt is adapted from an article of the same title published in a 2012 issue of the *Columbia Law Review*.

IN MEMORIAM

Professor Beth A. Eisler
1946-2012

Beth A. Eisler, professor of law and former interim dean, died Dec. 31, 2012 in Arbor Hospice in Ann Arbor. She was 66.

Professor Eisler spent 26 years teaching at Toledo Law, mostly in the fields of contracts and evidence. In the course of her career she also taught Sales, Secured Transactions, Legislative Drafting, and Trusts and Estates. She was past chairman of the appointments committee, associate dean for academic affairs from 1993-1995 and 1999-2005, and interim dean in 2005-2006.

"This would be a very different – and not nearly as good – law school had Beth Eisler not been a part of it," said Dean Steinbock. "As an administrator and faculty member, she was instrumental in shaping our program and the composition of our faculty. Beth Eisler was an outstanding and caring teacher, and thousands of students had a better education and experience for having known her. She was a role model for female students hoping to balance a professional career and family life."

Devoted to and greatly admired by her students, Professor Eisler received the Outstanding Professor Award from the College of Law graduating class on three separate occasions. She received The University of Toledo's Student Impact Award in 2011 and 2012, and she was honored posthumously by the University last spring with an Outstanding Teaching Award.

After learning of her death, David Fine of Harrisburg, Penn., a former student, wrote in an email, "Professor Eisler was an extraordinary teacher and a great person. She not only taught us the law, she explained to us how it worked and why, and she did so with good humor and wonderful accessibility. Professor Eisler never demanded respect — she earned it, and so many of us will remember her with gratitude and appreciation."

"This would be a very different – and not nearly as good – law school had Beth Eisler not been a part of it."

— Dean Daniel Steinbock

Professor Eisler was born in New York City on October 24, 1946. She received a bachelor's degree from The George Washington University and a law degree, with honors, from The George Washington University Law School. Before joining Toledo Law in 1987, she taught at Wayne State University Law School and was an attorney in the criminal division of the U.S. Department of Justice, where she was involved in drafting and commenting on the Federal Rules of Evidence. Professor Eisler was active in a number of professional and civic organizations, including the Michigan Supreme Court State Board of Law Examiners.

The spring 2013 issue of The University of Toledo Law Review was dedicated to Professor Eisler.

Her family has suggested that any donations in Professor Eisler's memory be made to the Beth Eisler Student Assistance Fund at The University of Toledo College of Law or to Arbor Hospice in Ann Arbor.

TOLEDO LAW WELCOMES TWO NEW FACULTY MEMBERS

Eric C. Chaffee
Professor of Law

The College of Law welcomed Eric C. Chaffee, a business law expert and previously a professor of law at the University of Dayton School of Law, to the faculty this fall. He will teach Contracts, Business Associations, and other advanced courses in the business law area.

Professor Chaffee earned numerous accolades for his teaching while at the University of Dayton. He won four Professor of the Year Awards voted upon by students – three for upper-level teaching and one for first-year teaching. He also received the Dean Francis J. Conte Special Service Award in 2012.

His scholarship has attracted national attention. He is the co-author of the book "Global Issues in Securities Law," as well as articles in the *Ohio State Law Journal*, *Washington and Lee Law Review*, and *American University Law Review*, among other publications.

Professor Chaffee served as chair of the Project for Law and Business Ethics at the University of Dayton and as director of faculty research. He has co-organized the National Business Law Scholars Conference for the past three years.

Chaffee has taught at Case Western Reserve University School of Law and in Prague as part of a DePaul University-sponsored study abroad program. Before he started teaching, Chaffee spent four years practicing business law at Jones Day. He earned his law degree from the University of Pennsylvania Law School and graduated summa cum laude from The Ohio State University.

Bryan Lammon
Assistant Professor of Law

Bryan Lammon, a civil procedure scholar who has been a visiting assistant professor of law at Washington University School of Law since 2011, joined the Toledo Law faculty this fall. Professor Lammon will teach Evidence and Conflicts of Law during the 2013-2014 school year.

Lammon earned his law degree at Washington University, where he graduated first in his class and was an editor for the Washington University Law Review. His student note on the Fourth Amendment received the Mary Collier Hitchcock Prize for outstanding law review writing. He earned his bachelor's degree in economics from the University of Notre Dame, where he won the John Harold Sheehan Award for the best senior honors essay in economics.

After law school, Lammon clerked for Judge Edward C. Prado on the U.S. Court of Appeals for the Fifth Circuit and practiced appellate litigation in Jones Day's Chicago office.

Professor Lammon's scholarly career is off to an outstanding start. He published "What We Talk About When We Talk About Ideology: Judicial Politics Scholarship and Naïve Legal Realism" in the *St. John's Law Review* in 2009. His latest piece, "Rules, Standards, and Experimentation in Appellate Jurisdiction," was published in 2013 in the *Ohio State Law Journal*.

PROFESSORS KENNEDY AND RICHMAN RETIRE

Please join us in congratulating Professor Robin Kennedy and Professor Bill Richman on their retirements.

Robin M. Kennedy

Professor Robin M. Kennedy retired this spring with the distinction of having served on the Toledo Law faculty for longer than any current or retired faculty member; he has served as a model practitioner for his many clinic students for more than 40 years.

An important presence in the College of Law's legal clinics, Kennedy has headed the Criminal Law Practice Program, the Civil Advocacy Clinic (then called the Legal Clinic), and the Public Service Externship Clinic. He has also taught Administrative Law, Education Law, Family Law, Mental Health Law, and Interviewing and Counseling.

In connection with his clinic work, Kennedy litigated and won *State, ex rel. Heller v. Miller*, in which the Ohio Supreme Court held that the 14th Amendment to the U.S. Constitution and Art. I, Section 16 of the Ohio Constitution require courts to provide indigent parents counsel and a transcript at state expense on appeal from a juvenile court judgment permanently terminating parental rights.

From 1999-2010, he served as director of the Reinberger Honors Program in Prosecution. The program had an enviable record of providing entrée to prosecutor jobs to nearly 25 percent of its graduates.

"Robin Kennedy has been a fixture of the Toledo legal community, as well as of the College of Law and the University," said Dean Steinbock. "We sincerely thank him for his many years of service to all three."

Kennedy received his law degree from Case Western Reserve University School of Law in 1970 and his bachelor's degree from the University of Notre Dame in 1967. Before joining the Toledo Law faculty, he held positions with the Hospital Legal Services Project in Cleveland and the Cleveland Legal Aid Society.

During his career at Toledo Law, he published law review articles and other writings in the fields of arbitration, alternative dispute resolution, mediation, and mental health law. He served as a member of many standing committees of the College of Law, as well as on many University committees, including the Athletics Committee, University Committee on Academic Personnel, and the Faculty Senate, where he served as chair of its Elections Committee.

Through his long practice experience and personal connections, Kennedy developed numerous externship opportunities for students.

The University named Kennedy an associate professor of law emeritus this past summer. He returned to teach a class at the College of Law this fall.

William M. Richman

Famous for banging his shoe on the table while teaching *International Shoe* and for boggling the minds of his students with his vocabulary, Professor William M. Richman retired last spring after 37 years on the College of Law faculty.

During that time, he has made countless contributions as a teacher, scholar, and colleague, and, in 1998, the University named him a Distinguished University Professor, its highest academic honor.

Richman, a nationally known and respected scholar in the areas of conflict of laws and appellate courts, has published five books, “Injustice on Appeal”, “The Full Faith and Credit Clause”, “Jurisdiction in Civil Actions”, “Cases and Materials on Conflict of Laws”, and “Understanding Conflict of Laws”, and many law review articles and other writings. In recognition of his scholarly contribution, he was awarded the University’s Outstanding Research and Scholarship Award. He is also a life member of the American Law Institute.

He has taught Civil Procedure, Evidence, Conflict of Laws, and Jurisprudence, and was a visiting professor at the University of Michigan Law School and the University of Maryland Francis King Carey School of Law. He has received rave reviews for his teaching and was twice presented with the College of Law Outstanding Professor Award.

The Deans’ Leadership in Legal Education Series, a biennial issue of The University of Toledo Law Review, commonly known as “the Deans’ Issue,” was Richman’s idea. The Deans’ Issue is written by the deans of various law schools and addresses topics pertinent to legal education. Richman edited the issue for many years.

“Bill Richman has truly put the best interests of our law school and its students foremost for over 35 years. We thank him for all that he has done for this institution and its graduates,” said Dean Steinbock.

Richman earned his bachelor’s degree from the University of Pennsylvania in 1970, and was a Woodrow Wilson Fellow at Johns Hopkins University. He received his law degree from the University of Maryland Francis King Carey School of Law in 1975, where he was named to the Order of the Coif and served as assistant editor of the law review.

Before joining the College of Law faculty, he was law clerk to Judge Joseph H. Young of the U.S. District Court for the District of Maryland, and an associate for the law firm of Piper & Marbury.

The University named Richman distinguished university professor of law emeritus this past summer, and he returned to teach a class at the College of Law this fall.

FACULTY NOTES

Kara Bruce, associate professor of law, published “Rehabilitating Bankruptcy Reform” in the *Nevada Law Journal* and placed “The Debtor Class” in the *Tulane Law Review*. She presented her current research on class actions in consumer bankruptcy cases at the Central States Law Schools Association Annual Conference, The University of Akron School of Law, the Valparaiso University Law School Regional Faculty Workshop, and the National Business Law Scholars Conference. She received a Student Impact Award from The University of Toledo. She served as faculty adviser for the Women’s Law Student Association and the College of Law’s new Bankruptcy Moot Court team. In fall 2013, she served as the Scholar in Residence at the American Bankruptcy Institute, where she worked on a comprehensive proposal to overhaul the Bankruptcy Code’s corporate reorganization provisions.

Benjamin G. Davis, associate professor of law, published “The 9/11 Military Commission Motion Hearings: An Ordinary Citizen Looks at Comparative Legitimacy” in the *Southern Illinois University Law Journal*, and “Ohio Election 2012: Reflections of a Private Citizen Negotiating an Extreme Public Discourse Experience at a True the Vote Summit and In its Aftermath” in the *Cardozo Journal of Conflict Resolution*. He was granted observer status by the U.S. Department of Defense Office to visit Guantanamo and observe the military commissions for 9/11 defendants and others. Professor Davis was elected as a member of the executive committee of the American Association of Law Schools National Security Law Section. He continued to serve as a board member for the Society of American Law Teachers, where he blogs at saltlaw.org/blog on international law and national security law topics. Professor Davis presented at the Midwestern People of Color Legal Scholarship Conference at Loyola University Chicago School of Law, the Legal Educators Colloquium of the Annual Meeting of the American Bar Association Section on Dispute Resolution, Southern Illinois University School of Law, the Thurgood Marshall Law Association in Toledo, University of Pennsylvania Law School, Sixth Annual Association of American Law Schools Works-in-Progress Conference, Cardozo Journal of Conflict Resolution Fall 2012 Symposium, and the Case Western Reserve University School of Law. He also taught an ABA Section on Dispute Resolution CLE teleconference with Professor Robin Kennedy.

Jelani Jefferson Exum, associate professor of law, presented on a panel at the Michigan Journal of Race and

Law Symposium, at the TedxToledo Inaugural Event, at the Central States Law Schools Association Annual Conference, and at a Toledo Women's Bar Association CLE. She also presented expert testimony on the federal sentencing guidelines and child pornography possession in the U.S. District Court for the District of Maryland. She received the Beth A. Eisler Award for First-Year Teaching.

Llewellyn J. Gibbons, professor of law, co-authored the book "Mastering Trademark Law." He also penned a book chapter titled "Regulatory Approaches: Crisis, Danger or Opportunity for Copyright and Trademark Law in the United States" for the book "Perspectives on American Law" and published "Crowdsourcing A Trademark: What The Public Giveth, The Courts May Taketh Away" in *Hastings Communications and Entertainment Law Journal*. He delivered presentations at The University of Hong Kong, the University of New Hampshire, and the Sculpting the Human: Law, Culture and Biopolitics Conference. The University awarded him an Outstanding Researcher Award. He served as a consultant at the Northwest University of Politics and Law in Xi'an, China, and as a tutor in the World Intellectual Property Organization Intellectual Property Academy.

Gregory M. Gilchrist, associate professor of law, published "The Expressive Cost of Corporate Immunity" in the *Hastings Law Journal*, "Condemnation Without Basis: An Expressive Failure of Corporate Prosecutions" in the *Hastings Law Journal*, "The Special Problem of Banks and Crime" in the *University of Colorado Law Review*, and "Trial Bargaining" in the *Iowa Law Review*. He presented at the ABA/AALS Criminal Justice Conference, the Central States Law Schools Association Annual Conference, Michigan State University College of Law Workshop, The University of Iowa College of Law, and the Law & Society Association.

Rick Goheen, assistant dean for the LaValley Law Library and associate professor of law, began his third two-year term as treasurer of the Ohio Regional Association of Law Libraries. In conjunction with other Toledo area law librarians, he organized the annual meeting of the Ohio Regional Association of Law Libraries in Perrysburg. He and Ryan Overdorf, the senior electronic media services librarian, presented a program at the American Association of Law Libraries annual meeting this past summer.

Jessica Knouse, professor of law, published "Reconciling Liberty and Equality in the Debate over Preimplantation Genetic Diagnosis" in the *Utah Law Review* and a book review. She presented at the Cleveland-Marshall College of Law's Journal of Law and Health Symposium and at a Toledo Women's Bar Association CLE.

Susan R. Martyn, the Stoepler Professor of Law and Values, co-authored the third edition of her casebook, "Traversing the Ethical Minefield: Problems, Law, and Professional Responsibility". The book has been adopted by professional responsibility professors in law schools across the country. She also co-authored an annual update to her book "The Law Governing Lawyers: National Rules, Standards, Statutes and State Lawyer Codes 2013-2014". She presented at the University of Montana School of Law, an Ohio Supreme Court CLE, and two Toledo Bar Association seminars. She also co-chaired the American Law Institute's annual CLE on legal ethics.

Elizabeth McCuskey, assistant professor of law, joined the faculty in fall 2012. She published "Clarity & Clarification: *Grable* Federal Questions in the Eyes of Their Beholders" in the *Nebraska Law Review* and is now the co-director of the JD/MD joint degree program. She also was one of the faculty advisers for the 41st Annual Charles W. Fornoff Appellate Advocacy Competition.

Kelly Moore, associate professor of law, published "The Curious Case of Dr. Jekyll and the Estate Tax Marital Deduction: Should Prenuptial Agreements Alter the Relationship?" in the *Northern Illinois University Law Review*. He presented a program on ethics to the Northwest Ohio Chapter of the Association of Fundraising Professionals. The University of Toledo awarded him a Student Impact Award for his teaching and other student interactions. He served as the College of Law's representative on The University of Toledo Faculty Senate. He also served on various College of Law and University-wide committees, such as the Student Experience Steering Committee (co-chairing a sub-committee exploring professional engagement), and the law school's Self Study Committee. He chaired the College of Law's Career Services Advisory Committee.

Nicole B. Porter, professor of law, published "Mutual Marginalization: Individuals with Disabilities and Workers with Caregiving Responsibilities" in the *Florida Law Review*, "Women, Unions, Negotiation" in the *Nevada Law Review*, and "Martinizing Title I of the Americans with Disabilities Act" in the *Georgia Law Review*. She presented at symposiums at Florida International University College of Law and Saint Louis University School of Law. She also delivered presentations at the CRIMT 2012 International Conference, the Seventh Annual Labor and Employment Law Colloquium, and the Work-Family Researchers Network Inaugural Conference. She received the University-wide Faculty Club Award.

Geoffrey C. Rapp, a Harold A. Anderson Professor of Law and Values, published "States of Pay: Emerging Trends in State Whistleblower Bounty Schemes" in the *South Texas Law Review*, "The Brain of the College Athlete" in the *DePaul Journal of Sports Law and Contemporary Problems*, and

"*Fisher v. University of Texas:* Supreme Court to Revisit Racial Preferences in Higher Education Admissions" as a *Lexis-Nexis Emerging Issues Analysis*. He also published a book review and an op-ed, titled "Opposing View: Penn State Deserved the Death Penalty," in USA Today. Professor Rapp presented at the University of Cincinnati, Toledo Women's Bar Association, and the Annual Institute for Investor Protection Symposium at Loyola University Chicago. He helped to organize the Ohio Securities Conference, co-sponsored by the state Division of Securities. He also consulted with the United States Department of Treasury regarding online peer-to-peer lending industry. Professor Rapp was awarded the Navy and Marine Corps Commendation Medal for his service as a reserve intelligence officer.

Robert S. Salem, clinical professor of law, was recently appointed by the United States Commission on Civil Rights to its Ohio Advisory Committee to serve a three-year term. The committee investigates and reports on civil rights issues in the state and makes recommendations to the commission. An upcoming report addresses the problem of human trafficking in Ohio. He also served on an advisory committee established by Equality Ohio, a statewide gay rights organization. He was part of an interdisciplinary team that received a grant from the Toledo Community Foundation to work with five area schools to establish and monitor comprehensive anti-bullying policies and practices. As part of the Preventing Bullying – Creating Safety program, a partnership between WGTE-TV, ProMedica, and The University of Toledo created to raise awareness and provide resources for bullying prevention, he presented at workshops and appeared on televised town hall meetings. Professor Salem also presented at the Lavender Law Conference in Washington, D.C., for Toledoans for Prison Awareness, and during a training workshop on housing discrimination for the Lucas County Metropolitan Housing Authority. He was recently elected to a three-year term on the Toledo Bar Association Board of Directors. He also serves on Flower Hospital's Ethics Committee and on the Leadership Council of Planned Parenthood of Northwest Ohio, and on the boards of the National Gay and Lesbian Task Force and the Toledo Public Defender's Office.

Joseph E. Slater, the Eugene N. Balk Professor of Law and Values, co-authored the casebook "Modern Labor Law in the Private and Public Sectors: Cases and Materials." He published "Public Sector Bargaining Impasse Dispute Procedures as ADR: From 1919 to the Present" in the *Ohio State Journal on Dispute Resolution*. Professor Slater made various media appearances discussing "right to work" laws and public-sector labor issues, including an interview on NPR's nationally-syndicated radio show "The Takeaway." He presented at Washburn University, Saint Louis University School of Law, Chicago-Kent College of Law, the 30th Annual Federal Sector Labor Relations and Labor Law Conference, and the 8th Annual Colloquium on Current Scholarship in Labor and Employment Law. Professor Slater moderated panels at the AFL-CIO Lawyers' Coordinating Committee Annual Conference and at the Labor and Working Class History Association Annual Conference. He received the University Presidential Research Award, a University-wide award for scholarship and research, and the Student Impact Award, a University-wide award for teaching.

Lee J. Strang, professor of law, published "Originalism and the Aristotelian Tradition: Virtue's Home in Originalism" in the *Fordham Law Review*. He also published a book, "Cases and Materials on Federal Constitutional Law: The Fourteenth Amendment," Volume 5 in the LexisNexis Modular Casebook Series, "Originalism's Limits: Interposition, Nullification, and Secession" in the book "Union and States' Rights: 150 Years after Sumter, Interposition, Nullification, and Secession," and several book reviews. Professor Strang presented at the Midwest Political Science Association Annual Conference, Gonzaga University School of Law, Templeton Colloquium, Federalist Society Annual Faculty Conference, Wayne State University Law School, Loyola University Chicago School of Law, Creighton University School of Law, The Ohio State University Moritz College of Law, and Northern Illinois University College of Law. He received the Eastman & Smith Ltd. Faculty Achievement Award.

Rebecca E. Zietlow, the Charles W. Fornoff Professor of Law and Values, published "Rights of Belonging for Women" in the *Indiana Journal of Law and Social Equality* and "James Ashley's Thirteenth Amendment" in the *Columbia Law Review*. She presented at Emory University School of Law, the Third Annual Constitutional Law Colloquium, the Class Crits V Workshop, the University of Cincinnati College of Law, the Toledo Bar Association Section on Federal Courts, the Toledo Women's Bar Association annual meeting, and the annual meeting of the Law and Society Association.

Evan Zoldan, assistant professor of law, joined the faculty in fall 2012. He presented "Legislative Generality in the Context of Public Law," a work in progress, at the Loyola University Chicago Annual Constitutional Law Colloquium. He also was one of the faculty advisers to the 41st Annual Charles W. Fornoff Appellate Advocacy Competition.

ALUMNI

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Basil C. Foussianes '50	12/12/12
Robert G. Morris '51	4/4/13
Dr. Paul J. Leahy '53	4/24/13
Sheldon Rubin '53	11/28/12
Walter W. Peterson '54	10/25/12
Charles E. Breese '55	9/12/12
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Class notes are now online. Check out "Alumni in the News," at ***utoledo.edu/law***!

THANK YOU to the friends and alumni of Toledo Law who made a donation to name a chair in the newly renovated McQuade Law Auditorium. If you have not yet dropped by the Law Center to see our new auditorium, we invite you to come visit your chair soon. We sincerely appreciate your generosity.

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Upcoming Alumni Events

March 5
Columbus Alumni Reception, Kegler Brown Hill & Ritter

March 15
The Music of Queen and Reception, Stranahan Theater

March 25
Lansing Alumni Reception, Clark Hill PLC

April 5
Tour and Reception, Toledo Museum of Art

April 24
Ann Arbor Alumni Reception, Bodman PLC

An Alumni Reception is also being planned for Detroit!

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