

AALS PROFESSIONAL RESPONSIBILITY SECTION NEWSLETTER



This newsletter is a forum for the exchange of information and ideas. The opinions expressed here do not represent the position of the Professional Responsibility Section of the Association of American Law Schools.

AALS PROFESSIONAL RESPONSIBILITY SECTION ANNOUNCEMENTS

NEW EXECUTIVE COMMITTEE MEMBERS SELECTED



At the last AALS Annual Meeting, the Section voted to amend our bylaws to expand the size of the Section Executive Committee. In response to this amendment, Section Chair Irma Russell appointed a Nominations Committee of Peter Joy, Carol Needham, Russell Pearce, and Laurel Terry to recommend a group of candidates from which the Chair and current Executive Committee could fill the six additional positions. Thanks to the work of the Nominations Committee, the following Section members have joined the Section Executive Committee (term expiration in parentheses):

- Elizabeth Chambliss, New York Law School (1/2010)
- Terry Dobbins, St. Louis University (1/2009)
- Peter Margulies, Roger Williams (1/2011)
- Daniel Markovitz, Yale (1/2010)
- Margaret Raymond, Iowa (1/2010)
- Jack Sahl, Akron (1/2010)

Thank you to the Nominations Committee for a great job, and congratulations to these new Executive Committee members.

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JOINING THE SECTION LISTSERVE

Anyone interested in joining the AALS Professional Responsibility listserv is welcomed to do so. To join, go to the following page for instructions:
<http://lists.washlaw.edu/mailman/listinfo/legalethics/>

INTEREST IN AN EXAM BANK

Leslie C. Levin, Professor of Law at the University of Connecticut School of Law, has been investigating the possibility of restarting the Section's exam bank. At one time, **Ellen Y. Suni**, Marvin Lewis Rich Faculty Scholar and Professor of Law and Dean of University of Missouri-Kansas City School of Law maintained an exam bank for professional responsibility teachers. While Dean Suni has not done this for years, she

has retained the old exams in WordPerfect format. The most recent of the exams is from 1997 so both she and Professor Levin suspect that a new exam bank would have to be started from scratch. Still, Dean Suni would be happy to forward these exams to anyone interested in working with the Section on a new exam bank. If you have such an interest, please contact Professor Levine at the University of Connecticut.

NEWSLETTER ANNOUNCEMENTS

The Newsletter would like to start including job opportunities at member schools for professional responsibility teachers. If your school has such an opening, please let Randy Lee know at glee@widener.edu by October 15, 2008, for inclusion in our Fall Newsletter. We would also like to begin including teaching tips for the Professional Responsibility classroom so if you have a teaching tip you'd like to share with colleagues through the Newsletter, please send that to Randy Lee as well.

Finally, if you have an interest in writing the Recent Cases column for the newsletter, please contact Randy Lee as well.

AALS ANNUAL MEETING & SECTION PROGRAM

This year's AALS Annual Meeting will be in San Diego from January 6th through January 10th, 2009. An early bird registration rate of \$425 runs through November 18th. After that, the rate goes up to \$475. At the Annual Meeting the Professional Responsibility Section will sponsor a joint program with the Section on Clinical Education. This program is scheduled for

Wednesday, January 7, 2009 from 2–5:00. The program is titled *Celebrating and Reflecting on the Council on Legal Education for Professional Responsibility (CLEPR): What Have We Learned about Legal Education and Where Are We Headed?* and commemorates the Fortieth Anniversary of the Council on Legal Education for Professional Responsibility (CLEPR). Professor Peter Joy of Washington University in Saint Louis is the Section's Program Planning Chair, and Professor Susan Carle of American University and Section Chair Irma Russell are serving on the committee. Professor Joy and his committee have been working all year on what promises to be an exciting and innovative program. The registration number for the program is #4200.

POSTER PRESENTATION AT 2009 AALS ANNUAL MEETING

You are invited to submit a proposal of a poster presentation for the 2009 AALS Annual Meeting in San Diego, California (January 6–10, 2009).

Please send your proposal by e-mail to sections@aals.org by September 30, 2008. The poster should state your name, the name of your law school, the Section for which you are submitting, a title of the poster, a description of what you will be presenting and an actual copy of the poster itself. Your proposal will be sent to the Section Chair and Chair-elect and they will review and select the posters that will be presented as the Section's posters at the 2009 AALS Annual Meeting. This is an opportunity to share your work with the larger academic community. If your Section is not sponsoring posters, you may still submit a poster proposal; the AALS

Committee on Sections and Annual Meeting will review it.

The following AALS Sections are seeking proposals from individuals for poster presentations for the 2009 Annual Meeting:

- Clinical Legal Education
- Education Law
- Evidence
- Legal Writing, Reasoning and Research
- Insurance Law
- International Law
- International Human Rights
- Law & the Social Sciences
- Mass Communication Law
- Professional Responsibility
- Sexual Orientation and Gender Identity Issues
- Teaching Methods

Goal of Posters at AALS Annual Meeting

Posters are intended to provide authors an opportunity to present in clear and succinct fashion the thesis and conclusion of their research or to describe teaching innovations outside formal program presentations. Because the focus is on the content of the research and innovative teaching, posters that are primarily promoting a particular school program, project, book or materials are not eligible for poster display. Other advertising or fliers are not permitted with posters.

Audience for Posters

The readers of posters may be professors casually passing through the hallway, professors who are reading posters for insights into possible interdisciplinary links to their own work or professors who seek out a particular poster because it presents research important to the reader. It is important to keep poster information

succinct and readable increases exposure to the core ideas of the poster.

Who Can Submit a Poster?

A faculty member or professional staff member who is at a member or fee paid school can submit a poster proposal to a Section.

Display of Posters

Posters will be displayed outside in the hallways of the hotel from Tuesday, January 6 through Saturday, January 10, 2009. Posters will be grouped and identified as a Section's poster. AALS will provide the easels and the poster presenter will provide the poster. Your poster will be displayed on an easel and needs to be easily read from 2–3 feet away, the content easily digested by viewers who stop for a minute or two to review your work. Specific suggestions on size, format and logistical details of preparing and getting your posters to San Diego are described below.

Poster Presentations

AALS will schedule an hour for Sections' posters to be presented during the Annual Meeting. The current plan is to have one day during the Annual Meeting with three one hour time slots assigned to poster presentations, most likely, the day of presentation will be either Wednesday, January 7 or Friday, January 9. Poster presenters are to be prepared to leave their posters up from January 6 through January 10, 2009 throughout the AALS Annual Meeting. If AALS receives too many Section posters to fit in the appropriate space, we will have presenters post their posters on an easel for an hour and allow other posters to replace it, so that all can be shown.

Poster Guidelines:

- Posters should easily read from 2–3 feet away. Text should be limited to the core ideas and presented in a font size that allows our aging academics to read it with ease.
- Experienced poster presenters suggest 3–6 graphics to mix in with your text to make the posters more engaging.
- Posters should be mounted on a hard backing such as foam core that can be placed on an easel. Foam core is available at print shops, art supply stores, FedexKinkos, Staples, etc. FedexKinkos sells a 3'x4' foam core poster board for approximately \$36. The closest FedexKinkos store to the hotel is located at (532 C Street (619) 645–3300)
- Because posters typically will be placed on easels in an area in which other posters are displayed, it is important that posters not exceed 3ft x 4ft (36 x 48 inches).
- Other than easels, AALS does not provide construction materials. Unless you have the AALS decorator (C.H.S.), the hotel's Business Center or local copy place assist you with your poster, please bring your own pins, tacks, tape, and whatever other set-up materials you need to assemble your poster. Please note that electricity will NOT be provided to the posters. There is no audio visual equipment with posters.
- Many universities offer assistance in poster design and printing. Research assistants are also a good resource for figuring out how to put the poster together.
- Some good tips and examples of posters can be found at these websites:
 - <http://staff.science.uva.nl/~bcate/essli03/posters.html>
 - <http://www.cis.udel.edu/~pollock/fse04/posterauthorinst.html>

Shipping Posters

You are responsible for getting your poster to and from the Annual Meeting.

1) The hotel will accept mounted posters or posters rolled into a tube and shipped to yourself for approximately \$10–25 (price is determined by the actual size and weight). Please send for delivery no earlier than three days prior to your arrival date. If you wish to send the poster back to the point of origin after the Annual Meeting, you may use your own Fedex, UPS or Airborne account or a credit card; the Package Room will charge approximately a \$10–25 handling fee to ship the poster out. If you plan to ship your poster home, please retain the box in which your poster was originally shipped since the hotel does not stock oversized boxes.

2) Posters shipped to the hotel can be taken to the local FedexKinko's (532 C Street (619) 645–3300) where they will mount it on foam core for \$5 per square foot.

3) FedexKinko's can receive an electronic file of posters (PDF preferred), produce a poster, affix it to foam core and deliver it free of charge to the hotel (24 hour advance notice needed for delivery). The cost to produce, print and mount a poster onto foam core is \$156 for a 3x4' color poster on matte paper – there is a discounted price of \$130 if you also have the poster laminated; \$96 for black and white up to 3' in width.

Files can be submitted to the FedexKinkos website (www.fedexkinkos.com) – select Print to FedexKinkos Location and follow the instructions. You will receive an email confirmation followed by a phone call from FedexKinkos. Files may also be sent to FedexKinko's at usa2696@fedexkinkos.com;

24 hour turnaround. Payment by credit card is required.

4) The exhibit decorator, Convention Handling Services (C.H.S.), offers several options for receiving and mounting posters:

Package #1 – Decorator provides 3'x 4' foam core. Presenter takes care of shipping poster to and from the hotel as well as affixing the poster to the foam core.
\$32.50

Package #2 – Decorator will receive mounted poster and ship it back to point of origin at conclusion of the Annual Meeting.
\$45.00

Package #3 – Decorator will receive unmounted poster, provide you with a 3'x4' white foam board and the materials needed to affix the poster to the board, and ship it to point of origin at conclusion of the Annual Meeting. You are responsible for affixing the poster to the foam board.
\$77.50

Removing Posters at the End of the Annual Meeting

Posters should remain on the easels until Saturday, January 10, 2009. At the conclusion of the Annual Meeting, the hotel will discard any remaining posters. If you wish to keep your poster, please plan to retrieve your poster before 12:00 p.m. and return it by the various methods listed above.

PROFESSIONAL OPPORTUNITIES

ABA INVITATION TO COMMENT ON PROPOSED CONFLICTS RULE

By Ted Schneyer (University of Arizona)

As the Section's Liaison to the ABA Committee on Ethics and Professional Responsibility, I would like to pass on the following request from that Committee to our Section's members. The deadline for comment is October 15, 2008. The ABA Committee on Ethics and Professional Responsibility appreciates both your time and input:

Dear Chairs and Staff Liaisons or Directors of ABA Entities and Other Interested Colleagues:

On April 11, 2008, the Standing Committee on Ethics and Professional Responsibility circulated for comment a proposal to amend Rule 1.10 of the ABA Model Rule of Professional Conduct to permit the screening of lawyers as they move from one employment in the private sector to another, so that any conflicts of interest they might carry with them need not be imputed to other lawyers in their new employment.

After consideration of all comments received, the Ethics Committee filed Report 114 with Recommendations for consideration by the ABA House of Delegates at the 2008 Annual Meeting. The Report was co-sponsored by the Standing Committee on Professional Discipline; the Standing Committee on Paralegals; the Government and Public Sector Lawyers Division; the Young Lawyers Division; the Section of Real Property, Trust and Estate

Law; the Section of Antitrust Law, the Section of Business Law; the Illinois State Bar Association; the Philadelphia Bar Association; the Ohio State Bar Association; the Oregon State Bar; the Tennessee Bar Association; and supported by the Association of Professional Responsibility Lawyers.

There was insufficient time to deliberate upon several comments and suggested amendments made immediately prior to the scheduled House debate, and a motion to postpone consideration of the Report passed 192 to 191. Since the August Meeting, the Ethics Committee has conferred regarding these comments and suggestions and has revised Report 114 with the intention of resubmitting it for consideration by the House at the 2009 Midyear Meeting. The attached proposal differs from the proposal presented to the House by adding additional procedural language designed to address the effective policing of screens by former clients and by the law firm that is implementing the screening.

The Ethics Committee invites written comments and suggestions on this proposal, including specific language if changes are recommended.

The Committee seeks to gather information about the experience of lawyers and disciplinary authorities with screening and would therefore particularly appreciate answers to the following questions:

1. To what extent has the inability to screen laterals resulted in firms not hiring lawyers they would otherwise have hired?
2. In states in which provisions permitting

screening have been adopted since 2000, has there been an increase in the ability to hire laterals who otherwise would not have been hired because of the conflicts with which they were tainted?

3. In states that have adopted screening for laterals, but have not permitted it for lawyers who had a substantial involvement in the matter or had material, non-public information relating to the matter, does experience indicate that, after such adoption, lawyer mobility was enhanced? If so, in what situations?

4. Are you aware of instances where, despite the screening of former government lawyers, former judges, law clerks, arbitrators, mediators, or other third party neutrals, confidential information nevertheless passed from the screened lawyer to the lawyer's colleagues in his new firm?

5. Are you aware of instances where, despite the screening of a lawyer for a prospective client who received material, non-public information, confidential information nevertheless passed from the screened lawyer to the lawyer's colleagues in his new firm?

6. Are you aware of instances in those states that have adopted screening provisions generally for lawyers in private practice where, despite the screen, information nevertheless passed from the screened lawyer to the screened lawyer's colleagues in his new firm?

7. Are you aware of instances in which screening was implemented with the consent of the former client, but information nevertheless passed from the screened lawyer to the screened lawyer's colleagues in his new firm?

8. Are you aware of instances in which former clients of a lawyer who has moved to a new firm and been promptly screened complained to a disciplinary authority that the screen was inadequate?

9. Did any of these complaints contend that, for one reason or another, no single screen could be adequately monitored?

10. Did any of these complaints contend that, despite receiving a description of the screen, the complainant could not determine whether the screen worked effectively and otherwise had no ability to challenge the effective implementation of the screen?

11. Where instances of complaint have come to your attention, were the complaints sustained by the disciplinary authority or court? What were the outcomes?

NOTE: *In your answers, it is very useful to indicate whether the instances described occurred in the context of a large law firm (more than 50 lawyers) or a smaller law firm and the nature of the practice of the law firm.*

Responses should be received prior to October 15, 2008 so that the Committee can consider them at its next meeting on October 17-18, 2008 in Chicago, Illinois, at the Hotel Allegro, 171 West Randolph Street. Please direct your responses to ABA Ethics Counsel George Kuhlman at gkuhlman@staff.abanet.org. Questions may be directed to Mr. Kuhlman at: 312-988-5300.

Members of the Committee will be available on Friday morning, October 17 to hear from persons who would like to make a personal appearance to elaborate on the written

submission made prior to October 15. These oral presentations should focus on experience with screening, particularly including the topics detailed above. If you would like to appear before Committee members on October 17, please notify Mr. Kuhlman by October 7. A schedule for these appearances will be set on October 10.

Robert H. Mundheim, Chair
ABA Standing Committee on Ethics and Professional Responsibility

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ETHICS
AND PROFESSIONAL RESPONSIBILITY

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association adopts the following amendment to Model Rule of Professional Conduct 1.10:

Imputation of Conflicts of Interest: General Rule

* * *

(e) notwithstanding paragraph (a), and in the absence of a waiver under paragraph (c), when a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, and a statement that review may be available before a tribunal, is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule.

* * *

Comment

[9] When the conditions of paragraph (e) are met, no imputation of a lawyer's disqualification occurs, and consent to the new representation is therefore not required by these rules. Lawyers should be aware, however, that tribunals may impose more stringent obligations in ruling upon motions to disqualify a lawyer from pending litigation, and may disqualify counsel notwithstanding compliance with paragraph (e) if screening will not adequately protect client confidences or otherwise avert the harms against which paragraph (a) protects.

[10] Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (e)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[11] Notice generally should be given as soon as practicable after the need for screening becomes apparent.

[12] "Tribunal," defined in Rule 1.0(m), includes any adjudicative body. In matters pending before a tribunal, review of screening procedures may be available before that tribunal. Review may also be available, whether or not the matter is pending before a tribunal, by filing an

action in court or by complaint to a disciplinary authority.

2009 LAWYERS IN GOVERNMENT CONFERENCE AT HOFSTRA

Hofstra's next major conference on legal ethics will be entitled *Lawyers in Government* and will be held Sunday, October 18, 2009 through Tuesday, October 20, 2009. Professors with expertise regarding lawyers in government (whether in the legislative, executive, or judicial branches) are welcome to email the Conference Director, Roy Simon, Howard Lichtenstein Distinguished Professor of Legal Ethics, with topic proposals (a short paragraph is sufficient). All Professional Responsibility professors are encouraged to suggest to Roy the names of speakers that they believe would enhance the conference. Roy's email is roy.simon@hofstra.edu, and his phone number is (516) 463-5289.

2008 ABA CoLAP CONFERENCE

The ABA Commission on Lawyers Assistance Programs has set their 2008 Conference for Tuesday, October 21 through Friday, October 24 in Little Rock, Arkansas.

INSTITUTE ON RELIGION, LAW & LAWYER'S WORK ON LIFE BALANCE

The Fall 2008 schedule for Fordham's Institute on Religion, Law & Lawyer's Work includes the program *Beyond Work-Life Balance* on Thursday, October 2, 2008 from 6:00 p.m. – 7:45 p.m. for CLE credit. The program will discuss how practicing attorneys face a number of pressures as they strive to provide excellent service to their clients and also to fulfill their

obligations to their families and to the community. In this context, it also will consider how Catholic social teaching on labor, work-life balance, and gender might shed light on these pressures and tensions. Panelists include

Luke Connelly, Esq., Partner, Winston & Strawn, LLP (FLS '96)

Bill Poorten, Esq. (FLS '04)

Maryanne Stanganelli, Esq., Associate, Baker Hostetler (FLS '04)

Jessi Tamayo, Esq. Associate Director, Louis Stein Center for Law &

Ethics (FLS '04)

Amy Uelmen, Esq., Director, Institute on Religion, Law & Lawyer's Work

All Institute programs are open to the public with the option of CLE credit for a fee. Events are held at Fordham Law School, Room 430 B/C; 140 West 62nd Street, New York, NY. For more information and to register, email lawreligion@law.fordham.edu or call 212/636-7699. For information on other upcoming events, please visit <http://law.fordham.edu/lawreligion> [click "Upcoming Events"]

IS THERE A HIGHER LAW? DOES IT MATTER

If you have always wanted to see Malibu in February, this may be your year to experience it! Pepperdine University's Nootbaar Institute on Law, Religion, and Ethics is hosting a conference to ask the questions, "Is there a higher law," and "Does it matter," on February 21-22, 2008, at the Pepperdine Law School. The conference promises to bring together law professors, judges, theologians, economists, historians, and philosophers with divergent viewpoints to catalyze the discussion of these two

thought-provoking and important questions. Six CLE credits are available for the program. To register or receive additional information, visit <http://law.pepperdine.edu/ilre>.

PUBLICATION IN THE JOURNAL OF THE LEGAL PROFESSION

The *Journal of the Legal Profession*, a scholarly journal published by the University of Alabama School of Law, would like to invite submissions to be published in the Spring issue of the 2009 volume. Articles should be submitted to Editor-in-Chief Cole Richins at jolp@law.ua.edu. The managing board will thoroughly review all submissions and reply as promptly as possible.

Since its inception, the *Journal* has provided insightful research regarding legal ethics while also supporting cutting-edge scholarship concerning the practice of law and professional responsibility. Publication in the *Journal* provides a wonderful opportunity for you to make your research and expertise available to the professional and academic communities through a highly regarded publication.

HOLLORAN CENTER FOR ETHICAL LEADERSHIP IN THE PROFESSIONS

The Holloran Center for Ethical Leadership in the Professions at the University of Saint Thomas Minneapolis School of Law focuses on research about the formation of an ethical professional identity in both students and practicing lawyers. If this is an area of scholarship interest for you, please get in touch with their director, Professor Neil Hamilton, and visit their website, www.stthomas.edu/ethicalleadership

LEGAL MALPRACTICE LAW UPDATE

Brian T. McDonough prepares the bi-weekly *Legal Malpractice Law Update*, a review of legal malpractice decisions throughout the country, as part of his legal malpractice defense practice with Morrison Mahoney LLP, a 160 attorney Boston based law firm with offices in New York, New Jersey, New Hampshire, Connecticut, and Rhode Island. Mr. McDonough's research method is an all federal – all states LEXIS search of the phrases "legal malpractice" or "attorney malpractice," which results in an average of 22 decisions a week. He reads each decision and summarizes those decisions that are relevant to legal malpractice law. Each bi-weekly *Legal Malpractice Law Update* has an average of 10 case reviews.

If you or anyone you know may be interested in receiving the *Legal Malpractice Law Update*, please contact Mr.

McDonough at
bmcDonough@morrisonmahoney.com

FUNDING OPPORTUNITY FOR SCHOLARSHIP RELATING TO LITIGATION

The ABA Section of Litigation invites applications to The Litigation Research Fund, which makes individual awards of between \$5,000 and \$20,000 to support original and practical scholarly work that significantly advances the understanding of civil litigation in the United States. The Fund was established in 2007 to support research and writing projects relevant to litigation policy and practice, with preference given to works with an empirical foundation. The first round of funding in early 2008 resulted in seven grants totaling approximately \$70,000. Priority will be

given to applications received by August 31, 2008. For additional information, see <http://www.abanet.org/litigation/researchfund>. (Section member and former Section Chair Bruce Green has been chairing this project)

WILLIAMSBURG IN THE FALL

Melody S. Nichols, Assistant Director of Institute of Bill of Rights Law at William & Mary School of Law was so impressed by those of us who attended last spring's program on *The Citizen Lawyer* that she wanted us to know that we would be more than welcome to come to the Institute's Fall Supreme Court Preview scheduled for September 26–27, 2008. For additional information, please visit their web site.

CHRISTIAN VOCATION OF THE LEGAL SCHOLAR

Pepperdine University's Nootbaar Institute and Regent University School of Law are among the co-sponsors of the Sixth Annual Christian Legal Scholars' Symposium. At this program, legal scholars from around the globe will meet to discuss what it means to be a Christian legal scholar and to examine the implications that a Christian worldview has on the teaching and practice of law. The Symposium will begin Friday, October 10 at noon with a luncheon address on "The Christian Vocation of the Legal Scholar" and continue with a panel of international law professors who will share stories about the intersection of their faith and their academic and legal careers. The remainder of Friday afternoon and a full session Saturday morning will be devoted to Christian jurisprudence, beginning with an address by renowned political philosopher J. Budziszewski, followed by panels on the

implications of jurisprudence for religious freedom issues and the culture of life.

The Christian Scholars' Symposium is a part of the Christian Legal Society Global Convocation (October 9–12). For those attending the full CLS Global Convocation, the only additional fee for the Scholars' Symposium is \$40 for the Scholars' luncheon and keynote. However, if one is unable to attend the CLS Global Convocation, one still can register for the Christian Scholars' Symposium only for \$200. For registration materials or additional information, please visit <http://www.globalconvocation.org/legalScholarsSymposium.html>

NATIONAL INSTITUTE FOR TEACHING ETHICS AND PROFESSIONALISM WORKSHOPS

The National Institute for Teaching Ethics and Professionalism (NIFTEP) was established in 2005 as a consortium of five nationally-recognized university centers on ethics and professionalism, and is also sponsored by the American Bar Association Standing Committee on Professionalism and the Georgia Chief Justice's Commission on Professionalism. NIFTEP conducts workshops that bring together leading academics and practitioners involved in promoting the teaching of ethics and professionalism. Participants in NIFTEP workshops are designated NIFTEP Fellows. Although fellowships are typically granted either to full-time law professors who teach legal ethics or to practitioners actively involved in ethics CLE education and professionalism programs, any person committed to promoting ethics and professionalism may apply. Fellows are reimbursed for their travel expenses; there is no charge for the workshops.

Webcasts of the first two workshops are available on the NIFTEP web site: <http://law.gsu.edu/ccunningham/Professionalism/NIFTEP/> The webcast of the November 2007 workshop will be available by September 15, 2008. The next NIFTEP workshops are scheduled for April 24 – 26, 2009 and November 6 – 8, 2009. If you wish to be placed on an electronic mailing list to receive notices about future NIFTEP events, including the call for fellowship applications for each workshop, please send an email to NIFTEP's Director, Professor Clark Cunningham: cdcunningham@gsu.edu. Put "NIFTEP MAILING LIST" in the subject line and place your contact details in the text of the email message.

WEBCAST OF THE INTERNATIONAL CONFERENCE ON THE FUTURE OF LEGAL EDUCATION

The International Conference on the Future of Legal Education, held in Atlanta from February 20 to 23, 2008, included over 200 speakers and participants drawn from the USA, Russia, Kenya, England, Scotland, South Africa, Argentina, Nigeria, Spain, India, Canada and Australia. The complete program, speaker biographies, abstracts and papers are currently available on the conference web site: <http://law.gsu.edu/FutureOfLegalEducationConference/> This web site also includes copies of PowerPoint presentations made at the conference and a webcast of all the plenary sessions (held on February 21 and 22). Of particular interest to members of this Section might be the following presentations:

Focus on Law Schools: A New Approach to Preventing Unprofessional Behavior by

John T. Berry, Legal Division Director,
The Florida Bar, and former chair, ABA
Standing Committee on Professionalism
Reflections on the Anniversary of the
Carnegie Report by William Sullivan,
Senior Scholar, Carnegie Foundation for
the Advancement of Teaching and lead
author of *Educating Lawyers*
The New ABA Initiative to Measure Law
School Outcomes by Hulett H. Askew,
Consultant on Legal Education,
American Bar Association
Panel on the Role of the Bench and Bar in
Transforming Legal Education: Jim O.
Stuckey II, Chair, American Bar
Association Standing Committee on
Professionalism; Melvin F. Wright, Jr.,
Chair, Consortium of Professionalism
Initiatives, and Hulett H. Askew,
Consultant on Legal Education,
American Bar Association

INNOVATIVE METHODS FOR TEACHING LEGAL ETHICS

Clark Cunningham at Georgia State recently made a presentation on innovative methods for teaching legal ethics to a delegation of Mexican law professors at the annual meeting of the Southeastern Association of Law Schools. He is also currently working on a related article, *A Practice-Based Approach to Teaching Legal Ethics*, to appear in a special international issue of the Law Teacher on *The Role of Values in Common Law Legal Education*. (The Law Teacher is the UK equivalent of the Journal of Legal Education.) He would be glad to send the powerpoint slides from his conference presentation and the discussion draft of the article for comments and suggestions. Contact him at cdcunningham@gsu.edu.

BOOKS OF INTEREST

Richard Abel, Connell Professor of Law Emeritus at UCLA Law School, has a new book coming out this fall: *Lawyers in the Dock: Learning from New York Disciplinary Proceedings* (Oxford University Press 2008). In it, he tells in depth the stories of six New York lawyers disciplined for neglecting clients, overcharging, or excessive zeal (three of the most common, or most disturbing, ethical violations). The case files, including lengthy statements in mitigation, allow Professor Abel to detail what the lawyers did and how they understood and justified their actions. He relates their stories to the basic problem of trust and betrayal and proposes reforms that might make such deviance less common.

Associate Dean **Kelly Lynn Anders** of Washburn University School of Law has a new book due out, *The Organized Lawyer* (Carolina Academic Press). The book should be of great interest to members of the Professional Responsibility Section because on a regular basis, attorneys are sanctioned for many misdeeds that can be traced back to disorganization. Often, the sanctions are for actions that are inexcusable, but not malicious. Rather they are examples of how bad things can get when one is disorganized.

The Organized Lawyer is designed to help all types of lawyers—corporate, nonprofit, government, private, academic, and solo practitioners—develop and maintain a more organized space, and it does so while recognizing that we all have a particular organization style that impacts how we view our things, live with them, and keep them

organized — or disorganized and that what works for some does not work for others. Additional details are available at www.theorganizedlawyer.com.

West announces the forthcoming publication of the second edition of *Lawyers, Clients, and Moral Responsibility* by Professors **Thomas L. Shaffer** (Notre Dame Law School) and **Robert F. Cochran, Jr.** (Pepperdine Law School). This second edition of the authors' influential book explores the place of moral and social values in the law office. Following its critique of the now familiar lawyering models: godfather, hired gun, and guru, the authors present their model, the lawyer as friend (based on Aristotle's notion of friendship), a lawyer who raises and discusses moral issues with the client without imposing the lawyer's values on the client. The book presents a practical way for lawyers to raise and discuss moral issues with clients. It will serve as an engaging supplement to professional responsibility, client-counseling, and legal clinic courses. This second edition adds substantial discussion of three topics in particular:

- 1) the place of moral discourse within law firms and corporations,
- 2) ways to engage the powerless client in moral discourse without overpowering the client, and
- 3) the place of social justice in client counseling and the practice of law.

Walter Effross, Professor of Law at American University's Washington College of Law, will be posting his new work *Professional ethics of Lawyers in the Digital World* online.

Professor **Michael B. Lang** of Chapman University School of Law is writing a

casebook on Tax Practice Ethics with **Linda Galler** of Hofstra School of Law.

Professor **Lisa G. Lerman**, The Catholic University of America, Columbus School of Law, and Professor **Philip G. Schrag**, Georgetown University Law Center, have completed the second edition of *Ethical Problems in the Practice of Law*. Thoroughly updated, the second edition now features a more flexible organization and coverage of important recent developments in the law, rules, and code.

Paul Rice, Professor of Law at American University's Washington College of Law and attorney/client privilege expert, has written a collection of poems about his childhood experiences on his grandmother's farm. The book is called *Walking among the Shadows: Searching for the Red Sunfish*.

Foundation Press has published the 10th ed. of its very popular text *Professional Responsibility* (10th ed. 2008) by **Thomas Morgan**, Oppenheim Professor of Antitrust and Trade Regulation Law at the George Washington University School of Law, and Professor **Ronald Rotunda** of Chapman University School of Law.

The second edition of *Traversing the Ethical Minefield: Problems, Law, and Professional Responsibility* by **Susan R. Martyn**, University of Toledo and **Lawrence J. Fox**, *Drinker Biddle & Reath* is now available. For the second edition, a new chapter on Control and Communication has been added as well as a new chapter on Judicial Ethics and an additional series of notes on ethical challenges unique to specialized areas of practice, including pro bono representation, criminal defense, insurance defense,

representing organizations, and representing governments.

Professor **Kydra Rotunda**, Chapman University School of Law, has now published *Honor Bound: Inside the Guantanamo Trials* (Carolina Academic Press 2008). As noted by Morris Davis, former Chief Prosecutor for the Military Commissions at Guantanamo Bay, then Major Rotunda was the only one who saw events at Guantanamo Bay unfold from three distinct vantage points, legal advisor in Guantanamo Bay, a member of the Criminal investigations Task Force, and war crimes prosecutor.

An esteemed and diverse group of critics have been enthusiastic in their reviews of the book. Former U.S. Attorney General Edwin Meese called *Honor Bound* "an engrossing, first-hand account of military justice in an age of terrorism and what it takes to defend liberty as a JAG officer today." **Alan M. Dershowitz**, Harvard Law School Professor, said of the book, "This eye-opening inside account must be read by everyone who cares about balancing national security and human dignity," and Theodore B. Olson, former Solicitor General of the United States called *Honor Bound* a "page-turning eye-opener for me. No American should miss the opportunity--and responsibility--to read it. Bravo!"

Thomas M. Cooley Law School has recently completed the book *Reflections of a Lawyer's Soul: The Institutional Experience of Professionalism at Thomas M. Cooley Law School*, and evaluation and description of Cooley's professionalism efforts. The work was edited by Professors **Amy Timmer** and **Nelson Miller**.

Marc I. Steinberg, Radford Professor of Law

at Southern Methodist University school of Law, has had a new book published--*Lawyering and Ethics for the Business Attorney* (West 2d edition 2007) and has also recently updated his work *Attorney Liability After Sarbanes-Oxley* (Law Journal Press 2007, 2008).

For those interested in legal ethics and legal heroes, Stuart Streichler's new book might be worth checking out. *Justice Curtis in the Civil War Era* is a biography of Benjamin R. Curtis, one of the nation's most brilliant Supreme Court justices and one of the two dissenters in the Dred Scott case. In fact, Justice Curtis not only dissented in the Dred Scott opinion, but he is said to have resigned from the Supreme Court over the majority's opinion. After leaving the Court, Curtis also publicly challenged Lincoln's conception of executive power and his presidential military tribunal system during the Civil War. During Reconstruction, Justice Curtis served as President Andrew Johnson's attorney in the President's impeachment trial. Professor **Tony A. Freyer**, University of Alabama School of Law, called Streichler's biography of Curtis "a model study of the American legal mind at work," and **Mark Graber**, professor at the University of Maryland School of Law noted, "Curtis was an extremely important political and legal figure during the nineteenth century; yet, he remarkably lacks a serious biography.... Professor Streichler does a first-rate job. No need exists for a further biography."

Michael Tigar, Research Professor of Law at American University's Washington College of Law, has authored *Thinking About Terrorism: The Threat to Civil Liberties in Times of National Terrorism*. In this book, Professor Tigar examines government responses to terrorist threats throughout

history and the impact these responses have had on civil rights. Professor Tigar has also edited *Trial Stories* with his colleague at American Professor **Angela J. Davis**.

Professors **Bernard Wolfman**, Harvard Law School, **Deborah H. Schenk**, New York University Law School, and **Diane Ring**, Boston College Law School, have completed the fourth edition of their text *Ethical Problems in Federal Tax Practice*. This long-time standard organizes the materials according to the various functions a lawyer serves, including litigator, advisor, and counselor, and has been updated to reflect the issues tax lawyers face today. The new edition features a significant update of the changes made to Circular 230, which applies to all tax lawyers and a complete revision of Chapter 4, "Tax Planning and Advice," to reflect the increased role that lawyers play, particularly with respect to tax shelters.

NEWS FROM SCHOOLS

University of Alabama School of Law alumnus **Harper Lee** received the Presidential Medal of Freedom last November from President Bush, who said of Ms. Lee and her classic book, "*One reason To Kill a Mockingbird* succeeded is the wise and kind heart of the author, which comes through on every page." Ms. Lee attended the law school from 1946-49.

Arthur N. Read, General Counsel of Friends of Farmworkers, Inc., a legal services provider in Philadelphia, received the 2007 Morris Dees Justice Award. The **University of Alabama School of Law** partners with Skadden, Arps, Slate, Meagher & Flom, LLP to present this annual award named in

honor of Mr. Dees, the famed civil rights lawyer and University of Alabama School of Law graduate. Nominations for the award are typically accepted through the end of July for the year the award is to be given.

Harvard Law School has just started a new program that will give students their final year of tuition for free if they commit to work in public service for five years after graduation. The program is called the Public Service Initiative and will operate in addition to the law school's current loan repayment program. In addition five HLS students and one alumnus received Skadden Fellowships, a public interest grant funded by Skadden, Arps, Slate, Meagher & Flom. More than sixteen students and alumni won awards this year to encourage public service work.

The **University of Maryland School of Law** is partnering with the Fetzer Institute of Kalamazoo, Michigan, to develop LEAD, a new initiative that emphasizes leadership, ethics, and democracy in legal education. The Fetzer Institute is supporting the Initiative with a \$1.6 million investment. **Michael Millemann**, Jacob A. France Professor of Public Interest Law, will serve as LEAD's director, and Marbury Research Professor of Law **Paula Monopoli** will head the leadership component of the Initiative.

Pennsylvania's law schools this summer held their second annual conference-meeting between their deans of students and Pennsylvania Lawyers Concerned for Lawyers and the directors of character and fitness for the Pennsylvania Board of Law Examiners. Once more it was a productive and fruitful event!

The **University of Virginia School of Law's** Pro Bono Project resulted in students volunteering more than 13,600 hours to indigent clients and nonprofit organizations last year. The project encourages students to perform at least 75 hours of free legal work during their time in law school. A record three UVA law students received Skadden Public Service Fellowships for 2008.

Washington University in Saint Louis School of Law alumnus Errin Braddock donated a kidney to his law school classmate Tony Jackson, a father of two who was suffering from lupus and kidney failure. Both are doing well, and not only is Mr. Jackson's new kidney functioning well, but he is testing free of lupus. Mr. Braddock noted, "My kidney was my gift to Tony. Seeing how it changed the quality of life for him and his family was his gift back to me, and I am forever thankful."

SECTION MEMBER NEWS

Professor Carol Rice Andrews, University of Alabama School of Law, was a panelist on the Alabama Chief Justice's Professional Consortium, an invitation event for leaders of the Alabama Bar and Judiciary and organized by the Chief Justice's Commission on Professionalism and the Alabama State Bar. She also served as Co-Chair of the University of Alabama United Way campaign, which set a record for University giving.

Debra Bassett, Professor of Law and Judge Frank M. Johnson Jr. Scholar at the University of Alabama Law School, has recently spoken at the University of Florida and Valparaiso Law Schools and at the Annual Judicial Symposium sponsored by

the National Foundation for Judicial Excellence.

Anita Bernstein has been appointed the Anita and Stuart Subotnick professor of Law at Brooklyn Law School.

Pamela Bucy, Fran M. Bainbridge Professor of Law at the University of Alabama Law School, serves as an at-large Bar Commissioner and chair of the Mentoring Task Force for the Alabama State Bar.

Alan Childress of Tulane Law School has been named the Conrad Meyer III Professor of Civil Procedure.

Susan Carle, Professor of Law and Associate dean for Scholarship at American University's Washington College of Law, received the National Equal Justice Library Award for Distinguished Scholarship on the subject of equal access to justice. Dean Carle was also reappointed a member of the D.C. Bar Rules of Professional Responsibility Review Committee.

American University's Washington College of Law Professor **Mary Clark** spoke on *Women Judges Speaking Out* at the University of Akron Law School's New Women's Legal History Symposium.

George Cohen of the University of Virginia Law School was the inaugural Edgar M. Snyder Distinguished Visiting Scholar at the University of Pittsburgh Law School last April. The Snyder Scholar program each year brings a distinguished scholar in the field of legal ethics to Pitt for two days.

An increasingly important ethical issue is when a law firm that has served as a corporation's general counsel can also

provide legal representation for an internal investigation of potential wrongdoing without violating conflict of interest rules. One federal court has recently addressed this issue in a lawsuit by the trustee of a creditor's trust against such a law firm for malpractice. The court denied the law firm's motion to dismiss, relying in part on expert affidavits provided by **Clark D. Cunningham**, W. Lee Burge Professor of Law & Ethics at Georgia State, and Merritt B. Fox, Michael E. Patterson Professor of Law at Columbia. For more information, see *In re Friedman's Inc.*, 385 B.R. 381, 2008 WestLaw 131163 (S.D.Ga. 2008).

Professor **Maureen Eggert** of Wake Forest Law School recently conducted two CLE programs, a CLE webinar for West LegalEd Center entitled *Avoiding Ethical Dilemmas and Malpractice in North Carolina* and a program for the North Carolina Bar Association entitled *Internet Research Tools Without the Expense*.

Barbara Glesner Fines, Ruby M. Hulen Professor of Law at the University of Missouri – Kansas City School of Law has assumed the duties of Associate Dean for Faculty.

Harvard Law School Professor **Mary Ann Glendon** has become the U.S. Ambassador to the Holy See (Vatican). Professor Glendon also recently received the National Medal for the Humanities.

Tom Bevill Chairholder of Law at the University of Alabama Law School **Steven Hobbs** spoke at the Association of Family and Conciliation Courts' conference on "Ethics in Family Law" and also presented "When the Hero Gets the Blues" at the Alabama Bar Leadership program. Professor

Hobbs was also the featured speaker at Widener—Harrisburg's annual Martin Luther King Day Celebration, and his talk for Widener, *Martin and Me: Lessons for the Social Activist*, was an especially popular program for the Pennsylvania Cable Network and was aired repeatedly. Professor Hobbs is also serving on the Committee to Review Scholarly Papers for the 2009 AALS Annual Meeting and continues to be active as a nationally-recognized quilter and speaker on quiltmaking.

This year **Randy Lee** of Widener Law School's Harrisburg Campus has done nine live ethics CLE programs for the Pennsylvania Bar Institute on *A Man for All Seasons* and *a Lawyer's Search for Integrity*. The program, which intertwines Robert Bolt's play about Saint Thomas More with the experiences of present day lawyers, has also been shown as a video CLE program in over twenty Pennsylvania counties and is available for CLE credit on the websites of four state bar associations. In an unrelated twist of fate, Professor Lee received the Fidelis Award this summer from the Saint Thomas More Society of Central Pennsylvania.

William Wesley Patton, Professor, Associate Dean of Clinical Programs, and J. Allan Cook and Mary Schalling Cook Children's Law Scholar at the Whittier Law School, has been working on a very important and interesting professional responsibility case that has been published in California, *In re Kristen B.*, 163 Cal. App. 4th 1535 (4th Dist. Div. 1, June 18, 2008). A Petition for Review has been filed in the California Supreme Court, and Professor Patton just filed a Petition in Support of Review and a Request for Depublication in the California Supreme Court for the Whittier Law School Legal Policy Clinic.

In *Kristen B.* the court of appeal found that it was not error for a child's attorney in a child abuse dependency case to impeach his child client on the witness stand and to argue in closing argument against his child client's stated legal goal. The opinion was based, in large part on a California statute, Welfare & Institutions Code Section 317 (e) that defines a child's counsel as both a zealous advocate and a federal CAPTA guardian ad litem. Professor Patton's brief raises a separation of powers question because the California Supreme Court for more than 100 years has stated that it has plenary and inherent power to regulate the attorney/client relationship, and the Court in case law and in its approval of the California Rules of Profession Conduct has not mandated a different form of lawyering for child clients. Therefore, there is a serious separation of powers problem since the Legislature in section 317(e) has redefined the attorney/client relationship in a manner that often will result in a violation of client loyalty and confidentiality since the statute permits the child's attorney to make recommendations to the court that are both against the child's stated preference and may rely sub silentio on the child's confidential statements to the attorney.

Professor Patton also argues that these fragile abused children will be re-abused by the jurogenic effects of the legal system since they will, once again, have their expectation of loyalty violated and it will exacerbate their psychopathology and make treatment more difficult. (Professor Patton teaches a course in forensic child and adolescent psychiatry at the UCLA Medical School Neuropsychiatric Institute)

Ronald and Kyndra Rotunda are pleased to report that they are now law professors at Chapman University Law School.

Section Chair **Irma Russell**, NELPI Professor of Law, University of Tulsa College of Law and National Energy-Environment Law & Policy Institute, has been busy with presentations over the last few months. Professor Russell was recently a panelist at the Southeast Association of American Law Schools Annual Meeting; a co-presenter at the Silver Anniversary Presentation of ALL-ABA's Annual Advanced Course of Study, Hazardous Substances, Site Remediation, and Enforcement in Washington, D.C.; a panelist on the CLE Panel on Ethics Issues in Environmental Law at the Pace National Environmental Moot Court Competition; and a presenter at the Fourth International Conference on Contracts at the University of the Pacific, McGeorge School of Law. Professor Russell also just presented on The Lawyer's Role in Representing Corporate Clients at the ABA Section on Environment, Energy & Resources Fall Meeting. Professor Russell will be visiting at the University of Kansas School of Law this spring.

Professor **Jack Sahl** of the University of Akron School of Law is back home having just completed (for the 18th year) his six-week teaching assignment at Yale for international lawyers. Professor Sahl's return this year is especially nice because, as of July 14th, he and his wife Joann adopted two siblings from India: Anish (a 6-year-old boy) and Mandakini (a 10-year-old girl). His experience at Yale teaching lawyers with different levels of English is proving helpful since the two are just beginning with their English but most ingenious. Anish and Mandakini are a real joy – and very active!

Professor Sahl has also been appointed Faculty Director of the Miller-Becker Institute for Professional Responsibility. The Miller-Becker Institute's First Distinguished Lecturer is Professor **Geoffrey C. Hazard, Jr.** of the University of Pennsylvania Law School. His lecture, "*Not the City of God: Confronting Multiple Obligations*" will be held at the Akron Law School of Law on November 21, 2008.

Professor **Linda F. Smith** of the University of Utah's S.J. Quinney College of Law is serving as a member of the Utah Judicial Standing Committee on Resources for Self-Represented Parties and recently organized and participated in a CLE entitled *The Access to Justice Crisis: The Challenge of Unrepresented Litigants.*"

Newsday reports that **Roy Simon**, the Howard Lichtenstein Distinguished Professor of Legal Ethics at Hofstra Law School and Professional Responsibility Newsletter Recent Developments columnist, is running for the New York State Senate. Professor Simon is challenging the Senate Majority Leader, a twelve-term incumbent. **Nelson Tebbe** has joined the faculty at Brooklyn Law School as an associate professor of law.

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