

2019 AALS EDUCATION LAW SECTION NEWSLETTER

January 2019

Letter from Outgoing Education Law Section Chair, Eloise Pasachoff

Dear colleagues:

It was a pleasure to see so many of you at AALS, where we had an extremely interesting set of programs. Thursday featured our main section program, **Markets, Money, and Public Education**, with fascinating comments from Professor Susan DeJarnatt from Temple (whose paper was selected from our call for papers), Professor Nicole Garnett from Notre Dame, Professor Bill Koski from Stanford, and Professor Erika Wilson from the University of North Carolina, expertly moderated by Professor Twinette Johnson from the University of the District of Columbia. On Friday, we started the morning off early with our **business meeting**, where we brainstormed a plethora of potential topics for next year's session (and it's not too late to share ideas if you want to!) and elected a new slate of officers: Professor Aaron Tang from UC Davis as the new chair, Professor Maryam Ahranjani from the University of New Mexico

as the chair-elect, Dr. Rochelle Newton from Duke as the secretary, and Professor Erin Archerd from the University of Detroit-Mercy. Later in the day, we co-sponsored a program with the section on Nonprofit and Philanthropy Law, called **Nonprofits, Philanthropy, and Education**. And we rounded out our programming on Sunday with a discussion group formed by section members Professor Jason Nance of the University of Florida and Professor Erik Girvan of the University of Oregon, and featuring many of our members, called **The Role of Law in Educational (In)equity**. We were thrilled to have so much education law programming at the conference. Thanks to all for the hard work in making this happen.

I am pleased to turn over the section to this year's leadership team, who I know will plan a great program for the 2020 Annual Meeting, to be held in Washington, D.C. I hope to see you there!

Best wishes,
Eloise Pasachoff
Chair, Education Law section, 2018



Professor Twinette Johnson speaks during "Markets, Money, and Public Education," the Education Law Section's main program.

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Remarks from Incoming Education Law Section Chair, Aaron Tang

Dear Colleagues,

It is an honor to follow in the footsteps of our outgoing Chair, Eloise Pasachoff. Eloise has displayed incredible leadership over the past two years, organizing a wonderful program in New Orleans this past year in addition to playing a considerable role in putting together the prior year's program in San Diego. Her steady hand and tireless work ethic will be missed, though she has generously agreed to serve on the Executive Committee to help keep the section vibrant as ever.

I look forward to working with incoming officers Maryam Ahranjani (Chair-elect), Rochelle Newton (Secretary), and Erin Archerd (Treasurer) as well as our talented Executive Committee to plan our programs for the 2020 AALS Conference in Washington, D.C. A number of terrific ideas were presented during the business meeting in New Orleans, but ***please do feel free to send additional thoughts on a topic for our main section program (or any Hot Topics or discussion groups)*** so that we can consider them!

Here's wishing everyone a happy, healthy, and rewarding 2019,

Aaron Tang
Chair-Elect, Education Law section, 2019

Professional Updates from Section Members

Maryam Ahranjani, Assistant Professor at the University of New Mexico School of Law, was awarded an endowed Lee & Leon Karelitz Professorship for the 2018-2019 academic year. She published *Universities as Sanctuaries* in the Journal of College and University Law in late November and authored a solicited chapter on censorship of student online speech to appear in a forthcoming international text entitled *Constitutional Knowledge and Its Impact on Citizenship Exercise in a Networked Society*. Maryam also has been invited to serve as the Reporter for the ABA's Task Force on Women in Criminal Justice, which is investigating the trend of women leaving the practice of criminal law and proposing ways to address this problem.

Erik J. Girvan received tenure and was promoted to Associate Professor at the University of Oregon School of Law. He is in his second year as co-PI on two three-year intervention development grants funded by the U.S. Department of Education. They are focused on addressing racial disparities in school discipline using either restorative practices or culturally responsive practices and techniques to reduce the impacts of implicit bias. His chapter, *The Law and Social Psychology of Racial Disparities in School Discipline*, describing a framework relating legal doctrine prohibiting race discrimination to social science research on the causes of racial disproportionality, is in press in the fourth volume of *Advances in Psychology and Law*. His article, *Tail, Tusk, and Trunk: What Different Metrics Reveal About the Problem of Racial Disproportionality in School Discipline*, was accepted for publication in *Educational Psychologist*. In it Erik and two colleagues describe the attributes of common measures used by states, social scientists, and courts to assess racial discipline disparities, illustrate how the measures can result in mis- and under-identification of schools with significant disproportionality and impact the evaluations of the effectiveness of interventions for disproportionality, and propose new and, for many purposes, potentially better measures to help address these issues.

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Julie McConnell, Clinical Professor of Law, University of Richmond School of Law, was recognized in December as the 2018 Woman of Achievement by the Metropolitan Richmond Women's Bar Association. She also co-edited the 2018 editions of *Juvenile Justice Update* (with Adrienne Volenik). Professor McConnell participated in a "Panel Discussion on Mental Health in Virginia's Juvenile Justice System," for the Regent University Law Review's 31st Annual Symposium, in Virginia Beach, VA on November 2, 2018. She will be presenting "Juvenile Law Explained: It Really is Easier than Understanding Your Teenager," at the Virginia State Bar's Annual Criminal Law Conference in February of 2018. She also published *Capital Sentencing for Children in Virginia in the Wake of Miller v. Alabama and Montgomery v. Louisiana*, 21 Rich. Pub. Int. L. Rev. 47 (2017); published *30 Tips for Excellence in Juvenile Representation*, Virginia Association of Criminal Defense Lawyers (VACDL) Virginia Champion (Jan. 2018); and co-edited the book, *Juvenile Law and Practice in Virginia*, (Angela Ciolfi & Julie McConnell, eds., March 2018).

Eloise Pasachoff, Professor of Law at the Georgetown University Law Center, published short pieces in a variety of formats in 2018, including a post for the Regulatory Review blog called *The Curious Bipartisan Push for Evidence-Based Policymaking*, based on her 2017 essay in the Columbia Law Review called *Two Cheers for Evidence: Law, Research, and Values in Educational Policymaking and Beyond*. The Regulatory Review featured this post in its year-end series as one of the top posts of the year. She also reviewed Justin Driver's new book, *The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind*, for the Washington Post. She has book chapters forthcoming on how federal grants affect state and local educational agencies (co-authored with Nora Gordon) and on why a federal constitutional right to education would not have the effect its proponents wish for it. She is at work on new projects about federal grant administration and on presidential budget powers in the Trump administration.

John Rumel, University of Idaho, was promoted to full Professor this past Fall. He contributed a book chapter entitled *Federal Antidiscrimination Law* to the Administrators' Guide to Employment Law and Personnel Management in Schools (Mark Paige and Adam Ross Nelson, Eds.) Education Law Association, Cleveland, OH (2018). He did the following paper and other presentations: "We Aren't Getting Anything Younger – Age Discrimination: School District Obligations and Teachers Rights, Concurrent Session Paper Presentation, 2018 Education Law Association Annual Conference; *Hot Topics & New Cases in 2017-2018*, Panelist, Martha McCarthy Education Law and Policy Institute, June 2018, Indiana University, Bloomington, IN.

Charlie Russo, Research Professor of Law, University of Dayton, published the following articles in peer-reviewed journals: **Russo, C.J.**, Osborne, A.G., (2018). "Janus v. American Federation of State, County, and Municipal Employees, Council 31 and the Demise of Fair Share Fees: A Victory for Free Speech." *Education Law Reporter*, Vol. 356, No. 3, 877-899; Osborne, A.G. & **Russo, C.J.** (2018). The IDEA, IEPs, and Cultural-Religious Traditions: Finding the Delicate Balance Under the Establishment Clause. *Education Law Reporter*, Vol. 355, No. 2, 617-632; **Russo, C.J.** & Thro, W.E. (2018). "Cracks in the Wall: Trinity Lutheran and the Potential Transformation of Religious Freedom in the United States." *Education & Law Journal*. Vol. 27, 173-198; and Thro, W.E. & **Russo, C.J.** (2018). "Expanding the Rights of Student Religious Groups on College and University Campuses: The Implications of *Trinity Lutheran Church v. Comer*." *Laws*, Vol. 7, 11. He also edited or wrote the following books: **Russo, C.J.** & B. Shaver. (Eds.) (2018). *The Yearbook of Education Law 2018*. Cleveland, OH: ELA; **Russo, C.J.** (Ed.) (2018). *Handbook of Comparative Education Law, Volume 3: Selected European Nations*. Lanham, MD: Rowman & Littlefield Education; **Russo, C.J.** & Permuth, S. (2018). *Legal Issues in Faith-Based and Other Non-public Schools*, 7th ed. Cleveland, OH: ELA; **Russo, C.J.** (2018). *The Law of Public Education*, 10th Edition. St. Paul, MN: Foundation Press; **Russo, C.J.** (Ed.) (2018). *Handbook of Comparative Education Law, Volume 2: Selected Asian Nations*. Lanham, MD: Rowman & Littlefield Education; **Russo, C.J.** (Ed.) (2018). *Handbook of Comparative Education Law, Volume 1: British Commonwealth Nations*. Lanham, MD, Rowman & Littlefield Education.

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Aaron Tang, Acting Professor of Law at the University of California-Davis, had two education law-related pieces accepted for publication. One piece, *School Vouchers, Special Education, and the Supreme Court*, is forthcoming in the Pennsylvania Law Review; the other, *Life After Janus*, is forthcoming in the Columbia Law Review. He also co-authored a short piece in the Harvard Law Review Forum entitled *Can Unions Be Sued for Following the Law?*, which examines the spate of recent lawsuits seeking the refund of millions of dollars in union agency fees in the aftermath of the Supreme Court's ruling in *Janus v. AFSCME, Council 31*. His current projects include a co-authored paper analyzing an original data set of more than 300 state-level school finance decisions to identify variables that correlate with plaintiffs' victories.

Upcoming Events

"Pauley at 40: Education Law Symposium," Friday, February 21, 2019, West Virginia University College of Law. The Symposium will feature a morning K-12 session, a luncheon presentation, and an afternoon higher education session. The morning session pays tribute to *Pauley* with a panel discussing current trends in state education rights cases, a second panel sharing insights and lessons from the 2018 teacher walkouts and activism inspired by the WV #55United teacher strike, and concludes with a featured speaker, former Governor Bob Wise. Professor Derek Black will deliver the Symposium's keynote luncheon presentation. The afternoon session will examine changes in legal education, including how new transformations in learning can help create practice-ready graduates and a discussion of mental health issues and programs to better support law students. The afternoon session will conclude with featured speaker, LSAC President and CEO Kellye Testy.

American Educational Research Association (AERA) Annual Conference, April 5-9, 2019. Website at: <http://www.aera19.net/>

The Canadian Association for the Practical Study of Law in Education (CAPSLE), May 5-7, 2019. Website at: <https://capsle.ca/conference/>

The South African Education Law Association (SAELA), date not yet announced on website (<http://www.edulawsa.co.za/saela/>)

The Australia New Zealand Education Law Association (ANZELA), Oct. 2-4, 2019. Website at: <http://www.anzela.edu.au/2019-conference/>

Calls for Papers

Education Law Association Call for Papers

Founded in 1954, the Education Law Association (ELA) is an organization focused on knowledge, scholarship, and interdisciplinary dialogue about legal and policy issues affecting education. We accomplish this through publications, periodicals, seminars, webinars and an annual conference. Education law encompasses a broad array of legal topics including Constitutional Law, employment law, torts, technology, policy, and more.

For the law professor, ELA is a solid resource for texts that offer practical application of the law and legal theory which will help you be a more effective professor, and these texts also make excellent course supplements. ***The Call for Proposals for the next annual conference, which is open until March 1, 2019, to be held in Norfolk, Virginia, November 13-16 is now open and the non-exclusive copyright to your paper allows you to receive the valuable feedback you need to perfect your research and writing for the broader publishing market.*** The link to the call for proposals as well as the program from the most recent conference can be found here:

<https://educationlaw.org/events/national-conference/conference-home>

Journal of College and University Law seeking student authored articles

The Journal of College and University Law is the only law review entirely devoted to higher education legal issues in the United States. It is the official publication of the National Association of College and University Attorneys and is somewhat unique in its hybrid approach to publishing scholarly publications focused for practical application primarily for an audience of college and university counsel, attorneys representing those institutions, and education law specialists in the

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academic community. It has more than 4,500 subscribers.

The Journal is co-published by Rutgers Law School and NACUA, and it is now published only as an on-line publication. Law school faculty who teach courses in Education Law are encouraged to invite and/or submit well written student seminar papers to the Journal. There is no longer a student board of editors from which to draw student authored work.

Please consider papers from the last year or those being written for the current semester courses for submission. These should be papers not published elsewhere. Faculty members are encouraged to work with the students to make editorial changes before submission. For information about submission please go to <https://jcul.law.rutgers.edu/instructions-for-author/>.

Consideration for publication is on an ongoing basis, and topics of current attention and interest will be given the highest priority. Laura Rothstein, a member of the Education Law Section, is available to answer questions at laura.rothstein@louisville.edu. Submissions should be sent to the co-editor Professor Rayman Solomon by email: JCUL@law.rutgers.edu.

Of course, the Journal is also very interested in submissions by faculty. If you are interested in publishing in the Journal please either contact one of the co-editors or submit an article to JCUL@law.rutgers.edu.