

A new communication of the William S. Boyd School of Law at the University of Nevada, Las Vegas, *BOYD Briefs* provides information regarding the scholarly and other activities of full-time faculty members.

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PROFESSOR RACHEL ANDERSON. Professor Anderson was honored by the State Bar of Nevada with the Medal of Justice for her work in creating the February 2012 issue of the *Nevada Lawyer*. Her article, "Timeline of African-American Legal History in Nevada (1861-2011)," was published in that issue.

THE APPELLATE CLINIC. The Appellate Clinic, directed by Professor Anne Traum with assistance from Visiting Professor Angela Morrison, recently argued and won two cases in the United States Court of Appeals for the Ninth Circuit. Recent Boyd graduate Cristen Thayer argued an employment discrimination appeal before a three-judge panel in San Francisco on behalf of a woman who claimed she was fired after she complained about sexual harassment on the job by co-workers. The Court held she was entitled to a jury trial on her claim and remanded. Recent Boyd graduate Ashley Nikkel argued a criminal case before a three-judge panel in San Francisco. The Court held that the lower court erred at sentencing and remanded for resentencing.

PROFESSOR PETER BAYER. Professor Bayer submitted for publication his latest law review article, "The Due Process Legality of the Individual Mandate: A Kantian Analysis, and Why It Matters."

PROFESSOR LINDA BERGER. Professor Berger's new article, "The Law's Mystery" (with Jack L. Sammons), will be published in the *British Journal of American Legal Studies* in spring 2013. A second article, "Metaphor in Law as Poetic and Propositional Language," is forthcoming in *The European Legacy: Towards New Paradigms, Journal of the International Society for the Study of European Ideas*. Professor Berger was recently elected President Elect of the Legal Writing Institute.

PROFESSOR MARY BERKHEISER. Professor Berkheiser's article, "Unchain the Children," was published in the June 2012 issue of the *Nevada Lawyer*. Professor Berkheiser's efforts to end the shackling of juvenile defendants in the Clark County Juvenile Court also were featured in Amy Kingsley's article, "Why the Practice of Shackling Juvenile Defendants Is Coming to an End," published in the August 8, 2012, issue of *Las Vegas City Life*.

PROFESSOR CHRIS BLAKESLEY. Professor Blakesley's recent article, "Law, Language, Crime, and Culture: The Value and Risks of Comparative Law," will be published in volume 40 of the *Criminal Law Bulletin* in 2013. Professor Blakesley also was appointed to serve as a Commissioner on the National Conference of Commissioners on Uniform State Laws. The Uniform Law Commission is becoming more involved in international law matters in part because the federal government has been working through the Commission with respect to the creation of legislation addressing non-self-executing treaties in various areas.

PROFESSOR ANN CAMMETT. Professor Cammett's latest law review article, "Shadow Citizens: Felony Disenfranchisement and the Criminalization of Debt," is forthcoming in volume 117 of the *Penn State Law Review*. Professor Cammett's article, "Deadbeats, Deadbroke, and Prisoners," originally published in volume 18 of the *Georgetown Journal on Poverty Law and Policy*, was reprinted in the third edition of *Contemporary Family Law*, authored by Douglas E. Abrams, Naomi R. Cahn, Catherine J. Ross, and David D. Meyer.

PROFESSOR LINDA EDWARDS. Professor Edwards's latest book, *Readings in Persuasion: Briefs That Changed the World*, was published by Aspen Law and Business in August 2012. A fourth edition of Professor Edwards's textbook, *Estates in Land and Future Interests: A Step-By-Step Guide*, will be published by Aspen Law and Business in January 2013.

THE FAMILY JUSTICE CLINIC. Professors Cammett and MacDowell, Co-Directors of the Family Justice Clinic, joined an amicus brief submitted to the Ninth Circuit Court of Appeals in *Stormans v. Selecky*, a case deciding the constitutionality of a Washington state rule requiring pharmacies to dispense medication to a patient on site and without delay. The rule was challenged on First Amendment grounds by pharmacists claiming that dispensing Plan B, the emergency contraceptive, offended their religious beliefs against abortion. The state of Washington, which is defending the rule, and interveners in the lawsuit, represented by Legal Voice and Planned Parenthood, are appealing a decision by the trial court that the rule violates these pharmacists' right to the free exercise of religion. The amicus brief seeks to educate the Court of Appeals about the prevalence of rape and domestic violence, the existence of reproductive coercion, and the significance of access to emergency contraception for women who have been raped or experienced reproductive coercion. The subject of the litigation is vital to communities served by the Family Justice Clinic, which includes incarcerated women, low-income families of prisoners, and those affected by the child welfare system and other forms of state intervention, many of whom are survivors of domestic and sexual violence.

PROFESSOR RUBEN GARCIA. Professor Garcia's foreword, "The Workplace Law Agenda of the Obama Administration," was published in volume 16 of the *Employee Rights and Employment Policy Journal* in 2012. He served as a guest editor of the same volume. Professor Garcia's article, "Ten Years After *Hoffman Plastic Compounds, Inc. v. NLRB*: The Power of a Labor Law Symbol," was published in volume 21 of the *Cornell Journal of Law and Public*

Policy in 2012. Professor Garcia held a book signing for his new book, *Marginal Workers: How Legal Fault Lines Divide Workers and Leave Them without Protection* (NYU Press 2012), at the Barnes & Noble in Henderson, Nevada, on June 2, 2012. He also discussed *Marginal Workers* as a guest on “Cultura Comunitaria” on *KRLV 1340 AM* on August 10, 2012, and *Marginal Workers* was reviewed favorably on the legal scholarship web site Jotwell on August 16, 2012. Professor Garcia was quoted in Colleen McCarty, “NLV, Union Meeting Canceled When I-Team Shows Up,” on *KLAS-TV 8 News* on May 30, 2012, and in Kelly Nolan, “Emergency Invoked to Cut Labor Cost,” on page A2 of *The Wall Street Journal* on June 29, 2012. He wrote a Letter to the Editor, “Weak Labor Laws Hindering Union Efforts,” which was published at page B7 of the *Las Vegas Review-Journal* on July 11, 2012. He also was named to the Program Committee of the Law and Society Association and was nominated for election to the Board of Trustees of the Law and Society Association.

PROFESSOR SARA GORDON. Professor Gordon submitted for publication her new law review article, “Through the Eyes of Jurors: The Use of Cognitive Psychology in the Application of ‘Plain Language’ Jury Instructions.”

PROFESSOR LESLIE GRIFFIN. Professor Griffin authored a letter addressing health insurance coverage of contraception under the Affordable Care Act. The letter, which was signed by 170 law professors across the country, including several Boyd faculty members, was entered into the August 1, 2012, *Congressional Record* by California Representative Laura Richardson. Professor Griffin also was invited by the United States Court of Appeals for the Fifth Circuit to submit a brief in *Cannata v. Archdiocese of Austin* about whether the Fifth Circuit’s test of who qualifies as a minister survives the recent Supreme Court case of *Hosanna-Tabor v. Evangelical Lutheran Church and School*. Foundation Press distributed the 2012 Supplement to Professor Griffin’s casebook, *Law and Religion: Cases and Materials*. Foundation Press also asked Professor Griffin to write a third edition of the casebook to be published in 2013. The *Indiana Law Journal* editors are completing edits on Professor Griffin’s article, “The Sins of *Hosanna-Tabor*.”

PROFESSOR JENNIFER GROSS. Professor Gross was elected to serve as President of the Western Pacific Chapter of the American Association of Law Libraries. She will begin her term in October 2012.

THE IMMIGRATION CLINIC. Professors Michael Kagan, Fatma Marouf, and Angela Morrison, together with their student Hillary Walsh, celebrated a victory before the Eleventh Circuit, which remanded a client’s case under the Convention Against Torture. In addition, Professors Kagan, Marouf, and Morrison, together with Boyd graduate Sarah Perez, filed an appeal before the Ninth Circuit that led to the cancelation of a client’s removal order and prevented her from being deported to a country where she had been tortured and feared future torture.

PROFESSOR LORI JOHNSON. Professor Johnson was invited to serve as a Contributing Editor of the Legal Writing Prof Blog and has published several posts, including “Contract Drafting in the Spotlight.”

THE JUVENILE JUSTICE CLINIC. Professor and Clinic Director Mary Berkheiser, together with two recent Boyd graduates, CJ Potter and Mitch Mildon, celebrated a victory relating to a 16-year old Clinic client who was illegally stopped and searched by Clark County School District police officers near his high school. The school district police claimed they had jurisdiction to search the client even though he was not on school property; indeed, the police asserted their jurisdiction extended to students the moment they walked out of their homes and began making their way to school. Judge William Voy, who presides over the Clark County Juvenile Court, granted the Clinic’s motion to suppress, which led to the dismissal of all charges against the client. Although Judge Voy’s order is not precedent setting in a strictly legal sense, the order will send a message to the school district and its police officers. Professor Berkheiser, together with several third-year law students, also succeeded in persuading Judge Voy to end the Court’s routine practice of shackling all juvenile defendants. Now, a new policy will allow for shackling only when a particular juvenile defendant is at risk of escape or violence. Clark County marshals have already removed leg irons from most juvenile defendants, and plans are in place to remove belly chains and handcuffs as soon as the Court is able to hire additional security.

PROFESSOR MICHAEL KAGAN. Professor Kagan is submitting for publication his article, “Justice on the Fly: Stays of Removal after *Nken v. Holder*” (with Fatma Marouf), which provides novel empirical data and analysis on the adjudication of motions for stays of removal in the United States Courts of Appeals.

PROFESSOR KAY KINDRED. Professor Kindred participated, as a member of the drafting committees, in the drafting of two new uniform acts, including the Uniform Deployed Parents Custody and Visitation Act and the Uniform Premarital and Marital Agreement Act. Both acts received final approval by the National Conference of Commissioners on Uniform State Laws at its annual meeting in Nashville in July 2012 and may now be introduced by legislators for enactment by the various states. Formal approval of each of these acts by the Conference as a whole was the culmination of a two year drafting process by the respective drafting committees.

PROFESSOR ELIZABETH L. MACDOWELL. Professor MacDowell’s latest article, “Theorizing from Particularity: Perpetrators, Performance & Intersectional Theory about Domestic Violence,” is forthcoming in volume 16 of the *Journal of Gender, Race & Justice*.

PROFESSOR THOM MAIN. Professor Main submitted for publication his latest law review article, “The Word Commons and Foreign Laws.”

PROFESSOR FATMA MAROUF. Professor Marouf submitted an amicus brief to the Board of Immigration Appeals in *Matter of Valdiviezo-Galdamez*, which was remanded by the Third Circuit, arguing that social visibility should not be required to obtain asylum based on membership in a “particular social group.” She previously submitted an amicus brief on the same issue to the Ninth Circuit during rehearing en banc in *Henriquez-Rivas v. Holder*. The briefs provide a comparative analysis of how our sister signatories to the UN Protocol Relating to the Status of Refugees have interpreted a “particular social group” and are related to Professor Marouf’s article, “The Role of Foreign Authority in U.S. Asylum Adjudication,” forthcoming in the *NYU Journal of International Law and Politics*. Professor Marouf also is submitting for publication her article, “Justice on the Fly: Stays of Removal after *Nken v. Holder*” (with Michael Kagan), which provides novel empirical data and analysis on the adjudication of motions for stays of removal in the U.S. Courts of Appeals. Her article, “The Emerging Importance of Social Visibility in Defining a ‘Particular Social Group’ and its Potential Impact on Asylum Claim Related to Sexual Orientation and Gender,” published in volume 27 of the *Yale Law and Policy Review*, was cited in *Gaitan v. Holder*, 617 F.3d 678 (8th Cir. 2012) (Bye, J., concurring).

PROFESSOR ANN MCGINLEY. Professor McGinley’s new book, *Masculinities and the Law: A Multidimensional Approach* (with Frank Rudy Cooper) was published by NYU Press in August 2012. The book features an introductory chapter by Professors McGinley and Cooper entitled, “Masculinities, Multidimensionality and the Law: Why They Need One Another,” and a chapter that Professor McGinley co-authored with Nancy Dowd and Nancy Levit entitled, “Feminist Legal Theory Meets Masculinities Theory.” Professor McGinley also has two new book chapters that will appear shortly, including “Masculinities and Disparate Impacts,” in *Masculinities and Feminisms*, edited by Martha Fineman and Michael Thompson for Ashgate Press, and “Meritor Savings Bank v. Vinson,” in Professor Edwards’s new book, *Readings in Persuasion: Briefs That Changed the World*. Professor McGinley also has two previously published law review articles that are scheduled for publication as book chapters, including “Work, Care Giving, and Masculinities,” which will appear in 2013 in *Gender and Equity Law*, edited by Julie Goldscheid, as well as “Hillary Clinton, Sarah Palin, and Michelle Obama: Performing Gender, Race, and Class on the Campaign Trail,” which will be published by Oxford University Press in 2013 in *The Gendered Society Reader*, edited by Michael Kimmel. One of Professor McGinley’s recent law review articles, “*Ricci v. DeStefano*: Diluting Disparate Impact and Redefining Disparate Treatment,” was published in May 2012 in the *Nevada Law Journal*. A second article, “Trouble in Sin City: Protecting Sexy Workers’ Civil Rights,” was published by the *Stanford Law and Policy Review* in July 2012. The *University of Connecticut Law Review* accepted for publication a third McGinley article, “Reasonable Men,” which should appear in late 2012. The *New York Law School Law Review* accepted a fourth McGinley article, “Cognitive Illiberalism, Title VII, and Summary Judgment,” for inclusion in a symposium on pretrial procedure and employment discrimination law. Professor McGinley completed a fifth new article, “Guaranteeing the Rights of Public Employees” (with Ken Dau-Schmidt), which

was accepted for publication by the *Employee Rights and Employment Policy Journal* and will appear in 2013. Following a two and one-half hour talk in Spanish at the University Adolfo Ibanez's Master's Program in Labor Law on the history and interpretation of sexual harassment law in the United States, Professor McGinley was invited to join the Academic Board of the Master's Program, an appointment with a three-year term. Finally, Professor McGinley prepared a brief for Kathleen England, Esq., in a sexual harassment case, responding to the defendants' motion to dismiss the complaint, and consulted with Ms. England on the case.

PROFESSOR REBECCA NATHANSON. The Kids' Court School, established and directed by Professor Nathanson, has been designated as a "Bright Idea," an Initiative of the Innovations in American Government Awards Program at Harvard University. The Innovations in American Government Awards is the nation's preeminent program devoted to recognizing and promoting excellence and creativity in the public sector. The program highlights exemplary models of government innovation and advances efforts to address the nation's most pressing public concerns. The program's new "Bright Idea" Initiative is designed to shine light on noteworthy and promising government programs and practices so that government leaders, public servants, and other individuals can learn about these ideas and adopt initiatives that work.

PROFESSOR TERRY POLLMAN. Professor Pollman is submitting for publication her new article, "Example and Model-Based Learning in the Legal Writing Classroom." She also was elected to the position of Assistant Editor in Chief of the *Journal of the Legal Writing Institute* and to the Board of Directors of the Association of Legal Writing Directors.

PROFESSOR JEANNE PRICE. Professor Price was honored by the State Bar of Nevada with the Medal of Justice for her contributions to the February 2012 issue of the *Nevada Lawyer*.

INTERIM DEAN AND PROFESSOR NANCY RAPOPORT. Dean Nancy Rapoport has three new law review articles, all published in 2012. The first, "Black Swans, Ostriches, and Ponzi Schemes," was published in volume 42 of the *Golden Gate University Law Review*. The second, "The Case for Value Billing in Chapter 11," was published in volume 7 of the *Journal of Business & Technology Law*. The third, "Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools," was published in volume 116 of the *Penn State Law Review*. Dean Rapoport has accepted an invitation from the *Law & Society Review* to write a review of Brian Tamanaha's *Failing Law Schools* (Chicago 2012). She also has committed to writing two more articles and two more books, as well as editing a bankruptcy treatise for Bloomberg. Dean Rapoport was invited to speak at the Department of Justice U.S. Trustee Program's public meeting on the proposed new fee guidelines in large chapter 11 cases, and she filed two sets of comments on the proposed fee guidelines. In addition, she was invited to serve as a co-reporter (together with the University of Chicago's Douglas Baird) of the American Bankruptcy Institute's Advisory Committee on the Governance and Supervision of Chapter 11 Cases and Companies. The Advisory Committee reports to the ABI's Commission to Study the

Reform of Chapter 11. The Advisory Committee will assist the Commission in drafting proposed reforms to Chapter 11 and related statutory bankruptcy provisions. Dean Rapoport filed an amicus brief in a United States District Court, Southern District of Florida, case on the side of the court sanctioning several bankruptcy attorneys. Finally, she served as an expert for the fee examiner in the General Motors bankruptcy and has been retained to serve as an expert in the Lehman Brothers bankruptcy.

PROFESSOR ADDIE ROLNICK. Professor Rolnick received an Honorable Mention from the Law and Society Association in the competition for the John Hope Franklin Prize for her article, “The Promise of *Mancari*: Indian Political Rights as Racial Remedy,” published in volume 86 of the *NYU Law Review*. The John Hope Franklin Prize is awarded to the best article on race, racism, and law published in the prior two years.

PROFESSOR REBECCA SCHARF. Professor Scharf’s recent article, “Psychological Parentage, *Troxel*, and the Best Interests of the Child,” is forthcoming in *The Georgetown Journal of Gender and the Law*. Professor Scharf also served as Co-Chair of the 15th Biennial Conference of the Legal Writing Institute, which has a membership in the thousands and a Biennial Conference attendance of over 600.

PROFESSOR ELAINE SHOBNEN. Professor Shoben published the fifth edition of Shoben, Tabb & Janutis, *Cases and Materials on Remedies* with Foundation Press in June 2012. She also recently completed an article on teaching remedies that will appear in a symposium in the *St. Louis University Law Journal* in spring 2013. Finally, her article from the *Harvard Law Review* criticizing the EEOC’s four fifths rule was recently cited favorably in *Brazile v. City of Houston*, ___ F.2d ___, 2012 WL 573633.

PROFESSOR JEAN STERNLIGHT. Professor Jean Sternlight’s latest book, *Psychology for Lawyers: Understanding the Human Factors in Negotiation, Litigation, and Decision Making* (with Jennifer Robbennolt), was published by the American Bar Association in July 2012. Professor Sternlight also recently completed an article entitled, “Mandatory Binding Arbitration Clauses Prevent Consumers from Presenting Procedurally Difficult Claims.” The article, which grew out of her presentation at an AALS panel in January 2012, will be published in a symposium issue of the *Southwestern Law Review* in 2012. The article argues that the Supreme Court’s approval of companies’ use of mandatory arbitration clauses to eliminate consumer class actions raises grave concerns with respect to consumers’ ability to present “procedurally difficult claims.”

PROFESSOR STACEY TOVINO. In May 2012, Professor Tovino completed a new article, “HIPAA Privacy for Physicians: Review and Update,” which was published in volume 17 of *Pathology Case Reviews*, a peer-reviewed medical journal. In June 2012, she completed a second new article, “A ‘Common’ Proposal,” which will be published in volume 50 of the

Houston Law Review in early 2013. In July and August 2012, she completed a third new article, “Gone Too Far: A ‘HITECH’ Extension of the Privacy Rule to Outside Health Care Counsel,” and is submitting it for publication. Professor Tovino’s book chapter, “MedicoLegal Issues in Neuroimaging,” in *Neuroethics in Practice*, edited by Martha Farah and Anjan Chatterjee, will go to press in fall 2012.

PROFESSOR ANNE TRAUM. Professor Traum’s latest law review article, “Mass Incarceration at Sentencing,” is forthcoming in volume 64 of the *Hastings Law Journal*. Professor Traum organized the Fourth Annual Southwest Criminal Law Conference, which will gather criminal law scholars from law schools around the region (including Arizona State University, Denver University, UC Davis, UC Irvine, and Brigham Young University) to present and discuss works in progress. At the conference, which will be hosted by Boyd School of Law on September 6-8, 2012, Professor Traum will present her draft article, “Using Outcomes to Reframe Guilty Plea Adjudication.” Professor Traum also has joined the Nevada State Bar’s new Appellate Section and serves as co-chair of its Pro Bono Committee.

PROFESSOR MARKET A TRIMBLE. In May 2012, Foundation Press published the third edition of the casebook *International Intellectual Property Law, Cases and Materials*, which Professor Trimble co-authored with Professor Paul Goldstein of Stanford Law School. The casebook is accompanied by a supplement (*International Legal Materials on Intellectual Property*), published in August 2011, and a *Teacher’s Manual*, published in June 2012. In June 2012, Professor Trimble’s article, “Injunctive Relief, Equity, and Misuse of Rights in U.S. Patent Law,” was published by *GRUR International*, a journal of the German Association for the Protection of Intellectual Property. Also in June 2012, Professor Trimble completed and submitted for publication a chapter for a book to be published from the presentations at the Internet Gaming Regulation Symposium, which was co-organized by Boyd in May 2012. In the chapter, entitled “Proposal for an International Convention on Online Gambling,” she proposes a method for enforcing diverse national laws on online gambling on the Internet. In July 2012, Professor Trimble submitted comments in response to a Request for Public Comments concerning the Development of the Joint Strategic Plan on Intellectual Property Enforcement, published in the *Federal Register* in late June 2012, which was issued by the Office of the U.S. Intellectual Property Enforcement Coordinator in the Executive Office of the President. In July 2012, Professor Trimble was appointed a member of the international advisory committee for a project by Professor Dan Svantesson of Bond University Faculty of Law at Gold Coast, Queensland, Australia, which is being funded by an Australian Research Council (ARC) Future Fellowship research grant. The project investigates how legal parameters can be applied to the Internet, in particular to Cloud Computing, Web 2.0 and geo-location technologies.

PROFESSOR JEAN WHITNEY. Professor Whitney was invited to provide training for the Arkansas Department of Corrections on the topic of “Operational Practices in the Management of Women’s Prisons” as part of a team organized by the National Institute for Corrections. During the training, Professor Whitney will address legal issues particular to women’s prisons.

THE WIENER-ROGERS LAW LIBRARY. The Wiener-Rogers Law Library was selected to host the 2013 meeting of the Western Pacific Chapter of the American Association of Law Libraries.

WILLIAM S. BOYD SCHOOL OF LAW FULL-TIME FACULTY (FALL 2012)

Rachel J. Anderson
Ian C. Bartrum
Peter Brandon Bayer
Linda L. Berger
Mary Berkheiser
Bret Birdsong
Christopher L. Blakesley
Ann Cammett
Jennifer Carr
Robert Corrales
Linda Edwards
Ruben J. Garcia
Sara Gordon
Leslie C. Griffin
Jennifer L. Gross
Lori D. Johnson
Michael Kagan
Kay Kindred
Mary LaFrance
Sylvia Lazos
Francine J. Lipman
Elizabeth L. MacDowell
Thomas Main
Fatma Marouf

Thomas McAfee
David McClure
Ann C. McGinley
Rebecca Nathanson
Raymond W. Patterson
Ngai Pindell
Terrill Pollman
Jeanne Price
Nancy B. Rapoport
Addie C. Rolnick
Keith A. Rowley
Sean Saxon
Chad Schatzle
Rebecca Scharf
Elaine Shoben
Jeffrey Stempel
Jean Sternlight
David Tanenhaus
Stacey Tovino
Anne Traum
Marketa Trimble
Jean M. Whitney
Matthew Wright