



## Faculty News

**Aubrey Baldwin** spent the fall working on a number of pollution control initiatives in Oregon and Washington. These efforts included working with students to submit technical and legal comments on several air quality permits proposed by the Oregon Department of Environmental Quality (DEQ). Aubrey also assisted a local environmental non-profit in submitting comments on air quality issues to the Federal Energy Regulatory Commission related to the Bradwood Landing Liquefied Natural Gas Terminal on the Columbia River. Aubrey and **Allison LaPlante** are also involved in Oregon DEQ's regional haze rulemaking to ensure that the Regional Haze Rule will improve visibility in National Parks and Wilderness Areas in Oregon and Washington by reducing pollution from large industrial polluters. PEAC legal interns Naeem Nulwala, Lauren Goldberg, Tucker Henson, and Austin Saylor have provided assistance in this work. In addition, Aubrey and Allison worked with PEAC legal intern Naeem Nulwala to challenge a new coal-fired power plant on the Columbia River based on the applicant's failure to satisfy Washington's new climate change law. On November 27, 2007, less than three weeks after briefing was completed, the Washington Energy Facility Site Evaluation Council (EFSEC) concluded that Energy Northwest cannot go forward with its plans. The ruling was EFSEC's first application of the new law. Aubrey also worked on several water quality cases, including a stormwater enforcement action and, with **Melissa Powers** (and PEAC legal interns Drew Kerr and Amanda Michael), a challenge to Oregon's general permit for industrial stormwater dischargers. On October 13, 2007, Aubrey presented "Protecting Pacific Vistas: The Regional Haze Program in Oregon" to the attendees at NEDC's retreat at Camp Westwind. On December 11, 2007, Aubrey was elected to the Oregon State Bar Environment and Natural Resources Section Executive Committee. Aubrey has also served as a mentor in the Lewis & Clark student chapter of the National Lawyers Guild mentoring program, a member of the Oregon Gay and Lesbian Law Association, and a member of the Crag Law Center Board of Directors.

**Michael Blumm** and Judith Royster (a former Natural Resources Law Fellow and now a Professor at Tulsa) published the second edition of their casebook, *Native American Natural Resources Law: Cases and Materials* (Carolina Academic Press, 2008). Michael also wrote "Norton v. SUWA and the Unraveling of Federal Public Land Planning," 18 *Duke Environmental Law & Policy Forum* (forthcoming, 2008), available <http://ssrn.com/abstract=991149> (co-authored with Sherry Bosse '07), and "Imposing Judicial Restraints on the 'Art of Deception': The Courts Cast a Skeptical Eye on Columbia Basin Salmon Restoration Efforts," 38 *Environmental Law* (forthcoming, 2008), available at <http://ssrn.com/abstract=1023489> (co-authored with Hallison Putnam, 2L). With **Lydia Loren**, Michael authored an op-ed piece concerning Measure 49 that was published on the Oregonian's web site at [http://blog.oregonlive.com/oregonianopinion/2007/10/big\\_guys\\_little\\_guys\\_and\\_measu.html](http://blog.oregonlive.com/oregonianopinion/2007/10/big_guys_little_guys_and_measu.html). But Michael's proudest accomplishment was coaching the Sisters Little League all-stars to a section championship and 3rd place in the state tournament.

**Jack Bogdanski** had two articles on taxation published in national journals in December 2007. "Lack-of-Marketability Discount Evolves in the Court of Federal Claims" appeared in the December 2007 issue of *Estate Planning*, and "Foreign Student Tax Filing Rules: Better, but an Urban Myth Persists" was

published in the December 2, 2007 issue of Tax Notes. Jack is currently working on a new supplement for his treatise, *Federal Tax Valuation*.

**Ed Brunet** has been invited to debate the constitutionality of summary judgment in a February conference sponsored by the Iowa Law Review. Several new articles posit that summary judgment violates the Seventh Amendment because it did not exist “at common law.” Brunet will argue against that proposition, as he does in his book on summary judgment, *Summary Judgment: Federal Law and Practice* (West, 3rd ed., 2006), co-authored by Martin Redish of Northwestern University.

**Amy Bushaw** served on the planning committee for a symposium on Humanizing Legal Education, held at Washburn University School of Law in the fall of 2007. Students in her Advanced Contracts course completed a simulated transaction involving the tax financing, purchase, and installation of a solar panel facility. Alum Jon Norling helped to develop the underlying facts for the transaction, while David Ellis (General Counsel of the College), alum Jerry Carleton, and Alan Hickenbottom (Principal with Tanner Creek Energy) served as clients.

**Bill Chin** coordinated public testimony at the September 2007 Board of Governors meeting at Salishan that discussed the OSB’s Affirmative Action Program. He also attended the January 2008 Association of American Law School (AALS) Annual Meeting in New York City in his capacity as a member of the Executive Committee of the Minority Groups Section and a member of the Legal Writing Institute.

In September 2007, **Henry Drummonds** attended a conference of labor and employment law professors held at the University of Colorado and the Stern School of Law at Denver University. In that conference, he presented his ideas on the topic “Reforming Labor Law By Reforming Labor Law Preemption.” Also in September 2007, his comments on the *Hall Associates* case pending in the U.S. Supreme Court were published in interview format in the CCH Labor Law Reports “Insight” section. In October 2007, Henry presented an Oregon State Bar Labor and Employment Law Section CLE on “The Card Majority Debate” about proposed changes to the National Labor Relations Act and laws adopted in several states; this CLE presentation was given separately in Eugene and Portland. A written article on the same topic as these two Bar talks was published in December 2007 in the Labor Law Journal (Vol. 58, Issue No. 4, Winter 2007) entitled “The Union Authorization Card Majority Debate.” In February, he will give a luncheon talk to a labor law conference of union attorneys and union officials in Portland. In April, he will speak at the annual Employment Relations Board/University of Oregon Labor Education Research Center conference on changes during the last 10 years in the Oregon Public Employee Collective Bargaining Act. He is also presently working on a law review article on “Reforming Labor Law Preemption.” He continues to serve on the Executive Committee of the OSB Labor and Employment Law Section, and was elected last fall to the Executive Committee of the OSB Products Liability Section for a term starting in January 2008.

In October 2007, **Tigran Eldred** participated as a member of the planning committee and as a panelist in the Northwest Clinical Law Conference in Sunriver, Oregon. This year’s conference focused on best practices in clinical legal education. As a panelist, he discussed the role of “serious play as pedagogy in legal education.”

**Maggie Finnerty** was on the planning committee for the Northwest Clinical Law Conference in Sunriver, Oregon in October 2007. In addition to helping plan the conference, Maggie was also a speaker on a panel

entitled “The New ABA Skills Requirement: What It Is, How Schools are Complying, and Ideas on How to Move Beyond the Bare Minimum.” Together with lawyers from Perkins Coie, Maggie led several training sessions for in-house attorneys from Intel Corp. to prepare them for volunteering at the SBLC’s Pro Bono Project. Topics included entity selection and formation, an intellectual property overview, and an overview of commercial leases. Maggie also presented a CLE for the Oregon Women Lawyers, and was a speaker on a panel entitled, “Creating Your Own Business Model.”

**Jim Huffman** is participating in a number of conferences and presentations, including the following: “Focus the Nation Teach-In, Debate with **Dan Rohlf** —Resolved: The U.S. should begin cutting emissions now,” Lewis & Clark Council Chambers, on January 31, 2008; “Private Property, Government Takings, and Individual Liberty,” Liberty Fund, La Jolla, California, February 28–March 2; “Common Grounds, Common Waters: Toward a Water Ethic,” Santa Clara University School of Law, March 14, 2008; and “Breaking the Logjam: An Environmental Law for the 21st Century,” NYU Law School, March 28–29, 2008. His upcoming and recent publications include “River Basins and Water Governance” (forthcoming); “Speaking of Inconvenient Truths: A History of the Public Trust Doctrine,” Duke Environmental Law and Policy Forum (forthcoming); “Background Principles and the Rule of Law: Fifteen Years After *Lucas*,” Ecology Law Quarterly (forthcoming); “Beware of Greens in Praise of the Common Law,” Case Western Reserve Law Review (forthcoming); and “A Party to Tyranny: The Aftermath of Measure 49,” Brainstorm Northwest, December, 2007.

**Jeff Jones** has done three public radio interviews for his book, *The Unaffordable Nation*. His interviews were with Lee Callahan, Community Matters Radio Show, KPTK 1090 in Seattle, WA; Diego Mulligan on The Journey Home Radio Show KSFR 90.7 in Santa Fe, NM; and Carl Wolfson on KPOJ 620 in Portland. The Law Quadrangle, the University of Michigan Law School Alumni publication, did a full feature story on the book (including a photos of Jeff and of the book cover, and a substantial interview). The Multnomah Athletic Club also did a story in its member publication, The Winged M. Jeff’s undergraduate and Ph.D. alma mater, The University of Wisconsin-Madison, announced the publication of the book in its alumni publication. Reviews of the book are just beginning. For example: <http://www.popmatters.com/pm/books/reviews/51384/the-unaffordable-nation-by-jeffrey-jones/>. Jeff hopes to have a draft of the article on which his job talk was based (“Neutral Rules and Reasonable Accommodation”) at the close of the spring semester.

**Steve Kanter** moderated the Portland City Club Debate on Ballot Measure 50 (the cigarette tax measure) on October 19, 2007. He also gave a presentation at the Classroom Law Project conference, From Classroom to Citizenship, on December 7, 2007. His forthcoming law review article, “Bong Hits 4 Jesus as a Cautionary Tale of Two Cities,” on the First Amendment, the Supreme Court, and student speech rights, will be published in the spring in the Lewis & Clark Law Review.

On October 26, 2007, **Robert Klonoff** spoke on “The Future of Class Action Litigation in America” at a meeting in Washington, D.C. of the Tort, Trial & Insurance Practice Section of the American Bar Association. On December 6, 2007, he and the other project reporters presented their chapter of the class action project, *Principles of the Law of Aggregate Litigation*, to the Council of the American Law Institute. After the presentation, the Council voted unanimously to approve the chapter, sending it to the full body of the American Law Institute for consideration in May 2008. His chapter addresses aggregate settlements. The Council also approved chapter 1, which contains definitions and general principles regarding aggregate litigation.

**Art LaFrance** delivered the George Rudolph endowed lecture in November 2007 at the University of Wyoming on “Physician Assisted Death: The Oregon Experience,” to an audience of 100 in Laramie. The paper will be published this spring in the Wyoming Law Review, and is being circulated prior to publication among the proponents of assisted death in the State of Washington, where former Governor Booth Gardner is urging adoption of Oregon’s physician assisted death model. His article on “Human Experimentation: The Lessons For Animal Experimentation” is in the latest issue of the Animal Law Review. In November 2007, Art began meeting clients pro bono for Legal Aid Services of Oregon on the first Friday of the month in Tillamook and the third Friday in Nehalem. The Tillamook County Seniors Pro Bono Project will involve students from the Law School. Over the fall semester, a public interest litigation class at Loyola Law School in Chicago undertook studying *Boddie v. Connecticut*, a case Art argued twice in the U.S. Supreme Court; the resulting papers are on the web, and can be located through Google.

During the fall semester, **Allison LaPlante** continued her ongoing litigation to improve water quality. Allison and **Melissa Powers** (with the help of PEAC students Liz Crosson and Allison Eshel) completed briefing motions in a federal district court case regarding Oregon’s water quality standards, and they completed briefing the merits of their case before the Oregon Court of Appeals regarding in-stream “suction dredge” mining. Allison also continued her work on air quality and climate change, focusing with **Aubrey Baldwin** on PEAC’s ongoing representation of several local and national organizations working to clean up the pollution from Oregon’s oldest, dirtiest air pollution sources. Also during the fall semester, Allison co-taught (with **Craig Johnston** and **Don Large**) the Environmental/Animal Law Moot Court course. Allison judged numerous practice rounds during the in-school competition and helped select the team of three students (Bethany Cotton, Liz Crosson, and Diana Federoff) for the National Environmental Moot Court Competition at Pace Law School, and two teams of two students (Lauren Goldberg and Erin Smith; Neal Clark and Zach Norris) for the National Animal Advocacy Competition at Harvard Law School. During January and February, Craig and Allison will coach the teams to help prepare them for the national competitions. On January 11, Allison gave a presentation at a CLE/conference on air quality and climate change. She shared a panel with Tom Wood of Stoel Rives and Tom Lindley of Perkins Coie.

**Lisa LeSage** has been invited by the Kaufman Foundation to travel to Kansas City in February 2008. The Foundation is embarking on a multi-year program to facilitate curricular development and scholarly research relating to the impact of the legal system on innovation and entrepreneurship. As part of this effort, the Foundation has been convening meetings of legal scholars, economists, and other social scientists to brainstorm about the most productive initiatives. This February meeting will bring together approximately 10 to 12 legal scholars from around the country to work with key Foundation personnel on ideas for promoting the training of lawyers to facilitate the success of innovative entrepreneurs.

In October 2007, **Lydia Loren** presented a talk at a conference on The Future of Copyright at the University of South Carolina. The title of the Lydia’s talk was “Remedies Revolution.” Following that conference, she traveled to the University of Michigan to attend her law school reunion. In November 2007, Lydia participated in the second meeting of the “Copyright Principles Project” hosted at Georgetown Law School. Berkeley Law Professor Pamela Samuelson (former Distinguished IP Visitor at L&C) has organized this principles project to explore and articulate the fundamental principles in copyright law. As noted above, Lydia and **Michael Blumm** authored an op-ed piece concerning Measure 49 that was published on the Oregonian’s web site at [http://blog.oregonlive.com/oregonianopinion/2007/10/big\\_guys\\_little\\_guys\\_and\\_measu.html](http://blog.oregonlive.com/oregonianopinion/2007/10/big_guys_little_guys_and_measu.html).

**Bob Miller** was interviewed on Washington public television's "Author's Hour." He spoke about the Doctrine of Discovery at San Francisco State University, Evergreen State College, the Western Historians Association conference in Oklahoma, and at eight locations in Canada and the eastern United States, including Syracuse University, York University, Osgoode Hall Law School, and Yale Law School. In November 2007, he spoke at an Oregon CLE, an Oregon Department of Justice conference, and at an economic development conference in New Mexico. In December 2007 he was a guest on a one-hour radio program on Native America Calling and participated in an Indian law think-tank session at the University of Washington Law School. His blog was linked to a Wall Street Journal Online article in October 2007.

**Joe Miller** helped host a two-day, interdisciplinary conference at the Law School on October 5-6, 2007. The conference, entitled "Nonobviousness: The Shape of Things to Come," focused on possible directions for development in the patent law doctrine known as nonobviousness (a nontriviality requirement for patent eligibility). He also gave a paper at the conference. On December 19, 2007, Miller was the featured speaker at the Oregon Patent Law Association's annual meeting. His presentation, delivered at lunch, was entitled "Patent Power with Distributors & End-users."

**John Parry** presented a paper entitled "Change and Continuity in Criminal Procedure's War on Terror," as part of the Criminal Justice Section panel at the 2008 AALS Annual Meeting. On December 6, 2007, John spent the day discussing constitutional law with four classes of eighth graders at the Catlin Gabel School.

On January 3, **Juliet Stumpf** gave a paper at the 2008 AALS Annual Meeting. Her presentation was part of a panel entitled "Crimmigration," after her most recent publication, "The Crimmigration Crisis." She spoke on the inevitable trend toward state and local regulation of noncitizens in light of the recent criminalization of immigration law, and the likelihood that state and local police may lawfully rely on race and ethnicity when enforcing immigration law. The paper will appear in the North Carolina Law Review, which invited her submission and accepted her proposal this fall.

**Terry Wright's** client interviewing and counseling class culminated with an interschool competition in November 2007, which selected the winning team who will be representing the school at the regional competition in Victoria, British Columbia in February. This year's theme is civil rights and liberties, and Terry is working with the school's team to prepare, in hopes of advancing to the nationals, as our team did last year. She continued her term on the Oregon State Bar's Board of Governors (BOG). Beginning January 1, she is chairing the BOG's Access to Justice Committee, and is Vice Chair of the Member Services Committee. These two positions, along with her being the liaison to the Bar's Diversity Section, are allowing her to work with the Bar as it hires a new Diversity Program Administrator, as well as helping to further improve the program. She is on the planning committee for the fall 2008 Northwest Clinical Law Conference to be held in Leavenworth, Washington. The theme of this year's conference is assessment. Like other faculty, she attended the AALS Annual Meeting in New York City in early January, bringing back ideas to improve her teaching, especially thinking about how to incorporate more "play" into the classroom. In addition, she learned much about the new Federal Student Loan Repayment and Forgiveness Law, which will have a tremendously positive impact on our graduates. The information will also assist Terry in her role as Vice Chair of the state Bar's Loan Repayment Assistance Program.

## OTHER NEWS

### News from the Boley Law Library

**Kathy Faust**, Assistant Library Director for Technical Services, over break hosted a meeting of local academic catalogers. Attending were catalogers from Watzek, Reed, University of Portland, Pacific University, Willamette, and Willamette Law. Kathy commented that “such a meeting is great because they can speak in code and everyone understands each other.”

The Library has three “new” additions to the Peter S. Nycum Rare Book Room. They are *Oke’s Handy Book of Game Laws* by George Colwell Oke (3rd ed., 1881); *The Principles of the Law of Scotland: In the Order of Sir George Mackenzie’s Institutes of that Law* by John Erskine (3rd ed., 1764); and *An Institute of the Laws of England, or, The Laws of England in their Natural Order, According to Common Use* by Thomas Wood (2nd ed., 1722).

### News from the Business Law Program

The Business Law Program’s busy 2007 fall semester began with a groundbreaking conference (as discussed above) organized by Professors **Joe Miller** and **Geoff Manne** on October 5–6, 2007. “Nonobviousness, the Shape of Things to Come” featured sixteen leading scholars from law, economics, and psychology (in four panels over two days) for an unprecedented interdisciplinary look at patent law’s nonobviousness doctrine. A panel of R&D managers also brought an industry perspective to the discussions. The conference featured lively discussions with panelists who look ahead, helping to shape the next decade of thinking about the nonobviousness principle in innovation law and policy.

That same weekend, the third annual Family Business Institute, organized by Associate Dean **Lisa LeSage** and the law firm Holland & Knight, brought together three generations of several of the Northwest’s most prominent family businesses for two days of discussion and interaction with a nationally-recognized specialist in intergenerational business transition.

On October 19, 2007, the third annual day-long Portland Directors Institute, hosted by the Law School, Portland State University School of Business Administration, and the law firm Perkins Coie, drew a record number of corporate directors and executives. Professor **Jennifer Johnson** opened the Institute with a lively discussion of shareholder lawsuits and alternative dispute resolution. Throughout the day, prominent corporate leaders led discussions on activist investors, issues facing mid-cap companies, and engaging the board in strategy. Merle Ryland, the Managing Director of Investment Banking for CIBC World Markets Corp., was the luncheon keynote speaker.

On October 16, 2007, Sandra Johnson, J.D., L.L.M., gave a public lecture at the Law School on “Should the Law Define Medical Futility?” Dr. Johnson’s scholarship has helped form the field of health law. She holds the Tenet Endowed Chair in Health Care Law and Ethics, Center for Health Care Ethics & School of Law, Saint Louis University. She also teaches in the Schools of Medicine and Public Health and, in 1982, she became the founding director of the Center for Health Law Studies, now recognized as one of the top health law centers in the country. Professor Johnson’s scholarship has helped form the field of health law. She is co-author of *Health Law: Cases, Materials and Problems*. This text is used by more than 150 universities and has been cited more than 500 times in scholarly articles and court opinions. Her

research interests include long-term health care and bioethics. In collaboration with other scholars, she helped draft the model Pain Relief Act, which has been adopted by several state legislatures. Professor Johnson's visit is made possible by the co-sponsorship of Lewis & Clark Law School and the Curtis R. Holzgang, M.D., Visiting Scholar Series. The Visiting Scholar program was launched in 2001 and was named in 2005 for Dr. Curtis R. Holzgang, director of Critical Care Medicine, Providence St. Vincent Medical Center.

## **News from the Small Business Legal Clinic**

The Small Business Legal Clinic is extremely pleased to announce that in late November 2007, the Murdock Trust awarded the SBLC \$224,000. The grant will be used over the next three years to expand its innovative programs and service to the community. Law School alum Steve Goebel, president of the SBLC advisory board, was instrumental in assisting with the grant.

## **News and Updates from the National Crime Victim Law Institute**

### **NCVLI Awarded \$1.6 Million Grant**

The U.S. Department of Justice's Office for Victims of Crime awarded NCVLI \$1.6 million to continue its work protecting, enforcing, and advancing the rights of crime victims through a nationwide network of seven pro bono legal clinics. The award includes funds to establish a new clinic in Colorado. The seven existing pro bono legal clinics are located in Arizona, Idaho, New Jersey, New Mexico, Maryland, South Carolina, and Utah.

The grant is a cooperative agreement between NCVLI and the Office for Victims of Crime, which is housed within the Office of Justice Programs, U.S. Department of Justice. Over the past five years, NCVLI's help has allowed this network of clinics to field over 3,800 requests for legal help, appear more than 800 times in court, and directly represent more than 600 victims.

### **NCVLI Successfully Protects Anonymity of Victims in Portland Archdiocese Sexual Assault Case**

In December 2007, NCVLI filed amicus curiae briefs in five pending civil cases in the U.S. District Court for the District of Oregon to support maintaining the anonymity of the sexual violence plaintiffs. Each of the five cases involves claims of sexual violence against the Archdiocese of Portland and the Roman Catholic Archbishop of Portland. The defendants moved to dismiss the complaints as improper due to their use of pseudonyms; NCVLI's amicus brief argued that pseudonyms in sexual violence cases are appropriate, and that if granted, the defendant's motion would put victims of sexual violence to the Hobson's choice of seeking a remedy for their victimization or maintaining their privacy. In a huge win for victims, in all five cases the magistrate judge agreed with plaintiffs and NCVLI and denied defendant's motion, allowing plaintiffs' identities to remain private.

### **Other NCVLI News**

**Meg Garvin**, NCVLI's Program Director, was appointed to the Attorney General's Sexual Assault Task Force to work on its Legislature and Public Policy Committee. The committee analyzes current state law on sexual assault and recommends improvements to the Attorney General.

**Toby Krauel**, staff attorney, traveled to Columbia, South Carolina, home of one of NCVLI's clinics, the Crime Victims' Legal Network, to speak to a gathering of over a hundred staff of the U.S. Attorney's office. Toby introduced the clinic's new attorney, Jason Bufkin, and explained how the clinic can work with the U.S. Attorney's office to protect crime victims' rights in federal court.

## **News from the Lewis & Clark Legal Clinic**

We finished the fall semester with a number of successes. Clinic students handled over a dozen domestic violence and Stalking Protective Orders, all of which were resolved in favor of our clients, giving them the protections they needed. In a couple of cases, we successfully had orders against our clients vacated because the original orders never should have been issued. In most other cases, the decision was delivered after the students presented a full hearing before a Circuit Court judge. Still others were resolved by negotiations. In the most complicated negotiations in domestic violence cases fall semester, two Clinic students had to negotiate with three separate lawyers—the Lake County District Attorney, a criminal defense lawyer from Klamath Falls, and a criminal defense lawyer from Portland. The negotiations resulted in our client voluntarily agreeing to dismiss her civil order, in exchange for her batterer agreeing to accept a fairly restrictive sentence in his criminal case. It was a satisfying semester.

This is the Clinic's 35th year in existence (probably one of the older ones among American law schools), and plans are underway for a grand celebration sometime next year.