



## Faculty News

Professor **Michael Blumm**'s co-authored article with Sherry Bosse '07, "Norton v. SUWA and the Unraveling of Federal Land Planning," was published at 18 Duke Envtl L & Policy Forum 105 (2007). This fall, Blumm taught a seminar on Public Trust Law, in collaboration with Mary Wood, a University of Oregon law professor, with whom he is co-authoring a treatise on public trust law.

**Ed Brunet**, Henry J. Casey Professor of Law, was invited to testify before the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States (drafters of the FRCP) regarding proposed amendments of the summary judgment rule. Brunet, who was also invited to a February 2008 workshop with the prestigious Committee, testified on November 17. Brunet opposes the draft proposal to make the granting of summary judgment discretionary by providing that summary judgments "should be granted" if the evidence shows no genuine dispute of material fact. The use of "should," he argued, changes the nature of a dynamic summary judgment rule and needs to be replaced with "must grant" language. Brunet is the co-author of a book on summary judgment and has authored numerous articles on the subject.

In October, **Tigran Eldred** presented a draft of his article, "Defendants Beware: Your Lawyer May Have a Conflict of Interest and Not Know It," at the Clinical Law Review Writers' Workshop at NYU Law School. The article will be submitted for publication in February 2009.

In December, the Cambridge University Press published *Preemption Choice: The Theory, Law, and Reality of Federalism's Core Question* in which Professor **Bill Funk**'s chapter, "Preemption by Federal Agency Action," appeared. Also in December Professor Funk participated in a conference hosted by the Center for Progressive Reform (CPR) in Washington, D.C., for congressional staff and public interest groups on how to overturn the Bush administration's actions and Supreme Court decisions regarding preemption of state tort law. In August, Professor Funk represented the Law School at the annual meeting of the Association of Administrative Law Judges in order to receive a donation for a student scholarship. In October, Professor Funk attended the Fall Administrative Law Conference in Washington, D.C., where he spoke on two separate panels, one on constitutional questions raised by the Regional Greenhouse Gas Initiative (RGGI) put in effect by northeastern states, and the other on transparency issues discussed in the report by the Transparency and Public Participation Task Force of the Regulatory Reform Project created by OMB Watch. Also in October 2008, in a program hosted by the American Constitution Society (ACS) and the Federalist Society, Funk debated Professor Tuan Samahon of the University of Nevada Las Vegas Law School on the topic of Politics and Judicial Selection. In November 2008, in another ACS/Federalist Society function, Funk and **James Huffman**

discussed the different identities and approaches of these two organizations. In January 2009, Funk attended the Association of American Law Schools annual meeting in San Diego, where (as a member-scholar) he also participated in the Center for Progressive Reform's semi-annual meeting.

A draft of the third edition of the *Encyclopedic Dictionary of International Law* was submitted to Oxford University Press in December by Professor **John P. Grant** and his co-editor, Professor Craig Barker of Sussex Law School, Brighton, England. With 2,600 entries, the third edition will be 20% larger than the second edition of 2004, and will be published in June 2009. Grant has completed a chapter on “Monitoring and Enforcing Children’s International Human Rights” for the third edition of Cleland and Sutherland’s *Children’s Rights in Scotland*, along with a joint chapter, with **Elaine Sutherland**, on “Scots Law and International Conventions.”

**Steve Kanter** was appointed to the Board of Oregon 150 by Governor Kulongoski. Oregon 150 is a broad-based non-profit organization charged with helping prepare for the 2009 Oregon Sesquicentennial Celebration, commemorating Oregon's 150th anniversary as a State.

On December 5, **Dean Klonoff** presented the latest draft of his class action project to the Council of the American Law Institute. Dean Klonoff is co-authoring an article on aggregate settlements for the Fordham Law Review and will present the paper at a symposium at Fordham in March 2009. An article co-authored by Dean Klonoff, “Making Class Actions Work: The Untapped Potential of the Internet,” was just published at 69 U. Pitt. L. Rev. 727 (2008).

Professor **Bob Miller**, '91, had two law review articles released: “Inter-tribal and International Treaties for American Indian Economic Development” in the Lewis & Clark Law Review, and “American Indian Entrepreneurs: Unique Challenges, Unlimited Potential” in the Arizona State Law Journal. Another article will be out soon from the West Virginia Law Review entitled “An Indigenous Lens into Comparative Law: The Doctrine of Discovery in the United States and New Zealand.” Miller co-wrote this article with New Zealand professor Jacinta Ruru. He is also working on a new book for the University of Oklahoma Press entitled *Reservation Capitalism: Economic Development in Indian Country*. Miller also published book reviews in the American Indian Quarterly, The Great Plains Quarterly from University of Nebraska, and in UCLA's American Indian Culture and Research Journal. Bob continues to speak about the Doctrine of Discovery and Manifest Destiny issues at various conferences, including the American Society for Ethnohistory, the National Indian Education Association annual conference in Seattle, a Lewis & Clark Trail Heritage Foundation conference in Pennsylvania, and at the University of Nebraska. He also spoke at the University of Nebraska Law School on a program entitled “Legal Issues in Indian Country”; gave a six-hour training session on Indian law to U.S. Fish & Wildlife

headquarters staff in Washington D.C.; was a keynote speaker at the Diplomacy Symposium at the University of Kansas; spoke about Indian gaming issues in Las Vegas at the International Municipal Lawyers' Association annual conference; and spoke at an Albany Law School conference entitled "God and the Land." Miller will also speak in Oklahoma City at a televised event to be put on by the Mount Vernon Association, at Portland State University for the World Affairs Council of Oregon's Great Decisions series on The Arctic Age, and at the George Wright Society annual conference in Portland. With Oregon's 150th birthday being celebrated in 2009, Bob will speak about Manifest Destiny at several events in Tillamook, Cannon Beach, Champoe Park, and elsewhere around the state. In February, his book *Native America, Discovered and Conquered: Thomas Jefferson, Lewis & Clark, and Manifest Destiny* will be the subject of a three hour Oregon State Bar CLE.

**John Parry** presented his article "Congress, the Supremacy Clause, and the Implementation of Treaties" at the annual December workshop of the International Law in Federal Courts interest group of the American Society of International Law, at Temple Law School. The article will appear in a Spring 2009 issue of the Fordham International Law Journal (32:4). The University of Michigan Press has approved publication of John's book manuscript, *Understanding Torture: Law, Violence, and Political Identity*, with anticipated publication in Fall 2009. His essay, "Rights and Discretion in Criminal Procedure's War on Terror," was published in the Fall 2008 issue (6:1) of the Ohio State Journal of Criminal Law. His article, "A Primer on Section 1983 and Treaties after *Medellin v. Texas*," is forthcoming in the Lewis & Clark Law Review's symposium (13:1) on *Medellin v. Texas*. John is also co-editing a book of essays drawn from the March 2007 second global conference on Evil, Law and the State. The book is tentatively titled, *Rights, Citizenship, and Torture: Perspectives on Evil, Law and the State* and will be published by the Inter-Disciplinary Press.

**Sandy Patrick** served as a guest author for a chapter of Professor Andrew McClurg's publication, *IL of a Ride: A Well-Traveled Professor's Roadmap to Success in the First Year of Law School* (West, forthcoming 2009), a book that prepares students for the rigors of law school. A chapter entitled "Legal Research and Writing: An Interview with Five Experts," examines the importance of legal analysis and writing as a foundation for legal education.

In September 2008, **Juliet Stumpf**'s most recent article, "States of Confusion: the Rise of State and Local Power over Immigration," appeared in the North Carolina Law Review. In October, Juliet participated with John Parry and Bill Funk in a panel discussion, moderated by **Bill Chin** and organized by the International Law Society, on the implications of *Korematsu v. United States* and the internment of classes of people. On November 7, Juliet delivered the Crossroads Lecture in Orcas Island, Washington. The lecture was entitled "Crossing New Borders: Making Sense of the U.S. Immigration Debate through Law, History and Politics." **Barbara Safriet** gave the introduction to the Lecture. On November 14, Juliet presented "Families at the Forefront of

Immigration Enforcement: The Impact of Workplace Raids" on a Families and Migration panel at the Ray Warren Multicultural Symposium entitled "Landscapes of Migration" at Lewis & Clark College. She made two presentations at the Association for American Law Schools (AALS)'s annual conference in San Diego in January 2009. She participated on a panel entitled "At the Border and Beyond: California and the Evolving Workplace" sponsored by the AALS Section on Labor Relations and Employment Law, where she made a presentation on the potential for immigration law to preempt employment discrimination laws. The following day she presented her draft article "Fitting Punishment: A Proposal for a Graduated System of Immigration Law Sanctions" at the Section on Criminal Justice's panel entitled "Crimmigration: At the Intersection of Criminal and Immigration Law." The panel's title was taken from one of Juliet's recent articles, "The Crimmigration Crisis." Juliet's proposal for a panel entitled "Imagining Immigration Authority: A Family Affair" has just been accepted by the program committee for the Law, Culture and Humanities conference in Boston, Massachusetts in March. She will present "Obeying Immigration Law: The Compliance Conundrum," which takes up the question of what motivates compliance with immigration law and whether legal proscriptions and enforcement make a difference.

Professor **Elaine E. Sutherland**'s latest article, "A Veiled Threat to Children's Rights? Religious Dress in Schools and the Rights of Young People," based on her Professorial Inaugural Lecture, delivered at Stirling University, Scotland, in February 2008, was published in 53 *Juridical Review* 143 (2008). Her chapter on developments in Scotland was accepted for publications in the *International Survey of Family Law: 2009 Edition*, the annual flagship publication of the International Society on Family Law. She has completed two of the four chapters (one co-authored with Professor **John P. Grant**) she is writing for the third edition of *Children's Rights in Scotland* (forthcoming 2009), which she also co-edits.

**Rob Truman** gave presentations titled "Finding Practice Materials" and "Locating Companies for Due Diligence and Background Information" at the National Business Institute CLE, "Find it Free and Fast on the Net: Strategies for Legal Research on the Web."

**Terry Wright** continues her work on the Oregon State Bar Board of Governors, and became a Vice President of the Board on January 1, 2009. She has been appointed Chair of the Access to Justice Committee, and is the Bar's President's designee to the Bar's Loan Repayment Assistance Program (LRAP). This group sets policy and makes LRAP awards to Oregon lawyers who have chosen to work in low paid public interest jobs. She attended the Bar's BOWLIO, a fundraiser for the Affirmative Action program, in early November. Wright has served at the Board of Governor's liaison to the Bar's Diversity Section for the last two years. She was a program planner for and presenter at the Northwest Regional Law Conference in Leavenworth, Washington, in October 2008. On election day, Wright and her husband were selected by

KINK.fm radio to appear in their live performance lounge, where audience members engaged in an on-air discussion about the reasons they had voted.

**News from Lewis & Clark Legal Clinic** - For the fall semester, Clinic students interviewed approximately 100 potential clients (21 bankruptcy, 13 domestic violence/family, 13 tax, 39 landlord/tenant, 11 unemployment, and 3 expungements), although some were “advice only” cases, in which the Clinic did not undertake full representation. In addition, students were assigned to work on more than two dozen cases that had been opened in previous semesters.

In the domestic violence program, the Clinic assisted a number of clients with obtaining Family Abuse Prevention Act (FAPA) Restraining Orders or permanent Stalking Protective Orders. At times, the Clinic also represented clients in attempting to defeat these actions. In one case, for example, our client’s former fiancée had obtained a FAPA Restraining Order because of a misunderstood conversation with our client’s mother. In one case, students began representing a client in a dissolution of marriage case, which became a FAPA case as well when our client obtained an order of protection from the court, which we successfully defended. Students then undertook the task of attending hearings, as the client’s moral support, to adjudicate whether the husband had violated the Order by telephoning her. In a third case, a student was able to assist a client who had been in an extremely physically abusive marriage for more than eighteen years in her dissolution of marriage case. Her husband is currently in prison because of actions related to his abuse (he attempted to strangle our client), and the couple’s six children are currently in foster care. We are confident that the children will be returned to her sometime next year. This past fall, a high percentage of our clients were non-native English speakers, so students gained experience in working with cross-cultural issues and, in some cases, interpreters.

In the above cases, students represented our clients in court, with supervising attorney “second chairing.” Students enjoyed their time at the Clinic this fall, and several are returning in the spring or next year as Advanced Clinic students.

**NCVLI was awarded two grants** - In fall 2008, NCVLI received two grants from the U.S. Department of Justice to enhance its work on behalf of crime victims. The first is a two year grant from the Office for Victims of Crime that will allow NCVLI to aid more crime victims by opening 4-5 new pro bono legal clinics around the country. In November, NCVLI issued the Requests for Proposals for these new clinics, which should be funded by summer 2009. Once the new clinics launch, NCVLI’s network will include 13 legal clinics representing victims nationwide. The second grant is a two-year grant from the Office on Violence Against Women, which will allow NCVLI to provide focused training and technical assistance on the rights of victims of domestic violence, sexual assault, stalking and dating violence.

**NCVLI Welcomes New Staff** - NCVLI is welcoming two new staff members. **Cassandra Mercer** joined NCVLI in December 2008 as its Administrative Assistant. Prior to joining NCVLI, Cassandra worked with a federal GEAR UP grant program in Wenatchee, Washington, helping prepare low-income and minority students for college. She has a B.A. in Classics from Colorado College and an M.A. in Classics from the University of Colorado. **Alison Swap** joined NCVLI in January 2009 as a Clinical Professor and Staff Attorney. Prior to joining NCVLI, Alison worked as a litigation associate at the law firm of Orrick, Herrington & Sutcliffe in New York. Alison has served as an officer of an organization that focused on women's legal issues, and has been involved in litigation concerning women's rights. She has a B.A. in English from the University of Michigan and a J.D. from the University of Virginia School of Law.

**NCVLI's Cases** - In November 2008, NCVLI submitted an amicus curiae brief in support of a mandamus petition in the Eleventh Circuit Case, *In re Janis W. Stewart and other Borrower-Crime Victims v. United States Dist. Ct.* NCVLI argued that the proper standard of review for victims' petitions for mandamus arising under the federal Crime Victims' Rights Act, 18 U.S.C. § 3771, is that of traditional appellate review rather than the heightened scrutiny given other mandamus petitions. Circuits are split on this issue and review by the United States Supreme Court is likely in coming years.

In December 2008, NCVLI joined an individual victim, K.G., as amicus curiae in the United States Supreme Court case of *District Attorney's Office for the Third Judicial District v. Osborn*. Amici argued that a convicted offender should not be permitted to circumvent victim's rights afforded by the federal Crime Victims' Rights Act, 18 U.S.C. § 3771, by using a Section 1983 action rather than habeas petition to seek access to evidence post-conviction.

### **NCVLI creates a national curriculum on enforcing victims' rights**

The federal Department of Justice's Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) contracted with NCVLI to develop a two-day curriculum entitled "Enforcing Victims' Rights." **Meg Garvin** led the curriculum development and then taught the two-day course in pilot form in September 2008 and again in October 2008. The curriculum has just been approved for integration into OVC TTAC's 2009 course offerings for victim service providers nationwide.

In October 2008, Meg Garvin, who is the co-chair of the American Bar Association's Victims Committee, facilitated a panel discussion on Victim's Roles and Rights at Sentencing, at the

ABA's Criminal Justice Section's Fall Conference in Washington, D.C. In addition, she taught a day-long skill building course on enforcement of victims' rights at the Colorado Organization for Victim Assistance annual conference in Colorado Springs, Colorado.