

Faculty Scholarship- Selected Highlights

July 2010

Compiled by Associate Dean for Faculty Scholarship Alan Chen

SCHOLARLY PUBLICATIONS

Rachel Arnow-Richman

"Just Notice: Re-reforming Employment At Will," *58 UCLA L. Rev.* ____ (forthcoming October 2010).

Rebecca Aviel

"Restoring Equipoise to Child Welfare," *62 Hastings L.J.* ____ (forthcoming December 2010).

Christine Cimini

"Ask, Don't Tell: Ethical Issues Surrounding Undocumented Workers' Status in Employment Litigation," *61 STAN. L. REV.* 355 (2008). Excerpts of "Ask, Don't Tell: Ethical Issues Surrounding Undocumented Workers' Status in Employment Litigation," reprinted in Stephen Legomsky's, *Immigration and Refugee Law and Policy*, Foundation Press, 5th edition (July 2009).

Sam Kamin

"The Ring Cycle: What Do We Know About Juries, Weighing and Death?," with Justin Marceau, ____ *U. PENN. J. CONST. L.* ____ (forthcoming 2010).

Justin Marceau

"Don't Forget Due Process: The Path Not (yet) Taken in § 2254 Litigation," *62 HASTINGS L.J.* ____ (forthcoming 2010).

"The Ring Cycle: What Do We Know About Juries, Weighing and Death?," with Sam Kamin, ____ *U. PENN. J. CONST. L.* ____ (forthcoming 2010).

Viva Moffat

"The Wrong Tool for the Job: The IP Problem with Noncompetition Agreements," *52 Wm. & Mary L. Rev.* ____ (forthcoming December 2010).

Rock Pring

Rock Pring (with Kitty Pring), *Greening Justice: Creating and Improving Environmental Courts and Tribunals*, The Access Initiative (TAI) of the World Resources Institute (WRI), Washington, D.C. (April 2010).

Nantiya Ruan

"Facilitating Wage Theft: How Courts Use Procedural Rules to Undermine Substantive Rights of Low-Wage Workers," *63 VAND. L. REV.* 727 (2010).

Joyce Sterling

"Exploring Inequality in the Corporate Law Firm Apprenticeship: Doing the Time, Finding the Love," with Bryant G. Garth, *22 Georgetown J. of Legal Ethics* 4:1361 (November 2009).

"So You Want to be a Lawyer? The Quest for Professional Status in a Changing Legal World," with Nancy Reichman, *78 Fordham L. Rev.* 2289 (April 2010).

Eli Wald

Review of *Lawyers in the Dock* by Richard L. Abel (2008) *59 J. LEGAL EDUC.* 311 (October 2009).

"Glass-ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes and the Future of Women Lawyers at Large Law Firms," *78 FORDHAM L. Rev.* 2245 (April 2010).

"The Great Recession and the Legal Profession," *78 FORDHAM L. Rev.* 2051 (April 2010).

SCHOLARLY PRESENTATIONS

Rachel Arnow-Richman

"Incenting Flexibility: The Relationship Between Legal Rules and Voluntary Action in Redressing Work/Family Conflict," University of Connecticut, Hartford, Conn. (October 30, 2009).

Invited speaker to U Conn symposium: "Redefining Work: Implications of the Four-Day Work Week," presented by the *Connecticut Law Review* (October 30, 2009).

Presented on panel: "The Law & Economics of Reduced/Compressed Work Weeks," to be published in *Conn. L. Rev.* (Spring 2010).

Jay Brown

"Issues of Islamic Finance," UC Hastings Law School (November 2009).

Alan Chen

"Right Labels, Wrong Categories: Some Comments on Steven D. Smith's, 'Why is Government Speech Problematic?'" at the 17th Annual Ira C. Rothgerber, Jr. Conference on Constitutional Law, Denver (January 22, 2010).

Christine Cimini

"In the Public Interest: Exploring the Legacy of Robert Cover as Professor, Activist, and Scholar," American Association of Law Schools (AALS) Annual Conference, New Orleans, La. (January 8, 2010).

"Nuts and Bolts: What Do We Mean By Outcomes and Assessment," at the AALS Annual Clinical Conference, Baltimore, Maryland (May 5, 2010). Co-presenters: Elliott Milstein, American University; and Alicia Alvarez, University of Michigan.

Stephen Pepper

"Three Dichotomies In Lawyers' Ethics," keynote address, 32nd Legal Ethics Institute, Washington and Lee University, Lexington, Va. (March 19, 2010).

Raja Raghunath

Panelist, "Cultivating Values: Developing Law Students into Citizen Lawyers," AALS Annual Meeting, New Orleans, La. (January 9, 2010).

Eli Wald

"Large Law Firms, Gender Stereotypes and the Economic Downturn," at Fordham Law School, New York City, NY (October 2009).

"Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes and the Future of Women Lawyers at Large Law Firms," Private Practice Lawyers – Jack Heinz Tribute Panel, Lawyers and Social Structure: Stratification, Law and Society Annual Meeting, Chicago, Ill. (May 2010).

Ed Ziegler

"American Cities, Sustainable Development, and Obama's New Green Initiatives," Pantheon-Sorbonne, University of Paris, Paris, France. Invited talk at University of Paris law school joint program hosted by their master's program in environmental law and the University of Paris Urban Planning Research Institute. (October 20, 2009).

"Private Property Rights, the Rule of law, and Economic Prosperity in the United States: A National and International Perspective," visiting scholar lectures at the University of Barcelona (February 9, 2010).

AWARDS**Kris Miccio**

Marie Curie Transfer of Knowledge Fellowship (March 2010). The Marie Curie is awarded by the European Commission. Two Americans received this award: Professor Miccio; and Professor Martha A. Fineman, Emory University Law School. Miccio lectured on male intimate violence and state accountability and worked with PhD students at the University of Dublin Law School and School of Social Justice (extended, 2010).

Fulbright Senior Specialist Award (April 2010). Miccio will visit the University of Dublin Law School to assist in the development of simulation-based learning. She will also teach U.S. Criminal Procedure, atomizing the course so that faculty who attend (along with law students) can experience this pedagogy. Miccio will also run faculty workshops (extended, 2010-2011).

PROF Grant Awardee (April 2010). Awarded to fund Miccio's research on the impact of mandates in domestic violence cases on the battered women's movements in the U.S. and Ireland (2010-2012).

ADJUNCT HIGHLIGHTS

Publications

David Kopel

"Pretend 'Gun-free' School Zones: A Deadly Legal Fiction," *42 Connecticut Law Review* 515 (2009).

Presentations

David B. Kopel

"McDonald v. Chicago—The Supreme Court and Second Amendment Rights," University of Chicago (March 3, 2010). Co-presenters: Lee Walker, President of the New Coalition and Senior fellow at the Heartland Institute; and Douglas Krick, founder of Pink Pistols.

MEDIA AND OTHER PRESENTATIONS

Jay Brown

CBS Radio, October 21—J. Robert Brown, a University of Denver law professor specializing in corporate governance, commented on the Obama administration's move to limit lavish pay packages for top executives of companies winning the biggest bailouts. Other media quoting Brown include: **WTOP Radio (Washington, D.C.), October 21; WBAL Radio (Baltimore), October 22 and Denver Post, October 22. Boston Herald, October 24, (AP reporting).**

CNBC, December 10—Jay Brown, University of Denver Sturm College of Law professor, says paying bonuses in shares does not mark the beginning of a new era in leadership on Wall Street.

<http://www.cnbc.com/id/15840232?video=1355416118&play=1>

Bureau of National Affairs Report, Dec. 11—University of Denver Sturm College of Law Professor Jay Brown was interviewed on Corporate Responsibility commenting on whistleblower legislation.

The Volokh Conspiracy Blog, December 21—J. Robert Brown considers the potential effect of legal blogging on judicial decisions. Any such influence would be difficult to quantify. Even when a judicial decision cites a blog, it is hard to know whether the blog in question actually influenced the case's outcome. Nonetheless, there are occasional instances in which it is quite probable blogging influenced judicial behavior.

Other blogs linking to Brown's blog include: **Brian Leiter's Law School Reports, December 21.**

<http://leiterlawschool.typepad.com/leiter/2009/12/blogs-influencing-the-judicial-process.html>; **Scotus Blog, December 22,** <http://www.scotusblog.com/wp/tuesday-round-up-6/>

New York Times, January 8—Associated Press reporting: A year after Fannie and Freddie got bailed out and amid continued promises from the Obama administration to rein in executive pay, the plump pay packages — which were disclosed in the companies' securities filings — show not much has changed.

"This highlights the myth of pay reform out of Washington," said J. Robert Brown, a professor of business law and corporate governance at the University of Denver and expert on compensation issues. "This is a sign that the government isn't going to do much about the problems of pay."

NPR, January 13—With Wall Street profits growing again, banks are also under growing pressure to hire the best employees, and they're doing that by offering bigger and bigger bonuses. One bank official noted that some banks are once again offering guaranteed bonuses. They're promising prospective hires that they'll get their bonus no matter what happens — even if the person ends up losing the bank's money. That kind of lavish promise ups the ante for the industry as a whole. The same official said banks are also facing growing competition from overseas financial institutions for the best talent.

Jay Brown, a professor at the University of Denver law school, says that makes it much harder for banks to consider reining in their compensation.

"It's tough to be the one financial institution out there that pays reasonable compensation when everybody else is paying excessive compensation, or at least compensation that looks excessive," Brown says. "There needs to be somebody that says, 'All of you must be more reasonable about this.'"

<http://www.npr.org/templates/story/story.php?storyId=122498067>

CNBC, January 19—Sturm College of Law professor Jay Brown was featured in lengthy segment on CNBC national TV arguing for controls on executive pay. Link to video (Brown's segment starts about 2 minutes in).

<http://www.cnbc.com/id/15840232?video=1390337285&play=1>

CNBC, January 26—Sturm College of Law Professor Jay Brown was interviewed live on CNBC TV on the future executive pay for GM's new CEO.

<http://www.cnbc.com/id/15840232?video=1396377933&play=1>

The Wall Street Journal, March 10—On Friday, Black & Decker Corp. investors are expected to bless the company's acquisition by Stanley Works, a fellow maker of power and hand tools that offered them a 22% premium for their shares.

But the situation does raise questions about the effectiveness of regulations set up in the wake of the corporate scandals early last decade to ensure an independent board review of corporate-governance matters like compensation. It "demonstrates weaknesses in the independent-director system we have in place," said J. Robert Brown Jr., a law professor at the University of Denver who specializes in corporate governance and securities law.

<http://online.wsj.com/article/SB10001424052748704145904575112023406207574.html>

CNBC, April 1—Jay Brown, a professor in the University of Denver's Sturm College of Law was interviewed about whether hedge fund salaries are justified.

<http://www.cnbc.com/id/15840232?video=1457414498&play=1>

NPR, April 20—Goldman Sachs Group this week reminded everyone why it is one of the biggest names on Wall Street. The firm's first-quarter earnings, released Tuesday, show Goldman netted nearly \$3.5 billion. This comes just days after the Securities and Exchange Commission sued Goldman for fraud, putting the firm on the defense. University of Denver law professor Jay Brown isn't all that worried about the firm.

“Anybody who uses Goldman knowing how good Goldman is, I don’t think they’re going to walk because there was one deal where it was alleged that they didn’t tell the whole story to the investors,” he says.

Washington Post, April 22—Gregory Palm, Goldman’s top lawyer, said Tuesday that ACA had evaluated every security proposed by Paulson and rejected half of them. And he said that, in the end, it didn’t matter, because virtually every mortgage investment created in this period lost value.

The agency also says that neither IKB nor ACA would have bet on the investment if they knew Paulson had helped create it and then made a major bet against it, or shorted it, essentially by buying insurance that would pay out if the security lost significant value. “At the end of the day, it’s very hard to argue that investors wouldn’t want to know that the portfolio was put together by somebody selling short,” said J. Robert Brown, a law professor at the University of Denver.

http://www.washingtonpost.com/wp-dyn/content/article/2010/04/20/AR2010042005444_2.html?hpid=topnews

K.K. DuVivier

Controversy brews over proposed uranium mine in Nunn, Colo.

<http://www.npr.org/templates/player/mediaPlayer.html?action=1&t=1&islist=false&id=128208291&m=128208309>

Robert Hardaway

A recent poll reflected that in the aftermath of the BP disaster only 25% of Americans say they would support off-shore drilling.

<http://www.foxnews.com/opinion/2010/06/15/robert-hardaway-bp-gulf-spill-punish-oil-suvs-gasoline/>

Mike Harris and the Environmental Law Clinic

WXTF (Fox29, Philadelphia), November 13—Two animal advocacy groups have filed a lawsuit seeking to delay a plan to shoot hundreds of deer in Valley Forge National Historical Park, west of Philadelphia. Park officials say they want to thin a herd of nearly 1,300 deer to between 165 and 185 to protect park vegetation and to protect deer from disease. The Connecticut-based Friends of Animals and Pennsylvania-based Compassion for Animals, Respect for the Environment filed a lawsuit Thursday in federal court, saying the National Park Service violated federal environmental law by not fully considering alternatives, like using coyotes, to thin the herd. Park officials have defended the plan. The University of Denver law school’s Environmental Law Clinic is representing the animal groups.

Boston Globe, December 23—The National Park Service has called off its plan to deploy silencer-equipped sharpshooters this winter to cull the nearly 1,300 deer overtaking Valley Forge.

With a lawsuit pending and facing the logistics of deploying contract shooters before spring, the government decided to put off a long-planned hunt at Valley Forge National Historical Park until at least next November, Assistant U.S. Attorney Richard Bernstein told The Associated Press on Wednesday.

A lawyer for the groups involved in the suit, Connecticut-based Friends of Animals and Pennsylvania-based Compassion for Animals, Respect for the Environment, said Wednesday they are thrilled by the one-year reprieve.

“The fact that they’re not managing the parks in a natural way is really what’s driving our concern,” said Michael R. Harris, a University of Denver environmental law professor who represents them. “They’re supposed to be managed in a wild state.”

Harris endorses the use of coyotes — already present in the region — to thin the deer population. If that means suburbanites must learn to live with predators in their midst, so be it, he said. (AP Reporting) http://www.boston.com/news/nation/articles/2009/12/23/apnewsbreak_valley_force_deer_hunt_postponed/?rss_id=Boston.com+%2F+Boston+Globe+--+National+News

Rock Pring

The New York Times, April 20—The number of courts and tribunals specializing in environmental issues doubled during the past decade, prompted by increasingly complex regulations and growing concerns about natural resources, according to a new study.

The study was prepared by University of Denver law professor George Pring and his wife, Catherine Pring, a mediator specializing in environmental issues. In the United States, they counted dozens of city- and county-level environmental courts, as well as state-level courts in Vermont and Washington and federal courts at U.S. EPA and the Interior Department.

<http://www.nytimes.com/gwire/2010/04/20/20greenwire-study-last-decade-saw-boom-in-environmental-co-74053.html>

Pring’s work featured: “Slapping Free Speech,” in “Number 1 Shimbun,” a magazine published by the Foreign Correspondents Club of Japan (April 2010, vol. 42, no. 4).

National Public Radio, April 2—Two former University of Denver professors were interviewed about “SLAPP” (strategic lawsuit against public participation) lawsuits, which are considered frivolous. The story was also run by NPR, April 3.

Article on ECTs and Pring’s book, *Greening Justice*, on the Australian Broadcasting Corp. online news.

<http://www.abc.net.au/environment/articles/2010/05/24/2907888.htm>

Laura Rovner and the Civil Rights Clinic

CNN.com, February 25—Tommy Silverstein has been held in solitary confinement for the past 27 years, longer than anyone else in the federal prison system, his lawyers say. He is locked up at the high-security prison in Florence, Colorado, known as Supermax.

His attorneys, who are affiliated with the University of Denver, filed a lawsuit against the U.S. Bureau of Prisons in 2007, alleging that such prison conditions violate the cruel and unusual punishment clause of the Eighth Amendment. The lawsuit, filed in the federal district court of Colorado, is awaiting trial.

<http://www.cnn.com/2010/CRIME/02/25/colorado.supermax.silverstein.solitary/index.html?hpt=Sbin>

Tom Russell

Philadelphia Tribune, May 25—*AP Reporting*: Simkins Residence Hall is the last all-male dormitory at the University of Texas. Tucked into a quiet corner of campus along Waller Creek, it was the first men’s dorm with air conditioning. It is notable for another reason as well: Simkins is named for a UT law professor who was a leader of the Ku Klux Klan.

“Simkins engaged in illegal, terrorist behavior during Reconstruction and doesn’t merit having a building carrying his name,” Tom Russell, a former UT law professor who now teaches at the University of Denver, said in an interview. “It’s particularly true in view of the fact that he was a law professor.”

MISCELLANEOUS

Jay Brown

While at Hastings in the fall, Prof. Brown wrote an amicus brief filed in the US Supreme Court in a case called *Merck v. Reynolds* about the application of the statute of limitations to securities fraud suits. The opinion came down on April 27. The brief was on the winning side of the case and received two citations in a concurring opinion by Justice Scalia. Despite the fact that there were dozens of amici in this case, only this brief and the brief filed by the Solicitor General received cites in the opinion.

<http://www.supremecourt.gov/opinions/09pdf/08-905.pdf>