Professor Mary Beth Beazley speaks with 1L students during Orientation 2009. Moritz welcomed 225 J.D. and 12 LL.M. students to the College.
From the Dean’s Desk

These are extraordinary times. In today’s difficult economic environment, organizations of all types from various sectors have been forced to reexamine, reevaluate, and revise their work. Belt-tightening, retrenchment, and a reduction of activities and services have been commonplace responses to the uncertainty. But these same challenges have also led some organizations to reinvention and innovation.

The Moritz community has been working hard to weather the storm of the current economy. Thanks to the generosity and support of our alumni and friends, we have maintained our momentum and continue to pursue our mission as a great public law school. We have not needed to respond with the unprecedented tuition increases (indeed, ours was the lowest in many years) or critical staffing cuts to which some other law schools have succumbed. One of the great strengths of our law school has always been our ability to innovate. For instance, in the 1930s during another period of substantial economic upheaval, the College of Law pioneered clinical legal education.

While some green shoots of economic recovery have started to appear, the legal employment market remains deeply challenging. In fact, The New York Times called this legal market “the most wrenching job search season in over 50 years.” The upheaval pervades the legal job market in both the public and private sectors.

In light of such realities, we have stepped up our efforts to assist our students’ transition into practice. For example, our Career Services Office will soon begin promoting and accepting applications for a newly established Career Start Grants Program. Through this initiative, members of the class of 2009 will be eligible to apply for limited financial support to pursue individualized volunteer projects designed to build legal skills in a substantive area of law. Another innovation: Moritz has negotiated an agreement to expand work-study positions for our current students with public sector and government employers beyond Franklin County. This new arrangement will expand opportunities for our students to develop important relationships and gain experience with prospective employers from the Cleveland and Cincinnati markets in summer 2010. In addition to these and other new initiatives, our recently added Mentoring and Leadership Programs have turned out to perfectly fit the needs of the times.

In these times of upheaval, reorganization, and problem-solving, there is a greater need than ever for the outstanding graduates the Moritz College of Law produces. Our alumni take leading roles not only in the practice of law, but also in operating the business world, shaping the public sector, and addressing societal challenges.

As a result, despite the current climate and the challenges it presents, I remain confident that our law school will continue to move forward, innovate, and prosper well into the future. I look forward to working with you as we continue to develop the next generation of outstanding lawyers and talented leaders.

Alan C. Michaels
Dean and Edwin M. Cooperman Professor of Law
Do you want to share your thoughts on a topic covered in “All Rise”? Send a letter to the editor by e-mailing Rob Phillips at phillips.854@osu.edu. Or mail a letter to The Ohio State University, Moritz College of Law, c/o Rob Phillips, 55 W. 12th Ave., Columbus, OH 43210. Letters should be kept to fewer than 400 words and may be edited. We can not guarantee that all letters received will be printed in the next edition of “All Rise.”

Diverse viewpoints are presented in this publication, and they do not necessarily reflect the official policies of the law school.
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Elbert Aull ’12 chats with a mentor during one of the 2009-10 Mentoring and More @ Moritz events. The popular program matches Moritz students with volunteer mentors and the groups are invited to several luncheons throughout the year.
Tobin Named Bazler Designated Professor in Law

By Rob Phillips

Professor Donald B. Tobin, the College’s associate dean for faculty, was recently named the Frank E. and Virginia H. Bazler Designated Professor in Business Law.

Tobin joined the Moritz College of Law in 2001 and specializes in tax law. He is a co-author on a leading treatise on federal income taxation and regularly teaches a course on the subject at Moritz. He has been active in promoting business law at Moritz. He was the original faculty advisor to the business law students and has been an advisor to the business law moot court team.

From 1997-01, Tobin was an attorney on the appellate staff of the tax division of the U.S. Department of Justice. Prior to his service in the Justice Department, he clerked for the Honorable Francis D. Murnaghan, Jr. of the U.S. Court of Appeals for the Fourth Circuit, and was a staff member with the U.S. Senate Budget Committee, the Joint Economic Committee of Congress, and for U.S. Senator Paul Sarbanes.

Tobin’s most recent research has focused on the roles of nonprofit and taxable entities that wish to participate in political campaigns. He also recently co-authored a textbook dealing with ethical issues in tax practice.

Tobin is a senior fellow with Moritz’s Election Law @ Moritz program, and he has also served as associate dean for academic affairs at the College.

The professorship, created in 2008, is named after Frank Bazler, a 1951 Ohio State College of Commerce graduate and 1953 College of Law alumnus, and his wife, Virginia. The Bazlers made an identical donation to Ohio State’s College of Food, Agricultural and Environmental Sciences. Virginia received her bachelor’s degree from the School of Home Economics in the College of Agriculture.

MLB Players Association Counsel Welcomed to Moritz

Steven Fehr, an attorney who has been outside counsel to the Major League Baseball Players Association since 1986, spoke at Moritz in September to kick off the Lawrence Negotiation Competition.

Every fall, Moritz students compete in the intramural competition, named for James K.L. Lawrence ’65. As part of the competition, the College’s Program on Dispute Resolution hosts a speaker with a distinguished career as a negotiator.

Fehr represented individual baseball players starting in 1980 and, in 1986, began serving as outside counsel to the Major League Baseball Players Association. In 1987, he was lead attorney for the MLBPA in the “collusion” cases, which involved claims that club owners had conspired to deprive free agent players of their rights.

Since 1990 Fehr has acted as outside counsel for the MLBPA on several other matters, including the 1992 Economic Study Committee; the 1994 strike and related litigation, and the negotiations leading to the new collective bargaining agreement reached in 1996; and the proceedings leading to the passage by Congress of the Curt Flood Act; among others.
The inaugural David H. Bodiker Lecture on Criminal Justice, featuring Michael E. Tigar, Professor of the Practice of Law at Duke Law School, was held Sept. 24 in Saxbe Auditorium.

Tigar is one of the most acclaimed criminal defense attorneys in the United States. He has argued seven cases before the U.S. Supreme Court and dozens of federal appeals courts. Professor Tigar has represented The Washington Post, John Connally, Sen. Kay Bailey Hutchison, Scott McClellan, Rep. Ronald Dellums, and Mobil Oil, among others.

Tigar was an associate and partner at Williams & Connolly and partner in his own firm, Tigar & Buffone. Since 1996, he has been associated in law practice with his wife, Jane B. Tigar. He has been acting professor of law at UCLA, held the Joseph D. Jamail Chair in Law at the University of Texas, and an endowed professorship at the American University Washington College of Law. He has been a visiting professor at the Faculté de droit et des sciences politiques, Université Paul Cezanne, Aix-en-Provence.

He received his bachelor's degree and law degree from Boalt Hall, University of California, Berkeley.

Professor Tigar is the author or editor of more than a dozen books, including Thinking About Terrorism: The Threat to Civil Liberties in Times of National Emergency, Fighting Injustice, Examining Witnesses (2d ed.), Persuasion: The Litigator’s Art, and Law and the Rise of Capitalism (2d ed.). He has also written three plays and dozens of law review articles.

The David H. Bodiker Lecture Series on Criminal Justice was established at The Ohio State University Moritz College of Law in February 2008 to honor the spirit, dedication, and passion of David H. Bodiker, who served as the Ohio Public Defender from 1994 until his retirement in December 2007.

Bodiker, a 1963 Moritz graduate and attorney in private practice for many years in Columbus, was a fierce advocate for the poor in Ohio’s criminal justice system and was singular in his tenacious and relentless advocacy for the rights of Death Row inmates.

The David H. Bodiker Lecture Series seeks to promote, improve, and advance the highest level of academic and professional interest in protecting the constitutional rights of the defendant in the criminal justice system through an annual lecture at the Moritz College of Law. Each year the featured lecturer will be a nationally known authority who will make a presentation to law students and interested professionals at Moritz. The lecture will also be published in the Ohio State Journal of Criminal Law.
Alumni Return for Visiting Practitioner Series

As part of a new career development effort, five Moritz alumni were welcomed to campus this fall to meet students and introduce them to substantive areas of law.

“We have an endless network of successful and knowledgeable Moritz alumni,” said Pam Lombardi, assistant dean for career services and external affairs. “We hope this program provides a venue for our alumni to share their expertise and another opportunity for our students to learn about careers in law.”

Practitioners from around the country visited the law school for a half day, where they made lunchtime presentations and then met with individual students.

The program was well received among students, and plans are underway to continue the program in the spring semester.

Fall semester speakers included:

Joseph Epps ’73, of Epps & Yong in Los Angeles, explained his work in health care law.

Marty Glick ’61 (pictured in insert above), of Howard, Rice, Nemerovski, Canady, Falk & Rabkin in San Francisco, discussed intellectual property law.

Lauren Harris ’05, of Vorys Sater Seymour and Pease in Columbus, discussed labor and employment law.

Michael Segal ’83, of Wachtell Lipton Rosen & Katz in New York, is expected to speak regarding executive compensation and ERISA in November.

Mike Zellers ’80, of Tucker Ellis & West LLP in Los Angeles, shared his experiences in business litigation and medical liability law.

Program on Law and Leadership Welcomes Renowned Consultant

On Oct. 20, Moritz’s Program on Law and Leadership welcomed Dennis Perkins, who presented “Leadership at The Edge: The Shackleton Saga” to a packed audience of Moritz students and faculty at the Barrister Club.

In December 1914, legendary Antarctic explorer, Ernest Shackleton, and 27 men sailed aboard a wooden vessel to become the first to cross the Antarctic continent. Forty-five days after their departure, disaster struck. Their boat was beset by solid pack ice, and the expedition was trapped. For nearly two years, Shackleton and his crew were stranded in the icy sea.

Facing unimaginable challenges with astonishing good cheer, Shackleton and his crew returned, without loss of life, after 634 days. Dennis Perkins’ presentation explained how Shackleton inspired his crew to such extraordinary levels of courage, unity, and commitment.

He also described how Shackleton’s leadership approach can be applied to any leadership crisis or challenge today.

“The presentation provided the audience with identifiable strategies for success in an organizational setting—memorably conveyed through an anecdote about Shackleton’s journey,” said Grant Bokerman ’10, who attended the speech. “My favorite success strategy was to ‘never lose sight of the ultimate goal and focus energy on short-term objectives.’”

Perkins, a former professor at Yale University School of Management, is chief executive officer of The Syncretics Group, and he’s one of the most sought after leadership development consultants in the world.

Perkins was joined by his friend and colleague Jack Creighton ’57, a former chief executive officer of both the Weyerhaeuser Co. and United Airlines.
Gregory H. Williams, former dean of Moritz and the current president of City College of City University New York (CUNY), was named the next president of the University of Cincinnati on Sept. 9.

Moritz Dean Alan Michaels is pleased to see his former colleague returning to Ohio as president of the University of Cincinnati. “He was a tremendous leader for us, and he will surely be a great asset to UC and a fierce advocate for Ohio higher education. In addition, his selection marks the latest in a long line of appointments of Moritz faculty to key leadership posts in academia,” Michaels said.

That sentiment was echoed by Williams’ successor as dean, Nancy Rogers, who led Moritz from 2001 to 2008: “This is another instance in which the Moritz community applauds as one of our own is selected for academic leadership. Three Ohio universities are now headed by a current or former Moritz faculty member and a fourth Ohio university is led by a Moritz graduate.”

In addition to Williams, Moritz Professor E. Gordon Gee serves as president of The Ohio State University, former Moritz faculty member Barbara Snyder leads Case Western Reserve University, and Moritz alumnus John Garland ’74 heads Central State University.

During Williams’ tenure at City College, the school increased its enrollment by nearly 50 percent and strengthened admissions standards.

At Moritz, which he led from 1993 to 2001, he is credited for expanding College programs and recruiting world-class faculty. While Williams was dean, the College created a certificate program in alternative dispute resolution, as well as the Justice for Children, Legislation, and Student Housing Legal clinics.

During his deanship, Williams also published the book, Life on the Color Line: The True Story of a White Boy Who Discovered He Was Black. The award-winning and best-selling memoir was selected as the 1995 Book of the Year by The Los Angeles Times.

Former Moritz Dean Gregory H. Williams Named University of Cincinnati President

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2009 Oxford Summer Program

Moritz Students and Professors Venture to Oxford

This summer, 37 Moritz students traveled to Oxford for the University of Oxford-Ohio State University Summer Law Program. Moritz Professors James Brudney and Dan Tokaji taught courses alongside colleagues from around the world. Tokaji taught a course entitled Comparative Constitutional Law and Brudney taught Comparative Labor and Employment Law.

Students had the opportunity to take several day trips, including visits to the Middle Temple, the Houses of Parliament, and the Palace of Westminster.

The five-week program is jointly conducted by the Oxford University Department for Continuing Education and The Ohio State University Moritz College of Law.

Letter to the Editor

Congratulations to those who did the All Rise magazine, Summer Edition 2009. This was one of the best issues I have ever received. The photos and subject materials were outstanding.

Previous issues contained too many pictures of deans meeting with students, faculty, and others. This issue was especially of interest to me since it carried the story of Daniel McQuade and mentioned the family interest in Ohio State and the community contributions the McQuade family members have made over many years.

Personal interest stories are always welcome – particularly when most of the current news is negative and not kind to lawyers in general.

Best Wishes,
Donald D. Simmons ’58
The brainchild of several Ohio law school deans, including former Moritz Dean Nancy Rogers, the Institute (not to be confused with the College’s Program on Law and Leadership for its law students) is now in its second year and is modeled after a similar one in New York. The concept arose in 2006 during a retreat held with the nine deans of Ohio’s law schools, Chief Justice Thomas Moyer ’64 of the Supreme Court of Ohio, and the leadership of the Ohio State Bar Association.

“It really is a wonderful opportunity for many young students who may not have thought about law for a number of reasons,” Moyer said. “And what we’re doing with the program is exposing them to opportunities that may have never occurred to them.”

Supported by the state’s law schools, the Ohio State Bar Foundation, the Kettering Foundation, the Ohio Center for Law-Related Education, and the Supreme Court of Ohio, the Institute is an initiative to increase the number of minorities involved in the justice system.

“It’s important to build the diversity of the profession and leadership more broadly,” Rogers said. “And I think it is important to give kids who have the promise to be those leaders and those lawyers, but are in underserved schools and without the economic resources, a strong chance to have that kind of a future.”

Cleveland and Columbus schools piloted the program during the summer of 2008 with about 40 rising ninth grade students between the two cities. The program has now grown to include students in Akron, Toledo, Cincinnati, and Dayton.

“The goal of the Law &

Want to learn more?
Check out a Moritz video about the Law and Leadership Institute at moritzlaw.osu.edu/videos/09_lawleadership

Moritz Nurtures Young Leaders of the Future

By Jamila T. Williams
Leadership Institute is to introduce students to the law, introduce them to what lawyers do, and to give them the opportunity to see what a career in law might be,” said Kathy Northern, Moritz’s associate dean for admissions, at the program’s orientation. “But more importantly it is an opportunity to begin to develop your leadership skills.”

On Moritz’s campus, 18 rising freshmen and 10 returning sophomores from Columbus City Schools participated in the five-week program weekdays from 9 a.m. to 4 p.m.

The potential lawyers were exposed to law in variety of ways: field trips, class activities, and guest speakers. There were even homework assignments and weekly tests. The freshmen-year curriculum primarily includes criminal law while the sophomore students learned about consumer law and torts, as well as the PSAT and writing practice. During the school year, the students will attend Saturday classes to continue to hone both their legal and leadership skills.

The students had opportunities to visit with a number of people in the law community including Judge Algenon L. Marbley of the U.S. District Court for the Southern District of Ohio, as well as Chief Justice Moyer.

Moritz alumna Suzanne K. Richards ’74 also was involved in the Institute, taking on the role of coordinating the internship week for the rising 10th grade students during the summer. “Even if these students don’t go into law, they will be enriched and will in turn enrich the institutions they eventually become a part of,” Richards said.

Not only does the Law & Leadership Institute provide opportunities for the high school students, it also provided an opportunity for Moritz students to serve as teachers for the program.

3L and volunteer Roshni Baldeo Phalgoo, a first-generation college student, said she could identify with many of the students.

“Watching these kids is like watching me and my friends when we were back in high school,” she said. “It really is a long way to the top so I hope the program helps them to learn better and think better. Every skill you enhance can only make you better.”

Passion for Giving Back: Suzanne K. Richards ’74

Suzanne K. Richards ’74 knew she wanted to be on board with the Law & Leadership Institute the moment she heard about it. “It sounded like a terrific idea and program,” Richards said. “I thought it certainly would be wonderful to give time to it.”

Richards, a partner at Vorys Sater Seymour and Pease LLP, coordinated the summer internship portion of the Institute for the rising 10th grade students. Two of the 10 students participating at Moritz spent their week interning at Vorys working under Richards’ direction.

“They did wonderfully,” she said in regards to the students. “Hopefully the Institute will do a great deal in diversifying law schools and the legal field in Ohio.”

Richards will stay involved with the program throughout the school year as well. She plans to work on both the debate program and some of the law and literature segments of the sophomore program.

“I think the law school is doing a good job of involving alumni with the school ... involving them in other activities to be part of the law school community again.”

After graduating from Moritz, Richards clerked for the Hon. Robert Duncan ’52 of the U.S. District Court for the Southern District of Ohio.

“Judge Duncan was a tremendously fun person to work with both professionally and personally,” she said. “He taught me a lot about the law and how it works and how to think through real issues and real cases.”

Richards carries that enthusiasm to her current practice at Vorys, where she primarily engages in business and employment litigation.

“I still enjoy the idea that law allows you to address people’s practical problems and issues and still has the ability to give you intellectual stimulation.”
Moritz Professor Douglas A. Berman didn’t quite know what would transpire after discussing with Suja A. Thomas, a then-University of Cincinnati law professor, in April 2007 about a possible conference regarding “originalism and the jury.”

Thomas had just finished speaking at a Moritz event regarding her research on the Seventh Amendment’s right to jury trial. Berman thought the topic — combined with his work regarding the Sixth Amendment — would make for a well-received discussion on originalism.

“We both agreed that trying to invite Justice (Antonin) Scalia would make the most sense for such a conference,” Berman said. “And so we did.”

The two — along with Jeffrey Sutton ’90, a judge on the U.S. Sixth Circuit Court of Appeals and former Scalia clerk — drafted a formal invitation letter to the justice.

“We received a letter back from Justice Scalia’s office indicating that he would not be able to make it to the law school during the 2007-2008 school year,” Berman said. “They told us that they would keep our request in mind, but, at that point, I really didn’t think he was going to be able to be part of an event at Moritz.”

But, in September 2008, Berman said that they received notice that Justice Scalia was interested in coming to the proposed event. The University of Illinois College of Law, where Thomas now is a professor, is co-sponsoring the event in Dinko Hall on Nov. 17.

And since learning the justice planned to attend the event, preparations have not slowed.

Distinguished panelists from around the country have agreed to visit the Moritz College of Law to participate in the symposium. Nearly 20 speakers will discuss originalism and the jury throughout the day as part of four panels: Originalism in Advocacy; Seventh Amendment Civil Jury Trial; Sixth Amendment Criminal Jury Trial; and The Framers and the Jury.

The symposium discussion will be furthered in a future edition of the Ohio State Law Journal.

Students organizing the event said they are particularly proud of the mix of panelists who have agreed to attend.

“Of course it is great to have Justice Scalia coming, but the Ohio State Law Journal is really excited about all the panelists who have agreed to speak throughout the day,” said Peter Glenn-Applegate ’10, editor-in-chief of the journal.

Nathan Colvin ’10, the journal’s symposium editor, has taken the lead on most of the invitations, confirmations, logistics, and other countless issues that are required prior to such an important event. Colvin and Glenn-Applegate have met weekly with
Moritz staff to coordinate, in addition to the justice’s arrival, four panels of speakers, arrivals, departures, registrations, a lunch and dinner, and other logistics.

Colvin and the 2009-10 journal staff do have one important advantage: they had the opportunity to watch and learn from the visit of Justice Ruth Bader Ginsburg for last year’s Ohio State Law Journal symposium.

“It was nice to be able to watch and take notes during that event,” said Colvin, a 3L and Cincinnati native.

It’s estimated that more than half of the 100 members of the Ohio State Law Journal will have some volunteer duty leading up to and during the symposium. “It’s mostly little stuff,” Glenn-Applegate said, “but it is what needs to be done to have a successful event of this size.”

What’s keeping Colvin up at night? “It’s making sure that nothing falls through the cracks,” he said. “There are a lot of moving parts and all of our planning must keep that in mind. We need to be so prepared that nothing major can go wrong.”

Both students agreed that it has been a pleasure to have two U.S. Supreme Court justices visit Moritz in 2009. “I feel very lucky,” Glenn-Applegate said. “I realize that it was nothing that I did or the journal has done, it is the relationships that the College and its faculty and alumni have. I feel like we need to keep this streak going.”
Professor Merritt Argues Before U.S. Supreme Court

By Rob Phillips

Professor Deborah Jones Merritt was the only one making her case before the U.S. Supreme Court Oct. 7, but several others – from her own family to her Moritz one – contributed to the success of her first U.S. Supreme Court argument.

The Court, in Reed Elsevier v. Muchnick, is expected to determine whether a provision in the Copyright Act eliminates federal jurisdiction over unregistered copyright claims. Merritt, the John Deaver Drinko-Baker Hostetler Chair in Law, was hand-selected by the Court to defend the lower court ruling.

A Columbus Dispatch story featuring Merritt and her argument read: “During her presentation, Merritt spoke in a clear and controlled voice, often gesticulating with her left hand. … Even though she was sharply questioned by Justice Stephen Breyer, Merritt stuck to her basic point …”

Moritz alumnus, Stephen Wolfson ’08, and Merritt’s husband, Andrew, who also is an attorney, were co-authors of the 69-page brief. The three, along with Merritt’s 21-year-old son, Dan, won’t forget the all-nighter they pulled leading up to a filing deadline.

“The entire experience was a phenomenal one,” she said. “It was fabulous. It was exhausting. But being there in the courtroom and having the chance to argue a case before the Supreme Court was inspirational.”

Student research assistants helped Merritt locate materials and make final edits to the brief. Moritz students and faculty also provided invaluable feedback while acting as justices during four of Merritt’s practice arguments.

Among the several Moritz faculty members who provided assistance were Mary Beth Beazley, an expert in appellate advocacy; Ed Lee, an expert in copyright law; and Melanie Oberlin, a Moritz research librarian.

3L Bob Bitzenhofer and about a dozen other Moritz students made the trek to Washington, D.C., for the argument, which happened to fall during the College’s fall break. “It was an awesome experience,” Bitzenhofer said. “We all agreed that of all the attorneys we watched argue that day, Professor Merritt was by far the best.”

Merritt even snuck in “Ohio State University” in her oral argument.

“That was the icing on the cake for us,” Bitzenhofer said. “It was great.”

Moritz students who made the trip to Washington, D.C., to watch Professor Merritt included members of the class of 2010 (from left to right) Stacey Laskin, Grant Bokerman, Robert Bitzenhofer, Tyler Bidwell, Scott Gretytak, Mike Duffy, and Jessica Guard.
Scare you to death, work you to death, bore you to death?

By Jonathan Peters

When I decided to attend law school, my family and friends were happy for me — they hoped the experience would make me respectable or wise or something like that (talk about wishful thinking). Attorneys, however, weren’t so excited. They listened politely, but then told me how they really felt.

Consider all your options, especially not going to law school . . .

But that’s three years of your life . . . in law school . . .

You know, they first scare you to death, then work you to death, and finally bore you to death . . .

Well, here I am, still alive. Law school’s been a rough ride, sure, but it hasn’t been the all-consuming hell the attorneys said it would be. Still, there may be some truth, a granule of it, to the third comment: that law professors first scare you to death, then work you to death, and finally bore you to death.

Scare You to Death

In my first year, Professor Whaley kicked off my contracts class with Hawkins v. McGee, better known as the “hairy hand” case. He called on a guy and asked him to recite the facts. That guy (we’ll call him Mr. Jones) did a nice job, but what happened next made me cringe.

Whaley: “Since the estimates were exceeded, Mr. Jones, does that create liability?”

Jones: “I’m not . . . I don’t know . . . the hand should be perfect.”

Whaley: “So does that create liability?”

Jones looked to his book.

Whaley: “Mr. Jones, please look up from your book.”

Jones: “I just didn’t . . . I . . .”

Whaley, smiling: “I’m not in your book. Do you see me there?”

Jones: “I’m sorry . . . I . . .”

Whaley: “No need to apologize . . . let’s just find the answer.”

That back-and-forth continued, at an excruciating pace, with the student shifting in vain in his seat, for the next 40 minutes. I should mention that Mr. Jones was (and is) a terrific guy, unassuming and very smart. Same goes for Whaley. It scared me senseless, though, to watch someone unravel like that, an audience looking on. After all, it was just a matter of time before Whaley called on me . . .

Work You to Death

Two words: appellate advocacy.

Bore You to Death

I’m sick of the Socratic Method and bored of the case method. Each served its purpose in my first and second years, but now they leave something to be desired. I’m ready (well, maybe not ready, but eager) to apply what I’ve studied.

It reminds me of my hockey days. At the beginning of each season, we practiced endlessly — we ran drill after drill, offense and defense and neutral zone and special teams. We skated around cones until we buried them in snow, and eventually we got sick of it . . . we wanted to play games.

That’s why, this year, I’m taking two clinics: prosecution in the fall, and legislation in the spring. As a result, I’m far from bored. Prosecution has let me lace up my skates and face off against a real opponent (I deserve 10 cents for this amazing analogy). So far, I haven’t been knocked through the boards or kicked outta’ the game. I just make up in preparation what I lack in experience.

And fortunately, preparation isn’t a problem for me . . . ever since Whaley scared me senseless.
Two Moritz evidence professors, Deborah Jones Merritt and Ric Simmons, have released a new evidence casebook that is expected to be an important entrant to West’s American Casebook Series. However, the “casebook” label is a misnomer: This is a casebook without cases.

The book represents a new pedagogic approach to teaching traditional upper-level law classes, and West has expressed interest in creating a series of books based on this innovation. Rather than asking students to extract principles from lengthy case excerpts, the text teaches those principles through textual discussion, focused analysis of the rules, and concrete examples drawn from cases.

“The case method looks to the past,” Merritt explained. “It asks students to trace the evolution of settled issues and spot open spots in the law. Upper-level students are ready to shift their focus to the future. By helping students master settled principles more efficiently, the book allows them to concentrate on the work lawyers do: applying those principles to client problems and future cases.”

The text guides students through each rule, mapping complex provisions with flow charts or tables. It also offers colorful examples based on real cases, concise analyses, and excerpts of trial transcripts. The book is very user-friendly, making ample use of icons, shading, and boldface that maintain visual interest and consistently highlight such features as “key concepts,” “quick summary,” “open questions,” and fact-dependent rules.

Merritt is the John Deaver Drinko-Baker & Hostetler Chair in Law at Moritz. She clerked for Judge (now Justice) Ruth Bader Ginsburg on the Court of Appeals for the District of Columbia Circuit and for Justice Sandra Day O’Connor on the Supreme Court of the United States.

Simmons is an associate professor of law at Moritz. After graduating from Columbia Law School, he clerked for Laughlin E. Waters, U.S. District Court, Central District of California and then spent four years as an assistant district attorney in the New York County District Attorney’s office.

“By helping students master settled principles more efficiently, the book allows them to concentrate on the work lawyers do: applying those principles to client problems and future cases.”

— Professor Merritt
HeinOnline: Image-based and Historical Legal Content

By Melanie Oberlin

HeinOnline, a product of William S. Hein & Co., is an increasingly popular legal database making headway into law firms across the country. HeinOnline began as a retrospective database of law journals, offering online access back to the first journal issue, such as the first volume of the Ohio State Law Journal from 1935 and the first volume of the Ohio State Journal on Dispute Resolution from 1985. Since law journals on Westlaw and Lexis go back to only the 1990s, HeinOnline’s retrospective collection fills a void in online access to legal information.

Given its popularity in law firms and academic law libraries, HeinOnline continues to expand its legal collections. Its core library now contains such standard federal legal sources as the official U.S. Reports, the United States Code, Code of Federal Regulations, and the Federal Register. Although the current versions of these sources can be accessed freely from GPO Access, www.gpoaccess.gov, HeinOnline is unique in that it offers retrospective access (e.g., it contains all editions of the U.S. Code and the CFR and all issues of the Federal Register). This makes historic research of laws and regulations easier, perhaps sparing you a trek to the basement of a far-away law library to find the version of a regulation that affected your client when your client first built the factory or upgraded the facilities many years ago.

Another attractive feature of HeinOnline is it provides the original image of legal resources in a pdf format. Having an image-based document means that footnotes, charts, graphs, pictures, and page numbers appear exactly as they did in the original document. The formatting of regulations and statutes is exactly as it is in the print version. Reading, understanding, and citing the content is often much easier. Judges will appreciate your providing a copy of an important law review on a new point of law in your motion memo when the law review has the footnotes at the bottom of each page, where they belong.

Although HeinOnline offers exceptional content, its searchability is not as sophisticated as others, such as Lexis and Westlaw. Although the databases can be searched, search options are limited. HeinOnline is at its best when you have a specific citation to a document, such as U.S. Code section or session law, that you need in a pdf format.

HeinOnline is taking steps to improve its usability. If your law firm subscribes to HeinOnline, you can set up a personalized MyHein account that allows you to create bookmarks, save searches, and export bookmarks to e-mail. It also has a blog, a wiki, a YouTube channel, and a presence on Twitter and Facebook, and also offers chat help, live web-based training, and webinars.

Even if your law firm doesn’t currently subscribe to HeinOnline, most academic law libraries do. If you need to do historical legal research and HeinOnline might help, contact the nearest academic law library to see if it subscribes.

HeinOnline continues to add new content (e.g., it has just recently added Federal Agency Decisions and U.N. Treaties). However, some of this content is priced as a la carte databases and may not be included in a standard subscription. For current content and pricing, visit heinonline.org.

Melanie Oberlin joined The Ohio State University Moritz College of Law as a reference librarian in 2007. Prior to becoming a librarian, Oberlin was an environmental litigation attorney in Austin, Texas. Her responsibilities include assisting in development of the U.S. law collection, providing reference services to faculty, staff, students, and the public, and teaching first-year research and writing courses at Moritz.
Ohio State Buckeyes Coach Jim Tressel and the team celebrate after winning the 2002 National Championship in the Fiesta Bowl over the Miami Hurricanes. The Buckeyes completed a perfect 14-0 season.
THE BCS

CONTROVERSIAL

OR ILLEGAL?

College sports are full of passion, excitement, heartbreak, and triumph. And lawsuits.

By Barbara Peck

The NCAA is no stranger to the courtroom, and, at any given time, it is likely to have several high-profile lawsuits filed against it. As would be expected, the theme is almost always the same: someone wants a piece of the pie.

When the NCAA capped the salaries of assistant coaches, the coaches sued for antitrust violations and won; when the players cried foul on the association’s no-draft, no-agent rule for college football players, they sued on antitrust grounds and lost; the NCAA basketball tournament was thrust into the antitrust spotlight in 2004 and settled its differences with the NIT; and when the league changed the size of regulation lacrosse sticks, the manufacturer’s sued on antitrust grounds and lost. Today, there is a major suit against the NCAA by former players regarding licensing and copyright of images. Ed O’Bannon, who played basketball for the University of California at Los Angeles in 1995 and whose image of on-court heroics is still used, understands the league owns the copyright to his image while he played. But, 12 years after he hung up his high-tops, O’Bannon is wondering why the NCAA can still use his image when selling millions of dollars in apparel, video games, and DVDs.
But, perhaps the elephant in the room is not the lawsuits that are pending and have been settled, but the one that has been often demanded and called for by coaches, fans, and members of Congress in recent years and has never been brought. The debate surrounding college football’s Bowl Championship Series (BCS) is loud, heated, and often ends with a declaration of a blatant violation of antitrust law. But, is it really? Or is this just the talk of pundits doing a legal version of Monday morning quarterbacking?

A BRIEF HISTORY

Division I-A college football (now called the Football Bowl Subdivision) is not just the backbone of many college athletic programs, it is the entire skeleton. At some schools, the revenue generated from the football program not only supports football operations, but every other sport at the university and then some. In 2009, the football program brought in more than $65 million to the athletic department at The Ohio State University while it spent just over $33 million. As a result of the power football program, Ohio State boasts 36 varsity sports, which is 16 more than the average division I-A school, and all give the maximum amount of scholarships allowed by NCAA regulations. The athletic department also pumps money into the school’s general fund as well as special projects like the recent renovation of Thompson Library, the University’s main library on the Oval.

Division I-A college football is the only NCAA-sponsored sport that does not have an official playoff leading to a national championship. Instead, the 120 teams play in 11 different leagues and the NCAA season is capstoned by a league championship. The controversy is two-fold: 1) Who is No. 1 and No. 2? And 2) who goes to the other BCS bowl games, which are very lucrative, especially in a year when the champion from an automatic qualifying conference is not highly ranked?

THE ISSUE

The concept seems simple: Set up a system to allow the No. 1 and No. 2 team to play each other and create marquee match-ups in the other four bowl games while honoring the major conferences’ historic traditions of sending their conference champions to major bowls. The controversy is two-fold: 1) Who is No. 1 and No. 2? And 2) who goes to the other BCS bowl games, which are very lucrative, especially in a year when the champion from an automatic qualifying conference is not highly ranked?

The No. 1 and No. 2 teams are selected by a complex formula, the heart of which relies on two polls. The No. 3 team, which does not get to play for the national championship, often has a legitimate subjective argument
Michael Briley is one of those lawyers who are fortunate to have what every young lawyer needs: a mentor.

“When I got out of law school, I went to practice at a firm and there was a national expert on antitrust law at the firm (Fred Fuller),” Briley said. “He chose me to work for him, and he was my mentor. He was a tremendous teacher, and I have just fallen in love with antitrust law. I love reading the cases, and it has become a hobby for me.”

Briley practiced with Fuller until the firm closed its doors 25 years ago. He moved on to Shumaker, Loop & Kendrick, LLP, where he is a partner and antitrust expert.

“Antitrust law in our country works well, and I don’t think Congress will be changing it anytime soon,” Briley said. “It fits with the free enterprise tradition in this country.”

Briley is a member of the Toledo Bar Association, past chairman of the Antitrust Law Section of the Ohio State Bar Association, and a member of the Litigation Section and Antitrust Law Section of the American Bar Association. He is also a member of the Ohio State Board of Bar Examiners and is listed in The Best Lawyers in America in the antitrust category.

When he is not practicing law, Briley is an avid fisherman and a self-described “average golfer.” “My favorite place to fish is Alaska, and I am a member at Belmont Country Club in Toledo.”

And, of course, he is a Buckeye fan. In 2002, when the Buckeyes won the National Championship in the Fiesta Bowl, Briley happened to be in Arizona, but couldn’t score tickets. “I watched the game in a bar in Arizona. It was the best college football game in history.”

His favorite memory of Ohio State was the 1967 Ohio State vs. Michigan game. “We won 50-13 and late in the fourth quarter Woody Hayes went for the two-point conversion. When asked after the game why he did that, he said ‘because I could.’”

Mike and his wife, Sandy, a third-grade teacher, have two children: Michael Jr., a physics professor at the University of Wisconsin, and Karen, a research chemist at Mt. Sinai in New York City. They are also the proud grandparents of Alex, Lisa, and Magnus.
that it should be ranked higher than the No. 1 and No. 2 teams and these arguments can cast doubt on the validity of the national championship. Because teams from different leagues rarely play each other, the use of polls has been an integral part of the selection of a national champion for decades. The Associated Press poll was created in 1936 and the United Press International/Football Coaches Association (now the USA Today poll) was created in 1950. It was not until the early 1970s that the polls even considered bowl results when naming a national champion.

“I don’t think there is a perfect system out there,” said Michael Briley ’69, an antitrust law specialist and partner at Shumaker Loop & Kendrick LLC in Toledo. “When I went to the Fiesta Bowl in 2007 and Florida beat us, it was crystal clear to me who the national champions were that year.”

There has always been a problem comparing teams from leagues, especially when, unlike professional sports, those leagues are not viewed as consistently balanced and equal. In many years, it would be hard for many fans to swallow leaving the Big 10 runner-up or SEC runner-up out of a playoff system in favor of choosing the conference champion of the MAC or Mountain West.

“There is much more competition in the bigger leagues,” Bazler said. “Other schools may have big games scheduled here and there, but being a national champion means beating competitive teams each week and also winning the big game at the end.”

The BCS is more than just the national championship game, however. The BCS itself involves five bowl games – the Fiesta, Orange, Rose, and Sugar bowls as well as the BCS National Championship Game, which is played at the site of one of the four other bowls – and 10 of the 58 bowl spots available to Division I-A teams. Six of those eight spots are reserved for champions of the ACC, Big East, Big Ten, Big 12, Pacific-10, and Southeastern Conferences (referred to as the “automatic qualifying conferences”). The remaining two spots are at-large bids and can go to a team from one of the other five conferences or to a second team from one of the automatic conferences. The guaranteed spots are controversial because they have, at times, put a lower-ranked team in a BCS bowl and left a higher-ranked team out. To avoid this problem, it has been suggested that instead the BCS should just take the top 10 ranked teams, regardless of which conferences they are from. While there a host of issues related to this idea, the main point expressed by Big 10 Commissioner James Delaney is that it is not what the Big 10 or other conferences agreed upon. In Congressional testimony, Delaney has firmly advocated that the Big 10 would have never agreed to give up the automatic slot in the Rose Bowl for its conference champion and create the BCS unless its conference champion was guaranteed a spot in at least one of the other major bowls.

“We have been to the Rose Bowl three times, starting in 1955 the first year we were married. If there were a playoff system instead, I don’t know how we would buy tickets and make travel arrangements when we wouldn’t know if the Buckeyes were playing in the game until a week before.”

— Frank Bazler ’53
CONGRESS & THE CASE FOR ANTITRUST

In the past six years, Congress has held three hearings, including two this year, on the subject of the Bowl Championship Series and whether its methods for selecting teams and dividing revenues violate antitrust laws. The focus of the hearings is clearly to put pressure on college football to move toward a playoff system. The hearings were spearheaded by Joe Barton (R-TX), whose Texan Longhorns were questionably ranked No. 3 in 2008 and missed out on playing for the national championship; Orrin Hatch (R-UT), whose Utah Utes were the only undefeated team in 2008, but were not ranked No. 1 or No. 2 and, therefore, did not play for the national championship; and Neil Abercrombie (D-HI), whose Hawaii Warriors have often expressed frustration with the BCS system.

House Resolution 1120, introduced on April 17, 2008 and again on Jan. 15, 2009 by Rep. Abercrombie, rejects the BCS system as an illegal restraint of trade that violates the Sherman Antitrust Act; demands the U.S. Department of Justice Antitrust Division investigate and bring appropriate action to have the BCS system declared illegal and require a playoff to determine a national champion; and supports the establishment of an NCAA Division I Football Bowl Subdivision Championship playoff system in the interest of fairness and to bring parity to all NCAA teams.

“The DOJ can bring a criminal antitrust action and an individual can bring a private civil action, but Congress cannot direct the DOJ to do anything.”

Michael Briley ’69

Congress only has the power to change the law, not to enforce it,” Briley said. “The DOJ can bring a criminal antitrust action and an individual can bring a private civil action, but Congress cannot direct the DOJ to do anything. I have never seen a case in history where Congress demanded that the DOJ take action. This is purely political grandstanding.”

Many of those calling for an antitrust suit look to a previous case brought against the NCAA by the University of Oklahoma and the University of Georgia. Prior to 1984, the NCAA regulated all television rights for college football games and had strict rules regarding when and how many times a team could be shown on television. In the lawsuit, Oklahoma and Georgia demonstrated that if teams and leagues were allowed to negotiate their own television contracts, many more college football games would be telecast and the price per game for the televising network would go down. The U.S. Supreme Court found this fact key to finding the NCAA regulations were in violation of antitrust laws and the NCAA had no valid, compelling reason for the rules besides to restrain trade.

In contrast, proponents of the BCS system argue it is pro-competitive, not anti-competitive.

“Antitrust law is not about being fair,” Briley said. “It is about preventing anti-competitive behavior. It would be a real uphill challenge for a lawyer to mount a case because first, it would involve a rule of reason analysis and secondly, unlike the 1984 Supreme Court case, the BCS system does not have a price fixing component to it. It does, however, have many of the ‘countervailing competitive virtues’ recognized by the Court in 1984 as justification for the system.”

From 1978 to 1998, when the BCS was formed, 159 of the 160 slots at the four major bowl games went to teams from the six conferences with automatic bids. In the last five years, however, four teams from non-automatic qualifying conferences have earned BCS bids. In recent years, the BCS has changed its rules so that a team from one of the five non-automatic conferences is guaranteed a spot in a BCS bowl if it is a conference champion and ranked in the top 12, or is a conference champion, ranked above the conference champion of an automatic-bid conference, and ranked in the top 16.

While the majority of slots in BCS games go to champions from the six premier conferences, the money does not just flow to those conferences. The BCS pays the remaining conferences money each year for making their champions available to play in the BCS even if they never play in a BCS bowl. In addition, eight division I-AA leagues also get a piece of the pie regardless if any of their teams ever step foot on the turf of a BCS game. According to the BCS, in the first 10 years of the BCS more than $90 million flowed to the non-automatic division I-A conferences and eight division I-AA conferences. Under the old system, these leagues would traditionally have seen no revenue from the bowl system. But, leagues arguing for changing the BCS point out that this amount is minuscule compared to what the six automatic-qualifying conferences collect. In a year when all the BCS spots are taken by teams from the

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TAXING A PROPERTY VALUE DECLINE

When’s the right time to pursue property reevaluation?

By Rob Phillips

The process seems simple. A government entity – usually a county – values residential, commercial, and agricultural real estate. Based on those valuations, the government applies a tax rate and collects taxes from property owners.

But the simplicity ends with varying opinions of property values, massive and complex commercial properties, and, as experienced the last two years, one of the most dynamic real estate markets in generations.

As property values have fallen at various levels in nearly every nook and cranny across the country, homeowners in some of the hardest hit regions have flocked to their local auditors’ offices asking for their property values to be lowered.
“As auditor, my job is to reflect what the market indicates property values to be. We do that by carefully looking at the evidence brought to us and evaluating it in a fair and equitable manner.”

— Clarence E. Mingo II ’98 recently was appointed Franklin County Auditor.
If they’re successful, they’ll pay a smaller tax bill. Multiply that scenario throughout entire cities and include highly valued commercial properties and it’s easy to see how the cities and schools that rely on the tax dollars could feel a financial pinch.

But, besides the effects on your own personal property, when should you recommend clients further investigate similar reevaluations. What are the risks? Is now the right time?

“It seems like this should be a no-brainer, but it can sometimes be difficult and costly,” said Rick Daley ’78, a senior lecturer of law at Moritz. Daley’s professional background includes 12 years in private practice as a partner with Squire, Sanders & Dempsey LLP and 13 years as executive vice president and general counsel of The Pizzuti Companies, a regional developer headquartered in Columbus. “It seems like it is something that everyone should be doing, but they are not. It is at least something that everyone should be thinking about.”

Not all, but most real estate markets around the nation have experienced varied levels of decline in the past two years. Of course, the major, headline-grabbing regions stick out – southern Florida, Las Vegas, southern California – but the even not-so-drastic drops in other areas have similar, although smaller, effects.

Nationally, from the second quarter 2008 to the second quarter 2009, median home sale prices dropped 15.6 percent from $206,400 to $174,100, according to the National Association of Realtors. Midwest sales in the same time frame dropped 8.6 percent, while dropping 10.3 and 26.6 percent in the South and West, respectively.

Commercial real estate values are believed to have dropped 27 percent in the first six months of 2009, according to the Moody’s/REAL Commercial Property Price Indices.

Historically, when property values have dropped, property owners have rushed to their local auditors’...
in Columbus. Porter represents Central Ohio school districts in their efforts to ensure properties are taxed at an appropriate rate and the district receives the revenue it should.

Ohio law says that the best indication of a property's fair market value is an arm's length sale between a willing seller and willing buyer. Similar guidelines are followed in most states.

“If a property is on the market for $100,000 and it sells for $150,000, the law in Ohio as set forth in statute and by the Ohio Supreme Court says that sale is the best indication of the property’s price,” said Karol Fox ’89, an attorney with Rich & Gillis Law Group in Dublin, Ohio, which represents several Central Ohio school districts on real property taxation issues. Partners in Fox’s firm were some of the first in Central Ohio to start pursuing property tax increases on behalf of school districts in the late 1970s.

In those days, attorneys would wait at a county auditor's office for the release of property sale information. When a sale was filed that was higher than the valuation for tax purposes, they would file a complaint to the board of revision.

Today, in most areas that information is readily available on the Internet. Larger taxing districts now have more advanced features that allow property owners to see comparable, historical, and neighboring sale information by a click of a button. These sophisticated, yet user-friendly, sites sometimes allow visitors to create custom maps of areas that quickly can designate comparable properties.

![National Commercial Property Prices](chart)

The Moody's/REAL commercial property index (CPPI) is a periodic same-property round-trip investment price change index of the U.S. commercial investment property market based on data from MIT Center for Real Estate industry partner Real Capital Analytics, Inc.
School districts almost entirely pursue large commercial and multi-family residential properties, not individual, residential landowners, Fox and Porter said.

“Our legal services generally pay for themselves,” Porter said. “When values are increasing or owners are making improvements to real estate, we’re filing complaints at the Board of Revision to ensure that the county auditor’s valuation of a property reflects the recent sale price or the improvement to the property.”

But Porter and Fox said that tables have turned in this market.

“Now we’re seeing the opposite,” Porter said. “If there is a legitimate arms-length transaction and it is below the county auditor’s valuation, property owners are coming forward to obtain a decreased valuation . . . and the property owner is generally going to prevail in that case.”

In Ohio, county auditors are required to perform reappraisals of properties every six years and those values are updated every three years. Property owners and school districts could benefit greatly if they succeed in landing a change that is favorable to them.

For instance, if your client owns a property that is currently appraised at $1 million, and the client files for and is successful in receiving a 20 percent reduction of that property’s valuation. A property tax bill of roughly $31,000 a year would drop to about $24,800 – an annual savings of about $6,200.

“You have to remember that that new tax rate ($24,800 a year) would be the starting point for the county when they came around for their increase every three years,” said Moritz Professor Michael Braunstein, an expert in real property and real estate finance.

Braunstein has taught at Moritz since 1986. “That savings could continue for quite some time.”

But the more complex the property and sale information, the more difficult it may be to convince a taxing district that the property value is incorrect, Professor Daley said.

A 10-year-long battle over the value of the Nationwide Arena in Columbus hinged on which value – the cost of building or sales and income – should be used. When originally entered on the tax duplicate, Nationwide Arena – a concert venue and home to the Columbus Blue Jackets, a professional hockey team – was valued at $129.7 million. The arena cost $147.1 million to construct.

The arena’s owners challenged the valuation, indicating that the price was inappropriate. The owners asked for the three-member board of revision to reduce the value of the property to $46.5 million, which was based on what other comparable arenas in North America sold for and the rental income it expected to receive. They also argued that the structure lost $107 million the day it opened because of obsolescence – meaning it paid more to acquire the building than it would receive if it were resold.

A compromise was reached in 2007 that allowed for the arena to pay taxes that are not directly tied to the property’s valuation.

If the best indication of a property’s value is a recent sale, then a close second is the sale of closely comparable property. But commercial property sales oftentimes include other items and intellectual property that are not directly tied to the property’s valuation.

And finding a comparable property can also be a tough task in this market, Daley said.

“That is very difficult to prove in these times,” he said. “As the housing market turned, so have the number of sales. I
Clarence E. Mingo II ’98
Tapped by GOP for Franklin County Auditor

Clarence E. Mingo II ’98 was appointed in August to fill the remainder of a term as Franklin County, Ohio, auditor. Mingo, of New Albany, has worked in private practice in Central Ohio since graduating from The Ohio State University Moritz College of Law. Mingo will stand for election in November 2010.

“My goals are to ensure a smooth transition from (former Auditor Joe Testa’s) retirement to my tenure in office,” Mingo said. “And I’m also looking to take the office into the next decade by adding new technology and other ways to improve services to constituents.”

Prior to attending Ohio State, where he also received his bachelor’s degree, Mingo served in the United States Army during the Persian Gulf War. Mingo served in the 1st Infantry Field Artillery in Saudi Arabia, Iraq, and Kuwait.

In 2007, Mingo was appointed by the Supreme Court of Ohio as a commissioner in the Ohio Court of Claims. There he administered cash awards to victims of crime from the Supreme Court’s victims-of-crime fund.

He has also served as a guardian ad litem in domestic and juvenile cases and volunteered with the Legal Aid Society of Columbus.

Mingo has a wife, Angela, and two daughters, age 3 and 4.
What happens to notice pleading after Twombly and Iqbal?

For over 50 years, it has been black letter law in civil procedure that federal pleading practice requires only “notice pleading.” In 2007, the U.S. Supreme Court muddied the pleading waters with Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), in what appeared to be a renunciation of notice pleading. Last term in Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009), the Court left no doubt that it intended a permanent change in the federal pleading landscape. Professor Christopher Fairman, one of the nation’s leading experts on federal pleading practice, assesses what is left of notice pleading in the aftermath of Twombly and Iqbal.

What exactly is meant by “notice pleading”?

Federal Rule of Civil Procedure 8 only requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” By design, Rule 8 makes it easier for plaintiffs to bring claims in federal court, avoid dismissals for technicalities as was prevalent under the previous pleading regimes, and focus on adjudication on the merits. This liberal standard gained the “notice pleading” label in Conley v. Gibson, 355 U.S. 41 (1957), with the Court’s articulation that “all the Rules require is ‘a short and plain statement of the claim’ that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” As a corollary, a claim could not be dismissed for failure to state a claim unless “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”

Are there exceptions to notice pleading?

Yes. Rule 9(b) imposes a heightened pleading burden on claims for fraud or mistake by requiring a party to “state with particularity the circumstances constituting fraud or mistake.” So on paper, the Federal Rules present a simple pleading formula: heightened pleading for fraud and mistake; notice pleading for everything else. In practice, the situation has always been quite different. Courts in every circuit on virtually every type of substantive claim dismiss some plaintiffs for failure to plead additional factual detail. But when the lower courts become too brazen in their fact pleading demands, the Supreme Court has re-affirmed the rubric of the Federal Rules and rejected requirements to plead with greater factual specificity as it did in Leatherman v. Tarrant County, 508 U.S. 223 (1993), with § 1983 suits against municipalities and Swierkiewicz v. Sorema, 534 U.S. 506 (2002), with employment discrimination cases. Then came Twombly.

How did Twombly change this?

Twombly was an antitrust case where the Court upheld the dismissal of a complaint for failure to plead with sufficient factual detail and appeared to eviscerate Conley in the process. Reinterpreting the Conley requirement, the Court opined that the Rules require “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Applied to the Twombly claim, the plaintiff must allege facts “plausibly” suggesting the existence of an illegal agreement to restrain trade. This “plausibility” standard requires “enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement.” The Court added that the oft-quoted Conley language that a complaint shouldn’t be dismissed for
“*Twombly* left most proceduralists wondering: was this really the death-knell for *notice pleading* or just a colorful way of creating an exception for big antitrust cases with conspiracy claims and huge, potential discovery costs? We got our answer this spring with *Iqbal*."

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failure to state a claim “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitled him to relief” had “earned its retirement.” *Twombly* left most proceduralists wondering: was this really the death-knell for notice pleading or just a colorful way of creating an exception for big antitrust cases with conspiracy claims and huge, potential discovery costs? We got our answer this spring with *Iqbal*.

**Q** What is the significance of *Iqbal*?

*Iqbal* involved a civil rights claim by a 9/11 detainee that the attorney general and FBI director orchestrated his unlawful confinement. Applying its new plausibility standard, the Court upheld a dismissal on the grounds that these allegations were not plausible because they were legal conclusions. What guidance does the Court offer to determine which allegations to accept as true and which to discard? This context-specific task “requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal* does add clarity on one front; *Twombly* was no fluke. Rather, *Twombly* “expounded the pleading standard for all civil actions.”

**Q** What does this shift in standards mean for federal pleading practice?

For one thing, the Court introduces uncertainty into what was a relatively settled area of procedure. A bevy of unanswered questions as to the application of the plausibility standard to both pleadings and dismissals will have to be sorted out in the years to come by the lower courts. We can certainly expect to see more motions to dismiss for failure to state a claim based on *Twombly/Iqbal*. My latest research project is trying to determine whether the lower courts are actually departing from their past practices under notice pleading in resolving these motions. Who knows? Plausibility pleading may turn out to be just as mythical in practice as notice pleading was. Ironically, the courts may not even have the last word. Senator Arlen Specter recently introduced the “Notice Pleading Restoration Act of 2009.” Short and sweet, this bill requires that a “Federal court shall not dismiss a complaint under rule 12(b)(6) or (e) of the Federal Rules of Civil Procedure, except under the standards set forth by the Supreme Court of the United States in *Conley v. Gibson*.” Notice pleading may turn out to be the phoenix of the Federal Rules after all.

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**PROFESSOR FAIRMAN,** joined The Ohio State University Moritz College of Law in 2000. He teaches civil procedure, alternative dispute resolution ethics, professional responsibility, and legal writing and analysis. Prior to joining the College, Fairman worked at the law firm of Weil, Gotshal & Manges LLP in Dallas, Texas. He is a former clerk to the Honorable Fortunato P. Benavides, United States Court of Appeals for the Fifth Circuit, and to Honorable J. Woodfin Jones, Texas Court of Appeals for the Third District.
In recent months, a major lawsuit was filed by the Minnesota Attorney General against one of the nation’s major arbitration providers, and Congress is considering legislative reform of arbitration guidelines. Professor Sarah Rudolph Cole, an expert in arbitration, discusses the developments and what is on the horizon.

What is consumer arbitration and why is it so controversial?

“Consumer” arbitration typically describes an institution’s unilateral imposition of an arbitration clause on an individual consumer. Banks and credit card companies, among others, impose these provisions on consumers using inserts included in monthly bank or credit card statements. Because consumers tend not to read such inserts, the first time consumers realize they are bound by an arbitration provision is when they try to file a claim against their bank or credit card company. Unquestionably, institutions do a poor job disseminating information to consumers about arbitration. Even so, the question is whether arbitration is as at least as good as, if not better, than any other alternative available – typically settlement or trial – for resolving consumer disputes.

While there is strong evidence establishing that arbitration provides an efficient and inexpensive forum for resolution of consumer claims, controversy surrounds consumer arbitration as a result of a report Public Citizen issued in 2007 and because the Minnesota Attorney General recently sued one of the major arbitration providers, the National Arbitration Forum (NAF), for deceptive trade practices. In addition, Congress is currently considering the Arbitration Fairness Act, which would create a blanket rule prohibiting companies from imposing pre-dispute arbitration agreements on consumers, employees, or franchisees.

What did Public Citizen say about consumer arbitration and was it right?

Public Citizen articulated two major concerns about arbitration. First, it argued that businesses prevail at a “stunning” rate in arbitration. Second, it claimed that arbitration costs consumers more than would litigation. A closer examination of Public Citizen’s findings, however, raised red flags. Public Citizen’s study examined approximately 34,000 consumer arbitration cases filed with the NAF (the arbitration provider that handled the majority of consumer arbitration claims) during a four-year period. All but 15 of these cases were designated “collections” cases. Collections cases are unlike other consumer cases. In a collections case, the consumer is the defendant. Typically, there is no question that the consumer owes the debt to the credit card issuer. In mediation, the consumer admits the debt and then typically works out a payment plan with the issuer. In arbitration, though, the debtor will lose, because he owes the debt. In such situations, all an arbitrator can do is enter an award against the debtor. Thus, the
Although it received considerable press coverage, NAF’s recent departure from the consumer arbitration business had little to do with the issues with which Congress is concerned.

win-loss record for consumers in these cases is not cause for concern. Moreover, it mirrors consumer success in court collection cases.

The Public Citizen report also claimed that arbitration often results in consumer costs that are higher than those incurred in court. My examination of this data actually reveals that most consumers paid few or no fees in these arbitrations. In all but five of the approximately 34,000 cases, the consumer paid well under $500 in arbitration fees. In fact, the data shows that in 33,691 cases (99.6 percent of the cases), the consumer paid absolutely no fee. Thus, in the vast majority of cases, consumers appear to pay either no arbitration fee at all or a minimum fee.

Public Citizen’s use of collections cases to demonstrate inherent bias within the arbitration system undermined its conclusions. The win rate in those cases will always be low for consumers. Moreover, the available data demonstrated that when consumers participate in arbitration, they do not pay exorbitant fees.

Q
If consumer arbitration benefits some consumers, why is Congress considering an Arbitration Fairness Act and why did NAF recently exit the consumer arbitration business?

In considering a prohibition on consumer arbitration agreements, I believe that Congress may be overreacting to a perception that arbitration is problematic. Rather than adopt a per se rule prohibiting arbitration in the consumer context, though, the Arbitration Fairness Act should instead focus more critically on the issue of consumer class actions. Currently, most arbitration provisions prevent consumers from bringing either a class action in court or as part of an arbitration. That prohibition truly harms consumers because the clauses effectively prohibit consumers, whose claims are typically quite small, from bringing claims at all.

Although it received considerable press coverage, NAF’s recent departure from the consumer arbitration business had little to do with the issues with which Congress is concerned. Unfortunately, NAF appears to have engaged in “deceptive practices” in hiding its ties to the debt-collection and banking industry. According to the Minnesota Attorney General, a hedge fund with a stake in entities NAF controlled had financial ties to a large debt-collection agency, raising concerns about NAF’s ability to deal fairly with credit card cases. NAF settled the lawsuit quickly, leaving the consumer arbitration business entirely. Although NAF’s actions unquestionably impugn the integrity of NAF arbitrations, it is not clear that any arbitration awards would be overturned if reheard because NAF arbitrators are independent contractors who typically have little or any connection to NAF as a business entity. Unfortunately, NAF’s actions cast a further shadow over consumer arbitration and provided fuel to those who oppose consumer arbitration (including those in Congress pushing for the Arbitration Fairness Act). Although it is not clear whether that Act will pass, NAF’s departure from consumer arbitration, followed quickly in time by the American Arbitration Association’s exit from administering such cases, suggests that the marketplace may handle this issue more quickly than will Congress. Recently, for example, Bank of America declared that it will no longer require its customers to participate in arbitration.
Making a Career at Health and Human Services
1990 Grad Now Expert In Health Care Industry

By Rob Phillips

At first glance, the career path that Gregory Demske ’90 followed after graduating from The Ohio State University Moritz College of Law seems to be a fairly straight one.

He admits that he “fell into” his first post-law-school job at the Office of Inspector General of the Department of Health and Human Services (HHS). Nearly 20 years later, Demske – although continually changing titles and increasing his responsibilities – works for the same department today.

But the ever-changing landscape of the health care industry and regulations have made Demske’s career a dynamic and challenging one.

“If you would have asked me when I started here, I would have told you that I would work for (HHS) for three years,” he said. “But, looking back, I have always been able to move to a slightly different position or do new things to keep it exciting and challenging. I have always had great mentors and colleagues to find a way to keep myself challenged here.”

Demske spent most of his childhood in Upstate New York where his father was an administrator for The State University of New York. The family moved to Oxford, Ohio, when Demske's dad took a job with Miami University, where Demske would later earn his undergraduate degree in finance.

But upon graduating from Miami, Demske didn't have any immediate job offers and hadn’t considered law school.

“I spent the summer in Cape Cod waiting
Demske started in the department as an attorney who would represent the government in the administrative hearings regarding alleged violations of Medicare and Medicaid. Around 1996, Demske began handling civil aspects of the HHS cases. Particularly, his office would fight for the monetary retribution from health care providers.

“But probably more importantly, we would decide whether the company should be allowed to continue to participate in Medicare or Medicaid,” he said. “We determine the best route and what resources should be expended to ensure future compliance.”

In his current position, Demske said he is drawing on all of his prior experiences in the department. In fact, he has twice been called to Congress to testify before the Senate Special Committee on Aging.

“Right now there is a big emphasis on health care fraud,” he said. “There is so much interest in health care reform and how we can be more efficient and save more money.”

Demske worked for a small law firm in Columbus, where he assisted plaintiffs’ attorneys who handled employment discrimination claims.

“I enjoyed the work, but I didn’t feel like it was something I would do after graduation. It wasn’t a good fit for my skills and temperament. My skills made me a better fit to be a prosecutor-type person, but I didn’t want to prosecute street crime. … I wanted to work for a firm that I felt good about the positions that I was representing.”

In his 3L year, HHS came to Columbus and interviewed on campus. “I enjoyed the trial practice work I did in law school, and I thought that it may be something that I would be interested in,” he said.

But he admitted that his knowledge of health law in 1990 was lacking.

“At the time, there was one health law class at Ohio State, and I didn’t take it,” he said. “I didn’t know the difference between Medicare and Medicaid.”

But, since then, his knowledge of the field – as well as the field itself – has burgeoned.

Now the assistant inspector general for legal affairs in the Office of the Inspector General for HHS, Demske is the second-in-charge of the 75-person office. Demske’s primary responsibilities are overseeing the office’s three branches: administrative and civil remedies, advisory opinions, and in-house general counsel.

The group that handles the office’s administrative and civil remedies cases is the largest. It primarily imposes program exclusions from Medicare or Medicaid and civil money penalties on health care providers, and litigates those actions within the department.

Demske spends most of his time reviewing the settlements reached with health care providers alleged to have violated government policies.

“I love my job. We have an incredible amount of autonomy,” he said. “We get to decide what position we will take on the cases. We have a lot of responsibility and a lot of discretion. We have the ability to administer our authorities in a way that we feel best advances the interests of the government.”

Demske is married to his wife, Tamra Mendelson, and the couple have two young daughters, Erika and Juliet. They live in Takoma Park, Md.
Ginny Trethewey ’77 is many things: a philanthropist, an avid traveler, and chief operating officer of the Ohio State Alumni Association. Yet the title that Trethewey is most proud of is Ohio State mentor.

“Mentoring is the greatest satisfaction I have right now, outside of direct work projects,” she said.

Trethewey has ongoing relationships with law students, graduates, and even undergraduates to whom she offers guidance and encouragement. She traces her passion for mentoring back to her days as a law student.

“I can’t say enough about the quality of the faculty at Moritz and how much they cared and were concerned for your well being and your preparation,” she said.

“Through mentoring, you do feel like you’re passing that on.”

Trethewey entered law school after she served four years as a sixth-grade teacher in the Fredericktown, Ohio public school system.

“I had never intended to teach,” she said. “But I came to Ohio from Seattle because my husband took a job teaching at Kenyon, and I found myself in Gambier, where there was precious little to do.”

“I basically talked my way into a teaching job for which I had zero preparation, except for a good political science education,” she said, laughing. “It was a lot of fun, though.”

After graduating cum laude from Moritz,
Trethewey oversees everything from alumni membership acquisitions to the publication of the alumni magazine, which circulates to more than 100,000 people. 

Trethewey said that the experience she gained while acting as counsel to a variety of businesses in her career has greatly helped. 

“I observed and learned a lot about business decision making and practices,” she said.

In addition to her work as a mentor and full-time job, Trethewey serves the community in several other ways. She's an active member of the Wexner Center's Donor Circle and Ohio State's Women in Philanthropy group, and also serves on the boards of CAPA and The Wellington School where she co-chaired the capital campaign for a new academic building.

Trethewey is visibly proud of her two sons and values the education they received at Wellington.

“I think creating a habit of philanthropy is really important,” she said. “A lot of that just begins by example. I love the Wexner Center and the things that they do; I'm always happy to support them.” Trethewey is also on the University's Distinguished Service Award Committee.

“If I’m asked to do something I generally say yes,” she said.

Trethewey has also recently decided to create a planned gift that will benefit both the Alumni Association's scholarship endowment and the Dean's Discretionary Fund at Moritz.

“Public funding and tax dollar funding for public education are getting smaller and smaller, and so private fundraising is really important,” she said. “Ohio State's law school has had wonderful deans,” she said. “I think the discretionary funding lets the dean be a little more entrepreneurial.”

Trethewey said that she has been very fortunate over the course of her career; that fact, and her close connection to Ohio State, made planning a gift to the College both “easy and obvious.”

“I think it’s a pretty simple equation,” she said. “I got, and now it’s time to give.”
### Football Picks: Fall 2009

In the summer 2009 edition of *All Rise*, an alumnus/a from across six decades and Moritz Dean Alan Michaels made their picks of some key matchups this season. Below are the most up to date standings at the time of printing.

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<th>ALUMNI FACE OFF</th>
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<tr>
<td>Alan Michaels Dean, Moritz College of Law, Columbus</td>
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#### Virginia Tech v. Alabama (Sept. 5)
- Correct: Alabama
- Incorrect: Virginia Tech

#### USC at OSU (Sept. 12)
- Correct: OSU
- Incorrect: USC

#### Texas v. Oklahoma (Oct. 17)
- Correct: Oklahoma
- Incorrect: Texas

#### World Series Champion (starts Oct. 28, 2009)
- Correct: Rangers
- Incorrect: Mets

#### Georgia at Florida (Oct. 31)
- Correct: Florida
- Incorrect: Florida

#### LSU at Alabama (Nov. 7)
- Correct: LSU
- Incorrect: Alabama

#### OSU at Michigan (Nov. 21)
- Correct: OSU
- Incorrect: OSU

#### Toledo at Bowling Green (Nov. 27)
- Correct: Toledo
- Incorrect: BGSU

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*Note: Correct and Incorrect standings are made by the alumnus/a.*
CLASS NOTES:
Submit news items to: Rob Phillips,
Communications Coordinator, Moritz College of
Law, 55 West 12th Ave., Columbus, OH 43210.
E-mail notes to moritzalumni@osu.edu
or fill out an online form at
moritzlaw.osu.edu/alumni/notes.

1950s
Ron Paul D. Ritter, Jr. ’56 was named in the 2010 edition of The Best Lawyers in America in the areas of corporate law and employee benefits law. Ritter is a director in the Columbus office of Kegler, Brown, Hill & Ritter.

Rick E. Marsh ’59 was named in the 2010 edition of The Best Lawyers in America in the area of professional malpractice. Marsh is a partner in the Columbus office of Lane Alton & Horst.

1960s
John McDonald ’61 was named in the 2010 edition of The Best Lawyers in America in the areas of bet-the-company litigation and commercial litigation. McDonald is a partner in the Columbus office of Schottenstein Zox & Dunn.

The work of James B. Atleson ’62 was featured during a daylong program at The Baldy Center for Law & Social Policy at the University at Buffalo Law School. The program, titled “James B. Atleson, Values and Assumptions in American Labor Law: A 25th Anniversary Retrospective,” discussed the 25th anniversary of Atleson’s book, Values and Assumptions in American Labor Law. Atleson is an emeritus faculty member of the University at Buffalo Law School.

E. James Hopple ’63 was named in the 2010 edition of The Best Lawyers in America in the areas of bankruptcy and creditor-debtor rights law. Hopple is a partner in the Columbus office of Schottenstein Zox & Dunn.

S. Michael Miller ’63 was named in the 2010 edition of The Best Lawyers in America in the areas of non-white-collar criminal defense and white-collar criminal defense. Miller is of counsel in the Columbus office of Kegler, Brown, Hill & Ritter.

Charles J. Kegler ’68 was named in the 2010 edition of The Best Lawyers in America in the areas of tax law and trusts and estates. Kegler is a director in the Columbus office of Kegler, Brown, Hill & Ritter.

Geoffrey Stern ’68 was named in the 2010 edition of The Best Lawyers in America in three practice areas: appellate law, legal malpractice law, and professional malpractice law. Stern is a director in the Columbus office of Kegler, Brown, Hill & Ritter.

John R. Thomas ’68 was named in the 2010 edition of The Best Lawyers in America in the area of corporate law. Thomas is a director in the Columbus office of Kegler, Brown, Hill & Ritter.

Sally W. Bloomfield ’69 was named in the 2010 edition of The Best Lawyers in America in the areas of energy law and water law. Bloomfield is a partner in the Columbus office of Bricker & Eckler LLP.

J. Jeffrey McNealey ’69 received a No. 1 ranking in Ohio in the area of Real Estate: Zoning/Land Use by Chambers USA 2009. In addition, McNealey was designated one of Ohio’s “Senior Statesmen” in the area of natural resources and the environment. McNealey in the Columbus office of Porter Wright Morris & Arthur.

John B. Rohyans ’69 has been recognized by Chambers USA 2009 as one of the leading lawyers in Ohio in the area of real estate law. Rohyans in the Columbus office of Porter Wright Morris & Arthur.

1970s
Jay Dingedledy ’71 was named in the 2010 edition of The Best Lawyers in America in the area of corporate law. Dingledly is a partner in the Columbus office of Schottenstein Zox & Dunn.

Stephen Smith, Sr. ’71 was named in the 2010 edition of The Best Lawyers in America in the areas of communications and municipal law. Smith is a partner in the Columbus office of Schottenstein Zox & Dunn.

John P. Beavers ’72 was named in the 2010 edition of The Best Lawyers in America in the areas of corporate governance and compliance law; corporate law; mergers and acquisitions law; and securities law. Beavers is a partner in the Columbus office of Bricker & Eckler LLP.

Steven W. Jemison ’75 was named an at-large member of the 11-member governing board established to guide the high school Law & Leadership Institute (see pg. 12). The Institute was formed last year as a pilot project in Ohio to improve diversity in the legal profession. Jemison is general counsel at Procter & Gamble in Cincinnati.

William J. McGraw III ’72 has been appointed to chair the Estate Planning, Trust and Probate Law Section of the Ohio State Bar Association. McGraw is a partner and president of the Troy, Ohio, law firm of Dungan & LeFevre Co., L.P.A.

William C. Hicks ’73 was appointed to chair the Unauthorized Practice of Law Committee of the Ohio State Bar Association. Hicks is with Cole Acton Harmon Dunn in Springfield, Ohio.

Curtis A. Loveland ’73 was recognized by Chambers USA 2009 as one of the leading lawyers in Ohio in the areas of corporate law and mergers and acquisitions law. Loveland in the Columbus office of Porter Wright Morris & Arthur.

Charles Faruki ’74 was appointed to chair the Antitrust Section of the Ohio State Bar Association. Faruki is a trial lawyer and managing partner of the Dayton law firm of Faruki Ireland & Cox PLL.
Donald R. Keller ’74 was named in the 2010 edition of *The Best Lawyers in America* in the area of labor and employment law. Keller is a partner in the Columbus office of Bricker & Eckler LLP.

Robert B. Barnett Jr. ’75 was named in the 2010 edition of *The Best Lawyers in America* in the area of estate planning law. Barnett is a partner in the Columbus office of Carlile Patchen & Murphy.

Karen M. Moore ’75 was named in the 2010 edition of *The Best Lawyers in America* in the area of trusts and estates. Moore is a partner in the Columbus office of Bricker & Eckler LLP.

Michael E. Zatezalo ’75 was named in the 2010 edition of *The Best Lawyers in America*. Zatezalo serves as managing director of the firm, Kegler, Brown, Hill & Ritter, and focuses his practice primarily in the areas of real estate and financing and gaming law, for which he serves as the firm’s practice chair.

William J. Kelly ’76 was appointed as chair to the Construction Law Committee of the Ohio State Bar Association. Kelly practices in the areas of corporate and business law at Porter Wright Morris & Arthur LLP in Columbus.

Steven R. Kerber ’76 was named in the 2010 edition of *The Best Lawyers in America* in the area of corporate law. Kerber is a partner in the Columbus office of Bricker & Eckler LLP.

Robert S. Wells ’76 received the 2009 Bolton Award for Outstanding Bar Leadership from the National Association of Bar Executives. Wells has served as Executive Director of the South Carolina Bar for 24 years.

Joseph A. Gerling ’77 was named in the 2010 edition of *The Best Lawyers in America* in the areas of personal injury and product liability law. Gerling is a partner in the Columbus office of Lane Alton & Horst.

John H. Guendelsberger ’77 was appointed to the Board of Immigration Appeals by U.S. Attorney Eric. H. Holder Jr. in August. Guendelsberger has served as senior counsel to BIA’s board chairman since October 2003. He previously served as a board member from September 1995 to October 2003. Guendelsberger is a former law professor at Ohio Northern University College of Law.

Kevin McDermott ’77 was named in the 2010 edition of *The Best Lawyers in America* in the area of commercial litigation. McDermott is a partner in the Columbus office of Schottenstein Zox & Dunn.

Gregory D. Rankin ’77 was named in the 2010 edition of *The Best Lawyers in America* in the area of professional malpractice. Rankin is a partner in the Columbus office of Lane Alton & Horst.

James A. Rutledge ’77 was named in the 2010 edition of *The Best Lawyers in America* in the area of corporate law. Rutledge is a partner in the Columbus office of Bricker & Eckler LLP.

Charles H. Waterman III ’77 was named in the 2010 edition of *The Best Lawyers in America* in the area of environmental law. Waterman is a partner in the Columbus office of Bricker & Eckler LLP.

Richard Barnhart ’78 was named in the 2010 edition of *The Best Lawyers in America* in the areas of banking law and corporate law. Barnhart is a partner in the Columbus office of Schottenstein Zox & Dunn.

Peter Collins Jr. ’78 is senior partner in the Tucson office of Gust Rosenfeld, P.L.C., a Phoenix-based firm. He chaired the Arizona College of Trial Advocacy from 2005-09 and was named in the Best Lawyers of America in 2009-10. His litigation practice centers on insurance coverage, aviation, construction, and environmental matters. He has been married to his wife, Debbie, for 35 years, and the couple have two daughters (born during law school), Courtney and Melinda.

John W. Cook III ’78 was named in the 2010 edition of *The Best Lawyers in America* in the area of corporate law. Cook is a partner in the Columbus office of Bricker & Eckler LLP.

Gary Leppla ’78 was elected convener and development committee chair of the 11-member governing board established to guide the high school Law & Leadership Institute. The institute was formed last year as a pilot project in Ohio to improve diversity in the legal profession. Leppla is partner in his Dayton-based law firm, Leppla Associates and was the 2008-09 president of the Ohio State Bar Association.

Robert A. Meyer, Jr. ’78 has been recognized by *Chambers US* 4 2009 as one of the leading lawyers in Ohio in the area of real estate: zoning/land use. Meyer works in the Columbus office of Porter Wright Morris & Arthur.

**2010 Reunion Weekend**

Sept. 10 & 11, 2010


If you would like to participate on your class committee, e-mail Darnell Hines at hines.127@osu.edu or call (614) 247-8640.
Randall E. Moore ’78 was named in the 2010 edition of The Best Lawyers in America in the areas of corporate, gaming, and securities law. Berliner is a partner in the Cleveland office of Taft Stettinius & Hollister.

Kimball H. Carey ’79 was named in the 2010 edition of The Best Lawyers in America in the area of education law. Carey is a partner in the Columbus office of Bricker & Eckler LLP.

David M. Whittaker ’79 was named in the 2010 edition of The Best Lawyers in America in the area of bankruptcy and creditor-debtor rights law. Whittaker is a partner in the Columbus office of Bricker & Eckler LLP.

1980s

David K. Conrad ’80 was named in the 2010 edition of The Best Lawyers in America in the area of real estate law. Conrad is a partner in the Columbus office of Bricker & Eckler LLP.

Richard Davies ’80 was named a 2009 Ohio Super Lawyer in workers’ compensation law. In February 2009, Davies established his own law firm in Akron dedicated to the representation of employers in workers’ compensation cases.

Glenn S. Krassen ’80 was named in the 2010 edition of The Best Lawyers in America in the areas of energy law, natural resources law, and oil & gas law. Krassen is currently a partner in the Cleveland office of Bricker & Eckler LLP.

William Scott Lavelle ’80 has joined Shayne Nichols, LLC in Columbus as head of the litigation department, representing both individual and corporate clients.

Norman Nadorff ’80 recently received the Annual Education Award from the Association of International Petroleum Negotiators. The award goes to the member who has done the most to promote education among international petroleum negotiators and lawyers. Nadorff has been senior counsel for British Petroleum in Luanda, Angola since 2006. The award was in recognition of the Norman’s efforts in the creation and implementation of a BP-sponsored oil and gas LLM program at the Agostinho Neto University College of Law, the first of its kind in Africa. Norman also serves as industry advisor and law instructor in the program which is currently in its second year.

Diane M. Signoracci ’81 was named in the 2010 edition of The Best Lawyers in America in the area of health care law. Signoracci is a partner in the Columbus office of Bricker & Eckler LLP.

James Davidson ’80 was named in the 2010 edition of The Best Lawyers in America in the areas of commercial litigation and labor and employment law. Davidson is a partner in the Columbus office of Schottenstein Zox & Dunn.

Steve Magas ’82, after more than 27 years of working for or with others, decided to open his own practice. The Magas Firm opened on June 14, 2009 in Loveland, Ohio. Magas continues to focus much of his practice on bicycles and motorcycles. He has handled more than 200 “bike cases” while continuing to write about bike laws for a variety of publications. Magas sits on the Board of Trustees of the Ohio Bicycle Federation. Learn more at www.MagasLaw.com and www.OhioBikeLawyer.com.
Carl Smallwood ’80 was elected president of the 11-member governing board established to guide the high school Law & Leadership Institute (see pg. 12). The Institute was formed last year as a pilot project in Ohio to improve diversity in the legal profession. Smallwood is a partner in the Columbus office of Vorys, Sater, Seymour and Pease.

Paul Skendelas ’81 was named chair of the Juvenile Law Committee of the Ohio State Bar Association. Skendelas is a Franklin County, Ohio, assistant public defender.

Barbara F. Yaksic ’81 was named in the 2010 edition of The Best Lawyers in America in the area of commercial litigation. Yaksic is a member of McGlinchey Stafford's Cleveland office, where she focuses her practice in civil litigation.

Linda L. Ammons ’87 was recognized as one of 14 “people of influence” in the September 2009 issue of Delaware Today. Ammons is the dean of the Widener University School of Law in Wilmington, Del. According to the magazine, Ammons is the first woman and the first African American to lead the Widener University School of Law, and one of only three African American women in the nation serving as a law school dean.

Donald W. Gregory ’82 was named in the 2010 edition of The Best Lawyers in America in the area of construction law. Miller is director in the Columbus office of Kegler, Brown, Hill & Ritter.

William T. Conard II ’83 was named in the 2010 edition of The Best Lawyers in America in the area of public finance law. Conard is a partner in the Columbus office of Bricker & Eckler LLP.

Joyce B. Link ’83 was named partner in the Philadelphia-based law firm, Montgomery, McCracken, Walker & Rhoads LLP. Link is a member of the firm’s Commercial Litigation and Labor & Employment departments. Her practice focuses on litigation and labor and employment matters for higher education and nonprofit organizations.

William M. Phillips ’83 was named in the 2010 edition of The Best Lawyers in America in the area of real estate law. Phillips is a partner in the Cleveland office of Taft Stettinius & Hollister.

S. Martijn Steger ’83 was named in the 2010 edition of The Best Lawyers in America in the area of corporate law. Steger is a director in the Columbus office of Kegler, Brown, Hill & Ritter.

J. Randolph Balch ’84 was reappointed to chair the Health Care Law Committee of the Ohio State Bar Association. Balch is of counsel at Balch Law in Columbus.

Catherine T. Dunlay ’84 was named in the 2010 edition of The Best Lawyers in America in the area of health care law. Dunlay is a partner in the Columbus office of Taft Stettinius & Hollister.

Samuel M. Duran ’84 was named in the 2010 edition of The Best Lawyers in America in the area of workers’ compensation law. Duran is a partner in the Cincinnati area of consumer financial services. He works in the Columbus office.

Catherine T. Dunlay ’84 was named in the 2010 edition of The Best Lawyers in America in the area of insurance regulatory law. Dunlay is a partner and member of the Insurance Regulatory and Transactional practice group at Nelson Levine de Luca & Horst in Columbus, was accepted as a member of the Federation of Regulatory Counsel. The Federation of Regulatory Counsel is a national association of attorneys who specialize in insurance regulatory law.

Susan T. Stead ’84, partner and member of the Insurance Regulatory and Transactional practice group at Nelson Levine de Luca & Horst in Columbus, was accepted as a member of the Federation of Regulatory Counsel. The Federation of Regulatory Counsel is a national association of attorneys who specialize in insurance regulatory law.

Catherine M. Ballard ’85 was named in the 2010 edition of The Best Lawyers in America in the area of health care law. Ballard is a partner in the Columbus office of Bricker & Eckler LLP.

Catherine T. Dunlay ’84 joined the Columbus office of Taft Stettinius & Hollister LLP as a partner in the firm's health and life sciences practice group. She was also mentioned in the 2010 edition of The Best Lawyers in America in the area of health care law.

Richard W. Holz ’85 was named in the 2010 edition of The Best Lawyers in America in the area of tax law. Holz is a partner in the Columbus office of Schottenstein Zox & Dunn.

Gordon F. Litt ’85 was named in the 2010 edition of The Best Lawyers in America in the areas of tax law and trusts and estates. Litt is a partner in the Columbus office of Bricker & Eckler LLP.

Anne Marie Sferra ’85 was named in the 2010 edition of The Best Lawyers in America in the area of commercial litigation. Sferra is a partner in the Columbus office of Bricker & Eckler LLP.

Mark S. Edelman ’86 was named in the 2010 edition of The Best Lawyers in America in the area of banking law. Edelman is a managing member of McGlinchey Stafford, where he practices in the area of consumer financial services. He works in the Cleveland office.

Daren Kimberly Draves ’87 was promoted from deputy managing counsel in the Pacific Area to managing counsel of the Southeast Area of the U.S. Postal Service’s Law Department. Daren and her wife, Catherine, and their daughters Destiny and Anna, are looking forward to starting their new lives in Memphis, Tenn.

Matthew Shay ’87 was named one of the top association CEOs in 2009 by CEO Update. Shay is...
president and CEO of the International Franchise Association, which aims to protect and enhance the environment for franchising around the world. Shay and his wife, Allison, have three children and live in Arlington, Va.

Robert G. Cohen ’88 was named in the 2010 edition of The Best Lawyers in America in the area of antitrust law. Cohen is a director in the Columbus office of Kegler, Brown, Hill & Ritter.

Philip F. Downey ’88 was named in The Best Lawyers in America 2010 in the areas of bet-the-company litigation and commercial litigation. Downey is a partner in the Akron office of Vorys, Sater, Seymour and Pease.

Betsy A. Swift ’88 was named in the 2010 edition of The Best Lawyers in America in the area of labor and employment law. Swift is a partner in the Columbus office of Bricker & Eckler LLP.

Daniel R. Elliott III ’89 was nominated by President Barack Obama to serve as chairman of the Surface Transportation Board, a regulatory agency that resolves freight railroad rate and service disputes, reviews proposed rail mergers, rail line purchases, constructions and abandonments. Elliott is a counsel for the United Transportation Union, which is based in Cleveland.

Richard J. Helmreich ’89 was named in The Best Lawyers in America 2010 in the area of employee benefits law. Helmreich works in the Columbus office of Porter Wright Morris & Arthur.

Carol H. Morita ’89 was recently promoted to vice president, assistant general counsel and assistant corporate secretary of Underwriters Laboratories Inc., a product safety testing and certification organization headquartered in Northbrook, Ill.

Jack Rosati, Jr. ’89 was named in the 2010 edition of The Best Lawyers in America in the area of construction law. Rosati is a partner in the Columbus office of Bricker & Eckler LLP.

Timothy T. Tullis ’89 was named in the 2010 edition of The Best Lawyers in America in the area of commercial litigation. Tullis is a director in the Columbus office of Kegler, Brown, Hill & Ritter.

Robert W. Lett ’38, of Ashland, Ohio, passed away June 26. Lett, 94, attended Ashland College and graduated from The Ohio State University Law School in 1938, with honors of the Order of the Coif. Lett practiced law and served the community in Ashland County for more than six decades. He won an award from the Ohio State Bar Association for practicing law for 67 years. He served in the Commerce Department in Washington, D.C., in 1940. Later that year he established his law firm in Ashland. It became the partnership of Lett and Lett with his son Sam in 1980. Lett was a member of St. Edward’s Catholic Church, the Elks Club, the Ohio State Bar Association, Ashland County Bar Association, and was elected president of the Ohio Academy of Trial Lawyers in 1962. He was later elected to the Board of Governors of the American Trial Lawyers Association. He is survived by his son, Sam J. Lett of Ashland; and his daughter, Hashi and son-in-law, Kanan Roberts of Queens, New York. He is preceded in death by his wife, June.

Harrison W. Smith, Jr. ’49, of Columbus, passed away Aug. 2. Smith attended Princeton University and received his law degree from The Ohio State University Law School in 1949. Smith, 83, was a prominent land-use attorney, a founding partner of Smith & Hale law firm, served as a member of the Franklin County Regional Planning Commission and the Capitol Square Commission, and served until June 2009 as the first chairman of the Downtown Commission. He is survived by his wife, Constance; son, Jay and daughter-in-law, Marianne Smith of Columbus; daughter, Gayle of Washington, D.C., and grandson, Harrison Ben Smith. He is preceded in death by his daughter, Amy.

Wade Hopping ’55, of Tallahassee, Fla., passed away Aug. 11. Hopping, 77, was a founding member of the Tallahassee law firm of Hopping Green & Sams and the youngest justice ever to serve on the Florida Supreme Court, serving from 1968-69. He served as the legislative assistant and constitutional law advisor to Gov. Claude Kirk from 1967-68. He died on the 30th anniversary of the start of his law firm, Hopping Green & Sams. At his death, he was chairman of the Board of Trustees of the Pacific Legal Foundation, a former president of the Florida Chamber of Commerce, and a 50-year member of The Florida Bar. Hopping is survived by his wife of 38 years, Mary, four children, and two grandchildren.

Gerald Anthony “Jay” Baker II ’08, of Gahanna, Ohio, passed away Aug. 1. Baker was a special education teacher for Columbus Public Schools and an educator for more than 10 years. Baker received a bachelor’s degree in English from the University of Michigan and master’s degrees in English and special education from The Ohio State University, where he was awarded a full fellowship. He was awarded his law degree in May 2008. He is survived by his wife, Michelle Robbins-Baker; son, Sam Baker; stepchildren, Caleb Robbins and Cassidy Robbins; parents, Gerald and Carole Baker, of Plymouth, Mich.; and sister, Dr. Angela (David) Lukomski.
1990s

Robert Bilott ’90 was named in the 2010 edition of The Best Lawyers in America in the area of environmental law. Bilott is a partner in the Cincinnati office of Taft Stettinius & Hollister.

Barbara K. Letcher ’90 was recognized by Cambridge Who’s Who for demonstrating dedication, leadership, and excellence in the practice of employment law. Letcher is a partner in the law firm of Newhouse, Propheater, Letcher & Moots, LLC, in Columbus.

Kent Wellington ’91 was named chairman of the Litigation Client Service Department of Graydon Head & Ritchey LLP. Wellington’s practice includes litigation, employment, health care, and media law. He works at the firm’s Cincinnati office.

Lisa Ge Shang Han ’92 was named in the 2010 edition of The Best Lawyers in America in the area of health care law. Han is a partner in the Columbus office of Schottenstein Zox & Dunn.

David M. McCarty ’92 was named in the 2010 edition of The Best Lawyers in America in the area of workers’ compensation law. McCarty is a director in the Columbus office of Kegler, Brown, Hill & Ritter.

Paul Bittner ’93 was named in the 2010 edition of The Best Lawyers in America in the area of labor and employment law. Bittner is a partner in the Columbus office of Schottenstein Zox & Dunn.

C. Lynne Day ’93 was reappointed to the Women in the Profession Section of the Ohio State Bar Association. Day is a partner in the Chardon, Ohio, firm of Petersen & Ibold, where she practices family law.

Stephen Intihar’93 was named in the 2010 edition of The Best Lawyers in America in the area of real estate law. Intihar is a partner in the Columbus office of Bricker & Eckler LLP.

Lisa Hammond Johnson ’93 was appointed to the Advisory Committee on Local Rules for the U.S. Court of Appeals for the Sixth Circuit. Johnson is an assistant U.S. attorney in the Civil Division of the Office of the United States Attorney for the Northern District of Ohio in Cleveland.

James McGovern ’93 was reappointed to chair the Administrative Law Committee of the Ohio State Bar Association. McGovern practices with Graff & Associates LPA in Columbus.

Dane A. Gaschen ’94 was named in the 2010 edition of The Best Lawyers in America in the area of education law. Gaschen is a partner in the Columbus office of Bricker & Eckler LLP.

Brian Kurzmann ’94 received a six-month assignment in the Munich, Germany, office of Amazon.com (known in Germany as Amazon.de). Kurzmann continues to work for the New York City-based law firm, Axiom Legal.

T. Earl LeVere ’94 was named in the 2010 edition of The Best Lawyers in America in the area of intellectual property law. LeVere is a partner in the Columbus office of Schottenstein Zox & Dunn.

Amee R. McKim ’94 has authored a book entitled Maximizing Your Lawyer Potential, Professionalism and Business Etiquette for Law Students and Lawyers. McKim is the director of lawyer recruiting and development at Hunton & Williams LLP in Richmond, Va. She oversees the recruiting and lawyer training and development efforts for the firm’s 19 offices.

Amy Mass ’95 was reappointed to chair the Insurance Staff Counsel Committee of the Ohio State Bar Association. Mass is the managing attorney of the Ohio and Indiana staff counsel offices of The Hanover Insurance Group.

Jonathan T. Tyack ’96 has been recognized in the 2010 edition of The Best Lawyers in America in the practice of white-collar criminal defense. He is partner in the firm of Tyack, Blackmore, & Liston, in Columbus.

J. Scott Bowman ’98 was hired by McNally Law Offices to open a new firm in Columbus, its ninth law office in the Midwest.

John Lowe ’98 has been appointed president and CEO of Jeni’s Splendid Ice Creams. Lowe, a veteran of General Electric, was most recently counsel to its business and general aviation unit. In addition to the original shop in the North Market in Columbus, Jeni’s Splendid Ice Creams has stores in Grandview, the Short North section of Columbus, Bexley, and Dublin.

Corie Ann Marty ’98 has joined the Columbus office of Barnes & Thornburg LLP in the firm’s Labor and Employment Department. Marty focuses her practice on management-side workplace health and safety law, with an emphasis on workers’ compensation. Prior to joining Barnes & Thornburg, Marty was a legislative liaison/analyst for the Ohio Judicial Conference.

2000s

Jason A. Hill ’00 was recognized by the Ohio Democratic Party at the annual State Dinner as the 2009 Democrat of the Year for his volunteer work with the party’s Promote the Vote program. Hill served as Northwest Ohio Regional Counsel overseeing the program in 24 counties in Northwest Ohio. Hill was also recently elected as treasurer of the Northern District of Ohio Chapter of the Federal Bar Association, and recognized for inclusion in the
RonNell Andersen Jones ’00, an associate professor of law at the Brigham Young University-J. Reuben Clark Law School, has a forthcoming article in the Washington Law Review entitled “Media Subpoenas: Impact, Perception, and Legal Protection in the Changing World of American Journalism.” Jones’ research is the second article reporting findings of a 2007 nationwide study of the frequency and impact of subpoenas served upon newspapers and television newsrooms.

2010 edition of The Best Lawyers in America. Hill is a partner at the litigation firm of Connelly, Jackson & Collier, LLP in Toledo, Ohio.

Jack Louis Schreibman ’00 has been named deputy director of acquisition for The Maritime Administration, Federal Department of Transportation.

Jeffrey A. Fickes ’01 was named partner in the Akron, Ohio, office of Roetzel & Andress. Mr. Fickes focuses his practice in corporate and general business law; mergers and acquisitions; banking and finance law; commercial law; deferred compensation and tax law.

Kristin J. Frost ’01 has joined Armstrong Teasdale LLP as a contract attorney in its St. Louis office. She is a member of the firm’s intellectual property practice group.

Kevin T. Shook ’01 was named chair of the Media Law Committee of the Ohio State Bar Association. Shook practices in the Columbus office of Frost Brown Todd LLC.

Sara LaFleur Cunningham ’02 and her husband, Bob Cunningham, had their first child, MacKay David Cunningham, on Jan. 24.

Daniel Griffith ’02 was named partner of Black McCuskey Souers & Arbaugh, LPA. Griffith is a member of the firm’s estate planning and business practice groups. He concentrates his practice in the areas of estate planning, including wills, trusts, probate administration, elder law, business succession planning, and family limited partnerships. Black McCuskey Souers & Arbaugh has offices in both Canton and Dover, Ohio.

Gregory J. Lestini ’02 and his wife, Jennifer, welcomed their first child, Isabella Maria, on June 20.

Laura Erebia Parsons ’02 and her husband, Benjamin Parsons ’03, welcomed their first child, Caden James Federico Parsons, on Feb. 22.

Christopher N. Swank ’02 was named in the 2010 edition of The Best Lawyers in America in the area of real estate law. Swank is an attorney with the Columbus office of Bricker & Eckler LLP.

Brendon P. Friesen ’03 rejoined the law firm Mansour, Gavin, Gerlack & Manos Co., LPA, located in Cleveland, as an associate in the firm’s general civil litigation; real estate, zoning, and eminent domain; and trademarks and copyright practice groups.

Natalie Martin Jackson ’03 earned her Ph.D. in higher education administration from the University of Toledo in August 2009. In the same month, she was hired as in-house counsel for Owens Community College in Toledo.

Jessica Walls Philemond ’03 and her husband, Jean Philemond ’02, welcomed their first child, Mia Isabella Philemond, on March 24.

Daniel A. Papajcik ’04 left the U.S. Army JAG Corps after four years of service to work at MetLife as an account executive. Papajcik is working in the company’s Chicago office, where he assists large employers with their benefits offerings. He also has started an outside law practice focused on helping consumers and small businesses with financial transactions.

Kelly K. Curtis ’05 joined the Cleveland-Marshall College of Law legal writing faculty. Immediately before taking the faculty position, Curtis was an assistant public defender with the Ohio Public Defender in Columbus.

Diedre Washington Smith ’05 and her husband, Keyshorn, welcomed a baby girl, Khelis Marian Smith, on Jan. 7.

Zachary Bolitho ’07 recently joined the U.S. Attorney’s Office for the Eastern District of Tennessee in Knoxville as an assistant U.S. attorney in the Appellate Section. Bolitho is responsible for briefing and arguing cases before the U.S. Court of Appeals for the Sixth Circuit.

Incorrect information was printed regarding David G. Kern ’00 in the Summer 2009 edition of All Rise. Kern works in the Cincinnati office of Roetzel & Andress, where his practice is focused in all aspects of complex civil litigation, including disability insurance defense, products liability, toxic tort, transportation and maritime litigation, business litigation, and personal injury litigation. He has been named an “Ohio Super Lawyer – Rising Star” by Law & Politics and Cincinnati Magazine for three consecutive years. The All Rise staff regrets the error.
2009 Reunion tailgaters: Diane ’72 and David Hathaway ’72.
Reunion Weekend: Sept. 11-12, 2009

Reminiscing, fun, and, of course, football

More than 400 Moritz alumni and guests gathered in Columbus in September for a weekend of reminiscing, fun, and, of course, football. Despite the outcome of the OSU vs. USC game, the remainder of the weekend was delightful for all those who attended.

Alumni had plenty of opportunities to renew old friendships, relive memories of law school, and learn about new developments at Moritz.


On Saturday afternoon, alumni filled the lawn in front of Drinko Hall to enjoy a pre-game tailgate. Visitors had a chance to reconnect with fellow alumni and Moritz faculty and staff, enjoy dinner, and listen to their favorite Ohio State tunes performed by the Buckeye Brass Band.

“It was wonderful seeing my former classmates. It’s always nice to share and hear about the journeys that each of us has taken. In talking to my classmates I found that each of us has traveled down a path that ultimately provides some encouragement and inspiration to someone else. So it was great to get together and share our stories with one another.”

Robika Sturdivant ’04

“My favorite part of the Reunion Weekend was our class gathering on Friday night. I not only had the opportunity to meet up with old friends that I’ve stayed in touch with over the years since law school, but I also had the chance to share professional and personal experiences with many others whom I didn’t know as well in law school.”

Neil D. Schor ’89
Thank you to the following alumni for their help in planning the Reunion Weekend 2009:

**CLASS OF 1959**
- John G. Lancione
- Frank Neff
- Frank E. Quirk
- John P. Van Abel

**CLASS OF 1964**
- William T. Bodoh
- Tom Coady
- William M. Connelly
- Peter G. Eikenberry
- Arnold L. Jack
- Duke Thomas
- Charles J. Tyburski

**CLASS OF 1969**
- Ed A. Bacombe
- David S. Bloomfield
- Sally Ward Bloomfield
- John R. Butz
- Theodore Frericks IV
- Keith F. Henley
- Michael G. Long
- William H. Moorhead

**CLASS OF 1974**
- Susan Garner Eisenman
- David K. Frank
- Robert E. Hickey, Jr.
- Tunney L. King
- Doug M. Mancino
- Frederick L. Ransier III
- Sheldon H. Weissberg

**CLASS OF 1979**
- Susan Shiffler Enlow
- Regina Reid Joseph
- Gerald S. Leeseberg
- Gregg Marx
- H. Grant Stephenson

**CLASS OF 1984**
- John Randolph Balch
- Nancy Truitt Blosser
- Karen R. Brinkman
- Glen A. Dugger
- John V. Magee
- Steven W. Miller
- Pierre W. Priestley

**CLASS OF 1989**
- James L. Catanzaro, Jr.
- David C. Levine
- Jonathon L. McGee
- Steve Mortinger
- Neil D. Schor
- Rachelle Cohen Singer
- Cheryl L. Sprinkle

**CLASS OF 1999**
- Stuart E. Casillas
- Andrew C. Emerson
- Priya N. Lakhi
- Traci A. McGuire
- David W. Walulik
- Danyelle S. T. Wright

**CLASS OF 2004**
- Priya J. Bathija
- Jennifer Marie Nelson Carney
- Erin Jane Donovan
- Jennifer R. Fuller
- Justin D. Harris
- Kimberly Sue Rigby
- Albert J. Sauline III
- Robika Garner Sturdivant
- Curtis L. Tuggle
- Cailin Chrismer Wilson
six premier leagues, 10 percent of the revenue flows to the other leagues that did not play in a BCS bowl. In a year when a school from a non-qualifying conferences does play in the BCS, 18 percent of revenues flow to the other leagues.

Unlike the previous case, the BCS also can point to other, non-competition reasons for sticking with the current system, including the impact extending a playoff system into the winter semester and adding more games would have on student-athletes.

“As a football fan, I would love to have more chances to see the Buckeyes win,” Ohio State President E. Gordon Gee said. “But as an educator, I cannot sacrifice our student-athletes to our hunger for even more football. The system is not perfect, and everyone has a scheme to fix it. But the fundamentals are off. It is about students, not football. It is about books and backpacks, not helmets and draft-picks.”

In 2008, the Football Bowl Association put on 34 bowl games in 29 communities and more than 6,000 student athletes, 12,000 band members, and over 75,000 performers participated. The 68 teams that participated in Bowl Games represented over half of major football programs. Perhaps most notably, bowl games generate in excess of $1 billion each in annual economic impact – that is airline flights, hotel rooms, restaurant, and bar tabs in host cities. According to FBA testimony before Congress, the FBA is adamantly opposed to a post-season playoff system because those events would be a single-day game, with little prior notice as to which team was playing where, as opposed to the current bowl system which is a multi-day event for athletes and fans around the holiday season.

“They are absolutely right that it is an experience, not just a game,” Bazler said. “We have been to the Rose Bowl three times, starting in 1955 the first year we were married. If there were a playoff system instead, I don’t know how we would buy tickets and make travel arrangements when we wouldn’t know if the Buckeyes were playing in the game until a week before.”

Finally, there is some debate about who exactly to sue in this case. The BCS itself is not a corporation or other entity formalized by filing in any jurisdiction. It is not party to the television contracts and the contracts actually say the BCS is not a joint venture. Documents prepared by legal counsel on behalf of the Mountain West and presented at U.S. Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights state:

“Clearly antitrust lawyers have sought to create a structure in which the monopolizing entity somehow lacks legal capacity in an effort to avoid Sherman Act liability. It seems appropriate to pierce that fiction and establish the principle that a dominant cartel would no likely avoid liability by obfuscating its legal status.”

But, perhaps all the debate regarding whether the BCS is anticompetitive or procompetitive, serves other social purposes, or is a mythical organization created only in theory as a result of a myriad of contracts and understandings, is all in vain for those desiring a college football playoff.

“Even if an antitrust action were successful, it would just declare that the current BCS system is unlawful. The courts would not likely direct that college football set up a playoff as a remedy,” Briley said.

And, the Big 10 and other conferences, as well as the bowls themselves, have made it clear that if the BCS agreement is dismantled or falls apart, they will revert to the old bowl system.

**OTHER CONGRESSIONAL REMEDIES**

In January 2009, House Bill 390 was introduced. Its aim is “to prohibit, as unfair and deceptive act or practice, the promotion, marketing, and advertising of any post-season NCAA Division I football game as a national championship game unless such game is culmination of a fair and equitable playoff system.”

In other words, the BCS may exist, but it just cannot call itself the national championship.

“The FTC’s biggest focus is principally on anti-competitive mergers and acquisitions, unfair trade practices, and deceptive advertising,” Briley said. “A challenge to the BCS is within the FTC’s jurisdiction, but I doubt that it would be within its interest.” In 2009, The Championship Fairness Act of 2009 was introduced in the House. It prohibits “the receipt of Federal funds by any institution of higher education with a football team that participates in the NCAA Division I Football Bowl Subdivision, unless the national championship game of such Subdivision is the culmination of a playoff system.”

“Congress may have the power to cut off funding to public universities, but this is the wrong and a very heavy-handed approach to superimpose their judgment on all of the university presidents about what is best for their student athletes,” Briley said.
Clinic Programs Gathering: Oct. 3, 2009

Day at the Columbus Zoo

More than 50 alumni of the Moritz Clinical Programs gathered along with their families and Moritz faculty at the Columbus Zoo on Saturday, Oct. 3. Dean Alan Michaels and Clinic Director Steve Huefner each welcomed guests to the event, which allowed graduates to reunite with one another and with their former professors.

Alumni and their children had the opportunity to get an up-close glimpse of several of the zoo’s residents, including a large python, a dingo, and two impressive members of the cat family, a serval and a caracal.

“It was great to have so many clinical alumni and their families decide to come out,” Huefner said. “I certainly enjoyed getting the chance to reconnect with former students, and I know others appreciated the chance to visit with each other as well.”

“I certainly enjoyed getting the chance to reconnect with former students, and I know others appreciated the chance to visit with each other as well.”

Prof. Steve Huefner
On Sept. 16, current and former Moritz Scholars gathered for the annual Moritz Scholars Dinner. Former Moritz Scholar Christopher Montgomery ’09, now an attorney with Bricker & Eckler, spoke regarding “A Moritz Scholar’s Experience.” Also adding remarks were Dean Alan Michaels, W. Ray Persons ’78, a partner at King & Spalding in Atlanta, and Mrs. Lou Ann Moritz Ransom.

Moritz Merit Scholarships were established in 2001 by Michael E. Moritz (B.S., 1958; J.D., 1961). He created these unique scholarships with a vision to help the Moritz College of Law attract and train students with outstanding academic and personal histories who are dedicated to improving the lives of their clients, their communities, and the profession of law.

Left: W. Ray Persons ’78. Pictured below are Moritz Scholars and their mentors (from left to right): Carson Barylak ’11, William P. Bair ’70, Jacqueline Pasek ’11, Megan Wintermantel ’12, Elizabeth Watters ’90, David Ebersole ’11, Elizabeth Keefe ’12, Aneca Lasley ’00, Lou Ann Moritz, Biru Chen ’12, Marcia Palof ’80, Scott Bent ’12, Heather Sobel ’12, Colin Peters ’12, Charlie Warner ’70.
Geoffrey Stern ’68, his daughter, Emily, and granddaughters, Madison and McKenzi, celebrate at the Moritz tailgate before the OSU vs. Illinois game on Sept. 26.
Save the Dates

Dec. 4, 2009
Fall Hooding

Feb. 5, 2010
Ohio State Journal on Dispute Resolution Symposium

Feb. 12, 2010
I/S: A Journal of Law and Policy for the Information Society Symposium

March 12, 2010
Entrepreneurial Business Law Journal Symposium

April 13, 2010
Schwartz Lecture

May 6-7, 2010

Reunions 2010
September 10 & 11, 2010

If you would like to participate on your class committee, e-mail Darnell Hines at hines.127@osu.edu or call (614) 247-8640.