The Ohio State University Moritz College of Law

All Rise

Spring 2009

MAGAZINE

REAL LAW, VIRTUAL WORLD

Election Lessons Learned • Ginsburg To Visit Moritz • Madoff's Ponzi Scheme

ALL RISE
MAGAZINE

EXECUTIVE EDITOR
Barbara Peck
Chief Communications Officer
peck.5@osu.edu

EDITOR
Rob Phillips
Communications Coordinator
phillips.854@osu.edu

CONTRIBUTING WRITERS
Natalia Mitsui
Communications Intern

Jonathan Peters
Student Columnist, Class of 2010

Thomas Sneed
Reference Librarian
Moritz Law Library

DESIGN AND PHOTOGRAPHY
Andrea Reinaker
Graphic Designer
reinaker.3@osu.edu

CONTRIBUTING PHOTOGRAPHERS
Todd Callentine
Callentine Photography
todd@callentinephotography.com

Cover Image courtesy Getty Images

WEB DESIGN
JD Barlow
Web Communications Specialist
barlow.65@osu.edu
moritzlaw.osu.edu

All Rise is published by:
The Ohio State University
Moritz College of Law
55 W. 12th. Ave.
Columbus, OH 43210
Phone: (614) 292-2631

moritzlaw.osu.edu

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*.

From the Dean

The spring is an exciting time around the Moritz College of Law. Students are busy planning and presenting an increasing number of out-of-classroom events within Drinko Hall, including several law journal symposiums. As you may have heard, U.S. Supreme Court Justice Ruth Bader Ginsburg is expected to visit the College in April as a part of the *Ohio State Law Journal*'s symposium exploring her jurisprudence during her 15 years on the Court. You can read more about Justice Ginsburg and the symposium in this edition of *All Rise*. We are eager for her arrival and enthusiastic about hosting this pioneer in women's rights and civil liberties.

Also in this issue, you can learn about the interesting legal questions that are beginning to surface within online virtual worlds. **Steve Mortinger '89**, an attorney at IBM, shares his expansive knowledge of the issues arising at the intersection of new technology and law. Moritz Professors Peter Swire and Donald Tobin also share their insights as to how privacy and tax issues, respectively, relate to virtual worlds.

You'll have the opportunity to read commentary by experts at *Election Law @ Moritz* regarding the November election. Moritz professors also answer questions on newsworthy topics such as Bernie Madoff's alleged Ponzi scheme and the recent changes to the Americans with Disabilities Act. We also catch up with several alumni, including **Joseph Epps '73, Frank Ray '73,** and **Andrea Seidt '98.**

As always, I hope you will stay in touch with us through our alumni activities, engaging with our symposiums and events (either in person or via webcast), and sharing personal and career updates through our Alumni News. Thank you for all that you do for Moritz.

Alan C. Michaels
Dean and Edwin M. Cooperman
Professor of Law

The Ohio State University Moritz College of Law

ALL RISE MAGAZINE

Spring 2009

Features:

Columns:

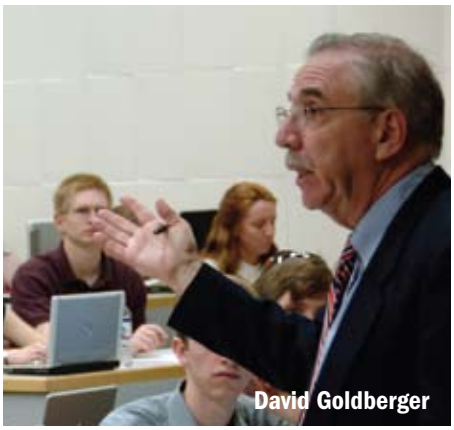
Departments:

PROF. GOLDBERGER TO RETIRE AFTER 29 YEARS AT MORITZ

Professor David Goldberger has announced that he will retire at the end of the current school year from full-time teaching after 29 years at The Ohio State University Moritz College of Law. "My theory on retirement is that it is essentially starting a new career," he said. "I'm not looking at it as ending one."

Goldberger began teaching at Moritz and in the clinic program in 1980. He has taught countless law students at Moritz, led two classes to the U.S. Supreme Court, and was director of the clinical programs from 1987 to 2004.

At Moritz, he and students have worked for nine years on *Cutter v. Wilkinson*, a case involving the right of pagan prison inmates to practice their religion. In 2005, clinic faculty and students brought *Cutter* to the U.S. Supreme Court, successfully representing prison inmates who were defending the constitutionality of a federal statute that protected their right to religious exercise. In 1995, Goldberger and clinic students briefed and argued *McIntire v. Ohio Elections Commission*, in which the Court ruled that the right to distribute anonymous campaign leaflets



David Goldberger

was protected by the First Amendment.

Prior to starting at Moritz and while working for the American Civil Liberties Union (ACLU), Goldberger argued before the U.S. Supreme Court in the case *National Socialist Party v. Skokie*, which upheld the First Amendment rights of a group of Nazis to publicly assemble. Emeritus Professor Gregory Travalio said Goldberger will certainly be missed.

"To a large degree, David is the embodiment of the clinic. We will miss his experience, thoughtfulness, and commitment to clinical education," he said.

Moritz Names New Asst. Dean for International, Graduate Affairs

Jessica Richman Dworkin began as the College's new assistant dean for international and graduate affairs at the Moritz College of Law in February. She stepped in for Professor Anne Doyle, who had been filling the position on an interim basis.

Dworkin leads the College's LL.M. program that was started in the 2007-08 academic year. "I hope to build upon the success of the LL.M. program by growing the program both in size and reputation," she said. She will also oversee the College's Master in the Study of Law program and the College's study abroad offerings at Oxford.

Dworkin received her bachelor's degree in international studies and Spanish from The Ohio State University in 1999 and her law degree and LL.M. in international and

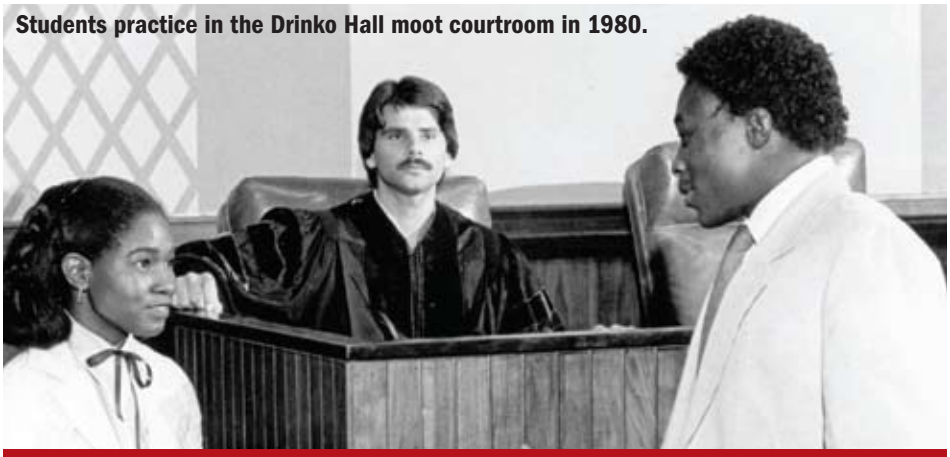
"I hope to build upon the success of the LL.M. program by growing the program both in size and reputation."

comparative law from Duke University School of Law. After law school she worked as an associate in the Columbus office of Baker Hostetler LLP, and later as an associate at the Washington, D.C., firm, Ludwig & Robinson PLLC.

"Since graduating from The Ohio State University, I've moved around the country but am always drawn back to Columbus, Ohio," she said. "I'm very excited to be coming home to Ohio, and to rediscovering Columbus, and all that it has to offer."

Dworkin, a native of Wooster, Ohio, served as senior law career counselor at the George Washington University Law School from 2005 to 2009. There she was in charge of placement services for more than 200 annual LL.M. students.

Dworkin also served as adjunct professor at George Washington University and Trinity University. She is fluent in Spanish and proficient in Portuguese. She has also worked as a contract language monitor for the U.S. Department of Justice.



Students practice in the Drinko Hall moot courtroom in 1980.

MORITZ CLINICS CELEBRATE 75 YEARS

When the Moritz College of Law clinical programs were first established 75 years ago, the College was just the fifth law school in the country to mix a clinical program into its regular curriculum. Since then, the Moritz clinics have blossomed into one of the most comprehensive and successful programs in the nation.

Today, seven regular practicums are offered to second- and third-year students, incorporating real-world experiences with in-class training by Moritz faculty.

Clinic alumni are expected to celebrate the 75th anniversary at a clinic alumni event this spring.

Professor Steve Huefner, who joined the College in 2000 as the director of the Legislation Clinic, assumed leadership of all the College's clinical programs last year. Huefner said his goals include continuing to ensure that the clinics provide the most relevant and vital educational experience possible, and to add additional practicums to the extent possible.

"We have a great collection of clinics and superb clinical and tenure-track faculty members leading them," Huefner said. "Each and every one of us will continue working to uphold the exceptional reputation the clinics have earned over the past 75 years."

Students, Employers Continue to Expand Annual Forum

More than 200 Moritz students attended the 10th annual Public Interest and Government Opportunity Forum, which was held in February at the Barrister Club. The forum was started in 2000 as a way to expose students to the variety of options in the public interest sector. In its first year, the forum welcomed 18 employers to Drinko Hall, where they collected resumes and discussed careers in an informal setting. This year, 34 employers attended the two-day event. Sixteen employers conducted formal, scheduled interviews and the others welcomed resumes and discussions with students.

The growing event was well received by students and employers. "I have had great success at the Opportunity Forums over the past two years," said **Becky Guzman '01**, who attended the forum on behalf of the Franklin County Public Defender's office. "Not only do I meet capable and accomplished law students, but I am thrilled to be able to offer a job to people who are truly interested in helping the indigent."

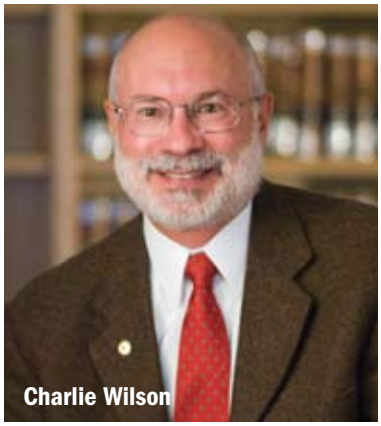
Prof. Wilson Named President-Elect of School Board Association

Professor Charlie Wilson was recently elected president-elect of the Ohio School Boards Association, Central Region. Wilson joined the Worthington, Ohio, City Schools Board of Education in February 2007.

He serves on the Ohio School Boards Association Board of Trustees and was appointed to OSBA's Legislative Platform Committee, Central Region Executive Committee, and Capital Conference Planning Work Committee.

Wilson received his bachelor's degree from the University of Kansas and his law degree from New York University. He clerked for Chief Judge David T. Lewis of the United States Court of Appeals for the Tenth Circuit and practiced with the New York law firm of Sullivan & Cromwell.

He teaches education law, labor law, legal negotiation and settlement, civil procedure, and legal analysis and writing.



Charlie Wilson

PROF. FAIRMAN NAMED TO OHIO COMMISSION ON PRACTICE AND PROCEDURE

Professor Christopher M. Fairman was appointed by the Ohio Supreme Court to a three-year term on its Commission on the Rules of Practice and Procedure. The 19-member commission reviews all rules governing practice and procedure in the courts of Ohio, including the Rules of Civil Procedure, the Rules of Criminal Procedure, the Rules of Appellate Procedure, the Rules of Juvenile Procedure, the Rules of Evidence, and the rules of procedure in traffic cases. The commission considers proposed rules and amendments and recommends rules and amendments for adoption to the Ohio Supreme Court.

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.

His research interests include rules of civil procedure, especially pleading practice, frivolous litigation, alternative dispute resolution, professional ethics, and taboo language and the law.


Chris Fairman

The law journals and other groups at the Moritz College of Law have been busy this semester preparing and presenting a number of thought-provoking and innovative symposiums. Here are a few that have happened or are scheduled:

The Future of ADR: Incorporating Dispute Resolution Into Society

Feb. 19

Ohio State Journal on Dispute Resolution

Alternative Dispute Resolution has become an increasingly important feature of conflict resolution within both modern law practice and public policymaking in the United States.

The *Ohio State Journal on Dispute Resolution* assembled a group of forward-thinking experts who explored the future of alternative dispute resolution through panel discussions in hopes of increasing the accessibility of the field. The ultimate goal of the symposium was to envision the potential future of alternative dispute resolution in order to increase its use and accessibility to lawyers and non-lawyers alike.

The Credit Crash of 2008: A Crash in Confidence?

March 6

Entrepreneurial Business Law Journal

Panelists from legal practice, the business sector, and academia presented their insights on the Credit Crisis of 2008. The symposium provided attorneys with an understanding of the causes of the credit crisis, the multiple governmental bailouts, and further regulations proposed to avoid such a crisis in the future. The Keynote speaker discussed the future of government regulation of financial markets after the credit crisis.

Mashup/Remix Conference 2009

March 12-13

I/S: A Journal of Law and Policy for the Information Society

The *I/S Journal* and the Wexner Center for the Arts collaborated for a novel discussion on the implications of mashup and remix in the world of Web 2.0. A number of speakers traveled to Columbus to present during this innovative, two-day conference. Organized as a combination of panels, roundtables, and performances, the event engaged presenters and audience members to think broadly about the legal, political, economic, and cultural landscapes accompanying mashup art and collaborative creation. Bringing together new media artists, prominent academics, and influential members of the media community, the attendees discussed ways in which the digitization of music, film, and visual art over the Internet is influencing the future of these industries and the future of copyright law.

Never Say No: The Law, Economics, and Psychology of Counteroffers

April 2

Schwartz Lecture on Dispute Resolution

Ian Ayres, the prominent lawyer and economist, will present the 2009 Schwartz Lecture entitled "Never Say No: The Law, Economics and Psychology of Counteroffers."

Ayres, a Yale law professor, lectures and writes about the intersection of law and economics and negotiation of contracts. Ayres' lecture will extend his economic analysis to the issue of the negotiation counteroffers.

The Jurisprudence of Justice Ruth Bader Ginsburg: A Discussion of Fifteen Years on the U.S. Supreme Court

April 10

Ohio State Law Journal

U.S. Supreme Court Justice Ruth Bader Ginsburg is expected to visit Moritz to speak at the symposium in her honor. Several speakers will provide in-depth analysis of Justice Ginsburg's impact on the law, statutory interpretation, reproductive rights, gender and race equality, and labor and employment law. See Page 22 for more on this event.

IN BRIEF

MERRITT RECEIVES UNIVERSITY TEACHING AWARD

Deborah Merritt and President E. Gordon Gee

Professor Deborah Jones Merritt was recently named one of the 10 recipients of the University-wide 2009 Alumni Award for Distinguished Teaching.

The Alumni Award for Distinguished Teaching honors faculty members for superior teaching. Recipients are nominated by present and former students and colleagues and are chosen by a committee of alumni, students, and faculty.

Merritt graduated with a bachelor's degree from Harvard College and from Columbia Law School. After graduation, Professor Merritt clerked for Judge (now Justice) Ruth Bader Ginsburg on the U.S. Court of Appeals for the District of Columbia Circuit and for Justice Sandra Day O'Connor on the Supreme Court of the United States.

She joined The Ohio State University Moritz College of Law in 1995. From 2000-05, Merritt served as director of the John Glenn Institute for Public Affairs.

Merritt has published widely on issues of equality, affirmative action, federalism, health and technology, legal education, tort reform, and law and social science. Much of her work has focused on public policy issues, and she has made numerous presentations to judges, legislators, and other policymakers. She has also co-taught courses in Europe with both Justice Ginsburg and Justice O'Connor.

She currently teaches evidence, law and psychology, legal writing and analysis, and the criminal defense practicum.

Merritt, the John Deaver Drinko-Baker & Hostetler Chair in Law, has been honored as both an Ohio State University Distinguished Lecturer in 1999 and as a University Distinguished Scholar in 2002, both awards are conferred on the University's most outstanding researchers.

LETTERS TO THE EDITOR

VALUING ALUMNAE WORKING MOTHERS

To the Editor:

In almost every regard, I enjoy your publication. However, in the Winter 2009 edition, your story on Rebecca Price '01 (page 26) dismayed me greatly. What kind of pressure do we really want to put on our young mothers who are also attorneys?

Your article starts off well enough stressing that she is a busy litigator and parent. However, there is, perhaps unintentionally, an underhanded qualifier in this sentence: "Even though she is currently working just 30 hours a week, the 32-year-old attorney still has a lot on her plate."

This sentence and the implication of this sentence makes me sick. Gosh, I guess she's really not doing that much. I think it implies that she's a second rate lawyer because she wants to attempt to balance her career with her baby and her healthy lifestyle.

Surely the person who wrote this article has no clue that being a mother and an attorney is one of the most monumentally difficult things a woman will ever try to do. I think the sentence should've been written: "In addition to working an impressive 30 hours a week and caring for her 2-year-old daughter, the 32-year-old attorney was also determined enough to train for and run the Columbus Half-Marathon in 2007."

How many hours does she need to work to get rid of the word "just?" 40? 50? 60? Why isn't 30 hours a week enough for our world? If she chooses to only work 30 hours for the rest of her life and never make partner, will this mean that she contributed less to this world somehow? If I had to guess, I'd say 30 hours is enough for her daughter, Audrey.

This article insults all women who work any job and try to raise a family. A mother's plate is always more than full whether she works 10 hours, 30 hours, or works in the home exclusively.

Most Sincerely,
Mary Knoll '92

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*.

Where to Find Business Filings

What Are the Best Sources for This Information?

By Thomas Sneed

Have you ever been asked by a client to search for a Uniform Commercial Code Financing Statement or needed to determine the statutory agent for a particular corporation? How do you go about finding a 10-K annual report filed with the U.S. Securities and Exchange Commission (SEC)? Would you immediately know where to research these matters, and how many options do you really have for the search? Even if this is not your primary area of practice, there are many situations where knowledge of the resources available for searching business filings may prove useful.

Governmental Web Sites

Many practitioners begin research with a commercial database such as Westlaw or Lexis. However, the best starting point for researching business filings may be a freely available government web site. For basic corporate documents and UCC filings, this would be the respective secretary of state's web site. The National Association of Secretaries of State (http://nass.org/) provides a directory of secretary of state web sites, along with those of the District of Columbia and several U.S. territories.

While states differ in coverage, the Ohio secretary of state's web site (http://www.sos.state.oh.us/SOS/) provides a good example of the types of business resources generally available online. In Ohio, the secretary of state approves articles of incorporation for Ohio corporations, grants licenses to out-of-state corporations, and approves amendments to previously filed documents. Under the "business filings" section of the site, corporate documents can be searched by business name, registration number, or agent/contact name. This section also includes forms, fee schedules, and explanations of issues such as nonprofit organizations, statutory agents, and certificates of good standing.

A second responsibility of the secretary of state is to document secured commercial transactions. The UCC department allows secured parties to file financing statements claiming an interest in collateral, which also serve to provide public notice of the interest. The section of the web site devoted to the UCC includes the ability to both submit and search for filings, along with forms, a fee schedule, and an explanation of Revised Article 9 of the UCC.

Much information is also freely available online for publicly traded companies regulated by the SEC. The SEC created a searchable database, called EDGAR (http://www.sec.gov/edgar.shtml), consisting of filings such as annual reports and proposed sales of securities. EDGAR is being phased out and replaced by a new search platform, referred to as IDEA, which is currently in use and intended to allow for easier searching. Among the search options provided by IDEA are full text searching, a most recent document search, and company and ticker symbol searching.

Other Options

In addition to the freely available government sources, Westlaw and Lexis provide access to secretary of state business filings, UCC filings, and SEC filings. In Westlaw, these filings can be found under "business and corporate information" in the public information, records, and filings database, while in Lexis, the secretary of state and UCC filings are located in the public records database and the SEC filings are in the news and business database. Both commercial databases allow for either a terms and connectors search or provide a form or template for searching by company name or another specific identifier. While the commercial databases rely on information from the governmental agencies, it is necessary to review the currency of the information provided by Westlaw and Lexis to verify the frequency of updates.

Researching business filings can be an important part of the legal research process. Serving the wrong statutory agent or missing a filed financing statement could prove costly to both you and your client. Investing a few minutes to become familiar with the basic sources of business filings will prove beneficial in the long run.

Thomas Sneed is a reference librarian at the Moritz College of Law. His responsibilities include providing reference services to faculty, staff, students, and the public, and teaching first-year and advanced legal research courses. Prior to becoming a librarian, Sneed practiced law in Kentucky and worked as a real estate specialist with the Ohio Department of Transportation in Columbus.

Law School Remains Mixture of Expected, Unexpected

By Jonathan Peters

I wrote in my first All Rise column that law school is what I expected — and it's not what I expected. That continues to be true: the whole experience has endowed me with an appreciation for surprises.

The Whole is Greater than its Parts

I spent my undergraduate years at one of the best journalism schools in the country. Brilliant people surrounded me, and there I met some of the most talented young writers I've ever read. We studied one another's work, we adopted one another's techniques, but we avoided study groups. We told ourselves that they were unhelpful and were a pain to coordinate. I swore by their uselessness.

Since then, I've eaten my words. The law is so complex, so nuanced that it helps to draw from the knowledge, perspective, and strengths of multiple people. Because one student's weakness is commonly another's strength, study groups enable everyone to develop a better command of the subject at issue. In that sense, one student can provide the missing piece to another's puzzle.

Another benefit: study groups actually bring people together. There's disagreement and tension, sure, even some yelling, but ultimately the group is like a sports team rallying against a common enemy — the law. I've developed great friendships with the people in my study group.

A New, Improved High-School Prom

Just when I thought I had attended my last prom, I came to law school. The annual Barrister's Ball has been a wonderful opportunity for me to see who's dating whom, and for me to embarrass myself (I danced on the stage this year, totally looking like a flamingo in heat). To put it another way — for those who scored well on the SAT and LSAT — the Cincinnati Bengals are to football, as I am to dancing.

Anyway, nearly everyone at Moritz attends Barrister's Ball, and they clean up really well. In fact, some of my classmates clean up so well that I introduced myself to them, not recognizing them from class. Yes, that actually happened to me, but we don't have to talk about it. Let's just say that clothes, hair, and attitude make a difference.

Barrister's Ball also forces students to develop better study-group skills. It does so because many attendees spend the next day calling one another trying to figure out what happened the night before. Again, one student can provide the missing piece to another's puzzle.

Yes, that's called synergy.

From News Hound to Sparknote's News

I think the most interesting people in the world are broadly knowledgeable and able to contribute (intelligently) to conversations spanning an array of topics. I'm not talking about depth as much as I am breadth. That is, I like people who have depth in some areas and who don't suffer from tunnel vision in others. That includes the news.

Keeping up with news and commentary was once a sacrosanct part of my life. I would read two newspapers each day, as well as four or five columnists. Those news habits, needless to say, suffered a quick death in law school. Now I read briefs and motions, cases and notes, treatises and restatements. I'm lucky to squeeze in one newspaper a day, and I sometimes cheat by reading news summaries, rather than the actual stories. That's right, I'm a columnist and an occasional investigative reporter who prefers short form to long form.

I'm the guy I mocked in journalism school — the lazy news consumer.

What I Already Knew

Law school is a nothing-ventured-nothing-gained experience. Every day, I make decisions that affect the rest of my life, whether it's to attend class, to participate in moot court, or to meet with my advisor. I now appreciate surprises and the unexpected. And the biggest surprise to me is that law school is rewarding, in the sense and spirit of something William Penn once wrote:

"To have striven, to have made the effort, to have been true to certain ideals — this alone is worth the struggle."

Jonathan Peters, a second-year student and award-winning columnist, is a Leadership Scholar at Moritz. He is from Athens, Ohio, and a graduate of the E.W. Scripps School of Journalism at Ohio University. E-mail him at peters.401@osu.edu.

REAL LAW IN A VIRTUAL WORLD

Legal Questions Arise in an Emerging Web-based Landscape

by Rob Phillips

When you hear "virtual worlds" you probably envision a teenager concentrating intently on a computer screen, his nose just inches from the animated characters he is directing. Or you may think of some online land filled with Star Trek fanatics satisfying a science-fiction craving.

Illustration by Andrea Reinaker

Well, think again.

Virtual worlds have emerged as societies that breed entrepreneurs, as forums that advance real-world business, and as stepping stones to an Internet platform that we all may welcome someday. To not appreciate the growing popularity of such online "worlds" could cause you to overlook the potential of these budding, three-dimensional universes. You'll likely also overlook the dozens – probably hundreds – of legal questions that are destined to arise. You may ignore that the American Bar Association created the Committee on Computer Games and Virtual Worlds.

If you're not interested, your clients probably are. If they're not, they probably should be.

What are Virtual Worlds?

In order to truly grasp where the Internet is headed it makes sense to understand its genesis. Although the groundwork for creating the Internet started much earlier, the forum that we know and use today made its first real public impact in the early 1990s. Web sites then were archaic in comparison to today's dynamic and interactive forums. Visitors couldn't buy anything on these one-dimensional sites, exchange voice or video, or interact, but they could gather information in a then-unprecedented ease.

"When you think about the Internet in the early 1990s you think of a one-dimensional Internet," said **Steve Mortinger '89**, vice president and associate general counsel of IBM's Systems & Technology Group. "You would go to the web to check information. It was like an encyclopedia. There was little interaction or exchange."

Then came what is commonly referred to as "Web 2.0." Although definitions vary of what is actually included in the Internet's second phase, its overwhelming theme is the ability for users to interact with one another. Think online chat and social networking sites like MySpace, Facebook, and Linkedin. Other popular examples include web sites such as Wikipedia (an online encyclopedia) and e-Bay (an online auction house and store). Internet users are now corresponding with people around the globe in real time, buying and selling goods, creating their own, step-by-step, satellite picture directions, and posting their own encyclopedic entries.

But experts who study the Internet say that interface, now used by roughly 1.5 billion people worldwide, is possibly in the infancy of its next major transformation. That transformation primarily includes the shift to the Internet in 3-D. Envision an Internet

Images courtesy Virtual Worlds Libraries, Education & Museums Conference 2008 by HVX Silverstar/ Bernadette Daly Swanson

VIRTUAL DICTIONARY

Confused? Here are some definitions of common in-world terms:

Virtual World: A computer simulated environment – normally three-dimensional – that allows users to interact with one another. Popular virtual worlds include Second Life, There, Disney's Planet Penguin (for children), and World of Warcraft (a game).

Avatar: The graphical representation of a user in a virtual world. These characters can normally be designed to include anything within a user's imagination.

Grid: A collection of servers that operate a virtual world.

Griefing: A form of heckling and, in extreme cases, of cyber-bullying in virtual worlds.

Linden Dollar or Linden: Second Life's official currency, which currently trades at 260 lindens for each U.S. dollar.

Linden Labs: The company the operates the Second Life virtual world site.

Teleport: An instant change of your location within a virtual world.

Images courtesy VWLEM
2008 by HVX Silverstar/
Bernadette Daly Swanson

interface where instead of jumping from web site to web site, users would move a virtual representation of themselves (called an "avatar") through online locations much like they would real-life ones.

For instance, if people wanted to go to a library's web site they would take their avatars and locate the library's "island" in the 3-D space. That island would likely include a virtual representation of a library (possibly replicating the real-world infrastructure), including buildings, trees, and people. Once there, they would likely be greeted by another avatar who is employed by the library (likely an automation, but possibly a real online librarian). That person answers questions and points guests in the right direction. If the library was having a real-world presentation, they may post a live-link or video in their virtual library. In fact, these types of interactions are already occurring on an Internet program called Second Life, the most popular virtual world to date.

What if users, instead of flipping through web pages of TVs on Best Buy's web site, could enter a virtual Best Buy and chat with a virtual salesman. The customer could tell the salesman he wanted to see a certain size TV and that salesman could answer questions, point out different models and features, and complete the sale.

"It's more appealing for us to interact in a virtual world," Mortinger said. "This adds that third dimension to the Internet."

Experts say they believe that the Internet is likely headed this direction for many reasons, primarily the growing popularity of worlds like Second Life.

In April 2007, Gartner, Inc., a leading information technology research and advisory company, estimated that 80 percent of online users would have a presence in a virtual world by 2011. A May 2008 release by the same company estimated that 70 percent of companies will have their own, virtual "web place" by 2012. These web places may or may not be in separate 3-D areas created by companies or in virtual worlds already created.

According to the Second Life web site, its virtual world is approaching 17 million "residents." In January 2009, some 1.5 million residents had

logged into the virtual place in the last 60 days. The number of people who log into some virtual place will continue to grow, said Benjamin Duranske, a California attorney and author of *Virtual Law: Navigating the Legal Landscape of Virtual Worlds*.

"The reason for that is that interfaces converge toward reality, and they always have," Duranske said. "We had originally interacted with computers using punch cards. We then progressed to operating systems that modeled real-life areas. They included hierarchal file structures and rudimentary graphic features like a trash can. The terminology here is derived from reality. We had the capability to make computers and interfaces look more and more like reality. Computer processing power and bandwidth is now large enough that we are able to display interfaces in three dimensions."

What's Possible in Virtual Worlds?

Opportunities for firms, companies, or clients are infinite. Even government and nonprofit organizations have begun to create virtual

places. For instance, the Arlington County, Va., Economic Development Office has a replica of its building in Second Life. There visitors can chat with development officials about the benefit of moving their companies to the county, see promotional materials, and watch slide presentations about its government. College and universities, the U.S. Capitol, and museums have also emerged on Second Life.

Mortinger said that at IBM his colleagues around the world often hold meetings in Second Life by directing their avatars to an IBM-owned space within the virtual world. The idea is similar to videoconferencing, but lacks sometimes technical and costly attributes. Attendees in Second Life can speak to one another, view the same presentations, watch live video, etc. "If we're doing a training session we may have people meet there so that they can simultaneously watch a PowerPoint presentation," he said. "There are plenty of opportunities."

Entire economies have been created in these worlds. For instance, nearly 63,000 Second Life users in December 2008 made a profit, according to Linden Lab, the program's California-based creator. That money, called "Lindens" in Second Life, can be exchanged for U.S. dollars (the exchange rate – which changes daily – is roughly $1 for 260 Lindens).

All sorts of virtual products are being sold within Second Life, residents can seemingly buy anything: cars, jewelry, clothing, or even a virtual home for their avatars.

Ability to purchase and develop online spaces has led to lucrative business opportunities. A 2006 *BusinessWeek* cover story detailed the virtual life of Anshe Chung (known as "Ailin Graef" in Second Life). In 2006, Chung was widely reported as the first person to earn $1 million in Second Life. Anshe opened a Second Life account for just $10 and was able to buy and develop virtual real estate using Lindens. She started with small-scale purchases and then "subdivided and developed with landscaping and themed architectural builds for rental and resale," according to her web site. Chung, in just 30 months, managed to begin buying and creating virtual real estate for real-world corporations. She also made successful investments in a virtual stock market operating within the world. Chung now operates a multimillion dollar company.

Most profits are miniscule in comparison. During December 2008, just 205 people made more than $5,000 and more than 58 percent of those people making money made less than $10.

Why Attorneys Should Care

Although many attorneys may not be interested in logging into a virtual world, there's a chance that they may represent a client who would like to start a virtual presence. All types of business – from fashion designers

Images courtesy VWLEM 2008 by HVX Silverstar/Bernadette Daly Swanson

to car dealerships – governments, and nonprofits have begun to appear in virtual worlds.

Even if their clients are not interested in entering such a forum, their clients' products, ideas, or names could already be under siege virtually. Intellectual property concerns are some of the leading issues among a sea of legal questions that all attorneys should think about, experts agreed. What about income taxes? What if a client hires someone as a virtual employee? How about trademark dilution? Privacy concerns? Copyright infringement? Just as the opportunities in these worlds are infinite, so are the possible legal problems. We've pared them down to four main issues: intellectual property, tax, privacy, and employment law.

Intellectual Property concerns

Because nearly anything can be created (or replicated easily) in virtual worlds, intellectual property issues are probably the most immediate concern for attorneys. So what should attorneys know if they are representing a client whose copyright, trademark, or patent rights have been infringed upon in a virtual world? First, the rights of participants in these worlds are largely set forth in the worlds' terms of service agreements. Because there are so many different worlds and so many different rules, it's important take a close look at these agreements, which oftentimes are simply "clicked through" when opening an account.

Before the release of Second Life in 2003, virtual lands – most of which then were centered on gaming – did not allow users to retain copyright for items created within the world. But Second Life changed that trend and is currently one of the only virtual worlds that allows users to retain copyright of items created within its forum.

Reporting violations of copyright infringement is oftentimes easier than enforcing violations of trademark and patent infringements. The Digital Millennium Copyright Act's (DMCA) takedown guidelines pertain to copyrighted items found within virtual worlds. The Act provides a safe harbor from copyright liability for online service providers if those providers follow a prescribed rule of taking down items that are in violation of someone's copyright.

"One of the nice things about these spaces is that they are quite searchable," Duranske said. "If I am trying to do a search for all the knock-off Gucci bags in the San Francisco Bay Area, it's nearly impossible. But in a virtual world I have a much better chance of tracking these violations down."

Linden Labs provides addresses on its web site where written notice of copyright infringements must be sent in order to begin its takedown procedure. Its web site reads: "If a DMCA notice is filed, and it meets the standard for a complete claim, Linden Lab will then expeditiously remove the indicated materials in-world. Repeated copyright or trademark violations by a resident can result in their account being placed on probation or permanently banned."

And further litigation may continue to arise regarding the DMCA. Some feel the Act sometimes encourages companies, like Linden Lab, to simply take down the material without determining if the material was truly a copyright violation.

Trademark infringements are reportedly rampant within virtual worlds. "It is critical that brands start paying attention to what is happening to their trademarks in virtual space," Duranske said.

Images courtesy VWLEM 2008 by HVX Silverstar/ Bernadette Daly Swanson

Mortinger said that a prime example is the use of Rolex watches. Most "virtual" watches purchased in Second Life, according to the two attorneys, are Rolex. But none are trademarked. Just think of a popular car, jewelry, or clothing accessory there's a fairly decent chance it could be victim of a trademark violation somewhere in a virtual world. "Brands can be considerably tarnished in these environments," Duranske said. "And the longer that these trademarks are abandoned the harder it is going to be for them to prove that a violation is occurring."

In his book, Duranske estimates that $3.5 million in counterfeit goods are exchanged each year in Second Life. And some of the best ways around such problems is for these companies to begin creating such materials for sale in virtual worlds.

Trademarks aren't covered by the DMCA and therefore there isn't an enforcement mechanism that is as cut and dry. "One of the difficulties in enforcement is because virtual worlds provide pseudo anonymity," Duranske said. "Once you track down the avatar who is ripping off the brand, then you have to find that user and contact him. If he doesn't respond to communication, you're basically left with filing a John Doe lawsuit."

Patents are treated differently depending on which virtual world is being used. But at least some of these virtual worlds have detrimental effects on users who introduce patents into the space. In Second Life's terms of service it says that by logging in residents grant "to Linden Lab and to all other users of the service a non-exclusive, worldwide, fully paid-up, transferable, irrevocable, royalty-free and perpetual license, under any and all patent rights you may have or obtain …" Mortinger said that because submitting a patent within the virtual world could render the patent valueless in that virtual world, it's important for attorneys to understand for what purpose their client plans to use the space.

"Sometimes we have to remind people that if you create a business enterprise through Second Life, and you put a patent there, you grant Linden Lab and all other users access to that patent," Mortinger said. "It would make that patent worth nothing in Second Life."

Tax law concerns

With an ever-increasing number of online transactions and income accumulation, tax questions were certain to arise. In its Dec. 31, 2008 Annual Report to Congress, the Taxpayer Advocate Service recommended that the Internal Revenue

WHEN VIRTUAL-WORLD BEHAVIOR EQUALS REAL-WORLD CRIME

In the United States, criminal prosecutions stemming from virtual-world actions are nearly nonexistent. However, a few recent cases – involving cyber bullying and virtual child pornography – have answered some questions that remain in the legal system.

Many real-world criminal codes have been updated to include crimes committed in the virtual worlds. Gambling, data theft, financial fraud, and money laundering codes have been updated to include virtual worlds, according to Benjamin Duranske, an expert in virtual law and author of *Virtual Law: Navigating the Legal Landscape of Virtual Worlds*.

Financial frauds within Second Life are abundant, Duranske wrote in *Virtual Law*. In 2008, Linden Lab prohibited unlicensed banks within the virtual world, but prior to that Ponzi schemes were "rampant" in-world, Duranske reports. Virtual "banks" paying outrageous rates of interest would pop up and collapse overnight and, as in the real world, take investors' money with them in the process. Other financial scams arise constantly, according to virtual world experts. "The amounts of money being lost are not insignificant, and while the alleged crimes took place in a virtual world, the damages done, … to individuals … (is) very real," Durankse said.

Other virtual world experts have found that strictly virtual crimes such as theft of "goods" in-world will not be prosecuted under current codes. Those crimes are considered part of the virtual game and normally left to the operators or administrators of the virtual world.

Virtual prostitution is apparent within virtual worlds, according to Duranske. Virtual "prostitution" mostly includes erotic text and voice chat, as well as the visual stimulation of watching two avatars engage in virtual sex acts. There currently are no laws that specifically address virtual prostitution, and Duranske said in his book that phone sex, obscenity, and real-life prostitution laws are too narrowly written to include virtual acts.

Federal charges filed against a Missouri woman exhibited some success in extending misdemeanor computer fraud charges to "cyber bulling." The woman pleaded guilty to the charges, which stemmed from her misrepresenting herself on the social networking site, MySpace. The woman pretended to be a teenage boy, who sent first nice, then nasty, messages to a 13-year-old girl, who killed herself shortly after receiving one of the malicious remarks. The unprecedented case may open doors for prosecutors searching for ways to prohibit such behavior, called griefing, in forums like virtual worlds.

A few questions – primarily surrounding pornography – in virtual worlds have also made their way through criminal courts. The U.S. Supreme Court in 2008 upheld the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act), which, among several provisions, prohibits computer-generated child pornography that includes a computer image or computer-generated image that is virtually "indistinguishable from that of a minor engaging in sexually explicit conduct." Linden Lab now also prohibits lewd or sexual acts by Second Life residents if at least one of those avatars depicts a minor.

Service begin to "proactively address" tax issues emerging in virtual worlds. The Service suggested that the IRS work with the Office of the Chief Counsel and the Treasury Department to issue direction on how taxpayers should report economic activity in virtual worlds.

The group, which is intended to support taxpayers' beliefs within the IRS, said that many tax-related questions have gone unanswered and unenforced. The report specifically mentioned such questions: Is a person subject to tax each time he or she acquires virtual property? How about when the person exchanges one virtual property for another, or for virtual currency? Or when the user sells the virtual property or his or her account (and avatar) for real money? What, if any, information reporting, withholding, backup withholding, and recordkeeping requirements apply to these transactions?

There was no question over the economic pertinence of the emerging virtual world trend. The IRS says that as early as 2001 the gross national product within virtual worlds was equivalent to about $135 million. That GNP per user was roughly equal to the per-capita GNP of Russia and higher than in many developing countries. Economists estimate that the worlds generated about $3.42 an hour, a wage that has caused people in developing countries to spend long hours seeking entrepreneurial success in virtual lands.

Most experts agree that a resident of a virtual world should be required to pay income tax if he or she makes a profit within the virtual world. According to the IRS report, "by participating in these worlds, a significant number of people are creating real economic income. Where there is economic income, there is likely to be tax due from someone."

Images courtesy VWLEM 2008 by HVX Silverstar/Bernadette Daly Swanson

But when that person should be taxed – when the wealth is cashed into "real" money or when a profitable exchange is created within the virtual world – is the primary question. In the report, the Taxpayer Advocate Network gives several different classifications that transactions made exclusively in virtual worlds could be labeled for taxing purposes and reasons why those classifications could be rejected.

Moritz Professor Donald B. Tobin, an expert in tax law, said that he believes the answer is quite simple. Transactions that occur within the virtual world should not matter to the IRS until that transaction is converted into "real" money. That income would then be taxable.

"It's imputed income," Tobin said. "If you decide to build yourself a chair, that chair is not taxed as something of value. It's self-created property. But once you go and sell that chair, that income would then be taxable. This is the same thing."

The Taxpayer Advocate Service called upon the IRS to provide some guidance to taxpayers, even if it is simply clarifying that transactions within virtual worlds are not taxable. IRS officials responding to tax questions have offered varied responses as to whether taxpayers should pay taxes on virtual income. Those differing responses were presented in a few books published that document taxpayers' quest to pay taxes on the income.

"The IRS should consider doing more to help taxpayers comply with their tax obligations by quickly issuing guidance addressing how to report economic activities in virtual worlds, as well as in inter emerging areas of economic activity," the report states.

Employment law concerns

Employment law concerns – from hiring avatars in a virtual world to what guidelines should be developed for employees who are interacting in such worlds during work – are also relevant. Mortinger said that latter spurred IBM to create its own user guidelines for employees who are using virtual spaces during work time. IBM has purchased "private" land within Second Life that allows its company's employees to meet while restricting access to other non-IBM-employed visitors. But, Mortinger said, because avatars can be designed or dressed in any imaginable way, it was important to set guideline on what was appropriate. "I always

continued on page 46

MORTINGER ’89 MAXIMIZES OPPORTUNITIES PRESENTED AT IBM

Since graduating from Moritz in 1989, Steve Mortinger has worked for IBM, which makes use of virtual world platforms regularly. Pictured is Mortinger and his avatar in Second Life.

It’s difficult not to be intrigued by parts of Steve Mortinger’s jobs over the years. And if you’re not, your teenager probably will be. The 1989 Moritz graduate and IBM attorney has had the opportunity to work on some incredible projects.

Mortinger, whose title is vice president and associate general counsel of IBM’s Systems and Technology Group, has drafted contracts for the 2000 Sydney Olympic Games, worked on projects associated with the design and manufacture of the microprocessors at the heart of the Nintendo Wii and Microsoft’s Xbox 360, and currently leads efforts investigating the emergence of online virtual worlds.

“There are parts of your job that you have to do, and there are parts of your job that you really look forward to doing,” he said. “I have been pretty lucky to have a variety of different opportunities over the years.”

Mortinger started working for IBM immediately after graduating from law school. “I always thought that I would stay here until I felt like I wasn’t interested in it anymore or my career opportunities dried up,” he said. “Neither of those have happened … so I have not had that problem.”

Before even arriving at law school, Mortinger could be heard telling friends that he someday wanted to be an attorney for a large corporation. So when IBM came to Moritz to interview students, Mortinger was sure to sign up.

He interviewed with **Ron Lauderdale ’74**, and Lauderdale hired Mortinger a short time later. Although they remained in different divisions for most of Mortinger’s time with the company, Mortinger has reported directly to his fellow alumnus since 2007.

Mortinger’s first job with the world’s largest computer company was supporting its Enterprise Systems Division in Poughkeepsie, N.Y. In that position, he handled contracts for the manufacture of mainframe computers, labor and employment issues, and environmental matters for a manufacturing plant there. From there, Mortinger has held nearly a half dozen other positions within in the company, each adding new and increased responsibility.

The Westerville, Ohio, native helped IBM garner some major contracts over the past several years, including one for providing all the information technology equipment and services (for such things as timing and results) to the 2000 Sydney Olympics.

From 1999-03, Mortinger worked in San Francisco as IBM’s lead marketing lawyer on the West Coast. “It was a great time to work in California because of the tech boom,” he said. “Everyday, when I got off the train there were dot-coms looking to hire people. They were so desperate for labor. Then the bubble burst, and everyone was hitting me up for jobs.”

He returned to the East Coast in 2003 where he supported the company’s newly-formed Engineering & Technology Services division. Mortinger helped craft contracts that placed IBM microprocessors in the Nintendo Wii and in Microsoft’s Xbox 360.

Currently, Mortinger oversees the acquisitions and divestitures for his division. He is also charged with exploring and cultivating the company’s presence in virtual worlds. “The Internet is going to take another evolution, and in that future state of the Internet we will likely be represented by characters that can interact with the Internet and with each other. That is why today’s virtual world sites are so relevant.” Mortinger co-founded and is co-chair of the American Bar Association Intellectual Property Section’s Committee on Computer Games and Virtual Worlds. He is a familiar face within the growing number of attorneys exploring virtual worlds and the legal questions that they raise.

Mortinger lives in Ridgefield, Conn., with his wife, Alison, and two sons, ages 12 and 10.

LESSONS LEARNED:

LOOKING BACK ON ELECTION DAY 2008

by Barbara Peck

Photos by Andrea Reinaker

Professors Daniel Tokaji, Edward Foley, and Terri Enns (left to right) await a television interview on Election Day 2008.

ELECTION LAW @ MORITZ

information and insight on the laws governing federal, state, and local elections

In the days leading up to the Nov. 4 elections, the tension in the fourth floor faculty offices at The Ohio State University Moritz College of Law continued to build. But the pressure was not about who would win, but rather: would the election run smoothly? Would polling places be able to handle the predicted record turnout, which included many first-time registrations and voters? Would a winner be declared?

"A lot of progress has been made in the last eight years," said Dan Tokaji, associate director of *Election Law @ Moritz* and an associate professor of law. "Voting technology did a better job of accurately recording a voter's intent than in 2000. States did a better job of handling provisional ballots and there were fewer disputes than in 2004. Congress passed the Help America Vote Act (HAVA) in 2002 and the first election after a big change in law usually equals problems. But it is normally smooth the next time, and that is exactly what happened in 2008. Yet states still had great difficulty in the area of voter registration which, not coincidentally, has been subject to new federal requirements since 2004."

In the months (well, actually years) leading up to the election, the *Election Law @ Moritz* team spent thousands of hours compiling data, reviewing statutes, and analyzing previous decisions to prepare for Election Day. The result: one of the world's most thorough and informative election law web site available. The team created more than 50 different maps comparing various election law statutes nationwide, catalogued every potential election administration problem, gathered a mountain of legal documents and court filings, and blogged and updated the site daily.

"In the months leading up to the election, there were lawsuits in Ohio regarding the five-day window, in Indiana and Georgia regarding voter identification and in multiple states regarding voter registration and early voting," said Edward B. Foley, director of *Election Law @ Moritz* and the Robert M. Duncan/Jones Day Designated Professor of Law.

While, in general, the election of America's 44th president did run smoothly, there were significant problems in some states and localities. "These problems were masked by Obama's decisive victory, but the problems are lurking in the system in the event that the next presidential election is much closer," Foley said. Specifically, Foley points to the 200,000 provisional ballots cast in Ohio, which would be the basis for a protracted battle if Obama's bid for reelection in 2012 is similar to the Ford-Carter election of 1976, for example.

In addition, the citizens of Minnesota watched the inauguration occur, the stimulus package pass, and more than 1,000 new pieces of legislation be introduced from the sidelines as they waited for the courts to determine the winner of one of their senate seats.

ELECTION '08 – LESSONS LEARNED

Minnesota's experience this year, according to Foley, should ring at least two alarm bells for anyone concerned with assuring a smooth presidential election in 2012. First, the rate at which absentee ballots are rejected is alarmingly high in many states around the country, and as Minnesota shows their rejection can serve as the basis for extended litigation over which candidate won. Second, neither Congress nor the states have put in place a feasible timetable for resolving these kinds of disputes before the need to inaugurate a new president on Jan. 20.

"Just imagine if the Minnesota recount involved the presidency, and not just a Senate seat," Foley said. "And it's not just Minnesota that needs time to conduct recounts. No state can complete a proper recount in a close election by the deadline that Congress has given for the Electoral College to meet."

LESSON ONE: EARLY VOTING IS GREAT, EXCEPT WHEN IT IS NOT

More than a dozen states used early voting for the first time, expanded their early voting programs, or highly publicized their early voting options. And voters embraced it.

"More and more voters are choosing to vote at a place other than their polling place on Election Day," Tokaji said. "This is convenient for voters and can reduce the pressure on polling places. But it is also a huge challenge because voters tend to make mistakes with these alternative voting methods and there is no poll worker helping them through the process. They mismark ballots, mail ballots late, forget to sign ballots, and forget to include or do not have the required identification."

While early and absentee voting reduced lines on Election Day, in many places, including central Ohio, voters just exchanged long Election Day lines for a long line at early voting sites. In central Ohio, only one early voting site was open in the 30 days prior to the election and the wait was upwards of eight hours as the line twisted its way outside the building. Voters casting absentee by mail had a significant number of their ballots eventually rejected because of a problem with the ballot. For example, more than 35,000 absentee ballots in Colorado were in jeopardy of being disqualified because voters did not properly enclose a photocopy of the right form of identification.

"One of the issues with early voting is that it is not easy for the absentee voter to ensure their ballot was properly received, processed, and accepted," Foley said. "There is no automatic notification that a ballot has been rejected, which could allow a voter a "do-over" on Election Day by recasting a proper ballot at their designated polling place."

LESSON TWO: VOTER REGISTRATION IS STILL A WEAK POINT IN THE SYSTEM

Unlike previous years when the counting of ballots and long lines were the sticking point, the 2008 presidential election's problems involved getting voters properly registered in the first place.

"Voter registration is a major unresolved issue," Tokaji said. "There is a massive influx of new voters and a major new federal law. The matching feature of HAVA is very challenging for some states and some states are still not in compliance."

The majority of lawsuits in the 2008 election revolve around the issue of voter registration. Almost every point in the process was susceptible to criticism. Several private groups, including the Association of Community Organizations for Reform Now (ACORN) and Citizen Action, came under fire in multiple states, including the key swing states of Ohio, Indiana, and Pennsylvania, for reportedly falsifying voter registrations to meet quotas set for employees.

"While we saw vigorous attacks on ACORN and other groups, the cases brought against them weren't successful," Tokaji said. "The fact that there's inaccurate or incomplete information on a registration card doesn't mean that there's been voting fraud. While a large number of inaccuracies can bog down the system, it has not been proven to lead to ineligible people voting."

Perhaps more problematic were several states' problems with the matching provisions of HAVA. The HAVA matching standard requires states to check voter registrations with another state database, such as a driver's license database. But the law was unclear how this should be done and many states, including Ohio, had difficulty getting different computer networks to communicate and account for differences in how data is entered and stored. For example, accounting for suffixes, middle names and initials, name changes, and maiden names,

as well as street names and abbreviations can cause a registration to be designated as invalid.

In addition, there was also concern about voter registration database purges. Guidelines called for voters who had not voted in the past two federal elections to be automatically deleted. Under this rule, an Ohio voter who did not vote in the 2006 senate race and did not vote in the 2004 presidential race because of long lines, would automatically be deleted. In Colorado, this rule led to more than 30,000 voters being initially deleted, but a judge later restored those names to the voter registration lists in the state. Florida also saw litigation, challenging its alleged "no match, no vote" policy.

"Some things to look at include expanding Election Day registration, which is used in nine states and is a safety net for voters because they can correct wrong information the day of," Tokaji said. "In addition, a universal system of registration is used in Canada and other countries and switches the burden from the voter to the government."

LESSON THREE: PROVISIONAL BALLOT CLARIFICATION IS NEEDED

Under HAVA, the provisional ballot was created to ensure that voters who went to the polls on Election Day had a way of formally indicating their selections if they incurred problems and were not eligible to cast an actual ballot. Provisional ballots are used when a voter does not bring proper identification to the voting precinct, goes to the wrong voting precinct on Election Day, or incurs some other problem. Many states, including Ohio, give voters a specific timetable to prove they were in fact eligible to vote.

"A provisional ballot says 'this is a ballot with a potential problem'," Foley said. "After Election Day, these ballots must be sorted and verified. Legally, they cause huge problems as sides argue about whether they should be counted. In 2008, provisional ballots weren't an issue in the presidential election just because the margin of victory was significant. They still remain the red herring of our election system."

In Ohio, 5.08 percent of the ballots cast on Election Day at the polls were provisional ballots, up from 3.16 percent in 2004. Statewide, about 80 percent of the provisional ballots cast were eventually deemed eligible and were counted, up from 78.4 percent in 2004. Had Ohio's electoral votes counted on the outcome of these 200,000 or so provisional ballots, America would have again waited weeks to find out the winner of the presidential election.

Prof. Steve Huefner (left) talks to Dean Alan Michaels at Election Central on Nov. 4, 2008

LESSON FOUR: PARTISANSHIP STILL REMAINS

In close elections, both parties have learned that understanding the rules and minutia of election administration and using those laws to their advantage can swing the results of an election.

"There still are issues of partisanship in election administration," Tokaji said. "There are partisan secretaries of states overseeing elections in some states and partisan local election officials. It creates questions about whether an election is being handled in an even-handed and fair manner. We need to examine a more nonpartisan structure."

Almost all of the pre-election litigation had the flavor of partisanship. In Ohio, the Republican Party filed suit against the Democratic secretary of state over voter registration; in Colorado, Democrats sued the Republican secretary of state over purges to voter registration rolls; and in Florida, Democrats sued Republicans to attempt to prevent alleged "frivolous" polling place challenges that lead to provisional ballots being cast.

"We have seen the inevitable problem whenever a state's chief elections officer, charged with implementing the voting

> "There still are issues of partisanship in election administration. ... It creates questions about whether an election is being handled in an even-handed and fair manner."
>
> — Dan Tokaji
> associate director of *Election Law @ Moritz,*
> associate professor of law

rules, is an elected partisan official. This problem is structural, and it exists whether the officer is an elected Democrat or an elected Republican," Foley said. "The problem merely may be one of appearances, rather than reality, but that is enough in the elections business. The dynamic now exists in which the other political party attempts to undermine the credibility and legitimacy of the state's chief elections officer, so that it can win back the position. Nonetheless, there will be no truly successful reform of the voting process unless and until our nation figures out a way to rid itself of this structural defect in our system."

LESSON FIVE: A FINAL ARBITRATOR OF DISPUTES MUST BE CLARIFIED

As was witnessed in the Minnesota senate race, sometimes the result of an election depends on the outcome of the smallest number of challenged ballots. When the results depend on a handful of ballots, the question becomes: who makes the final determination?

"At some point in our nation's future, there will be another incredibly close presidential election, when the winner of the Electoral College depends on the outcome in a single state and the result in that single state depends upon the resolution over a dispute over the counting of ballots for presidential electors there," Foley wrote in a blog posting. "When that occurs, all the reform of the voting process will not matter — including the institutional reform of nonpartisan chief election officers in each state — unless Congress has also reformed the institutional mechanism for resolving this kind of dispute over presidential ballots."

This past fall, Foley proposed the idea of creating a nonpartisan, specialized election court to be the final arbitrator of election disputes in the country. A simulated adjudication of this specialized court was held in Washington, D.C., in conjunction with the AEI-Brookings Election Reform Project and the Georgetown University Law Center. Under the proposal, a three-judge panel including one Republican, one Democrat, and a third person selected and agreed upon by the first two, would act as the final arbitrator.

A team of election law researchers worked diligently through Election Day.

Faculty look over the shoulder of Prof. Ruth Colker as results are reported.

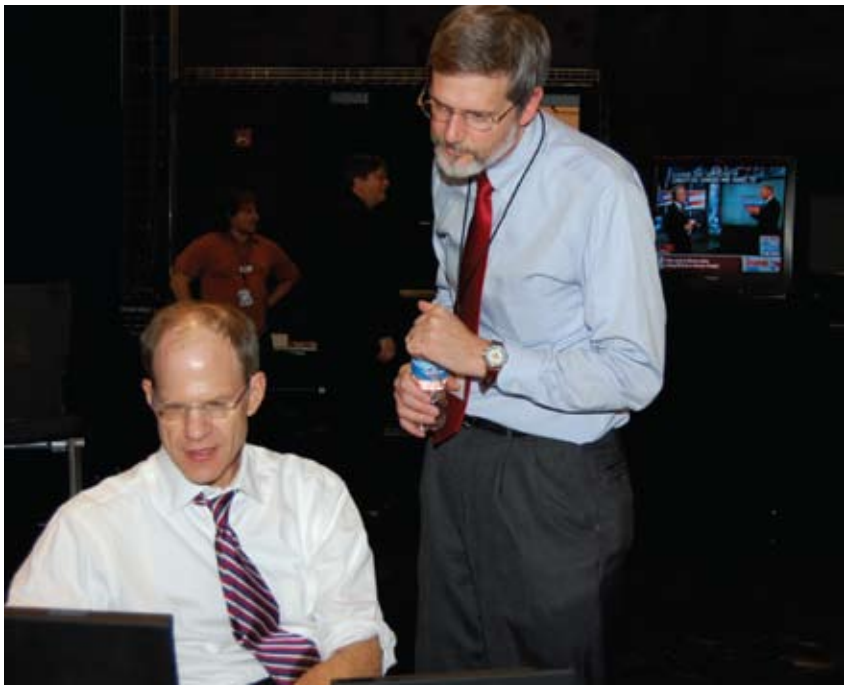
"In the aftermath of *Bush v. Gore*, it is unclear whether as a practical matter the institution that will resolve a future dispute over presidential ballots will be the U.S. Supreme Court again or, instead, Congress according to the arcane and imperfect procedures of the Electoral Count Act, which was adopted in the wake of the crisis of 1876," Foley said. "This institutional uncertainty is unsettling — and undesirable. It is the result of the 12th Amendment failing to specify what should happen when this kind of dispute arises, a defect noted presciently by Joseph Story in the 1830s but we have yet to rectify. While it might not seem the most pressing reform given the odds each year against another meltdown scenario, as a nation we have suffered considerably the two times that this deficiency has mattered: 1876 and 2000. It would be preferable that, whenever this kind of situation happens again, we have already taken the steps to be better equipped with a clear and fair method of resolving this kind of dispute."

LESSON SIX: MORE WORK IS NEEDED

While the spotlight did not fall on election administration this year as brightly as it has in the past two presidential elections, that does not necessarily mean the system is fixed and optimal.

"It is truly unconscionable the amount of time that many voters, particularly African-Americans, needed to wait in line this past election in order to cast their ballots."

— Edward B. Foley
director of *Election Law @ Moritz* and the Robert M. Duncan/Jones Day Designated Professor of Law



Election Law @ Moritz *Director Edward Foley and Prof. Steve Huefner (pictured) conducted several media interviews throughout the day.*

"What I would like to see is a decade-long agenda for fixing our election system. I call this agenda '2020 Democracy: Developing and Implementing a Vision for our Nation's Voting Process,'" Foley said. "Consider it a gift to the children born in 2000, that year of the hanging chad. For the first presidential election in which these first-born citizens of the 21st century can vote, we will bequeath to them a truly state-of-the-art electoral process. If the nation could actually achieve that objective, it would be worth waiting for; and if the 111th Congress sets in motion the process that yields this result, it will deserve the historical credit."

Among Foley's top concerns for the short-term is the length of time it takes some voters to cast their ballots.

"It is truly unconscionable the amount of time that many voters, particularly African-Americans, needed to wait in line this past election in order to cast their ballots," Foley said. "On Election Day, there were reports of voters in several states — including Missouri, Pennsylvania, and Virginia — waiting five, six, or seven hours to vote. There was even one CNN report of a Pennsylvania voter waiting 11 hours. Missouri's secretary of state has expressed the fear that some voters were unable to withstand the excessively long lines in that state, and since the presidential election in Missouri was undecided after Election Day, it is conceivable that disenfranchisement caused by the inordinate waiting times could have ended up being decisive on which candidate won that state. But voting should not be such an ordeal. Congress should set a national standard that no voter should have to wait more than one hour to cast a ballot and then work with states on ways to implement this standard.

Election Central was housed at WOSU-COSI in downtown Columbus.

A change from Election Day to Election Week, at least for presidential elections, would seem a sensible place to start. This move would differ from 'early voting,' as currently practiced in many states, where only one location is available for voting in each county prior to Election Day. This year we saw five-hour and longer lines at these single 'early voting' locations. The different concept of Election Week, by contrast, would consist of multiple 'voting centers' dispersed throughout a county, which would be open 12 hours per day, for seven days. Surely, voters could find a time within their busy schedules to visit one of these vote centers and cast a ballot without having to wait more than one hour. It would be more expensive than our current practice, but this year demonstrates that there is a constitutionally minimum level of expenditure necessary in order to prevent voters from having to suffer unreasonably long lines at polling places. Bottom line on this point: certainly by 2012, when the United States next votes for president, Congress should have put in place a solution to the long-line problem we saw this year."

SUPREME COURT JUSTICE RUTH BADER GINSBURG TO VISIT MORITZ

On Friday, April 10, the *Ohio State Law Journal* (*OSLJ*) will host a symposium entitled "The Jurisprudence of Justice Ruth Bader Ginsburg: A Discussion of Fifteen Years on the U.S. Supreme Court." The symposium will include an in-depth analysis of the Justice's impact on constitutional law, statutory interpretation, civil and criminal procedure, reproductive rights, gender and race equality, and labor and employment law. The day will conclude with conversation between Justice Ginsburg, her official biographer Wendy Webster Williams of Georgetown University Law Center, and her former law clerk Deborah Jones Merritt, John Deaver Drinko-Baker & Hostetler Chair in Law, The Ohio State University Moritz College of Law.

"It is such an honor to have Justice Ginsburg join us for the symposium," said Jeremy Lime '09, *OSLJ* symposium editor. "She is not only a brilliant and well-respected judge, but also an incredibly important civil rights pioneer. She serves as a great example for young lawyers because she rose to the top of the legal profession by fighting for equality. Her visit is a great chance for the *Journal* and the law school to be on display before the entire community."

Steven Calabresi, the George C. Dix Professor of Law at Northwestern University School of Law, will also contribute to the published symposium. Martha Nussbaum, Ernst Freund Distinguished Service Professor of Law and Ethics at the University of Chicago School of Law, will contribute as well.

"This symposium is a tremendous opportunity for Moritz and would not have come together without the leadership of symposium faculty editor Professor Marc Spindelman, and former *OSLJ* Editor-in-Chief Chad Eggspuehler '08 as well as current *OSLJ* Editor-in-Chief Dylan Griffiths and Symposium Editor Jeremy Lime," Dean Alan C. Michaels said. "We are looking forward to the Justice's visit and hope alumni will join us."

The event is open to the public. CLE credit is available for members of the bar, pending approval. Opening remarks begin at 8:30 a.m. with panels on equal protection and procedure and participation scheduled in the morning. Lunch will be followed by a discussion on constitutional law and the keynote address.

The interview with Justice Ginsburg is scheduled from 4:30-6 p.m. Pre-registration is required and detailed pricing can be found at moritzlaw.osu.edu/lawjournal.

CONFIRMED PANELISTS FOR THE SYMPOSIUM INCLUDE:

James J. Brudney, *Newton D. Baker-Baker & Hostetler Chair in Law, The Ohio State University Moritz College of Law*

Courtney M. Cahill, *Associate Professor of Law, Roger Williams University School of Law*

Martha Chamallas, *Robert J. Lynn Chair in Law, The Ohio State University Moritz College of Law*

Adrienne D. Davis, *William M. Van Cleve Professor of Law, Washington University Law School*

Cynthia Estlund, *Catherine A. Rein Professor of Law, New York University School of Law*

Pamela S. Karlan, *Kenneth and Harle Montgomery Professor of Public Interest Law, Stanford Law School*

Kenneth L. Karst, *David G. Price and Dallas P. Price Professor of Law Emeritus, UCLA School of Law*

Neomi Rao, *Assistant Professor of Law, George Mason School of Law*

Reva Siegel, *Deputy Dean and Nicholas deB. Katzenbach Professor of Law, Yale Law School*

Christopher Slobogin, *Professor of Law, Vanderbilt University Law School*

Marc Spindelman, *Professor of Law, The Ohio State University Moritz College of Law, and Faculty Symposium Advisor*

Tobias Barrington Wolff, *Professor of Law, University of Pennsylvania Law School*

For more information about this symposium or to register online, please visit: moritzlaw.osu.edu/lawjournal

RUTH BADER GINSBURG

Associate Justice of the U.S. Supreme Court

President Bill Clinton chose Ruth Bader Ginsburg as his first appointment to the U.S. Supreme Court. Ginsburg was born Joan Ruth Bader on March 15, 1933, in Brooklyn, New York. She was the second daughter born to Nathan and Celia Bader. Sadly, Ginsburg's older sister died before she started school, leaving Ruth as an only child. The Brooklyn neighborhood in which the Baders lived consisted mostly of poor, working class Jewish, Italian, and Irish immigrants. Celia Bader taught her daughter Ruth, whom she called 'Kiki,' the value of independence and a good education. Ginsburg heeded her mother's advice and worked diligently in school. Her classmates remembered her in varying ways. Some recalled her beauty and popularity, which led to her selection to the twirling squad. Others remembered her as overly competitive, even to the point of annoyance. A secret hidden to all her classmates at the time was the fact that Celia Bader suffered from cancer during Ruth's high school years. Celia Bader passed away a day before her daughter's graduation ceremony. Ruth did not attend a "Forum of Honor" to which she was invited for graduating sixth in her class. Celia Bader left Ruth a relatively large sum of eight thousand dollars for her college tuition. Ginsburg, however, earned enough scholarships by that time to support herself. She gave most of the money to her father.

Ginsburg attended Cornell University after graduating from high school. There, she began dating Martin Ginsburg, who would become her husband. Their undergraduate years were uneventful. Martin enrolled at Harvard Law School upon his graduation while Ruth completed her senior year at Cornell. Halfway through the year, Martin received his draft notice. Ruth graduated first in her class from Cornell and the young couple married before moving to Fort Sill, in Lawton, Okla., where Martin was stationed to serve in the Army. After Martin's discharge from the Army two years later, the couple returned to Harvard, where Ruth Ginsburg also enrolled in law school.

Ruth Ginsburg attended Harvard at a difficult time. In the era of harsh grillings by professors using the Socratic method, Ruth Ginsburg and her fellow women students found the school extremely hostile. At one point, Dean Erwin Griswold asked the women of the class what it felt like to occupy places that could have gone to deserving men. Still, Ginsburg overcame the derision and excelled academically. She received high grades and earned a position with the law review. Crisis struck when Martin developed testicular cancer and required extensive treatment with radiation and surgery. Ginsburg attended to her preschool daughter and her ill husband while maintaining her studies. She attended class for her husband and typed his papers as he dictated every word. After a difficult struggle, Martin recovered. He graduated from law school and accepted a position in a New York law firm. Ruth Ginsburg transferred from Harvard to Columbia Law School to continue her study. She made law review, becoming the first woman to achieve the honored position at two major schools. After a year at Columbia, Ginsburg graduated at the top of her class.

The years following her graduation from law school were spent in academic endeavors. Ginsburg worked for a few years as a research associate at Columbia Law School before joining the faculty at Rutgers University Law School in 1963. Ginsburg worked during this time to advance several feminist causes. While at Rutgers, she battled for maternity leave rights for schoolteachers in New Jersey. She also began an active participation in the American Civil Liberties Union. In 1972, Ginsburg became the first woman hired with tenure at Columbia Law School. She also became the first director of the ACLU's Women's Rights Project that same year.

Ginsburg's star continued to rise as she joined many important committees and boards in various law associations across the country. During this time, she also began appearing before the Supreme Court where she would eventually argue a total of six cases for women's rights. After a brief stint as a fellow at the Center for Advanced Study in Behavioral Sciences in Stanford, Calif., President Jimmy Carter nominated Ginsburg to serve as a judge on the U.S. Court of Appeals in the D.C. Circuit. She served as a federal appeals judge from 1981 until President Clinton nominated her to succeed retiring Justice Byron R. White. Clinton, impressed by Ginsburg's life story, praised her for her efforts in advancing women's rights.

While leaning towards the liberal side of the Court's political spectrum, Ginsburg has not hesitated to vote with her conservative colleagues. Ginsburg has shown a continuing willingness to promote women's rights from the High Court. Unlike other justices, Ginsburg relishes the opportunity to address the public in speeches, delivering her views eloquently and with a deep sense of commitment. There is little doubt that Ginsburg's position on women's rights, and civil liberties in general, will play an important role in many controversial issues to come.

Reprinted with permission from www.oyez.com

Ohio Supreme Court Modifies *Belvedere* Test for Piercing Corporate Veil

Decision Expands Behavior to Allow Corporate Veil to be Pierced

By Barbara Peck

Last fall, the Ohio Supreme Court modified the three-prong *Belvedere* test for piercing the corporate veil in Ohio. While the decision did expand the type of behavior that will allow the corporate veil to be pierced, it is not nearly as broad as many Ohio District Court of Appeals' earlier interpretations.

In *Dombroski v. WellPoint, Inc* (119 Ohio St. 3d 506), the plaintiff sued her health insurance company, Community Insurance Company ("Community"), for denying coverage of a cochlear implant, which is 90 percent effective in restoring hearing in the specific type of deafness suffered by the plaintiff. Community claimed the use of these implants is considered investigational.

"Courts should apply this limited expansion cautiously toward the goal of piercing the corporate veil only in instances of extreme shareholder misconduct."

Chief Justice Moyer '64

Anthem UM Services is an affiliate of Community and participated in the administration of the plaintiff's policy, as did Anthem Insurance Company. WellPoint Inc. is a publicly traded company on the New York Stock Exchange and owns 100 percent of all three of these companies. The plaintiff filed suit against Community, Anthem UM Services, Anthem Insurance Company, and WellPoint, Inc., for breach of contract and acting in bad faith in processing and repeatedly denying her claims. The plaintiff claimed WellPoint's corporate medical policies resulted in her denial.

The trial court dismissed the case against Anthem Insurance Company and WellPoint pursuant to Civ. R. 12 (B)(6). The appellate court reversed.

Under the test set forth in *Belvedere Condominium Unit Owners' Assn. v R.E. Roark Cos., Inc.* (67 Ohio St.3d 274 (1993)), shareholders of a corporation may be held liable for wrongs committed by the corporation when:

1) control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will or existence of its own;

2) control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against a person seeking to disregard the corporate entity; and

3) injury or unjust loss resulted to the plaintiff from such control and wrong.

The trial court dismissed the plaintiff's claims against WellPoint and Anthem Insurance Company because the second prong of the *Belvedere* test was not met. The Ohio Seventh District Court of Appeals reversed.

Prior the Supreme Court's decision, the Third, Seventh,

Tenth, Eleventh and Twelfth District Court of Appeals in Ohio had liberally construed the second prong of *Belvedere* to allow other forms of misconduct beyond fraud and illegal acts, including unjust or inequitable acts. In *Robert A. Saurber Gen. Contr. v. McAndrews*, (Bulter App. No. CA2003-09-239, 2004-Ohio-6927), the court asked: "The true question to be asked is whether it would be unjust under the circumstances of each case not to pierce the corporate veil."

The Sixth District Court of Appeals had narrowly interpreted *Belvedere* to apply acts that are illegal or constitute actual fraud.

Chief Justice Thomas J. Moyer '64, writing the majority opinion, rejected the appeals courts' liberal interpretation, stating it was in conflict with the purpose of limited shareholder liability in the corporate structure and that piercing the corporate veil should be a "rare exception." Moyer argued that expanding liability to all unjust or inequitable actions would virtually allow every shareholder of a close corporation to be sued because close corporations are by definition controlled by a small group of shareholders.

The opinion, however, did expand *Belvedere* somewhat. The Court held that to fulfill the second prong of the *Belvedere* test, the plaintiff must demonstrate that the defendant shareholder exercised control over the corporation in such a manner as to commit fraud, an illegal act, or a similarly unlawful act. The term "similarly unlawful act" was added to the second prong of the *Belvedere* test. Moyer advised that "courts should apply this limited expansion cautiously toward the goal of piercing the corporate veil only in instances of extreme shareholder misconduct." The Court did not find that the plaintiff met the new standard in this case.

Justice Paul E. Pfeifer '66, dissenting, found the majority opinion inconsistent with *Bucyrus-Erie Co. v Gen. Prods. Corp* (643 F.2d 413 (1981)), which *Belvedere* extensively cites and praises. In *Bucyrus-Erie*, the second prong of the test is written as "that domination and control was used to commit fraud or wrong or other dishonest or unjust act." Justice Pfeifer found the majority opinion abrogates the Court's previous reliance on *Bucyrus-Erie* and installed a much more restrictive test than it originally set forth in *Belvedere*.

Justice Pfeifer also found the addition of the language "or a similarly unlawful act" redundant and useless. In addition, he stated that he believed that even under the majority's new rigid rule, insurer bad faith is an exceptional wrong that breaches a legal duty owed to the insured, and, therefore, the plaintiff should have prevailed.

Chief Justice Moyer with a Moritz student

"The principle that shareholders, officers, and directors of a corporation are generally not liable for the debts of the corporation is ingrained in Ohio law. The corporate form is useful primarily because it creates a division between shareholders and their business concerns ... "

Chief Justice Moyer '64
majority opinion

"The new language seems to be pulled from the air. Is there a notable distinction between an "unlawful" and an "illegal" act? Not that the majority identifies. The words appear to be two ways of saying the same thing. Potato, potahto, illegal, unlawful - let's call the whole thing off."

Justice Paul E. Pfeifer '66
dissenting opinion

Q&A The Aftermath Of What Could Be the World's Largest Ponzi Scheme

In December 2008, Bernard Madoff was charged with a single count of securities fraud stemming from a Ponzi scheme that was reportedly estimated at $50 billion. Madoff represented several individual investors, foundations, and charities, and the losses could result in the largest reported Ponzi scheme of all time. Professor Paul Rose, an expert in the field of securities regulation, discusses the unprecedented accusations.

Q What is a Ponzi scheme?

A Ponzi scheme is a kind of investment swindle that gets its name from Charles Ponzi, who ran a fraudulent investment scheme around 1920. Ponzi duped thousands into investing in a fund designed to speculate in postal coupons. Ponzi offered a 40 percent return in 90 days. However, Ponzi actually only invested about $30 worth of the funds in the postal coupons, so early investors were essentially paid from the funds deposited with Ponzi by subsequent investors. The collapse of the scheme was inevitable — soon there was not enough new money to pay the investors, and the entire scheme failed.

Bernard Madoff's scheme was in effect a classic Ponzi scheme. Investors flocked to his exclusive funds, and he was able to make payouts for years as more investors kept investing with him. The surprising thing about Madoff's scheme is the massive amount of the fraud as well as his ability to perpetuate it for a relatively long time. The scheme orchestrated by Charles Ponzi only lasted from December 1919 to August 1920. Madoff's scheme has gone on since at least 2005, if not far longer.

Q If accusations are true, how did Madoff get away with such a grand scheme?

There are several explanations, I think. First, Madoff took advantage of his relationships with various individuals, groups, and charities. He appears to have taken particular advantage of many friends and contacts in the Jewish community. However, he also duped very sophisticated institutional investors, including hedge funds, multinational banks, universities, and even Abu Dhabi's sovereign wealth fund.

Another explanation for Madoff's success is simply his good luck: the economy and the markets were performing well enough so that investors were not cash-strapped and eager to pull their money out of the fund. Madoff apparently targeted passive, long-term investors, including charitable institutions or wealthy individuals, who would not need to withdraw from the fund to satisfy capital needs. However, once the bear market hit with full force, even many of these investors decided to withdraw their funds from the equity markets. This is the point at which Madoff knew his time was up. There were not enough funds to satisfy the requests from his investors, and so he admitted to his fraud. If there is a virtue in bear markets, it is that they serve to uncover frauds such as Ponzi schemes like Madoff's.

Finally, Madoff also benefitted from some lax oversight, and he knew how to exploit regulatory weaknesses. There were signals along the way suggesting that Madoff's investments were not all he claimed them to be. Evidence has surfaced suggesting that regulators ignored clear warning signs. The market also missed some opportunities to ask hard questions. For example, some analysts tried to replicate Madoff's returns based on the portfolio information he disclosed, but were unable to produce similar results. The SEC received numerous tips that Madoff's scheme might constitute a fraud, but its investigations failed to discover any problems.

Q What changes do you recommend to prevent this from happening again?

Although this may seem Panglossian in the face of a $50 billion fraud, I am not sure that we need drastic changes. A reasonable change would simply be to provide the U.S. Securities Exchange Commission with additional resources to pursue fraud. While mistakes were undoubtedly made in the Madoff investigation, the SEC is leanly staffed given the amount of investment activity it has been tasked to police. I also think

I also think it is a mistake to assume that just because we see fraud in the marketplace, the SEC or the market itself is not functioning properly.

Professor Rose began as an assistant professor at The Ohio State University Moritz College of Law in June 2007. Prior to joining the Moritz faculty, Professor Rose was the visiting assistant professor in securities and finance at Northwestern University School of Law.

Before joining Northwestern, Professor Rose practiced law in the corporate and securities practice group of Covington & Burling's San Francisco office. He worked as an assistant trader in equity and emerging market derivatives at Citibank, N.A., in New York prior to attending law school at the University of California, Los Angeles School of Law.

Professor Rose's research interests include corporate governance, securities regulation, institutional investors, and comparative corporate law.

it is a mistake to assume that just because we see fraud in the marketplace, the SEC or the market itself is completely broken down. Were we to adopt fraud prevention as the sole regulatory mission of the SEC, we would likely create such a burdensome regulatory apparatus that capital formation in this country would grind to a halt or move entirely offshore.

Q That being said, what do you think will be changed?

On Jan. 27, 2009, the Senate Banking Committee questioned officials from the SEC enforcement and the securities industry's primary self regulatory organization, the Financial Industry Regulatory Authority, on the Madoff case. After hearing testimony on what went wrong, the committee asked both organizations to return in three months to provide an update on the effectiveness of the current regulations, along with any suggestions for further regulations to combat fraud. As with many high-profile frauds, Congress and enforcement officials are under significant political pressure to demonstrate that they are taking active steps to prevent similar problems in the future. The track record of regulators under political pressure to "do something" has not been good, however, and has sometimes resulted in regulation that does not perform as designed or produces negative and unintended consequences.

The most likely regulation that will be implemented in part because of the Madoff scandal will be new regulations for hedge funds. Regulators will see the scandal as evidence that even extremely sophisticated investors are often not able to adequately protect themselves. Many funds (including hedge funds) which cater to sophisticated investors may no longer be permitted to operate under the lighter regulatory burden they have enjoyed in the past. In fact, a bill expanding oversight by SEC over hedge funds was introduced by Senators Chuck Grassley and Carl Levin on Jan. 29. Among other things, the bill would make clear that the SEC has the authority to regulate hedge funds, and would require hedge funds to register with the SEC and cooperate with the SEC with any request for information or examination. Mary Shapiro, the new chairman of the SEC, and Timothy Geitner, the new Secretary of the Treasury, have also expressed a desire to see further regulation of hedge funds.

Q As attorneys, what should this story teach us?

Madoff's fraud was certainly very shocking to his investors, many of whom probably knew him personally and some of whom had perhaps grown to think of him as not just a money manager but as a friend. He was a charismatic salesman. This charisma likely helped him deflect some of the questions that arose regarding his scheme. I think the Madoff story should remind us of the political idiom, "trust, but verify."

Q What should I keep in mind when investing my own money?

Consistently outperforming the market, as Madoff had claimed to have done for years in a row, is a very difficult and unusual thing to do. Even very sophisticated institutional investors were duped by Madoff's fraud, despite some clear warning signs. There is great wisdom in the old saying that if it sounds too good to be true, it probably is.

Q&A How Changes to the Americans with Disabilities Act Could Affect You

In September 2008, President Bush signed the Americans with Disabilities Act Amendments Act of 2008. The act made changes to the definition of "disability," and reassessed how statutory terms involving disabilities should be interpreted. Professor Ruth Colker, one of the leading scholars in the country in the areas of disability discrimination, was a leading proponent of these amendments.

Q Why were the amendments needed?

The civil rights community argued that amendments were needed to reverse the pro-defendant direction of several recent Supreme Court decisions that made it very difficult for plaintiffs to survive a motion to dismiss. My work and that of others suggested that more than 90 percent of potential plaintiffs had their cases dismissed before trial because they could not meet the definition of "disability."

Under the Americans with Disabilities Act (ADA), plaintiffs can only bring cases if a court concludes they are an "individual with a disability." The ADA creates three ways that an individual can seek to meet that statutory definition. An individual can argue that he or she: (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a "record of" such a physical or mental impairment, or (3) is "regarded as" having such a physical or mental impairment.

In *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), the Supreme Court had concluded that the determination of whether an individual has a "substantial" limitation should be made after the individual uses corrective or mitigating measures such as eyeglasses, hearing aids, prosthetic devices or medication. Even though United Air Lines insisted that the plaintiffs take their vision test without the benefit of corrective lenses, the Supreme Court concluded that the plaintiffs were not disabled because their vision was normal when they used corrective lenses. The civil rights community argued that the *Sutton* decision made it impossible for someone to be both "qualified" and "disabled," because the corrective measures used to render the person "qualified" would then move the person out of the category of being "disabled."

In addition, the Supreme Court had narrowly construed the "regarded as" definition of disability, particularly when the individual argued that he or she was falsely regarded as unable to work. The courts had required the plaintiff to demonstrate that the employer regarded him or her to be unable to perform a wide range of jobs, not merely the specialized position at issue in the case. Thus, in the *Sutton* case, they lost under a "regarded as" theory because the employer only regarded them as unable to perform the job of "global airline pilot," which was too specialized under this rule of law to constitute a disability. The civil rights community argued that no one could prevail under this definition of disability because an employer is never going to acknowledge a view about a person's ability beyond the specific job at issue.

Q What are the key elements that everyone should understand?

Congress overturned the mitigating measure rule. It instructed the lower courts to assess plaintiffs in their "pre-mitigated condition" to determine whether they are disabled. Hence, individuals who use medication to control epilepsy, who wear prosthetic devices that enable them to use their limbs, or wear hearing aids are now considered "disabled" even if their mitigating measures cause them to function within the "normal" range. Congress also instructed lower courts to interpret the term "disability" broadly.

Nonetheless, Congress wrote a special rule for people who wear corrective lenses. Individuals should be assessed with respect to their "mitigated state" if they wear corrective lenses. But, if an employer insists that an applicant for employment be tested without the use of corrective lenses, then the employer has to justify the need for such a test. The rule reflects the reality that it is "normal" to need to wear corrective lenses so people who wear corrective lenses should not ordinarily be considered disabled. There is an exception, though, for the unusual situation in which

Employers should know that they now have many more employees who meet the definition of disability under federal law.

Professor Ruth Colker is the Heck Faust Memorial Chair in Constitutional Law at Moritz. She joined the College's faculty in 1997. Colker is the author of seven books, two of which have won book prizes. She has also published more than 50 articles in law journals around the country.

Colker was also a recipient of the University's Distinguished Lecturer Award in 2001, the University's Distinguished Diversity Enhancement Award in 2002, and the University's Distinguished Scholar Award in 2003.

an employer requires virtually perfect vision without the use of corrective lenses as a condition of employment. In the *Sutton* case, under the current rule, United Air Lines would have to justify why pilots need to have vision within a certain range without the use of corrective lenses.

In addition, Congress broadened the "regarded as" definition so that plaintiffs no longer need to demonstrate they were falsely regarded as unable to perform a broad class of jobs.

Q How could these changes affect me or my clients?

If your client is a business or an educational institution, and it is facing a claim of "disability" discrimination, it is quite likely that the courts will conclude that the complaining party is "disabled." The legal issue will now become whether there was a valid reason for treating that individual in the way that has given rise to the dispute.

If you are a trial lawyer, and take plaintiff-oriented cases, then you will find it somewhat easier to defeat a motion to dismiss on the grounds that your client is not disabled.

Q What should businesses know about the changes?

Employers should know that they now have many more employees who meet the definition of disability under federal law. When these employees request accommodations to perform their job, they would be advised to engage in a good faith, interactive discussion about those accommodations. Employees still have to be able to perform the essential functions of the job after receiving accommodations but more employees can now request an accommodation discussion. In order to avoid the possibility of punitive damages, employers need to engage in a good faith discussion about those accommodations.

Educational institutions should know that they now have many more students with disabilities at their institution. Congress explicitly concluded that impairments in learning, reading, concentrating, thinking and communication constitute disabilities. Students still have to be "qualified" to attend educational institutions but they will have stronger recourse to requesting accommodations under the amendments.

Q What problems do you foresee?

I wonder if state courts will now apply these rules to claims brought under state disability statutes.

Q Were you happy with the amendments? Why or why not?

I was thrilled. Congress passed the ADA in 1990 with a strong bipartisan majority. I have no doubt that Congress intended the statute to cover individuals with hearing impairments, epilepsy, mental retardation, cancer, and HIV, based on the testimony it heard in the late 1980s. Yet, the courts had construed the statute so narrowly that the claims of many individuals with such impairments were dismissed because they could not demonstrate they were "disabled." These individuals may not prevail under the amended statute, if an entity had a valid reason for treating them in a particular way. Nonetheless, these individuals should now get their day in court to demonstrate that they are qualified individuals with disabilities who have faced unlawful discrimination.

Leadership of Frank Ray '73 Shines Again

Longtime Attorney Played Active Role in New Columbus Ball Park

By Rob Phillips

On Frank A. Ray's first day on the job as chief civil counsel at the Franklin County Prosecutor's Office in 1976, his boss at the time, **George C. Smith '59** (now Senior U. S. District Judge), instructed him to meet the Franklin County Commissioners, whom he would be representing in his new position.

In that initial meeting, Ray '73 met with then-Commissioners Harold M. Cooper and Michael J. Dorrian. The two men told Ray that, on their initiative, the county had just purchased aging and vacant Jet Stadium. The ballpark had fallen into disrepair since the Columbus Jets minor league baseball team left town following the 1970 season.

And Cooper had a dream to return professional baseball to Columbus, Ray said.

"He asked me to write a legal opinion on whether Franklin County could own and operate a stadium that was primarily used for a professional baseball team," said Ray, who admitted that he knew about none of this prior to starting the job.

"I'm really a trial lawyer, and so I did the same thing that I do when I prepare for trial. I identified and assembled the best experts I could find as to each aspect of design, construction, funding, and financing of a ballpark."

Frank Ray '73

Just three years out of law school, Ray began navigating what were uncharted waters for him and for such an arrangement. "It was a series of firsts for me," he said.

But his plan – which involved creation of county-related nonprofit corporations that would operate the team and stadium – is still used today. Although he left the prosecutor's office two years after formation of the legal structure for the team and stadium, Ray has continued to represent the corporations in private practice as legal counsel, appointed by Franklin County Prosecutor **Ronald J. O'Brien '74**.

"As best as we can determine, the Columbus Clippers are the only truly publicly-owned professional sports franchise in the United States," Ray said. "The legal organization put in place more than 32 years ago remains in place. It continues to function as the operating structure for both the county-owned stadium and the team that is owned by the county-related nonprofit organization."

One of his most recent accomplishments was his participation in efforts to create a new ballpark for the team. Starting in the 2009 season, the Clippers will play in a new $65 million stadium,

Huntington Park. The new ballpark sits in Columbus' Arena District near Nationwide Arena.

The Board of Trustees of the Clippers called on Ray to help produce and publish an "action and business plan" for a new stadium. "I'm really a trial lawyer," he said. "And so I did the same thing that I do when I prepare for trial. I identified and assembled the best experts I could find as to each aspect of design, construction, funding, and financing of a ballpark."

Ray said the result will likely to be the "finest minor league baseball park" in the country with nearly $50 million of the $65 million cost funded through private and corporate sources. "The current Franklin County commissioners have performed as exemplary partners on this public project," he said.

The work with the stadiums and the Columbus Clippers comprises just a fraction of Ray's successful career. He has served as lead counsel in more than 125 jury trials in state and federal courts and in 16 appearances in front of the Supreme Court of Ohio.

Huntington Park, located in Columbus' Arena District, is expected to open for the 2009 season.

Monetary gifts from alumni and friends are essential to helping the College and its students achieve their goals. In recent years, the College has been fortunate to receive outstanding support, which has created an underlying momentum that can be seen in rising credentials of our students, job placement of our graduates and alumni, and productivity and recognition of our faculty.

To learn about other giving opportunities, visit: moritzlaw.osu.edu/giving

Ray has been recognized repeatedly during his more than 35 years as an attorney. He was named "Lawyer of the Year" in 1999 by Ohio Lawyers Weekly, he received the Columbus Bar Association's Professionalism Award in 1997, and he was awarded the Distinguished Alumnus Award from Moritz in the 2006-07 school year.

He has served as president of the Columbus Bar Association, Franklin County Trial Lawyers Association, Ohio Academy of Trial Lawyers, and the Robert M. Duncan Chapter of American Inns of Court. In July 2009, he will serve as president of the Columbus Bar Foundation, which supports a wide range of initiatives in furtherance of the justice system in Ohio.

And throughout it all, Ray and his wife, Carol, have been continual supporters of the Moritz College of Law. His leadership helped transform the College's moot courtroom into a state-of-the-art facility that includes a digital evidence presentation system, five courtroom computer displays, plasma screens, video recording/projection systems, and upgraded lighting and sound systems. He and **John C. McDonald '61** co-chaired the committee that raised $350,000 to fund the project.

Ray said that he enjoys the direct benefit of the renovation because he uses it in his trial practice course that he teaches at Moritz. Since 2003, Ray has instructed an evening class during the fall semester.

"The students in my class don't understand how inspiring they are to me," he said. "I feel like I am the major beneficiary of the class. My students have actually re-enthused me about the practice of trial law. I enjoy the interaction, energy, and commitment from my students."

His work inside the classroom has not gone unnoticed. He was recognized by the Ohio State Bar Association as the recipient of its Friend of Legal Education Award in 2005.

Ray is a longtime member of the College's National Council, the dean's alumni advisory group. He remains close with many of his law school classmates; he organized the golf outing for the 25th reunion of his law school class and served as chair of the committee for his law class' 30th reunion.

He also has made a commitment to Moritz students in another way. He and his wife started the Frank and Carol Ray Scholarship at the law school that provides full three-year tuition for a Moritz student.

"Carol and I began to ruminate about what we would want to do to produce a personalized impact on the College," he said. "We decided on a scholarship where identifiable individuals would benefit from assistance to attend the College and graduate free of debt."

Ray said that he could not have been more proud of the first recipient of their scholarship, **Carlton J. Willey '08**. He said that it was a small thing that he could do to help the College that has meant so much to him, professionally and personally.

"After more than three decades of good fortune in the practice of law, it is inescapable that the opportunity to perform as a professional was made possible by the College of Law."

> "(Carol and I) decided on a scholarship where identifiable individuals would benefit from assistance to attend the College and graduate free of debt."

Investing in Momentum

The Campaign for the Moritz College of Law

In June 2008, the Moritz College of Law ended its seven-year Investing in Momentum campaign. In total, alumni and friends of the College contributed more than $35.9 million dollars – surpassing the $30 million donation made by Michael Moritz '61 in 2001.

Here's a glimpse at how the money was used to support the campaign's four priorities:

"If I did not receive a scholarship or several scholarships to attend the Moritz College of Law, I'm sure my legal education would have been in jeopardy. I am extremely grateful to the people who have come before me who were generous enough to give money towards scholarships like this, and I guarantee you, given the opportunity, I will do the same."

– Raphael Davis-Williams '10

1 Scholarship Assistance

In an effort to continue to attract the best and brightest students to Moritz, the College set out trying to increase the number of full- and partial-tuition scholarships. The scholarships are partially credited with the College's trend of improving the credentials of the incoming classes year after year.

Thanks to the generosity of our alumni and friends, more than $8 million was raised in support of student scholarships. More than 25 new scholarships were created which will provide direct support to students based on merit, need, diversity, special interest, and leadership ability.

In 2007, the College began offering Leadership Scholarships to high-achieving candidates who demonstrate strong leadership potential. Moritz Merit Scholarships include full in-state tuition and are awarded to the most exceptional students each year. Diversity Enrichment Awards are given to top students who continue to enrich the College's student body. The Leadership Scholarship Initiative remains a top priority for the College in the future.

2 Recruiting and retaining world-class faculty

Endowed and alumni-supported faculty positions are extremely important to maintain the upward trajectory of the College. These positions allow the College to retain the most accomplished scholars and recruit the most promising rising stars. Through the campaign the College created three new endowed chair positions and 12 additional professorships.

3 Innovation in Areas of Excellence

By continuing to develop new and innovative programs, the College has set itself apart from its peers. With money raised by the campaign, the College has created and enhanced several initiatives within the College. Here are a few:

- ***Election Law @ Moritz:*** Started in 2004, *EL@M* focuses on the legal issues surrounding elections and has secured grants, conducted in-depth research, and generated thousands of media articles in a timely and non-partisan manner.
- **LL.M. for foreign lawyers:** The LL.M. program began in 2007 and is designed for foreign lawyers who wish to advance their legal education in a stimulating academic environment.
- **Frank C. Woodside Moot Courtroom:** The Woodside Moot Courtroom houses the College's Moot Court Program, which allows students to gain experience with a variety of lawyering skills while utilizing the most state-of-the-art courtroom technology available.
- **Law and Leadership Program:** The Program on Law and Leadership helps students develop an understanding of leadership — integrating leadership skills with legal expertise to drive change and positively impact society.

4 Professionalism

Through the Investing in Momentum Campaign, the College created educational opportunities beyond the classroom. These opportunities for co-curricular education provide our students unique access to those leading the profession today. Examples include:

- **The Schottenstein Zox & Dunn Distinguished Business Practitioners in Residence:** This program welcomes practicing lawyers or judges from around the world who live near students in the South Gateway area, teach one-credit courses, speak at a mentoring lunches, and meet with students.
- **Barrister Club:** With money raised through the campaign, the College built this $2.2 million facility, which provides the College with a place to house programming for students and alumni, as well as special events for the College, the university, and other outside groups.
- ***Mentoring and More @ Moritz:*** Mentoring and More @ Moritz serves as a bridge between the theory and the practice of law. Students learn by example from mentors who care deeply about improving law and its administration, have high expectations for themselves and their colleagues in the profession and are willing to help guide those who follow them into the profession.

"My wish for the school is that it just keeps on the track that it is, and I expect that it will continue to be one of the best law schools in the country."

– Sally Bloomfield '69

"I think it is wonderful that people are inspired by his gift. It's such a nice thing. When he made the gift, we were so happy for dad because he was so happy, and now it's been so much more meaningful because it is such a big part of his legacy."

– Cathy Presper, daughter of Michael Moritz '61

3L Spriggs Worked as Counterterrorism Analyst

By Natalia Mitsui

No one imagines their final year as an undergraduate to include the government coming to your current and previous neighborhoods to interview your neighbors and friends. That is, especially not when all the questions asked pertain to you and your life.

But that is exactly what happened to 3L Matthew Spriggs, who applied to what he calls "a non-descript mapping agency."

While earning his bachelor's degree in management information systems from Miami University he attended a career fair, where different government agencies were represented. Having worked at the Wright Patterson Air Force during high school and college, Spriggs had some experience working for the government.

"I got the call that I got the job, so I packed up and moved to D.C. without really knowing what I'd be doing."

3L Matthew Spriggs

"I got the call that I got the job, so I packed up and moved to D.C. without really knowing what I'd be doing."

When he arrived in D.C. he started working as a counterterrorism analyst for the National Geospatial-Intelligence Agency.

"When you join, you are put on teams. I was put on the counterterrorism team," Spriggs said. "It's like a regular job, only that when you do PowerPoint presentations it's not about sales, instead it's about finding this one guy."

Spriggs worked for the NGA for a year and a half, until he realized he wanted to pursue another career path.

"I enjoyed working there, but I recognized early on that it was not what I wanted to do as a long-term career," he said. "You have to sacrifice a lot to work there, so you need to be sure that is what you want to do."

During his first summer at Moritz, he went back to work for the NGA as part of their in-house legal team. He split his second summer up by working the first half at Kirkland & Ellis LLP in Chicago and the latter half at Procter & Gamble in Cincinnati.

Spriggs will be working in-house at Procter & Gamble after earning his law degree.

2008 OSBA Reception

Join Fellow Alumni at Moritz's Reception During the 2009 OSBA Convention

If you're attending the Ohio State Bar Association Convention May 13-15 please remember to stop by The Ohio State University Moritz College of Law reception from 6 p.m. to 7 p.m. on Thursday, May 14, at the Cleveland Renaissance Hotel, 24 Public Square.

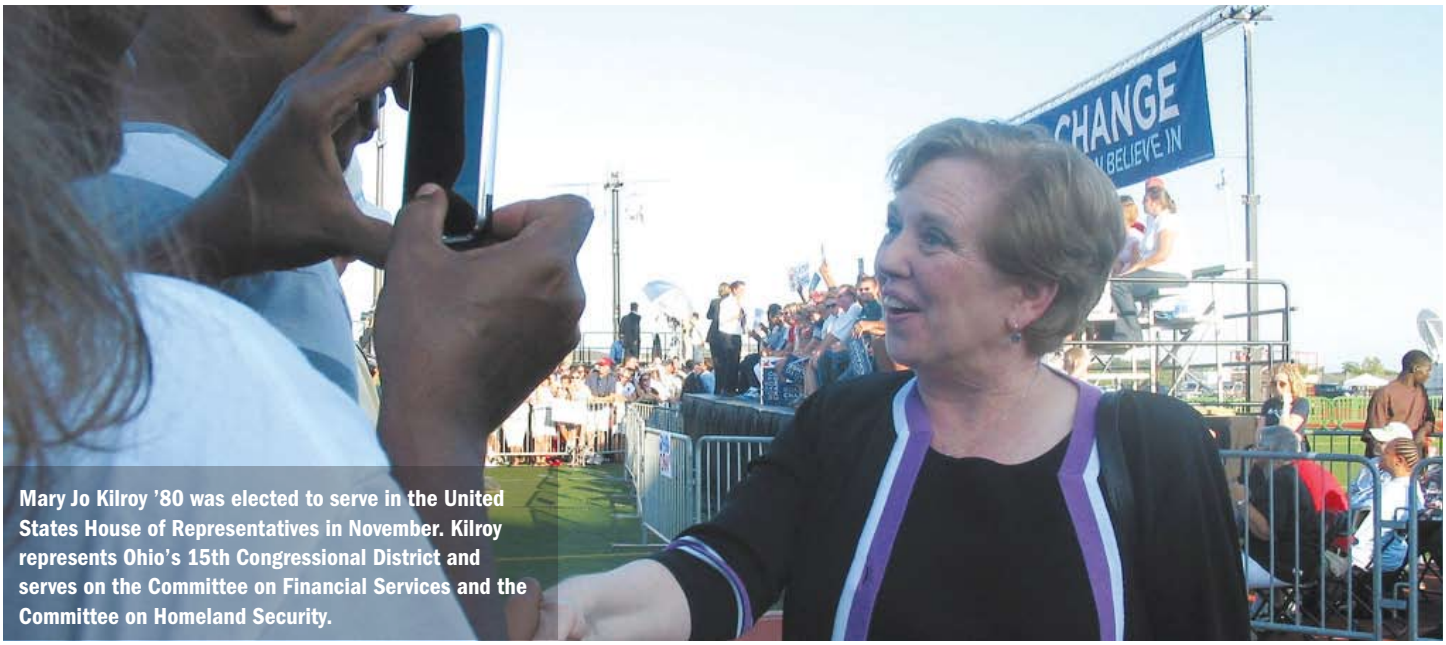
Join your fellow Moritz College of Law graduates to catch up, eat hors d'oeuvres, and meet fellow alumni. Cleveland-area residents not attending the OSBA convention are also invited to the College's reception.

May 13 - 15, 2009
6 p.m. - 7 p.m.
Cleveland Renaissance Hotel

If you plan to attend, RSVP to Carlita Pitts at pitts.54@osu.edu or by calling (614) 292-8809.

ALUMNI NEWS

TELL US WHAT YOU ARE DOING — **tarzwell.1@osu.edu**



Mary Jo Kilroy '80 was elected to serve in the United States House of Representatives in November. Kilroy represents Ohio's 15th Congressional District and serves on the Committee on Financial Services and the Committee on Homeland Security.

CLASS NOTES:
Submit news items to:
Cori Tarzwell, Alumni News, Moritz College of Law, 55 West 12th Ave., Columbus, OH 43210. You may also e-mail news to tarzwell.1@osu.edu. Color photos are welcome but will not be returned. Color digital photos must be high resolution for printing purposes.

1950s

Sheldon Mike Young '51 was selected for inclusion in *The Best Lawyers in America* for the specialty of employee benefits law.

Harry A. Sargeant Jr. '58 has retired after 30 years serving as a common pleas judge in Sandusky, Ohio.

1960s

Ron Perey '68 was elected to serve on the Board of Governors of the Washington State Bar Association, the Washington State Trial Lawyers Association, and the American Board of Trial Advocates. Perey was also honored for his 15th year as a Washington Super Lawyer.

1970s

Kevin O'Donnell '76 was elected to the Executive Council of the Nebraska State Bar Association. O'Donnell also became a member of the Board of Directors of the Nebraska Lawyers Foundation.

J. Anthony Kington '79 was named managing partner of Chester Willcox & Saxbe LLP. Kington will continue to focus his practice on business and corporate law during his tenure as managing partner.

Brian E. Hurley '79 was selected for inclusion in the *2009 Best Lawyers in America* in the specialties of commercial and personal injury litigation. Hurley was also recognized in *Ohio Super Lawyers 2008* as one of the top 50 attorneys in the Cincinnati/Dayton area and one of the top 100 in Ohio.

1980s

Phil Halley '81 was recognized for the fourth straight year in *Super Lawyers in the State of Wisconsin* as one of Wisconsin's top 50 lawyers. This was also Halley's second year recognized as one of the top 10 lawyers in Wisconsin.

Barbara Yaksic '81 was selected for inclusion in the *Best Lawyers in America 2009*. Yaksic focuses her practice on commercial litigation.

Brent Titus '84 was recognized by the *Best Lawyers* publication as the "Lansing *Best Lawyers* Real Estate Lawyer of the Year" for 2009. Titus is a real estate attorney for the Michigan law firm Foster, Swift, Collins & Smith, P.C.

Gary L. Grubler '85 was elected secretary of the Ohio Association of Civil Trial Attorneys at its annual meeting in November. Grubler is an attorney with Grange Mutual Casualty Company in Columbus.

Mark S. Edelman '86 was selected for inclusion in the *Best Lawyers in America 2009*. Edelman focuses his practice on banking law.

Ronald L. House '86 was named a partner in the Columbus office of Benesch, Friedlander, Coplan & Aronoff LLP. House is a member of the firm's litigation practice group.

Christopher E. Parker '89 was selected to serve as the chair of the Labor & Employment Section of the Federal Bar Association and a mediator and arbitrator through BAY Mediation and Arbitration Services in Atlanta. Parker also continues to serve as the head of Labor and Employment practice for the firm Mozley, Finlayson & Loggins LLP in Atlanta.

1990s

Lisa K. Vaughn '91 has joined the law firm Shannon, Gracey, Ratliff & Miller, LLP as a partner in their Fort Worth, Texas, office. Vaughn focuses her practice on business-related litigation and oil and gas litigation.

Nicole Forbes-Schmitt '92 was appointed as a federal administrative law judge for the Social Security Administration in Charleston, S.C.

Maryellen Corna Reash'92 was married to Rob Reash on Sept. 20, 2008. Maryellen is an attorney in the Columbus office of

Lane, Alton & Horst LLC. Rob is a principal environmental scientist at AEP in Columbus.

Dane Gaschen '94 was named partner in the Columbus office of Bricker & Eckler. Gaschen is a member of the firm's education law industry group.

David A. Campbell '96 was named a 2009 Ohio Rising Star. Campbell practices employment and labor law in the Cleveland/Akron office of Vorys, Sater, Seymour and Pease LLP.

David M. Lilenfeld '96 was selected as a 2009 Georgia "Rising Star" in the area of Intellectual Property Litigation. The selection was made by Georgia SuperLawyers which lists the state's most outstanding lawyers under 40 years old. This recognition is limited to only 2.5 percent of Georgia attorneys.

Lee Freedman '97 and spouse Dana Chaiton welcomed a son on Jan. 6. His name is Jonathan Rafe Freedman.

David A. Mellicone '97 was elected as a member of Dawda, Mann, Mulcahy & Sadler, PLC in Bloomfield Hills, Mich. Mellicone focuses his practice on general civil litigation involving commercial and corporate transactions, financial institutions, real estate, employment, and environmental matters.

Sara Sampson '97 published a new book, entitled *Ohio Legal Research*, with co-author Katherine Hall, assistant director of public services at The Ohio State University Moritz Law Library. Sampson currently works as the head of reference for the Georgetown Law Library and an adjunct professor at Georgetown University School of Law.

Jaqueline (Kirian) Shultz '97 and husband Rodney Shultz welcomed their son Bennett Kiernan Shultz on Sept. 21, 2008. Bennett joins his three big brothers Zachary, Mason, and Austin.

Peter A. Lusenhop '98 was named partner in the Columbus office of Vorys, Sater, Seymour and Pease LLP. Lusenhop is a member of the firm's health care and litigation practice groups.

Michael B. Kass '99 was elected partner at Armstrong Teasdale LLP. Kass, who works in the firm's St. Louis office, practices in the areas of employment law, non-compete agreements, and general business/corporate counseling.

2000s

Ross J. Kirchick '00 was named partner in the Cleveland office of Benesch, Friedlander, Coplan & Aronoff LLP. Kirchick is a member of the firm's commercial finance and banking practice group.

Aneca E. Lasley '00 was named partner in the Columbus office of Squire, Sanders & Dempsey LLP. Lasley focuses her practice on general and complex commercial litigation.

Judith L. Marsh '00 was named partner in the Columbus office of Vorys, Sater, Seymour

Mulgrew '75 Honored by AMA for Lifetime Achievement

Brent Mulgrew '75 was recently honored by the American Medical Association with the 2008 Medical Executive Lifetime Achievement Award, which is given to a medical association executive who has contributed and made an impact on the medical profession over an extended period of time.

"After finding out I was being honored for a 'lifetime of achievement', I realized I had been here a long time," Mulgrew said. "The staff earned the award for me; I didn't earn it on my own."

Mulgrew is the executive director of the Ohio State Medical Association (OSMA). He is in his 35th year working for the organization. He started with the OSMA after completing law school.

The Steubenville, Ohio, native earned his bachelor's degree in history and political science from Bethany College (W.V.) in 1971. In the same year, he earned his master's degree in history from Ohio University. He worked a short while in the United States Senate.

Although he came in as part of the class of 1975, he accelerated through his law degree and earned it in 1974. He began working for OSMA in September of his final year at Moritz and has been with the organization ever since.

The OSMA is a professional association representing 15,000 physicians and students in the state of Ohio. It is affiliated with the AMA on the national level and county medical societies on the local level.

Read the entire profile at moritzlaw.osu.edu/snip/814.

> "After finding out I was being honored for a 'lifetime of achievement', I realized I had been here a long time."

ALUMNI NEWS

TELL US WHAT YOU ARE DOING — **tarzwell.1@osu.edu**

and Pease LLP. Marsh is a member of the firm's commercial and real estate practice group.

P. R. Casey '01 was hired as the Ohio Senate Democratic legal counsel.

Nicole Francis Reynolds '01 accepted a position serving as chief of staff to Congresswoman Betty Sutton of Ohio.

Kreg Allison '02 was named to the *Business Courier of Cincinnati*'s 40 Under 40 Class of 2008. Allison manages the largest clerk of courts office in the state of Ohio.

Daniel R. Griffith '02 was certified by the Ohio State Bar Association in the area of estate planning, trusts, and probate law. Griffith works in the Canton, Ohio, office of Black McCuskey Souers & Arbaugh LPA. He is a member of the firm's estate planning and business practice groups.

Susan Kenney-Pfalzer '02 has taken a position as a staff attorney at the Micronesian Legal Services Corporation in the Palau office. Palau is a Pacific island nation located 500 miles east of the Philippines.

Frank Orlando '04 and **Christine Michael Garritano '04** welcomed their son, Frank Michael Garritano, on Nov. 28, 2008.

Amanda Runyon '05 has joined the staff of the Tarlton Law Library at The University of Texas School of Law as a reference librarian.

Gretchen Drenski '06 and **Brian Lange '06** were married on Dec. 20, 2008.

Wes Duncan '06 is currently serving a six-month deployment with the U.S. Air Force. He is working as a liaison to the Central Criminal Court of Iraq. When not deployed, Duncan is stationed in Las Vegas at Nellis Air Force Base.

Jennifer Hallman '06 and husband Brad welcomed their daughter, Callen Sofia Hallman, on Dec. 2, 2008. The family resides in Alexandria, Va.

Michael T. Spencer '06 is now senior advisor and analyst to the chief executive nursing officer at Saint Elizabeth's Hospital in Washington, D.C. Spencer has not permanently left private practice and will remain active in the District of Columbia Bar Association.

Antoinette Marsh '07 co-authored a paper on veterinary legal liabilities in the *Journal for the American Veterinary Medicine Association*. Also, Marsh authored a full length law review paper to be published in Spring 2009 in the *Journal of Animal Law and Ethics*.

Tiffany Romine '08 joined the Indiana Attorney General's office as deputy attorney general. Romine has joined the office's appeals division.

Chappelear '77 Starts As OSBF President

Stephen E. Chappelear '77 was named president of the Ohio State Bar Foundation, and is already working towards some ambitious goals.

Over the next year, Chappelear, a Columbus attorney, and the foundation board hope to alter how the organization awards grant money.

"The foundation has really taken a passive role," he said. "We wait for people to come to us with an idea. We hope to change the process to allow us to begin strategic grant making. We have some pretty good ideas ourselves, ways to improve the administration of justice in Ohio and ways to improve public understanding of the law. Now we'd like to take our grants to organizations and say, 'We have this idea and we would be willing to fund it if you are interested.'"

Chappelear has a long list of leadership endeavors. He is a former president of the Ohio State Bar Association, Columbus Bar Association, Metropolitan Bar Caucus, and American Inns of Court-Franklin Chapter. He has also participated on the boards of several dozen law-related and non-law-related organizations throughout central Ohio and across the country.

For the past five years, Chappelear has worked as partner-in-charge in the Columbus office of Hahn Loeser + Parks LLP, where his practice includes varied civil litigation.

He lives with his wife in Pataskala, Ohio, a Columbus suburb. He has two children, ages 28 and 26. His daughter, **Kacey Chappelear,** is a 2007 Moritz graduate and assistant Franklin County prosecutor.

Read the entire profile at moritzlaw.osu.edu/snip/815.

> "We hope to change the process to allow us to begin strategic grant making."

IN MEMORIAM

The Moritz College of Law has received word of the death of the following graduates.

We express our sympathy to relatives and loved ones.

Jerome B. Haddox '59 of Columbus passed away Jan. 12, 2009 at the Columbus Alzheimer's Care Center. Haddox earned his bachelor's in business administration from the Ohio State University Fisher College of Business in 1955 and his J.D. from the Ohio State University College of Law in 1959. He was an active member in the Columbus, Ohio State, and American Bar Associations. He authored and gave lectures on numerous articles pertaining to insurance, business, and tax law. Haddox was a former chairman of the Insurance Law Committee of the Columbus Bar Association, and of the legislative section of the Federation of Insurance and Corporate Counsel. He was also a co-founder of the Columbus Roadrunner Association. He competed in 49 marathons, including multiple Boston Marathon performances. Haddox is survived by his wife, Donna; children, Jeff, Stephen, Michelle, Amy, Owen, and Eric; brothers Homer and Vincent; sister Maryellen and numerous grandchildren, great grandchildren, in-laws, nieces, nephews, and cousins.

Donald R. Wheeler '64 of Towaco, N.J., passed away Feb.15, 2009. He earned his bachelor's degree from the College of Wooster and his law degree from The Ohio State University Moritz College of Law. Wheeler was a world traveler and an enthusiastic humanitarian. He owned and ran the Meadowwood Retirement Community in Indiana until he retired. Donald is survived by his five children Donald, Carolyn, Allison, Victoria, and Charlotte; his sister, Carolyn; his brother, Robert; and three grandchildren.

Deanna Lynn Redder '98 of Beavercreek, Ohio, passed away on Oct. 23, 2008. Redder earned her bachelor's degree from the Ohio State University Fisher College of Business in 1995 and her J.D. from The Ohio State University Moritz College of Law in 1998. She served as vice president and counsel of GE Money, was a member of the Dayton Bar Association, St. George's Episcopal Church of Kettering, and was a board member of the Dayton Ballet. Deanna is survived by her husband, Edward; her children, Henry Brandon Redder and Caroline Deanna Redder; parents, Jeffrey Lynn and Arvilla Ann Brandon; sister, Lora, and brother-in-law, Joe Oberer; brother, Scott, and sister-in-law, Danielle Brandon; and many other close friends.

RECONNECT GET INVOLVED WITH MORITZ

Name: _____ Law School Graduation Year_____

Personal:

Home address_____

Home phone_____ Home e-mail_____

Spouse's name_____ Is spouse an Ohio State law alumna/us?_____

Business:

Employer name_____ Your title_____

Business address_____

Business phone_____Business e-mail_____

Preferred mailing address ☐ Home ☐ Business Preferred e-mail address ☐ Home ☐ Business

My most recent professional and/or personal news is: (Use separate sheet if needed. Photographs are welcome, but will not be returned. All submissions are edited for style and brevity.)

_____

_____

_____

_____

_____

_____

Moritz College of Law
Cori Tarzwell, Alumni News
55 West 12th Ave., Columbus, OH 43210
E-mail: tarzwell.1@osu.edu Fax: (614) 247-47079

Swiss Alps and the Italian Lakes

September 27 - October 5, 2009

featuring St. Moritz • Pontresina • Como • Lake Como • Milan • Stresa • Lake Maggiore • The Borromean Islands

Join your fellow Ohio State Law alumni for this unforgettable experience.

Literary luminaries in the 19th century heralded the idyllic treasures of Switzerland and Italy in praise-filled travelogues. Since then, not much has changed in this pristine part of Europe. Elegance reigns supreme in the hideaway village of St. Moritz where weathered wooden chalets bedecked with red geranium boxes stand in bright contrast to lushly turfed valleys and snow-capped peaks. From Pontresina, see the region from atop Alp Languard and marvel at Roseg Glacier. Sunshine dances on the turquoise waters of Lake Como and the village of Como is renowned for its fine silks. Come let this extraordinary Alpine region inspire you as well!

From approximately $2995 per person, plus airfare, based on double occupancy. VAT is an additional $95 per person, subject to change. An Air Package will be offered. Register before May 5th and receive a $100 discount.

For further information, visit: ohiostatealumni.org, or call: (800) 852-TOUR (8687) or (614) 292-2372

Ohio State Alumni Tours
2200 Olentangy River Road
Columbus, OH 43210

Highlights

- Informative educational programs, presented by local experts.
- Indulge in the cosmopolitan ambience of the jet-set resort town of St. Moritz, the Top of the World in an Upper Engadine valley.
- Ascend to the Alp Languard by chair lift in Pontresina. Enjoy a lofty terrace lunch in this panoramic mountain-top setting.
- Travel by horse-drawn carriage to view the spectacular Roseg Glacier.
- Board a leisurely cruise on Lake Como.
- Visit fashionable Milan and admire Leonardo da Vinci's masterpiece, *The Last Supper*.
- Cruise to three picturesque Borromean Islands in Lake Maggiore from the tiny village of Stresa.

Transportation

- Scheduled jet service to Zurich, Switzerland, with a return from Milan, Italy.*
- Motor coach transfers from/to the arrival/departure airports, including baggage handling at the hotels.*

Accommodations

- Three nights in St. Moritz at the First-Class Hotel Schweizerhof.
- Four nights in Como at the First-Class Hotel Barchetta Excelsior.

Extras

- Consultation services of a passenger service representative prior to departure.
- Services of an OSUAA travel host and expert English-speaking local guides throughout your stay.
- Detailed travel and destination information to assist you in your planning.

**Provided for Air Program participants only.*

Epps '73 Shares Knowledge of Health Care Law in Annual Talk

Graduate Creates Diversity Scholarship, Offers Internship

By Rob Phillips

Everyone has their own way of staying connected to the Moritz College of Law. Some stop by for impromptu visits, others gather for a tailgate before a Buckeye football game, and plenty look forward to returning for their annual reunion. Joseph Epps '73 has begun returning to the law school for an annual talk about health care law, the focus of his practice over the past two decades.

"I'm excited because it is an extension of my efforts to involve Moritz in my life and my legal practice," Epps said. "I appreciate the opportunity to share my expertise and knowledge of my specific field of law with the students at the law school. And it is good to give back to a College that gave me a great deal."

Epps' commitment to the College does not stop there. He and his wife, Tiffany Hathaway, recently agreed to create a diversity scholarship that will help Moritz students over the next five school years. Epps also will welcome a Moritz student to his Los Angeles firm, Epps & Yong, LLP, as a summer intern this year.

"Ohio State has done a great deal for me," he said. "Lord knows that the training that I received at the College and the education that I was given while there has allowed me to achieve the professional recognition and accomplishments that I have earned."

When Epps graduated from the Moritz College of Law, he never intended to practice health-related law. In fact, while in law school he had never heard of health care law. His first encounter in the field was more a happenstance than a coordinated pursuit.

The Akron, Ohio, native began his legal career in the Ohio Attorney General's Office in Columbus, where he focused his practice on environmental litigation.

"I really wanted an opportunity where I would have a direct, hands-on experience in litigation."

He then moved to Washington, D.C., and worked for the Office of General Counsel, U.S. Department of Energy, Research and Administration. He would later serve as a legislative counsel to the late Sen. Howard M. Metzenbaum '41. In 1977, he moved to Los Angeles and joined TRW, Space & Defense, and provided general corporate counsel and support to the firm's defense and electronic groups. He also handled the company's real estate transactional matters.

So when Epps was being considered for a promotion that would have included a transfer back to Washington, D.C., he used the real estate niche to secure another job. "I did so much real estate that I interviewed with a health care company as their lead counsel in real estate development of medical office buildings." He accepted the job as vice president and senior counsel with Tenet Healthcare Corporation (formerly National Medical Enterprises).

> "I want to share with Moritz students the perspective of what is required to be successful in the practice of law."

"In order to understand the nuances of medical office building developments you invariably are going to become involved in the regulatory aspects of health care law," he said. "In order to complete medical office building syndications with the hospitals' physicians, I began to learn the various rules and regulations."

It was when he was transferred to Dallas with Tenet that Epps truly received his baptismal in health care-related legal issues. He became the regional legal counsel for three different operating divisions of Tenet Healthcare: general acute, psychiatric, and rehabilitation hospitals. Epps and his

Epps '73 opened his Los Angeles-based boutique healthcare law firm, Epps & Yong, LLP, in January 2005. The firm focuses primarily on healthcare affecting medical providers, including corporate, real estate, and general business law, regulatory law, and civil litigation.

Epps brings valuable experience from work with Tenet Healthcare Corporation, and TRW, Space & Defense. Epps also has worked in the U.S. Department of Energy, Research and Administration, as well as for late **Sen. Howard M. Metzenbaum '41**.

legal staff were responsible for more than 50 health care facilities, providing legal advice and counsel to senior management.

"In that position, I served as the regional general counsel and furnished daily advice to hospital executives on a variety of legal issues, including patient consent issues, Medicare compliance, physician medical staff issues and virtually all other general law issues that affected hospital operations."

He stayed with Tenet until 1998, when he started his own private practice in Los Angeles. Epps continues to provide legal advice to health care providers, specifically hospitals, ambulatory surgical centers, joint venture health care start-ups and physician organizations.

"I had absolutely no idea what health care law was when I was in law school," Epps said. "My path to where I am today is obviously a unique one. I attempt to share my experiences and enthusiasm with interested students when I travel to Moritz and speak in the fall. Although I entered the health care field this way, there are plenty of pathways and entry points to health care law."

"I'm excited because it is an extension of my efforts to involve Moritz in my life and my legal practice."

Joseph Epps '73

Epps has decided to welcome – for the first time – a Moritz student for a summer internship at his Los Angeles firm. "I want to share with Moritz students the perspective of what is required to be successful in the practice of law," he said. "How do you act and think like an attorney? How do you behave professionally? These are things that you must consider when you are striving to establish yourself as a reputable attorney."

Epps and his wife have committed to providing a five-year, diversity scholarship to a deserving Moritz student. Epps emphasized that the scholarship will not focus specifically on racial diversity. "It will be based, in part, upon students' work in the community or with community-based organizations."

The idea for the diversity scholarship sparked a few other Moritz alumni to follow Epps' lead. Alumni in the Chicago area heard of the new scholarship and are in the process of creating a diversity scholarship of their own at the law school.

"That makes me feel great," Epps said about the idea spurring others to give. "I am happy to do anything I can to help our students at the Moritz College of Law. We are in a highly competitive society, and I am very proud of what the students are achieving and of the College overall."

Epps and his wife have made a five-year commitment to provide a scholarship for a student at The Ohio State University Moritz College of Law. The scholarships' criteria will be at least partially based in diversity and the students' community involvement.

The College's Diversity Enrichment Awards have consistently created the results that they were intended to deliver: drawing increasingly diverse students while continuing to improve the quality of the student body. Recipients of such awards are not just bringing ethnic diversity to the College, but they are also drawing students with a variety of work experiences and backgrounds.

These awards are given to top students who continue to enrich the College's student body. Recipients have included students of different ethnicities, cultures, and professional backgrounds. These awards renew automatically if recipients remain in good academic standing.

Andrea Seidt '98 Takes Different Route to Job as Ohio's Securities Chief

Alumna Spent Time at Jones Day, Ohio Attorney General's Office

By Rob Phillips

Andrea Seidt '98 always had a desire to help the "little guy."

Before she entered high school, the argumentative teenager began telling people that she would become an attorney. Raised in a blue-collar family in the Appalachian region of Ohio, Seidt said she most wanted to be an attorney to help out regular folks who need it most.

And, as she entered The Ohio State University Moritz College of Law, she was confident that she would pursue a career in criminal prosecution.

"I didn't predict that in any way, shape, or form I would be where I am today."

Andrea Seidt '98

But Seidt's mind changed, and she has since followed a non-traditional career path that includes time at a large law firm, the Ohio Attorney General's Office, and in her current position – commissioner of the Ohio Department of Commerce's Securities Division.

"If you would have told me in 1998 that 10 years later I would become Ohio's securities commissioner, I would not have believed you," she said. "I don't think I even took a securities law course to be honest with you. I didn't predict that in any way, shape, or form I would be where I am today."

But Seidt said that after receiving her undergraduate degree from Ohio State and entering law school, she was adamant about becoming a prosecutor and helping crime victims. And after her first year at Moritz, she volunteered with a local criminal defense attorney who prepared writs for post-conviction relief on behalf of inmates awaiting the death penalty.

"We traveled up to Mansfield to visit an 18-year-old who was on death row," she said. "I really didn't like it. I realized that there were victims on both sides of these cases. I got emotional about it and thought maybe criminal law wasn't for me after all."

In her third year, she received an offer from Jones Day in Columbus. A few of her mentors at Moritz encouraged her to take the position.

While at Jones Day, Seidt was a general litigator and enjoyed the opportunity to represent a variety of clients in products liability, commercial contracts, and accounting and securities litigation. Seidt's work with securities was the first taste of what would become the focus of her current career.

After eight years at Jones Day, Seidt decided that she wanted to head down an altogether different path. She was looking for a new challenge and a career that would allow more freedom to spend time with her husband and two children, now ages 6 and 3.

A position at the Ohio Attorney General's Office opened, and she was named deputy chief counsel for the office in 2007. "I always had a yearning to do something for the little guy," she said, "and I felt as though I would get some opportunities to do that in the AG's Office."

She certainly did. Seidt took the lead on a major subprime mortgage lending investigation in the state.

"Ohio was in a state of foreclosure crisis at least partially because of some fraudulent subprime mortgage lending practices," she said. "We believed this investigation was essential to keep many Ohioans in their homes."

Seidt led efforts to negotiate a settlement between the state of Ohio and Countrywide Financial Corp. As a result, Countrywide agreed to pay $4.4 million to the state. The settlement is expected to allow loan modifications for about 8,000 Ohio homeowners and foreclosure relief payments to another 4,000 homeowners.

Seidt also led multi-state amici curiae briefs in support of investors in two landmark securities cases decided by the U.S. Supreme Court in 2008 - *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, and *Tellabs, Inc. v. Makor Issues & Rights, Ltd.* "That was pretty fun work as well," she said. "We got 23 states to join us with the first brief and more than 30 states to join us in the second brief."

The Attorney General's Office partnered with the Ohio

Department of Commerce during its investigation of subprime mortgage lenders in the state. And, in the summer of 2008, Seidt was contacted by the Department of Commerce Director Kimberly Zurz about the commissioner opening in the securities division.

But Seidt's decision to leave the Attorney General's Office was far from easy. Seidt was invigorated by the work she was doing at the office and felt an allegiance to Attorney General Nancy Rogers, who was named to the position following the resignation of Attorney General Marc Dann.

"(General Rogers) was rebuilding and reshaping the office, and I really felt an obligation to her and to the office," she said. "I wanted to stay with the office and with General Rogers as long as I could through her tenure."

Ultimately recognizing that Zurz's offer was an opportunity she simply could not pass up, Seidt accepted the position and began as the commissioner of the Ohio Department of Commerce's Division of Securities in October 2008. Seidt now oversees the division's 35 employees and three sections: licensing, registration, and enforcement.

"Sure there are high profile securities fraud cases, but the division also represents some of the smaller securities fraud victims," she said. "We have a lot of cases involving the targeting of elderly investors. Some individual investors have lost their entire retirements, and helping those people is very rewarding for me."

Seidt said that the transitions – to her current job and to the Attorney General's Office – have been made easier because of strong female mentors she has been fortunate to have during her career. At Jones Day, Seidt said that two senior women attorneys provided her valuable insight and counsel throughout her years in private practice and, importantly, a sense of security when she decided to leave.

Seidt's Career Path

1998	Graduated from the Moritz College of Law *Although she planned to go into criminal prosecution, those plans changed in law school*
1998-07	Associate, Jones Day in Columbus *Seidt was a general litigator and got her first taste of securities litigation*
2007-08	Deputy Chief Counsel, Attorney General of Ohio *She led a major sub-prime mortgage lending investigation*
2008-present	Commissioner, Ohio Department of Commerce's Division of Securities *Seidt oversees the departments sections: licensing, registration, and enforcement.*

But despite nearly slashing her salary in half, Seidt said she would make the same choice again.

"I don't know anyone who ever took the gamble of leaving a large firm to do public service and regretted it," she said. "But it is hard, really hard. I've just always tried to find what makes me happy and fulfilled; that is what has been the best for me."

Then-Attorney General Rogers was clearly a role model, she said, as is her current boss, Ohio Department of Commerce Director Zurz. In law school, Seidt said that she looked up to now-Associate Dean Kathy Northern, whom she researched for in her first year at Moritz.

"I have been blessed to have strong female leaders," she said, "in law school and in my different career path."

What lies ahead for Seidt is uncertain, and she said that she has learned that it would be foolish for her to predict. She particularly enjoys being a regulatory attorney, and that would be something she would like to continue. "This job is a huge responsibility, and to be truly effective I am going to be really vigilant and settle into this role."

> "I have been blessed to have strong female leaders in law school and in my different career path."

On Jan. 10, Moritz alumni, faculty, and staff gathered in the Saxbe Auditorium to celebrate the deanship of Nancy Rogers. Prof. Rogers led the Moritz College of Law from 2001 to 2008, when she was asked to serve as Ohio's attorney general. Rogers has since returned as a member of the Moritz faculty.

"Walking in her shoes, I see Nancy's extraordinary impact within the College and beyond every day. The genius of Nancy's leadership was her skill at enabling others to reach potential beyond their own expectations. We all feel a huge debt of gratitude for Nancy's remarkable and exceptional leadership."

— Dean Alan Michaels

Photos by Callentine Photography

Celebrating the Deanship of Nancy H. Rogers

"I cannot remember a time when I felt this way since I married Doug 39 years ago. Some of the people I care about most are here today. The last five days have been eventful: I have rejoined the faculty after 13 years, reconnected with old friends, and Richard Corday's name has replaced mine on 35,000 pending legal matters before the state of Ohio."

— Nancy H. Rogers

College accomplishments during Dean Rogers' tenure:

- Increased student scholarships from $1,256,805 to $4,280,757.
- Faculty publications increased 2 ½ times and citations to faculty work doubled.
- Fundraising matched the $30 million gift from Michael E. Moritz.
- Created 11 new faculty chairs.
- Welcomed 1,768 new students.
- Created *Election Law @ Moritz*, three new journals, the Program on Law and Leadership, Washington, D.C., Summer Program, Semester in Oxford Program, and International LL.M. Program

"Nancy is what this whole university should be about – service and leadership."

— OSU President E. Gordon Gee

"Every time I leave a conversation with Nancy, I am wiser and better. Her driving motivation in becoming Attorney General was to serve and protect the interest of the state of Ohio."

— Judge Robert M. Duncan '52

"Nancy has been a great steward of Mike's gift, using every penny wisely. When Moritz became a top 10 public law school, I was elated, as I knew Mike would be. That was the main reason for his gift: To make this law school a great law school."

—Lou Ann Moritz Ransom

"When you celebrate Nancy Rogers, you celebrate success, vision, accomplishment, dedication, integrity, responsibility, and leadership. Nancy Rogers is a very special leader."

— Ed Cooperman '67

"You are a remarkable individual, and you are deserving of recognition for your tremendous efforts in behalf of the community. Previously serving as dean and Michael E. Moritz chair in alternative dispute resolution at The Ohio State University Moritz College of Law, you were appointed attorney general for the State of Ohio by Governor Ted Strickland in May 2008, and since that time you have become involved with numerous beneficial projects that have contributed to the well-being of countless Ohioans. Indeed, you have made a positive contribution to the world around you, and we applaud you on your exemplary work."

—excerpt from award presented on behalf of the members of the House of Representatives of the 127th General Assembly of Ohio

10 Things I Learned from Nancy

1) Lead by example.
2) Never ask your staff to do things you are not willing to do yourself.
3) People are more important than things.
4) Have a sense of humor.
5) Kindness is always appropriate.
6) Mentor and nurture your colleagues and staff.
7) Cherish your time with family.
8) Work can be fun.
9) Actions speak louder than words.
10) Lead a balanced life.

— Robert L. Solomon II '88, Assistant Dean for Admissions and Financial Aid; Director of Minority Affairs

Virtual Law continued from page 14

tell people that virtual worlds are like New York City," Mortinger said. "You can do plenty of appropriate things like go to a play, museums, or business meetings in New York. But there are also much seedier sides of the city. Second Life is the same way."

Secondly, as businesses begin to open virtual world shops, some businesses have begun to hire avatars as greeters, although many companies use an automated system to greet other avatars. These greeters are normally paid very little (sometimes roughly $.50-$1 an hour). A glimpse through the Second Life classified ads shows advertisements for dozens of such greeters, and other jobs like editors of virtual newspapers, hotel clerks, etc.

Experts say that sometimes these people are being hired exclusively through Second Life with no knowledge of the avatars true identity. "A business has to ask itself whether they are complying with child labor laws and guidelines concerning the reporting of income," Duranske said. "Do you really know who you are hiring?" Likewise, noted Mortinger, "an avatar can be operated by multiple people in some instances so even if you know the identity of one of the people you are hiring, there may be more than one persona to an avatar."

And other questions are on the horizon. For instance, should employers face the same minimum wage regulations as if they were hiring a real person? And, if so, what about rules involving benefits?

"There are obviously still plenty of unanswered questions," Mortinger said.

Privacy issues

If companies or organizations would like to create a virtual presence in a world like Second Life, they should first have a strong grasp on the technology, Duranske said. For instance, Second Life has the ability to "listen in" on any conversation within the virtual space.

"Say, for instance, you are a big clothing manufacturer and you set up a virtual space in Second Life," he said. "You set up a spot that has info about existing products and you use the space for virtual meetings. You have to understand that the information (what was discussed, etc.) is being stored and where it is being stored."

Second Life's terms of service agreement specifically states that it will not disclose any information that pertains to an "individual," such as a person's real first and last name, their home address, phone number, etc. But, according to Duranske's book on virtual law, the provision does not prevent Linden Lab from dispersing information about a particular avatar's data, including "information regarding items purchased, social interactions, the amount of money in users' accounts, and more." That information could prove valuable to companies wishing to market directly to avatars.

Mortinger said that despite having purchased the private virtual property, IBM still holds its confidential conversations outside of Second Life because of Linden Lab's ability to monitor the conversations.

That's probably the safest route, recommended Peter Swire, the C. William O'Neill Professor at Moritz and an expert in the fields of privacy, computer security, and the law of cyberspace. "Once you write it you don't know who will forward it and whether those records will appear later in a trial or elsewhere," Swire said.

Swire said that it's important to remember that rules in virtual worlds are written exclusively by the company that is running that world. "If the owner likes surveillance then you will likely be living in a virtual society with heavy surveillance," he said. "Users should not forget that when they are looking into different virtual worlds. They should remember to check the privacy policies."

Other technologies reportedly have emerged in virtual worlds that allow some users to "listen in" to online chats

Images courtesy VWLEM 2008 by HVX Silverstar/Bernadette Daly Swanson

between other users or spy on those users' movements via "virtual cameras." It's unclear how detrimental such technology could be, but understanding such technology could prove valuable.

Unchartered Waters

If one thing is certain regarding virtual worlds, many legal questions remain unanswered or even more have yet to be raised. Mortinger said that it is important that our lawmakers refrain from proactively creating new laws specifically for use within virtual worlds. "We already have a very good set of laws in place that, with minor adjustments from time to time, can cover virtual world issues when they come up," he said. "Why should we screw things up that are probably OK. Right now we can only try to anticipate what problems will occur and be prepared to handle them."

But as many people and businesses begin to move toward a three-dimensional presence, the legal molding of such worlds has yet to be solidified. A few lawsuits have emerged. The most talked about lawsuit – which was settled in 2007 – was filed by a Pennsylvania attorney who said that Linden Lab improperly confiscated thousands of dollars in property within Second Life. Linden Lab said that Bragg had found a way that would automatically purchase mispriced virtual land.

Prof. Swire said the legal atmosphere is analogous to the early 1990s.

"This reminds me of the Internet about 1993," Swire said. "People were spotting possible legal issues but they hadn't gotten to court yet. Fifteen years later we have had so many lawsuits that involve the Internet. Fifteen years from now we'll probably have a lot of experience with lawsuits for virtual worlds as well."

Photos by Catherine Photography

Reunion 2009

Save the Date

Moritz Law Reunion 2009

September 11-12, 2009

Celebrating the Past,
Investing in the Future

Class of 1959, 1964, 1969, 1974, 1979, 1984, 1989, 1994, 1999, and 2004

If you would like to join your class committee, e-mail Darnell Hines, director of reunion giving and donor relations at hines.127@osu.edu or call (614) 247-8640.

A RECEPTION HONORING THE LEGACY OF MIKE MORITZ

AND THE GENEROSITY OF BAKER HOSTETLER AND CARDINAL HEALTH

Representatives of Baker Hostetler and Cardinal Health gathered at the Moritz College of Law Jan. 22 to honor Mike Moritz, a former alumnus, colleague, and friend. The event that honored Moritz's legacy evolved when Cardinal Health awarded Baker Hostetler its 2008 Outstanding Achievement Award, which included a $5,000 gift to the charity of the firm's choice. Baker Hostetler chose to designate its award to the Moritz College of Law and doubled its impact by adding its own $5,000 match – all to celebrate the ties that connect Moritz's legacy to these three institutions. Moritz '61 is the namesake of the College, a former partner at Baker Hostetler, and the original attorney, former secretary, and long-time board member of Cardinal Health.


1


2


3


4


5


6


7


8

Photos by Callentine Photography

From the Left:
1.Ivan Fong of Cardinal Health; 2. Fong, Alec Wightman '75 of Baker Hostetler, Dean Michaels; 3. George Bennett '78, friend of Moritz and adjunct faculty member; 4. Jessica Mayer of Cardinal Health; 5. Wightman, Dean Michaels; 6. Fong, Wightman; 7. Bennett, Wightman; 8. Thomas Long '76 of Baker Hostetler

Upcoming Events

April 10
The Jurisprudence of Justice Ruth Bader Ginsburg: A Discussion of Fifteen Years on the U.S. Supreme Court
Ohio State Law Journal symposium.
For more information visit, moritzlaw.osu.edu/lawjournal

April 30-May 1
Reinventing Juvenile Law: A New Construct for Practice and Policy Justice for Children Project symposium.
For more information, visit moritzlaw.osu.edu/jfc

May 14
Moritz Reception at 2009 Ohio State Bar Association Convention Cleveland Renaissance Hotel, 6-7 p.m.
RSVP to Carlita Pitts at pitts.54@osu.edu

June 13
Barton Memorial Cup
Golf Club of Dublin, Ohio. 9 a.m.
For more information, visit moritzlaw.osu.edu/bartonmemorial/

2009 Reunion Weekend
Sept. 11-12
For classes 1959, 1964, 1969, 1974, 1979, 1984, 1989, 1994, 1999, 2004

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

THE OHIO STATE UNIVERSITY **Moritz** College of Law

Moritz College of Law
Drinko Hall
55 West 12th Avenue
Columbus, OH 43210-1391
moritzlaw.osu.edu

Nonprofit Org.
U.S. Postage
PAID
Columbus, Ohio
Permit No. 711