



FACULTY NEWS

In February, **Paula Abrams** presented a paper titled “The Majority Will: A Case Study of Misinformation, Manipulation, and the Oregon Initiative Process” at the Oregon Constitution Sesquicentennial Symposium sponsored by the Oregon Law Review. The paper will be published this spring in the Oregon Law Review.

Douglas Beloof presented at a symposium at Thomas Jefferson Law School in San Diego, titled *Confronting Domestic Violence Head On: The Role of Power in Domestic Relationships*. His talk involved using evidence rules to place the domestic abuse relationship in front of the jury in criminal cases. Beloof also hosted Lewis & Clark Law Review’s Spring Symposium. The Symposium was on the Confrontation Clause of the Sixth Amendment to the U.S. Constitution, with a focus on the recent case of *Giles v. California*, which has significant ramifications for evidence of prior threats in homicide, organized crime, and domestic violence cases. Beloof’s article on *Giles* will be published in the Lewis & Clark Law Review. Beloof is an inaugural member of the Federal Sentencing Guidelines Commission’s Victim Advisory Group (VAG). The VAG has just completed its review of the annual proposed amendments to the sentencing guidelines and made its recommendations to the Commission.

Michael Blumm and student Jane Steadman ‘09 have completed “Indian Treaty Fishing Rights and Habitat Protection: The Martinez Decision Supplies a Resounding Reaffirmation,” which has been posted on the Social Science Research Network, available at <http://ssrn.com/abstract=1356223>. The authors argue that this decision is the most significant fishing treaty interpretation in the last three decades. The National Agricultural Law Center has posted four of Blumm’s articles on its site under agriculturally significant water law articles, available at <http://www.nationalaglawcenter.org:80/bibliography/results/?id=77>. The articles are: “Mono Lake and the Evolving Public Trust in Western Water,” 37 *Arizona Law Review* 701 (1995) (with Thea Schwarz); “The Rhetoric of Water Reform Resistance: A Response to Hobbs’ Critique of Long’s Peak,” 24 *Environmental Law* 171 (1994); “Pinchot, Property Rights, and Western Water: A Reply to Greg Hobbs,” 24 *Environmental Law* 1203 (1994); and “Unconventional Waters: The Quiet Revolution in Federal and Tribal Minimum Streamflows,” 19 *Ecology Law Quarterly* 445 (1992).

Professor **Jack Bogdanski** has been busy with a raft of projects. This tax season marked the fifteenth year in which he has led law-student volunteers in assisting dozens of international students at Lewis & Clark College with preparing their often-complex U.S. tax returns and related forms. Jack’s article, “Proposed Regulations Would Modify Standards for ‘Qualified Appraisals,’” appeared in the December 2008 issue of the national journal *Estate Planning*. In December he also gave his second annual one-man continuing education program, “Recent Developments in Federal Tax Valuation,” to a downtown Portland audience on behalf of the Law School’s Oregon Law Institute. He continues to turn out semi-annual supplements to his treatise, *Federal Tax Valuation*, first published in 1996, and the journal *Valuation Strategies*, which he founded and serves as editor-in-chief, has entered its twelfth year. Jack is currently testing the market for an experimental, “intensive” summer school course in business taxation, which would be held over two weeks in downtown Portland.

Ed Brunet, Henry J. Casey Professor of Law, recently completed a new article on antitrust procedure titled “Antitrust Summary Judgment and the Quick Look Method.” The article is part of an invited set of antitrust articles to be published by the SMU Law Review in Summer 2009.

In Fall 2008 **Amy Bushaw** team-taught a seminar on Sustainability in Law and Business with **Dan Rohlf**. The students in the seminar collaborated to write a book conceptualizing sustainability law, and introducing a legal audience to the intersections among sustainability and a wide variety of legal practice areas. Amy and Dan are editing the book, and it should be available later this year. Anyone who is interested in receiving a copy of the book should contact Dan or Amy to be put on the book’s distribution list. Last fall, Amy also spoke at the National Consumer Rights Litigation Conference on “Piercing the Holder-in-Due Course Shield and Other Theories of Assignee Liability.” More recently, Amy presented a paper on “Growth of the Sustainability-Inspired Business” at a conference sponsored by the University of Houston Law Center and the Center for Environment, Energy & Natural Resources Law. Amy is a member of the Board for the Association of American Law Schools’ (AALS) Section on Balance in Legal Education, serving as its secretary. She also edits the Section’s newsletter. The Section is concerned with the intellectual, mental, and physical well-being of law students and lawyers. **Henry Drummonds**, **Beth Enos** and Amy are among the professors nominated for inclusion of a study on What the Best Law Teachers Do. Professor Michael Hunter Schwartz of Washburn University School of Law is conducting the study, and plans to publish his results in a book to be published by the Harvard University Press.

Bill Chin, ’04, gave a presentation in March at the First Annual Gaps Conference on Working Together to Bridge Gender Gaps in Education, Health Care, Employment, and Leadership, sponsored by the Oregon Commission for Women. His talk was titled “Female Students of Color in Education: Overcoming Stereotypes, Cultural Misunderstandings, and Other Barriers.” Bill also worked with law students from the Minority Law Students Association to serve as instructors and judges for the Portland Opportunities Industrialization Center Mock Trial event, which helps students from the Rosemary Anderson Alternative High School better understand the role of attorneys and the legal system in society.

Tigran Eldred’s forthcoming article, “The Psychology of Conflicts of Interest in Criminal Cases,” will be published in Volume 58 of the Kansas Law Review. Relying on research findings from behavioral economics, this article argues that the corrosive influence of conflicts of interest requires a new approach to Sixth Amendment jurisprudence.

Pamela Frasch was recently appointed Assistant Dean and Executive Director, Center for Animal Law Studies at Lewis & Clark. In this new role, she will continue to oversee, direct and develop the Animal Law program. Pamela has given several presentations, including: “All Law is Animal Law,” with Professors Taimie Bryant (UCLA), Ani Satz (Emory) and David Cassuto (Pace) at the 2009 AALS Conference, held in January 2009 in San Diego. She also gave a presentation titled “Animals and Standing: Constitutional Law Considerations,” with **Bill Funk** and **Kathy Hessler**, at a November 2008 conference sponsored by the Lewis & Clark Student Animal Legal Defense Fund (ALDF) in Portland. Also in November 2008, she traveled to Dallas, Texas to give a presentation with Kathy Hessler to the Board of the ALDF titled “Center for Animal Law Studies Review,” and gave a CLE presentation with Kathy Hessler on Animal Law in Portland. Pamela also served as a coach and host for the National Animal Law Competition sponsored by Lewis & Clark Law School, held at Harvard Law School. Both Lewis & Clark teams made it to the semi-final round, with one advancing to finals and winning the prize

for Best Respondent Brief. Pamela has also co-authored a chapter on prosecuting animal abusers, to be published in the forthcoming *Animal Law* (ABA Publishing, 2009) and is currently working on the fourth edition of the casebook *Animal Law: Cases and Materials* (Carolina Academic Press, 2009) as well as the first edition of the forthcoming *Animal Law in a Nutshell* (Thomson West Publishing, 2010) with Kathy Hessler. She recently agreed to co-write an article on animal law for The Journal of Legal Education. Pamela was quoted in an AP article on the growth of animal law, which was reprinted in a number of national and international newspapers and other media outlets. She has also been interviewed by USA Today and the American Bar Association's GP Solo magazine for forthcoming articles on animal law.

In February, **Bill Funk** spoke at the Midyear Meeting of the ABA in Boston on constitutional issues involved in regional greenhouse gas cap-and-trade programs, focusing on the Regional Greenhouse Gas Initiative entered into by ten northeastern and mid-Atlantic states. His article on the same subject has been accepted by the UCLA Journal of Environmental Law and Policy. Also in February, Bill spoke on recent developments in federal administrative law at an Oregon Law Institute (OLI) program on administrative law. Bill continues his active involvement with the Center for Progressive Reform's preemption work, co-authoring two new white papers: "The Truth about Torts: Regulatory Preemption at the Consumer Product Safety Commission" (Nov. 2008), and "Limiting Federal Agency Preemption: Recommendations for a New Federalism Executive Order" (Dec. 2008).

John P. Grant's two-book, four-volume works on the Harvard Research on International Law, *Critical Analysis and Appraisal* and *Original Materials*, have been published online by Heinonline on their opening (Subscribers List) page, and is thought to be the first author-identified works so published. The third edition of the *Encyclopedic Dictionary of International Law*, written by John and his co-editor, Professor Craig Barker of Sussex Law School, Brighton, England, is at proof stage and will be published by Oxford University Press in September. With 2,600 entries, the third edition is 20% larger than the second edition of 2004. John's chapter on "Monitoring and Enforcing Children's International Human Rights" for the third edition of Cleland and Sutherland's *Children's Rights in Scotland*, along with his joint chapter, with **Elaine Sutherland**, on "Scots Law and International Conventions," will be published by W.Green/Thomson in the early fall. John is also attending the second appeal in the Lockerbie case, partly on behalf of some of the British families of the Pan Am 103 victims.

Lin Harmon, Associate Director of the Environmental and Natural Resources Law Program and Director of International L.L.M. and Visitor Programs, is currently serving a three-year term on the ABA Competitions Committee, with a focus on the ABA National Negotiation Competition. In the past academic year she went to Chicago in September to begin her Committee work, traveled to Boston in February to help administer the national finals, and is now involved in editing problems for all levels of next year's in-school, regional and national rounds. Her goal for the Committee is to improve competition procedures, regional administrator support, and the quality and educational value of the competition problems. In January, Lin was elected treasurer of the AALS' Section on Graduate Programs for Foreign Lawyers and is currently involved in developing a program for next January's AALS conference. She also served as a judge for the general and semifinal rounds of the Pacific Super-Regional Rounds of the Jessup International Moot Court Competition, which was held at Lewis & Clark Law School from February 27 through March 1. In March she taught a workshop in strategic planning and succession for Student Bar Association student groups, and she is developing panels for the upcoming April environmental law conference titled Greening the Grid: Building a Legal Framework for Climate Change. This semester she is supervising the work of a teaching fellow—Katia Metan from the Ivory Coast, who is creating an open-access course in energy law for developing countries—and assisting visiting international scholar Yin

Hongxiang in researching the origin of the notion of environmental rights. Lin also serves on the Law School's Global Law Committee.

In January, **Kathy Hessler** was elected Chair of the AALS' Section on Animal Law and Chair Elect of the Section on Balance in Legal Education. She is also serving as the Immediate Past Co-Chair of the AALS Section on Clinical Legal Education. She continues to serve on the national Task Force on the Status of Clinicians in the Academy. Kathy's article, "Mediating Animal Law Matters," 2 *Journal of Animal Law and Ethics* 21 (2007) was recently cited in *Augillard v. Madura*, 257 S.W.3d 494, 503 (Tex. Ct. of App., 2008). Kathy was interviewed by the ABA's GP Solo magazine and is publishing two short articles for the magazine, co-authored by Tanith Balaban, titled "Exotic Pets" and "Legal Issues Relating to Animals in Agriculture." She taught Animal Law and Standing as a guest speaker for Professor Patricia Matthews at Florida State University. She presented "What to Do About Non-Native Animal Species?" with **Dan Rohlf** and Nathan Baker, Staff Attorney, Friends of the Columbia Gorge at Lewis & Clark; "At Odds: Human Welfare and Animal Welfare Juxtaposed" with **Erica Thorson**, at the Public Interest Environmental Law Conference, University of Oregon; and "Should the Animal Movement be Vegan" with Professor Peter Sankoff, University of Auckland, New Zealand. In October 2008, at the Animal Law Conference, Globalism and Animal Law: One Earth, in Portland, Kathy spoke on a Tips for Law Students panel, and moderated the Animal Rights panel with Professor David Favre, Michigan State University College of Law, and author Steve Wise. Kathy also gave an Animal Law CLE presentation with **Pamela Frasch**, Dean and Executive Director of the Center for Animal Law Studies, Lewis & Clark Law School. Kathy also spoke on "Animals and Standing: Constitutional Law Considerations," with **Bill Funk** and **Pamela Frasch** at an event sponsored by the Lewis & Clark Student Animal Legal Defense Fund. Kathy also was a coach and host for the National Animal Advocacy Moot Court Competition sponsored by Lewis and Clark School of Law, held at Harvard Law School, and she made a presentation to the Board of the Animal Legal Defense Fund about the Center for Animal Law Studies at Lewis & Clark. Kathy is also working on two books; *Teaching Animal Law Across the Curriculum* (Carolina Academic Press, forthcoming) and *Animal Law in a Nutshell* (Thompson West, 2010) with Pamela Frasch.

Jim Huffman has been appointed to the Hoover Institution's Property Rights and Prosperity Task Force, a group of a dozen lawyers and economists with interests and expertise in property. As one of its first projects, on May 1, the Task Force will publish a book assessing the first 100 days of the Obama Administration as it relates to property and economic regulation. Jim is also writing a short book on water law and policy under the auspices of the Hoover Task Force. Jim's article "Beware of Greens in Praise of the Common Law" has just been published in 58 *Case Western Reserve Law Review* 813 (2008). Another article, "The Federal Role in Water Resource Management," was recently published as part of the Breaking the Logjam Project sponsored by New York University (NYU) School of Law and New York Law School. The article appears at 17 *NYU Environmental Law Journal* 669 (2008). Jim's article, "Comprehensive River Basin Management: The Limits of Collaborative, Stakeholder-Based, Water Governance," will appear in the forthcoming issue of *The Natural Resources Journal*. In March, Jim spoke to Federalist Society Chapters at the University of Cincinnati, Dayton University, and Ohio State University. Jim has also been commissioned by *The Oregonian* to write a regular column for the editorial and commentary page.

Jennifer J. Johnson, Jeffrey Bain Scholar and Professor of Law, published "Critiquing Arbitration of Shareholder Claims" in the Fall 2008 issue of the *Securities Regulation Law Journal*. This article was co-authored with **Ed Brunet**. In February, Johnson traveled to Yale Law School to participate in the Weil, Gotshal & Manges Roundtable on the Global Financial Crisis, presented in commemoration of the tenth anniversary of the Yale Law School Center for Corporate Law. In April, Johnson was pleased to host

Professor Roberta Romano of the Yale Law School faculty as our distinguished Higgins Visitor. In May, Johnson will travel to Washington D.C. for the annual meeting of the American Law Institute (ALI).

Jeffrey Jones published an op-ed in The Oregonian entitled “A New Economic Covenant.” The op-ed relates to his book, *The Unaffordable Nation: Searching for Decent Lives in America* (Prometheus Books, 2007). You can read the op-ed piece here: http://www.oregonlive.com/opinion/index.ssf/2008/12/a_new_economic_covenant.html. Jeffrey’s forthcoming article entitled “Enfeebling the ADA: The ADA Amendments Act of 2008,” will appear in the Oklahoma Law Review.

Dean **Bob Klonoff**’s recently published article, “Making Class Actions Work: The Untapped Potential of the Internet,” 69 University of Pittsburgh Law Review 727 (2008) (co-authored by Mark Herrmann and Bradley Harrison), was cited in a New York Times article discussing a recent class action settlement involving Google. He was quoted in the article as well. A forthcoming Fordham Law Review article he co-authored on the topic of settlement in aggregate litigation will be discussed at a Fordham Law School symposium being held in April.

Lisa LeSage has completed an article entitled “Stinky Thickets: Local Regulatory Challenges for Small and Emerging Sustainable Businesses,” that will be published in the spring 2009 issue of the Western New England Law Review. In October, Lisa presented a paper at the Third Annual Conference on Entrepreneurship and Community Economic Development: at the Western New England College of Law in Springfield, Massachusetts. She is serving as the Conference Planner for “Business, Law & Sustainability: Managing Risks While Leading Change,” to be held in Portland, Oregon on May 12. On April 16 she will serve as the Program Chair and Panel Moderator at the ABA Section of Business Law Spring Meeting on a panel entitled “It IS a Small World After All: Cross Cultural Competency for Business Lawyers.” On April 24 she will present at the annual Business Transactions Law Clinical Conference in Washington, D.C. on the Kauffman Foundation Law and Entrepreneurship project, and in June 2009 she will participate in the ABA Global Business Law Conference in Hong Kong. In February 2009, Lisa also served as the Co-Planner of the OLI Business Law CLE Planning Committee for a CLE entitled “Advising Business Clients in Difficult Times: Risks and Opportunities.” Lisa has been performing ongoing pro bono casework with private counsel and Oregon Law Center on the class action case *Liborio v. Del Monte* (set for trial September 2009 in Multnomah County Circuit Court). She was also selected for a Fulbright Teaching Fellowship in Law to begin March 2010 at a law school in Chile. In addition, she was selected as special consultant to the Kauffman Foundation on its Law and Entrepreneurship Project. Lisa also created a partnership with Oregon State Bar Business Law Section, the Bar’s largest section, where SABER and Business Law Society students will edit the Business Law Section’s newsletter beginning in the fall semester of 2009.

Intellectual Property LAWCAST, a national NPR-style audio legal news service for attorneys, interviewed **Lydia Loren** in September about the Federal Circuit’s decision in *Jacobsen v. Katzer* concerning the enforceability of a copyright infringement claim related to content licensed under an Open License. Lydia also spoke at the Oregon State Bar’s day-long conference on The Continuing Evolution of Computer and Internet Law, on the topic “The Digital Millennium Copyright Act: 10 Years Later.” In October Lydia’s article, “The Pope’s Copyright? Aligning Incentives with Reality by Using Creative Motivation to Shape Copyright Protection,” was published at 69 Louisiana Law Review 1 (2008). In this article she argues copyright law should account for the creator’s motivation in determining the level of protection granted to the copyrighted work and that the law should offer less robust copyright protection for differently motivated works. Lydia continues to participate in the Copyright Principles Project hosted

by the Berkeley Technology Law Center and attended the November meeting of this group held at Georgetown University. In December Lydia spoke at the Technology Law Conference in Seattle, organized by Law Seminars International. The topic of her talk was “2008 Update: International Copyright & Trademark Law.” In January she spoke at the kick-off luncheon CLE for the *Ecommerce Deskbook* published by the Computer and Internet Law Section of the Oregon State Bar. Together with former student Dan Buri ('08), Lydia authored the *Deskbook's* chapter on Copyright Law. In February Lydia provided remarks on the political changes in Washington D.C. that may affect intellectual property policy at the American Intellectual Property Law Association's Women in IP dinner, hosted in Portland by Klarquist Sparkman, LLP.

Bob Miller, '91, submitted the first draft of his new book to his publisher, the University of Oklahoma Press, tentatively entitled *Reservation Capitalism: Economic Development in Indian Country*. He will speak on this subject at an Indigenous Peoples international economic development conference put on by the province of Alberta in June. He also signed a contract with Oxford University Press (Cambridge division) to co-write a book with three Indigenous people—who are professors in New Zealand, Australia, and Canada—about how England used the Doctrine of Discovery in our four countries. Bob continues to speak about Discovery and Manifest Destiny issues at various conferences and venues, including, the Oregon Indian Education Association conference at Lewis & Clark, the Oregon Council for Social Studies conference in Grand Ronde, the Tillamook County museum, the Oregon Coast History Association in Cannon Beach, the Oregon History Extravaganza conference in Portland, Blue Mt. Community College, Eastern Oregon University, the Native American & Indigenous Studies Third Annual conference in Minneapolis, the Salish & Kootenai Tribal College, a Montana teacher training conference in Missoula, and the Terwilliger Plaza retirement community. He also gave an eight-hour training session on Indian law to 90 U.S. Fish & Wildlife project leaders and staff in San Diego. He also spoke in Oklahoma City about George Washington and Indian policies at a conference put on by the Mount Vernon Association and the Oklahoma History Center. The show will be broadcast on the web March 31 for schools across the country and will be seen on a wide variety of television programs. In line with other programs it has produced, the Association estimates that more than one million people will see the program. Bob also spoke to a crowd of about 150 people at Portland State University in the World Affairs Council's Great Decisions series on the subject “The Arctic Age.” He also continues to consult on two long-term grant projects with the American Philosophical Society in Philadelphia. Most importantly, though, Bob scored his 100th goal for his men's indoor soccer team in January!

Sandy C. Patrick's article, “See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum” (co-authored with Christine Nero Coughlin and Lisa T. McElroy), was accepted for publication by Georgia State Law Review for its medical law symposium and will be published late this year. She will present the article this summer at the 2009 Association of Legal Writing Directors Conference.

In November 2008, **Melissa Powers** attended the International Union for Conservation of Nature Academy of Law Colloquium in Mexico City, where she presented a draft paper entitled “Food, Fuels, and Farms: Designing a Sustainable Renewable Fuels Policy.” In February 2009, Melissa presented her draft article “The Cost of Coal: Will Climate Change Force Regulators to Reject Coal as a Source of ‘Cheap’ Electricity?” at the University of Pennsylvania Journal of Business Law Symposium. The article will be published in a forthcoming edition of the Journal. Also in February, Melissa participated in two panels regarding climate change at the Public Interest Environmental Law Conference in Eugene. Finally, Melissa's commentary regarding the Obama Administration's energy policy will be published in April in the online edition of *Environmental Law*, the environmental law review of Lewis & Clark Law School.

Pacific Environmental Advocacy Center (PEAC) Director and Associate Professor of Law **Dan Rohl**f was promoted to Professor of Law in October. The month before, Dan gave a lecture at Ohio Northern University as part of the Pettit College of Law Dean's Lecture Series; the school's law review will publish his article based on the talk, entitled "Avoiding the 'Bare Record:' Safeguarding Meaningful Judicial Review of Federal Agency Actions." Dan spoke about salmon survival through the dams on the Columbia and Snake Rivers at the inaugural Northwest Water Law Symposium, a conference produced cooperatively by students at four Pacific Northwest law schools, including Lewis & Clark law student Drew Kerr. He also gave presentations at the annual Public Interest Environmental Law Conference at University of Oregon Law School, including a panel on the future of the Endangered Species Act and a workshop on threats to biodiversity due to climate change. This year Dan also serves as the Vice Chair for Programs of the ABA Endangered Species Committee. Finally, Dan continues to maintain an active docket at PEAC, including cases aimed at modifying dam operations in the Columbia and Snake Rivers to restore salmon and steelhead runs, protecting grizzly bears in Montana from roads and snowmobiles, and conserving rare vernal pool wetlands in southern California.

Janet Steverson published the article "Prenatal Drug Exposure: The Impetus for Overreaction by the Legal Community or a Serious Problem Needing a Serious Solution" in the Winter 2008 issue of the Children's Legal Rights Journal. She presented the article on February 27, 2009 at the Duke Journal of Gender Law & Policy's Symposium; the symposium's theme was The Symptoms of Public Health Policy: Invisible Injuries, the Gendered Body and the Law. This symposium generated another article, "Legislating for the Provision of Comprehensive Substance Abuse Treatment Programs for Pregnant and Mothering Women," which Steverson co-authored with Dr. Traci Rieckmann from Oregon Health Sciences University. This second article will be published in the Spring 2009 symposium issue of the Duke Journal of Gender Law & Policy.

In January 2009, **Juliet Stumpf** presented two papers at the AALS's annual conference in San Diego. The first paper, entitled "Private Actors, Public Policy: Employment Discrimination & the Domestication of Immigration Law," was part of a panel called "At the Border and Beyond: California and the Evolving Workplace" sponsored by the AALS Section on Labor Relations and Employment Law. The following day she presented her draft article "Fitting Punishment: A Proposal for a Graduated System of Immigration Law Sanctions" at the Section on Criminal Justice's panel entitled "Crimmigration: At the Intersection of Criminal and Immigration Law." The panel's title was taken from one of Juliet's recent articles, "The Crimmigration Crisis." In April 2009, Juliet presented "Obeying Immigration Law: The Compliance Conundrum," on a panel at the Law, Culture and Humanities conference in Boston. The paper takes up the question of what motivates compliance with immigration law and whether legal proscriptions and enforcement make a difference. In May 2009, she will act as a reader and discussant for a paper by Mary Fan at the University of Oregon's conference on Contested Citizenships.

Elaine E. Sutherland has completed the remaining two of the four chapters she is contributing to the third edition of *Children's Rights in Scotland* (forthcoming, Fall 2009), of which she is the co-editor. Her chapters are "Children's Rights in Scotland: Where Are We Now?" (with Alison Cleland); "International Standards and Scots Law" (with **John P. Grant**); "Care of the Child within the Family" (sole author) and "The Child in Conflict with the Law" (sole author). Copy is now with the publisher, W. Green, a subsidiary of the Thomson Group, and proofs are expected in June. In March 2009, she delivered a paper, "Reaching Children and Young People", at a conference organized by the Scottish Government in

Edinburgh on Public Legal Education. The paper generated considerable interest, and a pilot project, based on some of the ideas presented, may result.

During the fall of 2008, **Erica Thorson** presented a lecture at the National University of Cordoba in Argentina to an environmental law class on practicing international environmental law. She also participated in a clinical writers' workshop at New York University, where she presented a working paper. In January 2009, Erica participated in a symposium on Global Justice and Climate Change at Duke University, anchoring a panel on international water law and climate change. In conjunction with the symposium presentation at Duke, Erica is publishing an article "Sharing the Himalayan Glaciers: The Role of Territorial Sovereignty" in the Duke Journal of Comparative and International Law (forthcoming May 2009). In February, she participated in two panel presentations at the Public Interest Environmental Law Conference in Eugene: one on environmental clinics and the other entitled "At Odds? Animal Welfare and Human Welfare Juxtaposed." Erica also contributed to the ABA's Year in Review of International Environmental Law, writing the sections on Biodiversity and contributing to the Trade and Environment Section.

Theresa (Terry) Wright accompanied two teams to the February regional ABA client counseling moot court competition in Spokane, Washington. One team, Erik Wilson and Cameron Levine, came in first of twelve teams, thereby earning the right to represent the school and Region 12 at the nationals. Terry accompanied them to the nationals in Durham, North Carolina in March, where they placed first of fifteen after the preliminary rounds, with a perfect score. They advanced from the semi-finals to the finals, where they came in third of three, placing them third in the country, out of 146 teams that had competed on the regional and national level! Terry continues her work on the Oregon State Bar Board of Governors, primarily focusing on access to justice issues. She sits on the Board of the Campaign for Equal Justice, and is liaison to the Oregon Law Foundation Board, Pro Bono and Legal Services Committees, and is on the Bar's Loan Repayment Assistance Program (LRAP) Committee. In late March, she attended the Western States Bar Conference in Turtle Bay, Hawaii, on the island of Oahu. Lastly, this spring, she has been mentoring a number of former clinic students as they embark on their legal careers.

OTHER NEWS

News from Boley Law Library

Congratulations to **Alana Carson**, Reader Services Librarian, who recently received her Master of Library and Information Science (MLIS) degree from the University of Washington. Alana, who is a 1999 J.D. graduate of our Law School, has been with the Boley Library for ten years, first as a student assistant and then as a full-time staff member. Alana's smile is even brighter than normal these days not only because of her accomplishment, but because she now has evenings free from the demands of the distance learning program, not to mention the trips to Seattle. We also have to think Alana was a role model for **Audrey Ferrie**, Library Serials Assistant, in anticipating that we will see those same inspired smiles when Audrey completes the same Master's program this December.

On another note, it appears that the antiquarian law book collecting bug has struck another faculty member. The symptoms have shown up in Professor **Tomás Gómez-Arostegui** and were apparent when he donated a 1795 copy of *A Treatise on the Pleadings in Suits in the Court of Chancery, By English Bill*

by John Mitford. This second edition has been described as “The much expanded second edition of Mitford’s principal work, important to the literature of equity.” Thank you Tomás.

Another donation, but of contemporary materials, came from **John Kroger** in the form of transcripts of some of the major mafia trials of the 1980s and 1990s. This collection is unique, and once available for use will become a major resource for scholars. The “once available” means, as John put it, “99.9% of the material is public information, and can be made public, there is . . . a small amount of ‘sealed’ non-public material.” The Library will need to remove this material before it becomes available for research use. This “vetting” is a small price to pay for such a worthwhile collection. Thank you John for the contribution.

News from the International Environmental Law Project (IELP)

The **International Environmental Law Project (IELP)** has had a successful year fundraising. It has raised more than \$100,000 for projects from a variety of clients, including Greenpeace–Netherlands, Greenpeace–United States, Humane Society International, New World Forestry Services, and the Whale & Dolphin Conservation Society. The largest grant, about \$75,000, is to help the government of Mauritius develop legislation to protect environmentally sensitive areas. To implement this project, IELP Director **Chris Wold** has twice traveled to Mauritius to work with government officials to design appropriate conservation strategies. IELP is also working with a small group of governments participating in the Convention on International Trade in Endangered Species (CITES) to develop rules for trading in whales and sharks taken on the high seas. IELP is also helping determine the rules for trade in CITES-protected coral specimens from Guantanamo Bay. In addition, IELP has drafted a resolution to rationalize the units of measurement that Parties use to report wildlife specimens in trade, which the United Kingdom has agreed to propose to the CITES Parties in their next meeting; it has asked IELP to do some follow-up work to support its efforts. IELP has also provided legal support for efforts to list the narwhal (*Monodon monoceros*) on Appendix I of CITES—which would effectively prohibit commercial trade—by conducting a detailed history and analysis of trade in narwhal ivory.

IELP also continues its work on other wildlife law issues. IELP provided a legal analysis to the United Nations Environment Program and the Secretariat of the Convention on Migratory Species (CMS) policy and legal reasons for overcoming U.S. resistance to joining CMS. IELP has conducted an extensive survey of the history of aboriginal subsistence whaling management under the International Convention on the Regulation of Whaling, which has supported efforts to curb commercial whaling conducted under the auspices of aboriginal subsistence whaling. In addition, IELP is preparing a comparative legal analysis of international scientific bodies in support of efforts to reform the Scientific Committee of the International Whaling Commission.

IELP is also engaged in a number of projects concerning climate change. For example, on behalf of South Asian Waterkeeper groups, IELP drafted a “Water Security Treaty” for the South Asian countries that would promote cooperation and conservation in light of the hastening of Himalayan glacial retreat due to climate change. The draft treaty proposes a number of innovative cooperative efforts, including regional disaster preparedness plans and river development assessments.

News from Lewis & Clark Legal Clinic

The 2009 Spring semester of the Lewis & Clark Legal Clinic was another busy semester of clinical education. The Legal Clinic enrolled 41 law students who were at the Clinic for a minimum of eight hours each week. Under the supervision of the clinical faculty, these Legal Interns represented clients in

residential eviction defenses, Chapter 7 bankruptcy, expungements, unemployment compensation hearings, tax controversies with the Internal Revenue Service, and a variety of family law issues. With the downturn in the economy, an increasing number of individuals are requesting assistance with Chapter 7 bankruptcy. As compared to prior years, many more of these applicants are enduring financial hardship because of loss of employment. The number of applicants who are facing foreclosure proceedings has also increased. The Legal Clinic has the resources to assist only a small number of the applicants for assistance. For those individuals who are represented by the Clinic, the Legal Interns conduct the initial interview, provide counseling, draft and file bankruptcy petitions, and appear at §341(a) (Meeting of Creditors) hearings.

This academic year marks the twelfth year in which Clinic students have participated in the Oregon State Bar Debtor Creditor Section Pro Bankruptcy Clinic. This Bankruptcy Clinic is held once each month in the evening at rotating locations in Beaverton, Portland, and Gresham. At each session, low income debtors are interviewed and assisted by volunteer attorneys. In March, a plaque was posted at the Bankruptcy Court listing the Lewis & Clark Legal Clinic among those organizations which in 2008 regularly provided volunteer services through the Pro Bono Clinic.

Legal Interns at the Clinic also represented a number of clients in the defense of residential eviction actions. Some of these cases proceeded to trial and a number of the cases were settled through negotiation at the courthouse. Residential eviction defenses are fast-moving cases which typically utilize teams of two students, at least one of whom is certified to appear in court. At the first appearance, the certified student will typically appear before the court while the non-certified student attempts to negotiate a settlement in courthouse hallway.

Students in the Clinic's Employment Program continued to represent individuals in unemployment compensation hearings. The students had a major victory in February: The client, an unemployed carpenter, received more than \$11,000 in unemployment benefits that, according to the State, had been obtained fraudulently. The alleged fraud concerned the client's failure to tell the Employment Department that he declined an offer to work two days in St. Helens at a job that paid lower than the average wage paid to carpenters in the locality. The client explained that he did not take the job because, at the time it was offered, gas prices were so high that he could not afford the costs of transportation. The student Legal Interns proved, based on evidence that they obtained from the Employment Department itself, that the failure to report the job refusal was neither fraudulent nor a basis to recover payments that had already been made to the client. In addition, because of the students' work, the client received benefits on the remainder of his unemployment claim. All together, the victory was in excess of \$14,000!

The Legal Clinic has operated an Employment Program for many years. Individuals who are denied unemployment benefits and request a hearing typically find it extremely difficult, if not impossible, to obtain representation. Students at the Clinic are able to provide a valuable and necessary service to these individuals, although the Clinic's resources permit it to assist only a fraction of the total number of individuals who have unemployment compensation hearings. Unemployment compensation hearings also provide a unique training opportunity for the students. Every hearing involves fact investigation which has to be completed within a very short timeline. Hearings are held by telephone, and involve opening and closing statements, direct and cross examination, and objections. Since the hearings are administrative, both certified and non-certified students may participate. By the end of the semester, the Clinic expects to represent clients in seven hearings. **Tigran Eldred** has been supervising students in the Employment Program since he joined the Legal Clinic in 2005. Family circumstances have dictated that Tigran move to the East Coast, at least for the next academic year. Tigran has accepted a visitorship position for next year at Hofstra Law School. Unfortunately, the Legal Clinic does not have the resources to replace Tigran for the next academic year, and after many years will no longer operate the Employment Program.

The Clinic continues to operate a Family Law Program. This semester, the family law program has seen a significant increase in the number of child support modification cases it is accepting. Clearly, this is a result of the economic downturn, with most of the clients seeking downward modifications. The Clinic has had several administrative hearings in which non-court-certified students have been able to “first chair” the cases at the hearing. Several more are heading to court. In the domestic violence realm, the biggest case this semester has been representing three undocumented women who have been sexually exploited and harassed by a former employer. The police are involved, and the Clinic hopes to obtain permanent Stalking Protective Orders on behalf of its clients. The Clinic has actually settled at least three Restraining Order or Stalking cases, keeping the clients, and in some cases their children as well, safe. The Clinic also has several dissolution of marriage cases set for trial later in the semester, and it is hoping that those that do not go to trial in April will be set for June, when summer Clinic students will be able to handle them.

As a prerequisite to graduation, the Law School requires each student to complete a course on the duties and responsibilities of the legal profession. The Clinic continues to be one of the courses through which this requirement can be satisfied. Similar to prior semesters, the Clinic held a two-hour Ethics class every Friday. The course is team-taught by the Clinic faculty, focusing on professionalism and the Oregon Rules of Professional Conduct. The format of the course involves a series of ethics scenarios, with the students required to analyze the issues raised in the scenarios and submit a written discussion prior to each class.

The forthcoming Summer semester at the Clinic will be busy, as sixteen students have enrolled for the one-month term.

News from the Low Income Taxpayer Clinic

The Low Income Taxpayer Clinic (Clinic) has conducted 37 interviews for new clients so far during the Spring semester. Sixteen of those cases are U.S. Tax Court cases.

U.S. Tax Court Calendars were held in Portland on February 9 and March 9. The February 9 Calendar was a Regular Case Calendar, and the March 9, 2009 Calendar was a Small Case Calendar. The Clinic was involved in seven cases on the Regular Case Calendar: one was tried, three were settled, two were continued, and one involved advice only. The case tried on this Calendar involved equitable innocent spouse relief under Internal Revenue Code (IRC) § 6015(f), and it was tried for the most part by two of the students. The Clinic was involved in eleven cases on the Small Case Calendar: Eight of the cases were settled, with four of them being conceded by the IRS. One client moved out of state, and the other two cases involved advice only.

Today the Clinic has an open inventory of 52 cases, 24 of which are U.S. Tax Court cases. The remainder are “collection” cases, i.e., cases where the client has an unpaid tax liability. Since the Clinic represents low income taxpayers, the cases almost always involve clients who cannot afford to pay their tax liabilities. A significant part of the collection cases involve IRS levies upon Social Security benefits. Historically the Clinic has been very successful in convincing the IRS to put its clients in a “Currently Not Collectible” (CNC) status; where the Clinic can show the IRS that a client needs every dollar coming in each month to pay basic living expenses, the IRS will classify the client as CNC. This means that the IRS will cease taking enforced collection action against them. During the Spring semester thus far the Clinic has continued its almost perfect record of getting its collection clients classified as CNC where appropriate.

News from the National Crime Victim Law Institute (NCVLI)

In January, **Meg Garvin** presented on the federal Crime Victims' Rights Act to 50 Assistant United States Attorneys at the national training center in Columbia, South Carolina.

NCVLI also has several significant trainings on the near horizon. First, on April 3rd, Meg Garvin will teach a one-hour training on the Ethical Implications of Victims' Rights, as part of the Oregon Bar Association's Criminal Law Section's annual Criminal Law CLE. Second, on April 28, in honor of national Crime Victims' Rights Week, NCVLI, in collaboration with the Oregon Department of Justice, will present a CLE entitled "Victims' Rights in Oregon's State and Federal Criminal Justice Systems." **Doug Beloof**, from Lewis & Clark Law School, and Professor Paul Cassell, from the S.J. Quinney College of Law at the University of Utah, will be the primary speakers. Finally, NCVLI's annual Law & Litigation Conference, which draws more than 120 criminal law attorneys and advocates from across the country will be held June 30–July 1 at the Benson Hotel in Portland, Oregon.

In recent litigation, NCVLI filed an amicus brief in *In re Stewart*, No. 08-16753, 2008 WL 5265344, (11th Cir. Dec. 19, 2008). NCVLI participated in the case because it was the first opportunity for the Eleventh Circuit Court of Appeals to address the significant issue of what standard of review a reviewing court should apply when reviewing petitions for writ of mandamus under the federal Crime Victims' Rights Act. This issue is currently the subject of a circuit split. The Eleventh Circuit granted the writ but did not address the standard of review issue.

In January 2009, **Sarah LeClair** joined NCVLI as a staff attorney, and the coordinator of NCVLI's National Alliance of Victims' Rights Attorneys (NAVRA). Prior to joining NCVLI, Sarah worked as an associate attorney at Miller Nash LLP in Portland, focusing her practice in the areas of general commercial litigation and employment, education, and environmental law. She has a B.A. in History from the University of Oregon and a J.D. from the University of Virginia School of Law.

News from the Pacific Environmental Advocacy Center (PEAC)

PEAC Litigation and Advocacy:

Aubrey Baldwin, **Allison LaPlante** and **Tom Buchele** continue to represent Sierra Club, Northwest Environmental Defense Center, Friends of the Columbia Gorge, Columbia Riverkeeper, and Hells Canyon Preservation Council (collectively the Coalition) in their work to improve air quality in the Pacific Northwest. This work is three-fold. First, PEAC represents the Coalition before the Oregon Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC) in a Regional Haze rulemaking process that would require the installation of pollution control technology to clean up Oregon's oldest and dirtiest industrial air polluters. Second, PEAC represents the Coalition in a Clean Air Act citizen suit against Portland General Electric Co. for violations of air quality laws at the PGE Boardman coal-fired power plant in Morrow County, Oregon. The case is currently being briefed on PGE's motion to dismiss, which involves several jurisdictional issues as well as legal questions regarding the Clean Air Act and Oregon's complex regulatory program. Third, PEAC represents the Coalition in proceedings related to electricity ratemaking, and provides technical assistance on related public relations, legislative and state and local administrative fronts. Third-year students Kristen Monsell, Johannes Epke and Gilbert Mears are currently working on the rulemaking and litigation.

Tom Buchele and **Aubrey Baldwin** continue to represent Columbia Riverkeeper before the Federal Energy Regulatory Committee (FERC) in proceedings to license the Bradwood Landing Liquefied Natural Gas Terminal on the Columbia River. FERC has issued a final order to Bradwood Landing, and PEAC has sought rehearing, along with the States of Oregon and Washington, and the National Marine Fisheries Service, and has filed a Petition for Review with the U.S. Court of Appeals for the Ninth Circuit. Third-year students Neal Clark, Tarah Heinzen, Casey Barnard, and Hallison Putnam are working on the case.

Tom Buchele continues to represent a coalition of groups regarding the proposal to build a new, much larger I-5 bridge over the Columbia River. The groups include National Environmental Defense Center (NEDC), Columbia Riverkeeper, Coalition for a Livable Future, Audubon Society of Portland, and the Association of Oregon Rail and Transit Advocates (collectively, 'Bridge Coalition'). The Bridge Coalition generally supports the consideration of alternative solutions which do not increase the current capacity of the bridge in terms of single-occupancy vehicles and will not induce additional traffic and sprawl, alternatives that truly emphasize additional bicycle, pedestrian and public transit facilities, and alternatives that seek to actually reduce the pollution emissions and other adverse impacts from the bridge and the vehicles that will use it. After submitting extensive comments on the Draft Environmental Impact Statement in July of 2008, the Bridge Coalition has continued to press its views in public hearings. Tom has testified before the Portland City Council and Metro Council on behalf of the Bridge Coalition on multiple occasions and has been quoted in several newspaper articles about the proposed bridge. PEAC has also submitted multiple Freedom of Information Act and state public records requests on behalf of the Coalition. Third-year student Tarah Heinzen and second-year student Mark Billingsley have been assisting Tom with PEAC's representation.

Dan Rohlf and **Tom Buchele** filed a lawsuit in August of 2008 on behalf of NEDC to block a proposal by the city of Lake Oswego to build a dock for large, "non-trailerable" boats on the Willamette River, only a few hundred feet from the mouth of Tryon Creek. The lawsuit, filed in the federal district court in Portland, challenges the approval of the dock proposal by the Army Corps of Engineers and the National Marine Fisheries Service (NMFS). NMFS had to approve the dock because the Willamette River and Tryon Creek are designated critical habitat for several salmon and steelhead species protected by the Endangered Species Act (ESA). Generally, the lawsuit claims that the approvals by these agencies failed to adequately consider the impacts of the proposed dock on these threatened species and the extensive restoration work that has recently occurred in the Tryon Creek watershed. Many Lewis & Clark students, staff and faculty members have actively participated in these restoration efforts, which have been quite successful. The most recent fish surveys in the creek have confirmed that steelhead, coho and Chinook salmon have returned to the creek after a long absence. In early March, PEAC filed its opening summary judgment brief in the case on behalf of NEDC. Its reply will be due in April, and we hope for a ruling from the court before work on the dock begins in July. Third-year student Ryan Couch and second-year student Mark Billingsley are working on the case.

Dan Rohlf has been active in litigation on behalf of the National Wildlife Federation challenging significant revisions to regulations implementing the ESA, which the Bush Administration issued just as its term in office expired. These "midnight" regulations exempt greenhouse gas emissions from consideration under Section 7 of the statute and weaken the ESA's interagency consultation process in other ways. President Obama issued a memo asking federal agencies not to use these regulations while his administration reviews them; Congress also passed a budget rider authorizing the Secretaries of Commerce and Interior to rescind the new regulations without going through normal procedural requirements. The regulations thus may be repealed without a need to complete the litigation.

Allison LaPlante and **Dan Mensher**, representing Northwest Environmental Advocates in a suit to ensure that Oregon's waters remain cool and protect threatened and endangered salmon, recently won another important motion to force the federal agency defendants to produce critical documents they had

attempted to withhold from judicial review under the Administrative Procedure Act. With the help of student Matt Moore, PEAC has succeeded in creating legal precedent to ensure that federal agencies cannot hide key documents behind an expansive vision of the “deliberative process privilege.” Allison and Dan, along with Debbie Sivas of the Stanford Environmental Law Clinic, are also representing Northwest Environmental Advocates, the Center for Biological Diversity, and People for Puget Sound, in their challenge against EPA’s new permit for pollutants discharged from ships. Last summer PEAC won its case before the Ninth Circuit, which found that EPA’s exemption of ships from the Clean Water Act (CWA) was illegal. Now PEAC is challenging the permit EPA created in place of the exemption, because the permit does little to address the toxic pollutants and invasive species that ships discharge. Though the new case was just filed in January, Allison and Dan, with significant help from student Julie Nimnicht, have already briefed several motions before the Panel on Multicircuit Litigation, the Ninth Circuit, and the D.C. Circuit.

Allison LaPlante is representing Northwest Environmental Advocates in another water quality case, this one pertaining to Oregon’s water quality standards for toxic pollutants. Allison has been negotiating with EPA, the NMFS, and the Fish and Wildlife Service to ensure prompt action on Oregon’s water quality standards for toxic pollutants and the species affected by them. Allison is also advising Northwest Environmental Advocates in related state rulemaking proceedings regarding criteria for protection of human health from consumption of fish with high levels of toxic pollutants.

Dan Mensher has continued to represent NEDC and Friends of the Tualatin River National Wildlife in their suit against a fifty-year-old unlined landfill that is discharging untreated pollutants and landfill leachate into the Tualatin River. Students Claire Tonry, Oday Salim, and Jim Richardson have played key roles in developing legal theories, finding key evidence in the 50,000 pages of produced documents, and preparing the summary judgment motion. In March, Dan took successful depositions of the landfill owner, the landfill controller, and one of the landfill’s many consultants. Dan, with the help of student Julie Nimnicht, also just settled a case on behalf of Willamette Riverkeeper against the Oregon DEQ for its illegal use of “compliance schedules” in CWA permits. Dan is also in the middle of negotiating a settlement in a long-running case against Oregon DEQ and its failure to properly regulate stormwater.

Other PEAC Activities:

On October 30, **Aubrey Baldwin** presented, along with Geoff Tichenor of Stoel Rives and Paul Logan of the Oregon DOJ, a panel discussion on current topics in air litigation in a web-based CLE produced by the American Air and Waste Management Association. On February 28, Aubrey presented, along with Patrice Sims of the Natural Resource Defense Council and Howard University, and Robert Ukeiley, a panel discussion on fighting coal-fired power plants at the Public Interest Environmental Law Conference at the University of Oregon. During the Fall 2008 semester, Aubrey taught Environmental Litigation with **Tom Buchele**. Aubrey is currently supervising two Lewis and Clark College students in an independent study focused on environmental law and policy. **Dan Mensher** judged ten practice rounds of the Environmental Moot Court team and two rounds of the Animal Law Moot Court teams. Dan also presented at a stormwater management meeting last fall alongside stormwater engineers, and attorneys for both the state and the regulated community. Dan is also working on bringing PEAC into the realm of electronic discovery—a process critical to help PEAC deal with the information- and record-intensive cases on its docket. **Allison LaPlante** also helped prepare the Environmental Law and Animal Law Moot Court teams for their national competitions by judging practice rounds. Allison is currently supervising several students’ independent studies on topics such as the regulation of coal-fired power plants under the Clean Air Act, EPA’s use of “general permits” under the CWA, and the use of the “concurrent remedy doctrine” to bar citizen suits for injunctive relief.

News from the Small Business Legal Clinic (SBLC)

During Spring 2009, the SBLC served 44 clients on approximately 82 matters. SBLC interns worked with 21 clients on 39 matters through the Student Intern Program, and between January 1 and March 31, 2009 local volunteer attorneys served 23 clients on 43 matters through the SBLC's Pro Bono Project. Eleven students worked in the Student Intern Program during the semester, the SBLC's largest class since opening its doors in September 2006. They represented clients on a variety of legal issues, including assisting in entity selection and formation, drafting standard customer and vendor contracts, researching and advising on regulatory compliance and licensing issues, advising on intellectual property issues and registering trademarks, reviewing and advising on commercial leases, and assisting in the formation of tax-exempt non-profit entities. Currently, the SBLC and Lewis & Clark's Animal Law Clinic are collaborating on a project to form a tax-exempt non-profit organization for a client whose mission is to stop the slaughter of chimpanzees in Cameroon as part of that country's bushmeat trade.

Also, the SBLC and its staff were featured in the February 2009 issue of Portland Business Alliance's Small Biz Connection e-magazine: http://www.portlandalliance.com/news_and_pub/smallbiz_connection/feb2009/index.htm.

Demand for the SBLC's services continues to grow, resulting in a variety of great educational opportunities for students and much-needed affordable legal services for Portland's small business community.