Ohio Northern University
College of Law
525 Main St.
Ada, OH 45810

ADDRESS SERVICE REQUESTED

A Publication of the Ohio Northern University Pettit College of Law

2011

AUGUST
30  First Day of Law Classes

SEPTEMBER
29  Ohio Supreme Court in Session at ONU

OCTOBER
6  Carhart Lecture, William Patry
8  Phi Alpha Delta CLE
8-10  Homecoming 2010

FEBRUARY
12  Carhart Lecture, William Patry
16  Inn of Court
17  Dean's Lecture Series, Markus Zimmer
21  Accepted Students Day 1
27-3/6  Spring Break

MARCH
12  Accepted Students Day 2
16  BLSA Diversity Forum
25-27  Biltmore Law Alumni Event

APRIL
6  Celebrezze Competition final round
8  Women in Law Symposium, Reception & Portrait Dedication
15  Honors Banquet
20  Inn of Court
22-25  Easter Recess

MAY
5  Woodward Lecture
15  Law Commencement
Sports Center, 2:00 pm
31  Summer Classes Begin

For details about these events or other activities at the ONU College of Law, please see www.law.onu.edu/Calendar
This is an exciting year for the Pettit College of Law at Ohio Northern University. Not only are we celebrating 125 years of preparing students for the legal profession, but we are also celebrating our largest total enrollment in 5 years, a number of new faculty members and an enhanced curriculum.

This issue of the Writ focuses on some of the many exciting things going on here. We hope you enjoy the "ONU Law by the Numbers" feature and the articles which touch upon many key accomplishments of our talented students, alumni, faculty and staff. These markers are an indication of the progress of the college over the years. I am confident that ONU Law will continue to rise to the challenge of preparing students for the legal profession well into the future while staying true to its ambitions of providing a solid legal education with a focus on practical skills in an environment which features personal attention supported by a number of dedicated faculty and professionals.

While celebrating this milestone year in the college’s history and recognizing its successes, we must be mindful of the challenges which continue to face ONU Law. We need your continued support in a number of ways, including assisting Career Services with identifying employment opportunities for students and alumni and providing financial support for the college and its initiatives. We are sincerely grateful for the generosity of our alumni and friends who continue to give to programs such as the Northern Fund, the Public Interest Fellowship, and the Hanson Fellows Program. Alumni support is critical to the success of the college.

As we continue to celebrate this momentous occasion in the college’s history, we invite you back to Ada to visit the campus and see the wonderful things that are happening here. I look forward to seeing you back on campus in the near future!

Sincerely yours,

David C. Crago
Dean and Professor of Law

"Know Thyself"
–Socrates

"Control Thyself"
–Cicero

"Give Thyself"
–Jesus

Your support of the Pettit College of Law is greatly appreciated.
WINTER 2010

THE Writ

A Publication of the Ohio Northern University Pettit College of Law

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Ohio Northern University
Pettit College of Law

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The Writ is the official publication of the College of Law. The Writ is published once a year and distributed to alumni and friends of Ohio Northern University’s Claude W. Pettit College of Law.

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As ONU Law celebrates 125 years of preparing students for the legal profession, we highlight some key numbers about us.

Number of years Ohio Northern University Law has been preparing students for the legal profession

LAW LIBRARY STATS:

- Current volumes in collection: 430,000
- Number of seats in library: 306
- Hours open per week: 113

Oldest Law School in Ohio

2nd Oldest Law School in Ohio
1,317 Average number of applications received each year by Law Admissions over the last 3 years.

31 States represented in our current student body.

26 States represented in the L-1 class.

16 States represented in the L-2 class.

19 States represented in the L-3 class.

157 Undergraduate institutions represented in our current student body.
90
NUMBER OF CREDIT HOURS
TO EARN A JD DEGREE
(For the 2010 entering class)

7,035
GRADUATES
OF ONU LAW
5,126 – LIVING
ONU LAW ALUMNI

29,038
LIVING ONU
ALUMNI

States where ONU Law alumni reside, plus the District of Columbia, Guam and the U.S. Virgin Islands

TOP 5 STATES WITH MOST ONU LAW ALUMNI
1] Ohio 1,852
2] Pennsylvania 581
3] New York 286
4] Florida 226
5] New Jersey 177

COUNTRIES OUTSIDE
OF U.S. PROTECTORATES
WHERE ONU LAW ALUMNI RESIDE

+25
39 NUMBER OF STUDENTS WHO HAVE GRADUATED FROM OUR LLM PROGRAM SINCE ITS INCEPTION 4 YEARS AGO

$3.5 MILLION IN SCHOLARSHIPS TO ALL THREE CLASSES THIS ACADEMIC YEAR

144 Number of students who have traveled to Iceland through the Icelandic Legal Exchange Program

- 2010-11: ONU Law has the largest total enrollment in 5 years.
- The 2010 entering class is the largest entering class in 4 years.
19TH EDITION OF THE BLUEBOOK CURRENTLY USED FOR RESEARCH AND WRITING COURSES

1,800 Blue exam booklets used during the last academic year

132 ISSUES OF LAW REVIEWS DISTRIBUTED

36TH VOLUME OF THE LAW REVIEW THAT WILL BE COMPLETED THIS YEAR

94% EMPLOYMENT RATE FOR CLASS OF 2009

10:1 STUDENT TO FACULTY RATIO

539 FANS OF ONU LAW ON FACEBOOK

102 FOLLOWERS OF ONU LAW ON TWITTER

AND COUNTING...
Social Media @ ONU Law
A great way to stay connected

Are you following ONU Law on Twitter?
Are you a fan of ONU Law on Facebook?
Have you joined the ONU Law group on LinkedIn?
Have you seen the ONU Law photo album on Flickr?

Twitter is estimated to have more than 18 million registered users in the United States, with 400 million users worldwide. LinkedIn has over 50 million visitors worldwide.

These social media outlets provide a fantastic opportunity to stay connected with classmates, faculty, staff, students and friends of ONU Law. We regularly post notices about events, student, faculty and alumni accomplishments, and news about ONU Law, as well as photos from events such as homecoming, class reunions and the donor dinner. Feel free to post discussion items, job openings and updates.

Find out what you are missing. Now’s the time to connect with us to get the latest updates and to show your support.

- On Twitter, you can follow ONU Law at twitter.com/ONULaw
- On LinkedIn, you can join the ONU Law group at http://www.linkedin.com/groupRegistration?gid=84070

Linkedin

You can connect to all of them from our website at www.law.onu.edu

Have you seen the new ONU Law website?

Take a look at what is available at www.law.onu.edu and send any feedback to lawwebmaster@onu.edu

* Upcoming events
* Update your information
* Alumni achievements
* Order transcripts
* View past issues of the Writ, Sidebar Journal and other publications
* View ONU yearbooks back to 1911

ON THE WEB @ LAW.ONU.EDU
May 16, 2010

Justice Robert R. Cupp speaks at ONU Law Commencement Ceremony

The 2010 Ohio Northern University Pettit College of Law commencement took place on Sunday, May 16, at 2 p.m. in the ONU Sports Center. One hundred one students graduated in the May and December classes. Dr. Kendall L. Baker, Ohio Northern president, presided over the ceremony.

In addition to juris doctor degrees, ONU conferred LLM degrees to 11 lawyers from transitional and emerging democracies who completed a yearlong course of intensive study in the Democratic Governance and Rule of Law program.

The Sports Center opened for the commencement exercises at 12:30 p.m. A musical prelude began at 1:30 p.m., followed by the procession of faculty and juris doctorate candidates.

Robert R. Cupp, BA ’73, JD ’76, current justice on the Supreme Court of Ohio, delivered the commencement address. He has committed much of his 30-year career to effective public service. Prior to his election to the Supreme Court of Ohio in 2006, Cupp served on the Ohio Court of Appeals, Third Appellate District and as a member of the Ohio Senate for 16 years, from 1985-2000.

Academically ranked at the top of her class, Megan R. Roby, of New Brighton, Pa., delivered the student address, and David C. Crago, dean of the College of Law, gave remarks. Graduating law students Aaron M. Baker, of Ohio City, Ohio, gave the invocation; Sean A. Mott, of Biglerville, Pa., performed a musical benediction, and Elijah A. Osiro, of Kisumu, Kenya, gave the spoken benediction. Jacqueline A. Cook, of West Chester, Ohio, sang the national anthem.

Crago, assisted by members of the tenured law faculty, placed the academic hood upon each candidate, followed by Baker’s presentation of the diplomas.

A reception for graduates and families was held in the College of Law immediately following the ceremony.
Professionalism Focus of Supreme Court Symposium

The Supreme Court of Ohio hosted a Student to Lawyer Symposium on Friday, Dec. 3, 2010, at the Ohio Judicial Center. Law school academics, law school students, experienced practicing attorneys, judges and new lawyers were invited to attend. Coordinated by the Commission on Professionalism, the Student to Lawyer Symposium’s goal was to encourage discussion on how professionalism may become more incorporated throughout the law school experience, so that law schools may better prepare their students to be exemplary legal professionals.

Presentations were made regarding Washington & Lee’s professional development program and the University of St. Thomas School of Law’s mentoring program. Additional sessions focused on effective teaching methods and a panel discussion. In addition, each Ohio law school submitted a video highlighting their school’s professionalism initiatives. A bound volume containing the symposium’s materials, which also contained professionalism training information from each of the law schools, was distributed to all participants. Several individuals associated with Ohio Northern attended the event, including Robert R. Cupp, BA ’73, JD ’76, justice, Supreme Court of Ohio; Kalpana Yalamanchili, JD ’82, director of bar services, Ohio State Bar Association; Richard Warren, JD ’66, judge, Allen County Court of Common Pleas; Steve Holland, JD ’81, administrative director, Supreme Court of Ohio; Nancy Paine Sabol, director of academic support and associate professor of law, Ohio Northern; and Mindi Wells, BSBA ’95, JD ’98, assistant dean for administration and student services, Ohio Northern.

Students to Lawyers at Ohio Northern University

By Stephen C. Veltri, associate dean and professor of law

Ohio Northern University began educating lawyers 125 years ago. Personal attention to its students and hands on skills training has long been a feature of education at the University and generations of skilled, practicing attorneys have begun their careers at the College of Law.

Building on this tradition, the College of Law began a comprehensive review of its curriculum in 2007. As part of this process, the law faculty solicited the advice of practitioners and leaders of the bar including the members of the College of Law Alumni Association. The faculty also drew on the insights published in 2007 by the Carnegie Foundation for the Advancement of Teaching in its report “Educating Lawyers Preparation for the Profession of Law.” Both the faculty and the members of the bar it consulted shared the view of the Carnegie Foundation that effective legal education should integrate formal knowledge with the experience of practice.

Both the faculty and the members of the bar it consulted shared the view of the Carnegie Foundation that effective legal education should integrate formal knowledge with the experience of practice. of the profession. The revised program of study will be implemented over a three year period. The first year law class admitted in the 2010-11 academic year, notably the 125th in the history of the law college, will be trained entirely in the new curriculum.

The Academic Calendar

In order to achieve the objectives of the law faculty’s curriculum reform, Ohio Northern revised the academic calendar of the law college. Like most academic institutions, the law college had operated under a standard calendar consisting of two 15-week semesters. The traditional calendar was well suited to the doctrinal courses that form the core of the law curriculum. It was not very well suited, however, to concentrated skills courses where students work in depth on a problem. Moreover, the faculty, in its effort to address the concerns of the Carnegie Foundation, wanted to bring leading practitioners to campus. While good lawyers can find a day or two to share their skills and experiences with law students, it is very difficult for them to clear their calendars for 15 to 30 short class sessions. Finally, the faculty felt strongly that its students should have the opportunity to apply legal doctrine to the cutting edge issues of the day and to travel and learn off-campus, where that experience would be worthwhile.

To further these goals, the College of Law shortened its Fall and Spring semesters from 15 to 13 weeks. In between these semesters, the law college placed a new January term. The Spring and Fall semesters still provide a framework for standard coursework. The new January term, however,
offers a vehicle for offering in-depth skills courses, mentoring by experienced practitioners, exploring contemporary issues and travelling off-campus where that would enhance student learning.

**THE FIRST YEAR OF STUDY**

The reforms adopted by the faculty to the first year of law study at Ohio Northern seek to implement one of the fundamental recommendations of the Carnegie Foundation to incorporate lawyering, professionalism and legal analysis from the very beginning of law school. The faculty’s new program of study better integrates law school with practice and introduces students to the values of the profession from the day they enter the college. This effort begins with the orientation program required of all incoming students. The first session of the first day introduces all students to the expectations of professionalism. In recent years, the college has been privileged to have this session led by Ohio Supreme Court Justice Robert R. Cupp, whose career in public service exemplifies the best values of the profession. At the close of this session, Justice Cupp leads the students in an oath of professionalism in which the students commit to approach their craft as a calling to serve their clients and the public good.

In addition, beginning with the 2010-11 first-year class, every student entering Ohio Northern is introduced during orientation to experienced lawyers who have agreed to serve as class mentors. These lawyers then return to the campus during the January term of the first-year of study and at other times throughout the students’ three year course of study. Through this mentoring program, Ohio Northern hopes to give every student who enters the college the chance to form a relationship with a role model.

The new curriculum employs the January term to further serve the objectives of the Carnegie report. All first-year students take only one course during the January term titled Legal Problem Solving and Analysis. This course is designed to help the students see how lawyers use legal doctrine to solve problems. It is entirely problem based and gives the students the experience of approaching problems as lawyers do in firms, as part of a group or team. A major goal of the course is to bring the profession to the students. Practicing lawyers, including the class mentors, are part of the instructional team leading the course. These lawyers bring their experience, skills and ethical concerns to the class. In this fashion, the course seeks to wed doctrine with practice. During the upcoming January term, for example, students will be given an opportunity to interview a prospective client injured by a tort and then fashion a complaint. The practitioner, however, will discuss with the students the other concerns he raises with a prospective client in his initial meeting, making sure, for example, the client understands the demands and expense of litigation and is situated to face it. In future class sessions, the students will be presented with a police report and will be asked to formulate a proposed indictment on multiple
charges. An experienced prosecutor will then discuss with the students the ethical and other concerns she has when she makes charging decisions. In this fashion, the course hopes to move the students beyond the standard fare of first-year law school, the antiseptic analysis of the elements of a tort or crime, with what the Carnegie Foundation called the “rich complexity of actual situations that involve full-dimensional people.”

As part of the new January term course in the first-year curriculum, the students will observe an actual session of the Ohio Third District Court of Appeals held at the law school. Following the session, the students will be given the opportunity to interact with the members of the bench and the advocates. Again, the effort will be to have the students observe lawyers and understand how the choices the attorneys make during the course of the litigation frame the issues presented to the court.

The final change made to the first-year curriculum addresses what has long been seen as a shortcoming of legal education. The standard first-year curriculum was designed in the late nineteenth century, when most American law was crafted by judges as common law. Today, statutes and administrative regulations form a much greater part of the law. Consequently, the faculty has added a course titled Public Law and the Legal Process in the Spring semester of the first-year that will introduce students to legislative and administrative law.

UPPER CLASS CURRICULUM

Following the publication of the MacCrate Report by the American Bar Association in 1992, Ohio Northern revised its upper class curriculum to require more training in professional skills. The College of Law requires that every student complete at least 10 credit hours in classes designated as skills courses or in clinical placements. To be designated as a skills course, a class must involve simulations, drafting assignments or other exercises that mirror practice. Some skills courses involve live client experiences. Students enrolled in Alternative Dispute Resolution, for example, mediate actual disputes that have reached a local court. The skills courses offered by the College of Law include Advanced Appellate Advocacy, Interviewing, Counseling and Negotiation, Advanced Legal Research, Law Office Economic Management, Alternative Dispute Resolution, Bankruptcy: Practice & Procedure, Business Planning, Real Estate: Residential Conveyances, Complex Litigation, Real Estate Commercial Development, Civil Practice: An Introduction, Criminal Practice: An Introduction, Criminal Practice: Advanced, Trial Advocacy, Estate Planning, Trial Advocacy: Advanced and International Commercial Arbitration Law and Guardian-ad-litem Law and Practice.

The law college also offers a number of clinical opportunities to its students. The college maintains and staffs a law clinic in the City of Lima that provides legal services to the low income individuals. It also offers a civil litigation clinic in conjunction with a local legal aid society. The corporate transaction clinic of the college provides services to local non-profit organizations and churches in matters such as incorporating, obtaining tax exempt status and real estate work. The bankruptcy clinic involves work with a bankruptcy trustee or debtor’s counsel. Students enrolled in the environmental clinic work with a non-profit environmental group in
The college also offers clinical placements in various state and local government agencies. Students have the opportunity to work under the supervision of local prosecutors representing the state in misdemeanor proceedings. They can also have a similar experience in the public defender’s office. Finally, students can work under the supervision of federal and state judges in judicial externships.

Generally, the local bench and bar have been very supportive of Ohio Northern students participating in clinic. In many ways, the location of the college has been an advantage. A judge in the court of common pleas of Kenton, Lima or Findlay, often can give a law student representing the clinic more time than it would be possible to give a student in a larger city. The University’s affiliation with the United Methodist Church has also been beneficial. The legal needs of local churches and affiliated non-profit organizations enable Ohio Northern to offer its clinic students transactional and real estate work.

Both skills courses and clinical placements offer students the opportunity to enjoy a “capstone” experience in curricular sequences of the kind recommended by the Carnegie Foundation. For example, once a student has completed core doctrinal courses in Property, Estates, Wills & Trusts, and Taxation of Estates, Gifts and Trusts, the student can enroll in Estate Planning. That course, given the small size of the college, generally has an enrollment of fewer than 10 students. The professor who teaches the course has wide experience and leads the students through problems in counseling, planning and drafting wills, trusts and other documents. By the end of the semester, the students have completed an accomplished portfolio. Similarly, once a student completes the foundational courses in the bankruptcy sequence, the student is able to take part in a series of clinical placements with a bankruptcy trustee, debtor’s counsel and a bankruptcy judge. In addition to these curricular sequences, the College of Law offers others in corporate law, criminal law, international law, public law and policy, real estate law, civil litigation and taxation. Each of these sequences builds on a foundation of doctrinal courses and culminates in skills course or clinical placements. Students who excel in a curricular sequence are recognized by the faculty with certificates of achievement.

In planning its new curriculum, the faculty sought guidance from the bar. Practicing lawyers consistently stated that new lawyers would have benefited from more writing experiences in law school. As the law college already had a rigorous upper division writing requirement and an advanced legal research course, the faculty addressed this concern of the bar by requiring more written exercises as a method of assessment, particularly in classes designated as skills courses. Members of the bar were also concerned that young associates were often insufficiently conversant with business terminology and concepts. Larger firms, in particular, frequently provide younger associates with training in fundamental principles of accounting. The faculty determined that all lawyers should have some familiarity with these concepts. Accordingly, the revision of the curriculum requires students who do not have a background in accounting to take a required course in the beginning of their second year in fundamental principles of accounting. The faculty viewed the course as providing foundational knowledge of a kind that the Carnegie Foundation recommended be provided early in a student’s course of study. Placed early in the second year of study, the course enhances student learning in business organizations, tax, commercial law, real estate and corporate finance.

The new January term provides a framework for bridging the gap between law school and practice. The faculty hopes to develop classes that will bring practitioners to the campus during the term to help with specialized courses. The term also provides a space for travel, where the experience would be worthwhile in the teaching of a course. Finally, the January term is ideal for skills courses in which students devote large blocks of time to work in depth on assignments.

**JOINT PROGRAMS**

The College of Law has developed joint programs that also offer students meaningful opportunities for experiential learning. A number of years ago, the college developed a graduate program for foreign students from transitional countries leading to an award of an LLM in Democratic
Governance and Rule of Law. This program is designed to train the students in legal mechanisms to encourage the development of democracy, strengthen the rule of law, build market economies and combat corruption. Ohio Northern supports the LLM students in return for their commitment to return to their home countries to work in order to further the aims of the program. The College of Law now offers American students who desire to work in international development to earn both their law degree and the master’s degree in three calendar years. As part of this joint degree program, the students engage in two summer externships, one in the United States and one overseas. The domestic externships involve placements with groups like CARE, the United Nations Development Program and the Urban Institute. The overseas placements have generally been in Central Asia and Africa with governmental agencies, courts and programs sponsored by United States Agency for International Development and the American Bar Association. A graduate in the joint degree program is currently clerking for the Chief Justice of the Rwandan Supreme Court.

The College of Law also has a joint degree program with Ohio Northern’s College of Pharmacy in which students earn both the Pharm. D. and the JD. The program involves externship placements with agencies such as the State Board of Pharmacy and the Food and Drug Administration. Finally, the business college of the University expects to soon receive final approval from accreditation agencies allowing it to award a masters of professional practice in accounting. The business college and the law school will then offer a joint degree that will include experiential learning in the combined curriculum.

CONCLUSION

The recommendations of the Carnegie Foundation informed Ohio Northern’s revision of its curriculum. The new curriculum of the college offers foundational coursework suited to the practice of law today by adding new required courses in legislation, administrative law and principles of accounting. It also offers its students a rich array of experiential learning opportunities in which students can apply what they have learned in practice settings. From the first day of orientation through these capstone experiences, the college emphasizes the values of professionalism and builds on a long tradition of preparing law students for the practice of law.

The revision of the curriculum requires students who do not have a background in accounting to take a required course in the beginning of their second year in fundamental principles of accounting.
Legal Clinic Offers
“Real World” Experience

During the 2009-10 school year, students at the clinic worked on 118 cases and received 217 inquires for assistance.

Since 1960, the Ohio Northern Legal Clinic has been providing legal assistance to residents of Allen and Hardin counties, while offering law students the opportunity to receive critical experiential training. Students assist with matters ranging from child support issues to incorporating community organizations. The recent economic downturn increased the number of inquires for assistance fielded by the clinic, which is located in Lima, Ohio. During the 2009-10 school year, students at the clinic worked on 118 cases and received 217 inquires for assistance. Each student had roughly six clients while working at the clinic and handled various cases from divorce to criminal expungement. Students working in the Legal Clinic are given the opportunity to work on some cases from the initial stage and others that are already in progress. This experience allows students to work with cases at various points from client interviews to final hearings. Students at the Legal Clinic appear before local judges and magistrates regularly in the Domestic Relations Division of Allen County Common Pleas Court, Allen County Juvenile Court and the Domestic Relations Division of Hardin County Common Pleas Court. This “real world” experience is invaluable for students in developing their advocacy skills. Not only does ONU Law offer students the opportunity to work in its Legal Clinic, but also in a number of other clinical sites throughout the state and area. Over 70% of the current L-3 class will have participated in a clinic or judicial externship opportunity prior to graduation.

Recent clinic placements include:

- Judge Walter Rice, U.S. District Court, Southern District of Ohio, Western Division, in Dayton
- Judge Gregory Frost, JD ’74, U.S District Court, Southern District of Ohio, Eastern Division, in Columbus
- Judge Edmund A. Sargus, Jr., U.S. District Court, Southern District of Ohio, Eastern Division, in Columbus
- Judge C. Kathryn Preston, U.S. Bankruptcy Court, Southern District of Ohio
- Federal Public Defender, Columbus, Ohio
- Judge Frederick P. Stamp, Jr., U.S. District Court, Wheeling, W. Va.
- Ohio Attorney General’s Office, Columbus, Ohio
- Fair Elections Network, Washington, D.C.
- Indiana Attorney General’s Office, Indianapolis, Ind.
- Ohio Supreme Court
- Ohio Environmental Council
- Common pleas courts throughout Ohio and Indiana
- Municipal public defenders throughout Ohio
- Municipal prosecutors throughout Ohio

For more information on experiential opportunities at ONU Law, contact Bryan H. Ward, director of legal clinics and professor of law at b-ward1@onu.edu
Despite these hard economic times, Ohio Northern University College of Law Graduates Surpass the National Employment Rate Eight Years in a Row.

By Cheryl A. Kitchen, director of law alumni and career services

The 2009 national Employment Report was released in June 2010 from the National Association for Law Placement (NALP), with an overall national rate of 88% employed nine months after graduation. Ohio Northern’s employment rate for the class of 2009 was 94%.

2009 marked the 37th consecutive year that NALP, the National Association for Law Placement, compiled annual statistics on the employment rate of law graduates throughout the United States. Nationally, for the past eight years, the ONU College of Law employment rate has been higher than the national average. The 2009 National Employment report was released in June 2010 from the National Association for Law Placement (NALP), with an overall national rate of 88% employed nine months after graduation. Ohio Northern’s employment rate for the Class of 2009 was 94%.

The legal job market continues to be in what some call a “crisis,” but even in a crisis situation there are opportunities that may arise. Indeed, in this economic downturn, we are forced to sift through and sort out what we think will resolve this crisis in the employment world. What Ohio Northern has always had is a strong connection to its alumni, which continues to be our most powerful marketing agent for our students.

As alumni, you are our connection to employment for the students. With the help of our alumni, our students will be able to survive this economic crisis and forge ahead to a successful legal career. The many ways in which you could help include mentoring a student, speaking on a panel, networking with students or being a resource for a student in your practice, setting or geographical location.

Although we continue to report a slight increase in our employment statistics over the national average, 2010 is going to be a very difficult year in the legal market. ONU Law’s employment rate is due to the hard work and tenacity of the students, along with the help and support of the faculty and alumni and the continued efforts of the Career Services Office.

These efforts, along with the current employment success of our alumni, continue to help strengthen the status of the law school among employers and increase the demand for our students. The growing recognition of the quality of our students is demonstrated by the increasing number of employers using the Career Services Office to recruit students. In the 2009-10 school year, over 600 employers from across the country posted job announcements with our office. These employers come from all segments of the legal profession including federal judges, The American Lawyer’s 100 top corporate firms, government agencies, public interest organizations and corporations. Our students represent over 30 states and their job searches span nationwide.

The placement statistics for the Class of 2009 show the diversity of employment not only in the areas of the legal practice, but also in the employment of our students throughout the country.

AREAS OF THE COUNTRY

Mid-Atlantic ...........................................13%
East North Central ..................................74%
South Atlantic...........................................4%
East South Central......................................6%
Mountain ..............................................3%

What Ohio Northern has always had is a strong connection to its alumni, which continues to be our most powerful marketing agent for our students.

If you can assist us in uncovering job leads for our students and graduates, please let us know. You can do this by calling (419) 772-2249, faxing (419) 772-1487, or emailing the Office of Career Services at lawcareer@onu.edu
The College of Law
Needs Your Help!

The College of Law regularly calls upon our alumni to assist us in many ways. If you have a desire to assist the College of Law with any of the following activities, we welcome your involvement.

☐ I would host a student who is interviewing in my area.

☐ Please contact me about posting a job opening with Career Services.

☐ I would be interested in assisting with mock interviews.

☐ I would be interested in speaking on the following topics:
  ☐ Non-legal careers
  ☐ Corporate opportunities
  ☐ Non-profits & public interest groups
  ☐ Small & medium firms
  ☐ Large firms
  ☐ Lobbying & government
  ☐ Judicial clerkships
  ☐ Other topic(s):

☐ I would host an alumni event at my home or office.

Name: __________________________________________________

Business Name: ___________________________________________

Address: _________________________________________________

  is this ☐ work ☐ home

Phone: __________________________________________________

Email: __________________________________________________

  is this ☐ work ☐ home

Please fax to (419) 772-3151 or visit us online at www.law.onu.edu
The national and international dimensions of a challenging curriculum at Ohio Northern University College of Law are paralleled by an accomplished, expert faculty and a diverse, multi-talented student body. The approachable faculty enables students to thrive in a rigorous, yet humane environment. We believe students deserve not only academic rigor, but also a personalized and respectful experience. Ohio Northern Law has been ranked by the Princeton Review's Best 170 Law Schools 2008 Edition as one of the top 10 schools with the most competitive law students in the nation. The quality and reputation of our program continues to grow as a result of our JD students' scholarship and contributions to the legal field.

The entering class of 2010 is one of the most academically talented classes in the history of the law school. Nearly 1,300 applications were carefully reviewed in selecting the members of this class. The 120 first-year students hail from 26 states, with 35% in-state and 65% out-of-state. They received their bachelor's degrees from nearly 84 different undergraduate colleges and universities throughout the nation. Although the majority of entering students are traditionally aged and have recently graduated from a bachelor's program, the age range is 20-44. The entering class is over 10% minority.

ONU Law Admissions is committed to the mission of seeking students who are capable of undertaking the rigorous study of law and will uphold the highest standards as citizens and future lawyers. The fall 2010 entering class is showing great promise not only in continuing a rich history and tradition of excellence at the Pettit College of Law, but also in demonstrating great potential for being “architects of justice” in a complex and dynamic society.

The more traditional pre-law majors in history, political science, English and criminal justice continue to dominate, yet, a very diverse selection of disciplines provides multiple perspectives and a rich forum in which to study the law.

We are actively recruiting students for our 2011 entering class. This Fall, ONU Law representatives visited nearly 130 schools. A special thanks to those who assisted the Office of Admissions in representing ONU Law throughout the country:

- Amy Archambault, JD '06
- Aaron Baker, JD '10
- Patrick Brutus, L-2, Ridge, N.Y.
- C. Antoinette Clarke, Professor of Law
- David C. Crago, Dean and Professor of Law
- Theresa Daniel, L-2, Granville, Ohio
- Jeana Harbison, JD '07
- Joshua Jones, JD ’08
- Christopher Keller, JD ’07
- Steven Kochheiser, BA ’06, L-3, Lexington, Ohio
- Cheryl Kitchen, Director of Law Alumni and Career Services
- Michael Lewis, Associate Professor of Law
- Louis Lobenhofer, Professor of Law
- Jackie (Jay) Matheny, JD ’06
- Kristi Miller, L-2, Orlando, Fla.
- Nicole Rataski, L-3, Akron, Ohio
- Stephen Veltri, Associate Dean for Academic Affairs and Professor of Law
- Mindi Wells, BSBA '95, JD '98, Assistant Dean for Administration and Student Services

2010 ENTERING CLASS

62% MALES

38% FEMALES

35% of 2010 entering class is from Ohio

65% of 2010 entering class is from out-of-state
2010 ENTERING CLASS PROFILE

<table>
<thead>
<tr>
<th>Class Percentiles</th>
<th>LSAT</th>
<th>GPA</th>
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<tr>
<td>Median</td>
<td>154</td>
<td>3.33</td>
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<tr>
<td>25th</td>
<td>149</td>
<td>2.94</td>
</tr>
<tr>
<td>75th</td>
<td>156</td>
<td>3.70</td>
</tr>
</tbody>
</table>

Undergraduate Schools Represented in 2010 Entering Class including:
- University of Michigan
- Indiana University
- Gettysburg College
- Washington & Jefferson College
- Emory & Henry College
- Morehouse College
- The Ohio State University
- Depauw University
- Clark Atlanta University
- Fordham University
- Allegheny College
- Princeton University

LIFE ON CAMPUS
ONU Law has over 20 student organizations including Moot Court, Law Review, Student Bar Association, Environmental Law Society, Veteran’s Association, Legal Association of Women, Sports Law Society, LAMBDA, Black Law Students Association and the Christian Legal Society, among others.

DEGREE PROGRAMS OFFERED
1] JD
2] JD/LLM
3] JD/MPAA*

Ohio Northern’s placement rate consistently exceeds the national average.

94% of the class of 2009 were employed full-time or enrolled in an LLM program within nine months after graduation.

CAREER PLACEMENT
The graduating class of 2009 had a 94% job placement rate within nine months of graduation, outpacing the national average of 88%.

Types of Employment
- Private Practice: 50%
- Business: 13%
- Government: 12%
- Judicial Clerkships: 8%
- Other: 8%
- Public Interest: 5%
- Academic: 4%
Alumni Moot Court Room to go “High Tech”

The Alumni Moot Court Room, which serves as a trial court room and a 24-seat classroom, is scheduled for an upgrade this summer. Originally renovated in 1997 from a portion of the law library, the courtroom has seen increased use as a classroom in recent years. The courtroom is also used for trial advocacy classes, appellate advocacy classes and Moot Court activities. The renovation will include replacing the armchairs with standard chairs and tables wired for electrical and internet access, moving the back wall to increase seating in the room and installing multi-media technology in the room.

The goal is to have the courtroom outfitted with technology currently in use in federal and state courtrooms throughout the country. This equipment not only provides state-of-the-art instructional technology for use by our faculty, but also gives students the opportunity to learn first-hand how to utilize equipment they will find in practice. Technology enhancements include a multi-media podium with a document camera, computer and controls for the projection system and recording. Future enhancements include cameras which allow the advocate to be recorded from the judge’s perspective and the jury’s perspective. Funding for the renovation was generously provided by the Walter White family: Walter L. White (deceased), BA ’41, JD ’48, LLD ’00; Virginia White (deceased); William White, BA ’64, JD ’67; Patricia White King, BA ’74, JD ’83; and the ONU Law classes of 2008 and 2010.

ONU Law Receives Class Gift

The class of 2010 continued the tradition of presenting ONU Law with a class gift. This year’s class, which saw over 33 students pledge, has earmarked their gift for the renovations to the Alumni Moot Court Room. Members of the class gift committee presented President Kendall Baker and Dean David C. Crago with a check for $16,651 at the college’s Honors Banquet on April 14, 2010.

Dedication of the Alumni Moot Court Room
Homecoming 2011
Oct. 1, 2011

Rachel Kasper, Dean David C. Crago, Megan Schnik, John Fenz, Keesha Warnesh, Brian Anderson, President Kendall Baker and Randy Petrouske.

Ways to Support

The College of Law is grateful to our alumni for its past support and invites you to be a part of Ohio Northern University’s Tomorrow. You can support the Campaign by:

* Making an outright gift
* Becoming a contributor to the Northern Fund for the College of Law or increasing your current level of support
* Taking advantage of deferred gift options

For more information about the Campaign for Ohio Northern University’s Tomorrow and the College of Law Campaign priorities, please contact the Office of Law Development at (419) 772-2256 or e-mail lawdevelopment@onu.edu
Charitable Giving

Consider making a gift to The Northern Fund this season! The Northern Fund is an essential element in providing revenue for current needs of the University, including the College of Law. The Northern Fund supports student scholarships, faculty research and campus improvements. If you have yet to make your annual gift this year, you are invited to support the College of Law with a gift to The Northern Fund. For your convenience, you may give online at www.onugive.com or contact Kelly Brant at 419-772-2072 or kbrant@onu.edu for more information.

Scholarship Recipients Named at Donor Dinner


Burgess Scholarship: Dean David C. Crago, Millicent Burgess, Rhett Burgess, JD ’79, Carol Burgess and Ian (Seth) Martin, L-3.

ONU Law selected for PLUS Program Grant

The Ohio Northern University Pettit College of Law was awarded a grant from the Law School Admissions Council and DiscoverLaw.org for the purpose of providing a Pre-Law Undergraduate Scholars (PLUS) program on its campus. Schools selected for such grants can receive up to $100,000 per year for a maximum of three years.

PLUS programs are targeted to, but not restricted to, college students from racial and ethnic minority groups underrepresented in the legal profession. The programs are designed for students in the first two years of college and preference is given to students who have registered with DiscoverLaw.org.

Ohio Northern, one of three law schools nationwide to receive the PLUS grant, was selected based on the strength of its program combined with the law school’s commitment, geographic location and target population.

ONU Law welcomed 25 students into its inaugural PLUS program. The program, which ran from June 7 through July 2, 2010, provided students with an intense focus on the skills required to succeed in law school, the law school admission process and legal career opportunities. The students also participated in field trips to the Ohio Supreme Court in Columbus, the National Underground Railroad Freedom Center in Cincinnati, a local court, and the Cedar Point amusement park in Sandusky.

The PLUS Program is now accepting applications for 2011. Contact lawplus@onu.edu for more information.
The College of Law hosted a number of activities for the Homecoming weekend. Historical tours were held throughout the weekend to celebrate the 125th anniversary of the college, showcasing important moments and people in the College of Law’s rich history. Video interviews of alumni were collected to obtain first-person memories of ONU. On Friday, Phi Alpha Delta hosted its annual continuing legal education program, with over 70 attendees. That evening, a Law Donor Dinner was held to recognize those who have generously provided financial support to the college over the past year. In addition, the 2010-11 Hanson Scholars were named and Rhett Burgess, JD ’79, was present to award the first William James & Millicent Marie Burgess Scholarship for veterans.

On Saturday, many alumni and family members joined Dean David C. Crago and members of the faculty at a breakfast in the Wishing Well of McIntosh Center. Alumni and friends then made their way to the tailgate party outside Dial-Roberson Stadium where the Student Bar Association hosted a photo booth, and the Icelandic Exchange Program sold 125th apparel. The College of Law also distributed 125th commemorative yardsticks and fans.
College Hosted Historical Tours

The College of Law conducted Historical Tours over Homecoming weekend. The tours were indoor, guided walking tours celebrating the last 125 years at ONU Law. The tours, approximately 45 minutes in length, covered the origin of the college, historical deans, notable alumni and faculty, student life, campus and community, and curriculum, along with interesting architecture and historical acknowledgments.

The tours were organized by assistant dean Mindi Wells and involved several members of the faculty, staff and student body as speakers. Cheryl Kitchen, director of law alumni and career services, was the tour guide and discussed various college highlights throughout the tour, including the Narol Smart Classroom.

Tour stops and presenters:
- Stephen C. Veltri, associate dean for academic affairs and professor of law, discussed the evolution of the curriculum over the past 125 years.
- Stephanie Swiger, L-3, Findlay, Ohio, discussed student life.
- John P. Christoff, JD ’77, and Louis F. Lobenhoffer, both professors of law, discussed notable ONU Law faculty members.
- Paul Logsdon, director of Heterick Library, presented information and a video on the Ada community’s development over the past 125 years.
- Howard N. Fenton, director of LLM program and professor of law, discussed the college’s international education component.
- Nancy A. Armstrong, director of the law library, showcased the recent creation of the Hanson Reading Room, discussed attributes of the law library and provided a historical account of the law library.
Alumni Visit the Greenbrier

The Ohio Northern College of Law hosted an alumni weekend at the famed Greenbrier Hotel in White Sulphur Springs, W. Va. from April 9-11, 2010. The weekend included a tour of the Congressional Bunker and subsequent reception, an alumni dinner in the Crystal Room and a meeting of the Law Alumni Board. Nearly 60 law alumni and friends participated in the weekend’s events.

The Greenbrier opened in 1778 and has hosted 26 U.S. presidents and countless dignitaries throughout its distinguished history. It is located on 6,500 acres of beautiful land in the Allegheny mountains and has 721 rooms, 10 lobbies and a 40,000 square foot spa. The hotel was chosen by the U.S. Government to serve as a safe haven for Congress if nuclear war broke out between the United States and the Soviet Union. This bunker was “hidden in plain sight” until 1992 when the U.S. decommissioned it. Since this time, the bunker has been one of the hotel’s most popular attractions. ONU Law alumni also had the opportunity to play golf at three 18-hole championship golf courses, eat gourmet food and enjoy the many amenities that the hotel has to offer.
The Ohio Northern University Pettit College of Law and the University of Iceland celebrated the 50th anniversary of the student exchange between the two institutions with a commemorative dinner in Reykjavik, Iceland, on Friday, June 18, 2010. Nearly 100 guests attended the dinner including several Icelandic dignitaries and former exchange students and a delegation from ONU Law. A special plaque was presented to the University of Iceland honoring the founders of the exchange program, Ármann Snævarr and Eugene Hanson, who began the program in 1960.

The history of the program will be covered fully in the upcoming 125th anniversary edition of the Writ.
Fifth Class of International LLM Students Begin Their Studies

By Howard N. Fenton III, director of LLM program and professor of law

Four students from around the world arrived in Ada this fall to begin the fifth year of the Democratic Governance and Rule of Law LLM program. The lawyers from Botswana and Guyana are the first representatives of their countries in the LLM program, while the Uzbekistan and Georgia students continue the program’s strong relationship with their countries. The two women and two men have a rich variety of legal backgrounds and commitment to advancing the rule of law in their home countries. Two other students, from Kosovo and Afghanistan, who were scheduled to join the 2011 class had to withdraw for family medical reasons.

Onalethata Kambai from Guyana is the first LLM student from the Western Hemisphere. She comes to ONU from the Governance Unit of the Office of the President of Guyana.

Azeena Baksh from Guyana is the first LLM student from the Western Hemisphere. She comes to ONU from the Governance Unit of the Office of the President of Guyana.

Dilshod Abduraimov is from Uzbekistan, where in addition to his law practice he advises a women’s entrepreneur organization and a rural entrepreneur’s group on economic development issues.

Lina Glvinianidze is the sixth Georgian student to study at ONU. She has been working on governance and accountability issues for the Georgian Young Lawyers Association in Tbilisi.

The LLM program also welcomed a new visiting faculty member for the 2010-11 year. Boris Mamlyuk is a visiting assistant professor teaching the new course of the concurrent JD/LLM students on the international law of non-governmental organizations and the capstone Rule of Law Seminar for the international students and graduating concurrent students. Professor Mamlyuk spent the past year as a Visiting Scholar at Cornell Law School, and has his BA magna cum laude from California State University Fullerton and his JD from the University of California Hastings College of Law where he was Articles and Symposium Editor of the Hasting International and Comparative Law Review. He is completing his Ph.D. in international law at the University of Turin, Italy.

Concurrent JD/LLM Candidates Participate in International Externships in Rwanda, Liberia and Georgia

The summer externships are probably the most exciting feature of the JD/LLM program at Ohio Northern. After the first year of law school, the concurrent degree students spend their summer working for an organization devoted to law reform or international development located in the United States. During their second summer the students participate in externships abroad. This past summer, the five JD/LLM students in the first class worked overseas in some challenging environments.

Three of the students were in Africa. Jemel Liverpool worked in Monrovia, Liberia with the American Bar Association’s Rule of Law Initiative office assisting the new Liberian National Bar Association. During his time there he had the opportunity to meet the President of Liberia and a number of other government and professional leaders. Daniel Bey and Nicole Rataski worked in Kigali, Rwanda with the Ministry of Justice. Nicole worked with the Department of Civil Litigation and the Legal Advisory Office, assisting in the preparation of pleadings and international agreements. Daniel worked with the Legislative Department providing research and comments on proposed legislation, assembling legislative data bases and participating in legislative training.

The externships for Ryan Nuss and Geoffrey Lawson were in Tbilisi, Georgia where they worked on a USAID-funded court management project. During the summer they observed a variety of legal proceedings in Georgia and provided research on different judicial practices from the United States and European judicial systems. Both Geoff and Ryan had the opportunity to meet with Georgian judges and court administrators and to make presentations on the American legal system.

The second class of concurrent students spent their summers working in different non-governmental organizations in New York, Washington and Atlanta. Two new organizations hosted externs, with Chris Hill spending the summer with Transparency International’s office in Washington, D.C., and Zack Smith working in the General Counsel’s office at CARE USA in Atlanta. Tim Rodes was at the United Nations Development Programme in New York, and Kristi Miller worked at Urban Institute in Washington.
HAVE A GREAT PHOTO OF ONU LAW?
Submit your photo(s) into our contest celebrating the college’s 125th anniversary.

- Photos may be published in an upcoming publication and/or on the college’s website.
- Photos may be emailed to m-wells@onu.edu or mailed to Mindi Wells, ONU College of Law, 525 S. Main Street, Ada, OH 45810.
- Please include the date, location and names of those individuals in the photographs.

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**Save-the-Date...**

Join the Ohio Northern University Pettit College of Law this spring at...

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**Spring 2011**

**Law Alumni Event**

**March 25-27, 2011**

- **Friday, March 25**
  - Private ONU tour of the Biltmore House and reception at the Stables Café Loft
  - 7:00 p.m.

- **Saturday, March 26**
  - Reception and Alumni Dinner
  - 6:00 p.m.

**Biltmore Estate**

www.biltmore.com

For additional information contact the Law Alumni Office at 419-772-1980 or lawalumni@onu.edu

Details online at www.law.onu.edu
As part of the Fred L. Carhart Memorial Program in Legal Ethics, copyright expert William Patry spoke at the Pettit College of Law on Oct. 6, 2010. Patry's lecture titled “What Will it Take to Fix Copyright Law?”, addressed the flaws of modern copyright laws in the United States. Patry is senior copyright counsel for Google Inc. and author of five treatises on copyright law including his most recent book, Moral Panics and the Copyright Wars, which was published in 2009. Patry's lecture focused on the inherent problems of U.S. copyright laws that arise from the moral motivations behind these laws.

“There are perpetual problems with copyright law that no one can agree upon because they have different perspectives for different reasons,” Patry said. “Those problems are business problems. They are never conflicts caused by the alleged show of moral shortcomings of others. We use moral claims in debates about economic issues.”

Using the music industry as an example, Patry demonstrated that business solutions were the best answer to current problems with copyright law. In 1998, the U.S. extended the copyright on music by 20 years, so that an artist's music was protected for 70 years after his or her death. The law was created in the hope that this added protection would stimulate more new works and allow artists to make more money from their previously-released music. However, Patry argued that no empirical data has been collected to prove that this extension of copyright has achieved the intended effects.

“If we want effective laws, we can’t have that if it’s based upon an alleged moral case,” Patry argued. “For politicians or lawmakers to act in an effective way, they have to act like economists. You have to investigate the real world consequences of what you’re doing and decide whether those laws, if enacted, do the things you want them to do.”

Pointing to economist Andrew Gower’s 2006 report on the impact of existing copyright law in the UK, Patry said, “Data show that [music copyright laws] don’t actually help the people they are intended to help; but [lawmakers] are actually doing it because there is a moral case at the heart of copyright law.” According to Patry, Gower concluded that many artists sell a majority of their records in the first ten years after their release. So, extending the copyrights on music does little to help the artist and actually hurts the public by limiting access to the music.

“If we want effective laws, we can’t have that if it’s based upon an alleged moral case,” Patry argued. “For politicians or lawmakers to act in an effective way, they have to act like economists. You have to investigate the real world consequences of what you’re doing and decide whether those laws, if enacted, do the things you want them to do.”

“In the music world, the joke is that people aren’t composing, they’re decomposing,” said Patry. Patry concluded that business solutions are the best way to curb copyright infringement. He explained that online venues like iTunes, which provide people with a legitimate way to buy music, are far more effective than extended copyright laws.

ABOUT THE CARHART PROGRAM...

The Fred L. Carhart Memorial Program in Legal Ethics, which was established in 2007, brings eminent scholars, jurists, and lawyers to Ohio Northern to actively engage in lectures, seminars and panel discussions for the benefit of ONU Law students, the college and university communities and the public. The endowment to fund the program came from the estate of Dwight L. Carhart, JD ’47, in memory of his father, Fred L. Carhart, BS 1902.
KORMENDY LECTURE

Kormendy Lecture Brings Prominent Scholars to Campus

Barbara Aronstein Black, the George Welwood Murray Professor Emerita of Legal History and dean emerita at Columbia University, was a prominent figure in the legal field. She presented “Who Judges? Who Cares? History Now and Then” on Oct. 28, 2009, as part of ONU Law’s Kormendy Lecture. Aronstein Black has published numerous articles on legal history and contracts. She received her undergraduate degree from Brooklyn University and her LLB from Columbia Law School, as well as a Ph.D. in history from Yale.

On Oct. 28, 2010, Sanford Levinson, the W. St. John Garwood and W. St. John Garwood, Jr., Centennial Chair in Law and professor of government at the University of Texas School of Law, presented “Who, if Anyone, Really Trusts ‘We the People’? In his talk, Levinson challenged the notion of popular government.

Woodworth, for the 2010 Laurence Neal Woodworth Lecture, discussed “Tax Policy in the 21st Century: Challenges and Changes from the Time of Larry Woodworth,” for the 2010 Laurence Neal Woodworth Lecture on Federal Tax Law and Policy, held May 6, 2010, in Washington, D.C. Barthold’s lecture brought up many interesting points regarding the changes in tax law that were later discussed the following two days during the American Bar Association Tax Section’s May meeting.

Barthold, as chief of staff of the Joint Committee, is generally considered to hold the most influential staff position on tax matters in the legislative branch of the federal government.

ABOUT THE KORMENDY LECTURE...

In 1980 a lectureship in the College of Law was established through an endowment gift from Helen E. Kormendy, widow of the late Dr. Steven W. Kormendy. The Dr. Steven W. Kormendy and Helen E. Kormendy Law Lecture Fund is used each year to bring prominent individuals to campus to address matters of law in a public forum in the College of Law.

Dr. Kormendy, who died on January 6, 1985, graduated from the ONU College of Law in 1928 and was posthumously awarded the honorary LLD degree in 1985. The Ohio State Bar Association honored him for 50 years of law practice, and he was long active in events in the Hungarian community in Cleveland.

At ONU he was a member of the Henry Solomon Lehr Society, the Leadership Gifts Committee and the N Men. He was a President’s Fellow for 10 years. Mrs. Kormendy passed away in 1998.

Woodworth was the chief of staff of the joint committee for 15 years, and is still revered, more than 30 years after his death, as the model for members of the Congressional tax staffs. Barthold joined the Committee staff in 1987 and worked his way up to the deputy chief of staff before becoming chief of staff in 2009. He received his BA and MS from Northwestern University and an MA and Ph.D. from Harvard.

Barthold’s published papers cover a range of topics including capital gain realizations, charitable bequests, distribution of the tax burden and comparative transfer taxes.

About the Woodworth Lecture...
Dean’s Lecture Series

The 2009-10 Dean’s Lecture Series brought three national legal scholars to campus to discuss a variety of current topics in the law.

On Oct. 1, Kathryn Abrams, the Herma Hill Kay Distinguished Professor of Law at the University of California-Berkeley School of Law, discussed “Empathy and Experience in the Sotomayor Hearings.” She has published many articles on numerous subjects ranging from feminist jurisprudence to election law. Abrams received her undergraduate degree in Government from Harvard-Radcliffe College in Government and her JD from Yale Law School.

Keith Aoki, professor of law at the University of Toledo College of Law, presented “Theft! A History of Music” on Jan. 28, 2010. His presentation focused upon his comic book that detailed the theft of music and copyright law throughout the ages. Aoki received a BFA from Wayne State University, his MA in Fine Arts from Hunter College, his JD from Harvard Law School and his LLM from the University of Wisconsin Law School. He has published many articles regarding intellectual property.

The final lecture was presented on Feb. 24 by Daniel W. Hamilton, professor of law at the University of Illinois College of Law. Hamilton presented “Emancipation and the Common Law: Slavery Litigation after the Civil War.” He received his BA in history from Oberlin College, his JD from George Washington University and his Ph.D. from Harvard University. He has published on American legal history and Civil War legal history.

LGBT Legal Issues Focus of Inaugural LAMBDA CLE

Ohio Northern University’s Pettit College of Law presented “Emerging LGBT Legal Issues: What you should know to protect your client,” on April 9, 2010. The continuing legal education program was sponsored by the ONU LAMBDA Law Students’ Association and the American Civil Liberties Union of Ohio.

Robert S. Salem, of the University of Toledo College of Law, presented “Domestic Partnerships and Family Law.” Salem has published articles regarding gay rights and education issues in the Cleveland State Law Review, Louisiana Law Review and the Albany Law Review. Salem serves on several non-profit boards and advisory panels, including the National Gay and Lesbian Task Force, the ACLU of Ohio and Equality Toledo. Salem received his JD from the University of Toledo.

Attorney Karen Ball presented “Estate Planning Issues for LGBT Individuals and Couples.” Ball has practiced law for nearly 25 years and has a long history of involvement with community and family issues. Prior to practicing law, Ball worked with the Fair Housing Contact Service in Akron, Ohio, and with several non-profit civil rights groups. Ball received her bachelor’s and master’s degrees from Cornell University and her JD from Capital University.

Carrie Davis, Staff Attorney for ACLU of Ohio presented “Employment and Housing Non-discrimination.” Davis joined ACLU of Ohio in 2003 and travels the state working on important civil liberties litigation, lobbying all levels of Ohio government, helping Ohioans to lobby their officials and speaking on a variety of subjects. Davis has served as counsel on landmark cases involving voting rights, free speech and individual liberties, including Carswell v. Ohio. Davis has a BA in philosophy and public policy from Albion College and a JD from Case Western Reserve University.
Phi Alpha Delta Sponsors Program on Ethics, Abuse, Professionalism and Substance

Phi Alpha Delta offered its annual continuing legal education program as part of the University’s Homecoming activities on Oct. 9, 2009 and again on Oct. 8, 2010. The CLE program provided the ethics, professionalism and substance abuse training required for all attorneys licensed in Ohio. Featured speakers at the 2009 event included Edward Erfurt, III, JD ’77, an attorney in Columbus, Ohio, Dr. Michael Schafer, director of counseling at Ohio Northern University and Victor Streib, professor of law at Ohio Northern. Erfurt, who has practiced as a sole practitioner for over 30 years and presented programs at various professional seminars and other professional associations, provided a case law update on ethics decisions from 2009. Schafer, a clinical psychologist and licensed independent chemical dependency counselor whose professional work experiences include providing psychological assessments and counseling services in inpatient day treatment and private practice settings, discussed trends and best practices in substance abuse treatment. Streib, a nationally recognized scholar and death penalty expert who has taught criminal law and ethics to over 5,000 students at 10 institutions since 1971, spoke on professionalism. Over three dozen attorneys attended the program. Erfurt and Schafer spoke again at the 2010 event, where Bryan H. Ward, director of clinics and professor law, presented on professionalism. Over 70 attorneys participated in the 2010 event.

Edward Erfurt, Bryan Ward and Michael Schafer.
The Supreme Court of Ohio held an official session at Ohio Northern University on Wednesday, Sept. 29, 2010. The visit is part of the court’s semiannual Off-Site Court Program.

Chief Justice Eric Brown and Justices Paul E. Pfeifer, Evelyn Lundberg Stratton, Maureen O’Connor, Terrence O’Donnell, Judith Ann Lanzinger and Robert R. Cupp, BA ’73, JD ’76, heard oral arguments in several cases beginning at 9 a.m. on campus in Ada, Ohio. Ohio Northern extended a formal invitation to the Supreme Court in celebration of the 125th anniversary of the Claude W. Pettit College of Law. This was the court’s second visit to the law school as part of the Off-Site Court Program, the first having come in 1999.

College of Law Dean David C. Crago said, “The College of Law was privileged to host the Ohio Supreme Court as part of our 125th anniversary celebration. The Off-Site Court Program provides an outstanding opportunity for both our law students and area high school students to experience the judiciary in person.”

The Off-Site Court Program, initiated by former Chief Justice Thomas J. Moyer, LL.D (hon.) ’04, in 1987, has gained national recognition as a model program for education about the judiciary. The program enhances students’ understanding of the legal system by providing an opportunity for hundreds of students to attend and observe the proceedings of the Supreme Court in person and to interact with justices, attorneys and court staff.

ONU law students and area high school students participated. The students, faculty and teachers received curriculum material to study before the session, including summaries of the specific cases to be argued. Local attorneys teamed with ONU law students and educators to explain Ohio’s judicial system and review case materials.

On the morning of Sept. 29, Hardin County high school students attended a special briefing during which they asked questions and interacted with the justices. In addition, the students were assigned to attend one of the oral arguments. After the assigned case had been argued, students met with the case attorneys for a debriefing and discussion of the legal issues in the argument they just heard.

The ONU session marked the 60th time the Supreme Court has heard oral arguments outside Columbus during the past 23 years and has enabled 33,750 Ohioans, 27,715 of them high school students, to observe the Supreme Court in action without leaving their communities.
BLSA Hosts Eleventh Annual Diversity Forum

On Feb. 17, 2010, the Ohio Northern University Black Law Students Association hosted its Eleventh Annual Diversity Forum titled, "From the White House to the classroom: A look at the changing face of America." The panel included Kevin L. Boyce, Ohio Treasurer of State; Patricia Hardaway, president of Wilberforce University; Brian Thomas, partner with Graydon, Head & Ritchey LLP; and Jason Upthegrove, president of the Lima Chapter of National Association for the Advancement of Colored People (NAACP). Visiting ONU Law Professor Amanda E. Compton moderated the panel which discussed the social, economic and political impact of President Barack Obama's election on the American landscape.

Street Law Teaches the Litigators of Tomorrow

The Street Law program at Ohio Northern continues to bring the law to area classrooms. For the 2009-10 school year, the Street Law program brought together eight teams of high school students from four local schools for a mock trial competition held in April. Students from Ada, Kenton, Upper Scioto Valley and Lima Christian Academy took part in the program. Law students visited the classrooms of the local schools over the course of several weeks, teaching the students about the American legal system and specifically about civil procedure. After researching the case and learning about the trial process from the law student educators, the young litigators came to Ohio Northern to try their cases in front of a panel of judges. Ultimately, the students from Lima Christian Academy took first place, Kenton took second and team two from Upper Scioto Valley finished in third place. The high school students enjoyed the opportunity to learn about the law and to have an active role in the mock trial, while law students enjoyed the opportunity to share some of their legal knowledge with the high schoolers.

2010-11 Street Law Executive Board

President: Nicole York, L-2 from Ada, Ohio
Vice President: Heather Armstrong, L-2 from Elmira, N.Y.
Secretary: Nichole Mahrt, L-2 from Groveland, Ill.
Treasurer: Vestonia Viddy, L-2 from Smyrna, Del.
Head Coordinator: Shiva Varghai, L-2 from Cleveland, Ohio
The 2009-10 edition of the Moot Court program carried on the tradition of success and high achievement from years past. As always, the year began with the Burke E. Smith competition, the intra-school mock trial competition. Teams of two law students practiced and developed their trial advocacy skills in a courtroom setting by trying a fictitious case. Not only does this competition provide the students with valuable experience and the chance to hone their public speaking and trial skills, but the participants also compete for a cash prize. This year’s competition saw the veteran team of Brian Anderson, L-3, Johnson Creek, Wis., and Randall Petrouske III, L-3, Tomahawk, Wis., win first place. The team composed of Jemel Liverpool, L-2, Bronx, N.Y., and Mary Ellen Ditchey, L-2, Warren, Ohio, took second place.

At the beginning of the fall semester each year, the Executive Board members of the Moot Court program hold tryouts for incoming L-2s and L-3s to become members of the six Moot Court teams. This year, after being chosen, the members of the appellate teams were given the chance to take Advanced Appellate Advocacy in order to prepare them for the brief writing and oral advocacy components of their Moot Court competitions. This was an invaluable class that had positive effects on the team members, as each team’s brief writing grades and oral advocacy improved from years past and will be a staple for members in the future.

Traditionally, we have done very well at this tournament, and the 2009-10 season was no exception. The team placed 3rd overall among a field of many quality schools. The team also received 2nd place for Best Brief. We look to continue our strong showings at this competition in the years to come. This year’s team was made up by Andrew Johnson, L-2, Troy, Ohio; Randall Petrouske III, L-3, Tomahawk, Wis.; and Brett Hillyer, L-2, Dennison, Ohio. The team was coached by Brett Schlender, L-3, Stevensville, Mich. The advisor was Professor Kevin Hawley.

ONU Tax Team

The ONU Tax Team kicked off the Moot Court competition season by traveling to beautiful St. Petersburg, Fla., in early February to compete in the Florida Bar Association National Tax Competition.

American Bar Association Team

This year the ABA Team took part in the National Appellate Advocacy Moot Court Competitions in Boston, Mass. The competition focused on complicated questions of law dealing with the U.S. Constitution. While the team failed to move on past the preliminary rounds, they did, however, beat each of their opponents in the oral advocacy component of the competition. We

2009-10 EXECUTIVE BOARD

Chief Justice - Keesha Warmbsy, L-3 from Atlanta, Ga.
Administrative Justice - Anna Russell, L-3 from Atlanta, Ga.
Presiding Judge - Tom Burkhart, L-3 from Mercer, Pa.
Associate Justice - Tyler Haslam, L-3 from Bluffton, S.C.
Associate Justice - Rachel Kasper, L-3 from Hunlock Creek, Pa.
Associate Justice - Brett Schlender, L-3 from Stevensville, Mich.
hope to use this as a springboard for successes in the future in this competition. The team was comprised of Joe Sellers, L-3, Hamburg, N.Y.; Mary Ellen Ditchev, L-2, Warren, Ohio; and Jeff Hiatt, L-2, Dubuque, Iowa. The team was coached by Anna Marin Russell, L-3, Atlanta, Ga. and advised by Professor Joanne Brant.

John J. Gibbons Criminal Procedure Team

The Criminal Procedure Law Team is one of our more efficient teams because they are required to write and then argue their brief at the competition. These events are separated by a mere two weeks in March. This year the team competed at the John J. Gibbons Criminal Procedure Moot Court Competition at Seton Hall University in New Jersey. Stephanie Swiger, L-2, Findlay, Ohio, took home First Place Oralist for the preliminary rounds, while her partner, Matthew Oyster, L-3, Hilliard, Ohio, took home the Second Place Oralist for the preliminary rounds. The team made it to the semifinal round, where they came up a little short of the eventual champions of the competition and took home third place. The team was advised by Rachel Kasper, L-3, Hunlock Creek, Pa., and was coached by Professor Toni Clarke. We congratulate this team on their great achievements and look forward to continuing that success in the future.

Jerome Prince Evidence Team

The final team to compete was the inaugural Evidence Team which was composed of Ryan Kirk, L-2, Powell, Ohio; Scan Mott, L-3, Biglerville, Pa.; and Michael Perehinec, L-2, Altoona, Pa. The team was coached by Luke Overmeyer, L-3, Groveport, Ohio, and advised by Professor John Christoff. The team participated in the Dean Jerome Prince Memorial Evidence competition in Brooklyn, N.Y. for the first time in the program’s history this past April. While the team did not advance past the preliminary rounds, they competed admirably and gained valuable experience for future teams. We hope to build on that experience in order to achieve success in the future at this respected competition.

ANTHONY J. CELEBREZZE COMPETITION

Each spring, the Moot Court program holds the annual Anthony J. Celebrezze Competition, which is an intra-school appellate competition open to all second and third year law students. The competition is named in honor of the late Honorable Anthony J. Celebrezze, LLB ’36, LLD ’63, distinguished alumnus of the College of Law and former Senior Justice of the Sixth Circuit of the United States Court of Appeals. The problem presented to competitors usually focuses on a controversial issue that will be heard by the United States Supreme Court. The 2010 competition, held on April 15, was based on McDonald v. City of Chicago and focused on whether the Second Amendment right to keep and bear arms is incorporated against the states by the Fourteenth Amendment’s Privileges or Immunities or Due Process Clause, thereby invalidating ordinances prohibiting possession of handguns in the home. Presiding over the final round, held April 15, 2010, in the Celebrezze Moot Court Room, were Thomas F. Bryant, JD ’66, LLD ’06, Ohio Third District Court of Appeals (Ret.); John R. Willamowski, JD ’85, Ohio Third District Court of Appeals; and Dean David C. Crago. Ultimately, Chase Carter, L-2, Bainbridge, Ohio, won, with Paul Foley, L-2, Walkersville, Md., taking second place in a fiercely contested final round.

DANIEL S. GUY INTRA-SCHOOL FIRST YEAR APPELLATE ADVOCACY COMPETITION

The annual Daniel S. Guy Intra-School First Year Appellate Advocacy Competition also took place in April. This competition is mandatory for all first-year students and is named in honor of the former Dean of the Pettit College of Law, Daniel S. Guy, JD ’52, LLB ’05. The competition is an integral part of the first-year Legal Research and Writing Course. Each L1 is required to write an appellate brief and then participate in oral arguments in front of their respective professors and members of Moot Court. After the preliminary round in which all L1s must take part, the field is narrowed to the 16 students that scored the best, then to the Elite Eight, and then to the Final Four. This is a difficult competition not only because of the many qualified first-year students, but also because students are switching sides and issues for each round - not to mention preparing for final exams! The final round of the 2009-10 Dan Guy Competition, held April 27, 2010, was judged by Mark L. Pietrykowski, JD ’79, Sixth District Court of Appeals; Michael Bernstein, BA ’65, JD ’68, Mercer County Common Pleas Court (Ret.); and incoming Moot Court Chief Justice Michael Perehinec, L-2, Altoona, Pa. The winner was Zachary Smith, L1, Kennesaw, Ga.; first runner-up Laura Leister, L-1, Harleysville, Pa.; second runner-up Hannah Smith, L-1, Upper Arlington, Ohio; and third runner-up Ashley Rodabaugh, L-1, Lima, Ohio.
2010-11 MOOT COURT EXECUTIVE BOARD

Chief Justice - Michael Perehinec
L-3 from Altoona, Pa.

Administrative Justice - Stephanie Swiger
L-3 from Findlay, Ohio

Presiding Judge - Andrew Johnston
L-3 from Troy, Ohio

Associate Justice - Geoff Lawson
L-3 from Lima, Ohio

Associate Justice - Mary Ellen Ditchey
L-3 from Warren, Ohio

Associate Justice - Ryan Kirk
L-3 from Powell, Ohio

Associate Justice - Greg Reichart
L-3 from Sharpsville, Pa.

2010-11 MOOT COURT COMPETITIONS

Texas Young Lawyers National Trial Competition
February 18-19
Louisville, Ky.

Florida Bar Association National Tax Moot Court Competition
February 3-5
St. Petersburg, Fla.

John J. Gibbons Criminal Procedure Moot Court Competition
April 1-3
Newark, N.J.

Philip C. Jessup International Law Moot Court Competition
February 10-12
Chicago, Ill.

ABA National Appellate Advocacy Competition
March 3-5
Seattle, Wash.

Jerome Prince Evidence Moot Court Competition
March 31 - April 3
New York, N.Y.

REGIONAL COMPETITION DATES

36 OHIO NORTHERN UNIVERSITY COLLEGE OF LAW WINTER 2010
2010 Symposium Explores the Influence of the Constitution on the Development of Foreign Law

By Daniel Bey, L2, Conover, Ohio

On March 19, 2010, the Ohio Northern University Law Review held its 33rd Annual Law Review Symposium. The symposium was titled “The Role and Influence of the Constitution in Formulating Law and Policy Outside the United States.” Many professionals, professors and students joined together to attend the event. Joseph Calimeri, the 2009-10 Symposium Editor, worked with the Dean’s Office and the rest of the Law Review to successfully organize the event.

Professor Jean-Marie Kamatali acted as the moderator and presenter for the event. Kamatali is the assistant director of the LLM program and visiting assistant professor of law at Ohio Northern University. He earned a Doctor of Laws from the Karl-Franzens Universitat-Graz, a Master of Arts from the University of Notre Dame, a License en Droit and a Bachelier en Droit from the National University of Rwanda. Previously, Kamatali served as the dean of the law school at the University of Rwanda, as a senior post-doctoral research associate and adjunct professor at the University of Notre Dame and as an adjunct professor at Indiana University, South Bend. He has also been a consultant for a USAID project in Burundi, the United Nations Children Fund and the Agricultural Organization of the United Nations.

Professor Susan Bitensky of Michigan State University College of Law made the first presentation of the day titled “The Mother of All Human Rights: The Child’s Right to be Free of Corporal Punishment as ‘Hard’ International Law.” Bitensky argued, through the use of customary international law and treaties, that over the last few decades there has developed the principle that corporal punishment of children is a violation of international human rights law. In addition to the legal aspects, Bitensky discussed some of the sociological and psychological aspects of corporal punishment on children.

The second speaker of the day, Kamatali, gave a presentation titled “The Impact of the First Amendment in the Judgments of the International Criminal Tribunals: Recent Developments.” He opened his presentation by examining the First Amendment and equivalent laws in Canada, France, Germany and South Africa, then compared cases concerning hate speech from the United States, Canada and Denmark, extrapolating three different schools of thought. After examining the results of free speech cases that have come before international tribunals, Kamatali concluded that international tribunals have followed the example of the United States more than other liberal democracies.

The symposium’s keynote speaker, Professor Mark Kende, is a former Fulbright Scholar at the University of Stellenbosch in South Africa, and is professor of law and the co-director of the LLM in Global Human Rights and Citizenship Plan at Drake University. Kende also serves as the James Madison Chair in Constitutional Law at Drake University. His presentation was titled “Reviving Pragmatism in Constitutional Law: U.S. Opportunities and South African Examples.” Kende argued that the U.S. Supreme Court’s decisions are too abstract and formalistic. He encouraged the Court to look to foreign courts for a more context-based and pragmatic approach to decision making. During his presentation, he compared decisions from the U.S. Supreme Court with those from the South African Constitutional Court on capital punishment, poverty, the duty to protect and affirmative racial measures. He also compared cases regarding freedom of religion from the U.S. Supreme Court with those of the Canadian Supreme Court. Kende concluded that should the Supreme Court adopt a pragmatic approach, its decisions would have more influence over foreign courts.

The final speaker, Professor Stanley Laughlin, is a professor of law at The Ohio State University Moritz College of Law. Laughlin concluded the symposium with his presentation titled “Should the Constitution be Interpreted the Same Way in a U.S. Territory as in a State?” During his presentation, Laughlin examined constitutional interpretation in United States territories and free association states. Using the example of American Samoa, he highlighted how a strict interpretation could damage the native culture. He concluded by advocating an interpretation of the Constitution in these territories that protected core values, while being flexible when local culture made strict application impractical.

Prominent speakers are featured at the annual symposium to discuss important topics in the legal field. If interested, each speaker will have their presentations published in the upcoming edition of the Ohio Northern Law Review. This year, all symposium speakers will publish articles in Volume 36 of the Ohio Northern University Law Review, in its third issue, set to be published in the fall 2010.

Kamatali

2009-10 LAW REVIEW MEMBERS

CARHART SYMPOSIUM ON LEGAL ETHICS
in conjunction with ONU Law Review
March 30, 2011 “Crisis in the Legal Profession”
Summer Public Interest Stipends Awarded

By Cheryl A. Kitchen, director of law alumni and career services

These students, along with the ones who have gone through the program in the past, are dedicated to public service. We continue to encourage our students to participate in making a difference and effecting social change.

ASHLEY AHRENS, L-2
Davenport, Iowa
Maryland PIRG (Public Interest Research Group), Toxic-Free Future Campaign

LINDSEY ALEXANDER, L-1
Pittsburgh, Pa.
Equal Justice Works AmeriCorps, Legal Aid of Western Ohio, Inc.

AZA GRAY, L-2
Bloomfield, Conn.
Department of Consumer Protection, Legal Division

MARIANELLA MEDELIUS-MARSANO, L-1
Hampstead, N.C.
Mil Mujeres, 5013C family and immigration legal services- Spanish-speaking victims of domestic violence

ROSS MILTNER, L-1
Massillon, Ohio
Cleveland Department of Public Health

TYSHIA RIDDLEY, L-2
Minneapolis, Minn.
Neighborhood Justice Center, Inc.

For the past 13 years, the Office of Law Alumni & Career Services at Ohio Northern University College of Law has sponsored a Public Interest Auction to support students who want to pursue a public interest career, and who volunteer their time during the summer. Each year businesses from the area, as well as individuals, donate items for the auction. The auction provides the funds for students to participate in legal positions over the summer in the public service sector. No salaries are paid for these positions, but students receive a stipend to help with their expenses. In the past 13 years, we have raised over $72,000 and have been able to award stipends to 70 students.

The annual auction has grown each year, and we encourage its expansion, which allows even more students the opportunity to gain valuable experience in the public service area of law. In the summer of 2010, six more students were awarded each a $1,000 stipend for their volunteer work over the summer. This summer law students will serve with judges and government agencies to help people in many areas who are in desperate need of legal representation, but cannot afford it.

The next Public Interest Auction will be held April 15. To donate items for the auction or to provide financial support, contact Cheryl Kitchen at (419) 772-2249 or c-kitchen@onu.edu

Summer Scholar Studies Fair Use

First-year law student Amy Jeffries, of Modesto, Calif. was selected as the 2010 Summer Scholar. Each spring, an outstanding first or second-year student is selected for the ONU Pettit College of Law Summer Scholar Award. This student spends the summer working with a member of the law faculty on a substantial research project. Students in the top 15 percent of their classes are invited to apply. The selected student is chosen for his or her research and writing skills and then matched with a selected faculty member who is encouraged to undertake a new project or expand the scale of a current project. The Summer Scholar Award comes with a $300 stipend, an hourly wage and a tuition waiver for a summer class at ONU Law.

Jeffries worked with Dré Francis, assistant professor of law, in researching derivative works and fair use, specifically where fair use does not appropriately protect freedom of speech. She began her research by reviewing all briefs, transcripts and amici briefs submitted to and leading up to the opinions dealing with fair use and the First Amendment. She then created a memo analyzing each side’s arguments concerning the topic and compiled a comprehensive bibliography of cases she felt were relevant to the topic.

When asked about the value of serving as the Summer Scholar, Jeffries responded: “I have found the Summer Scholar position to be valuable not only for the opportunity to refine my research and writing skills surrounding a topic that has no model answer, but the experience also helped me realize that while law firms desire efficiency, academia requires comprehensiveness, and I think learning these skills separately can only help to improve the other.” Francis said that for her, the Summer Scholar Program was particularly beneficial, noting “Amy has been central in helping me to appreciate the universe of relevant scholarship I must master in order to be in a position where I can write the article I want to write. She has gone through a lot of information and created bibliographies so that my research and writing is more efficient and directed, which helps my writing process.”
ONU Law Students Travel to Iceland

From March 2, 2010 through March 8, 2010, Ohio Northern College of Law sent four law students to Iceland for a cultural exchange with students from the law school at the University of Iceland: Ian Martin, L-2, Plain City, Ohio, Ryan Nuss, L-2, West Liberty, Ohio, Adrienne Rines, L-2, Portland, Ind. and Ashley Rodabaugh, L-1, Chicago, Ill.

Our journey began with breakfast in Ada, lunch in Detroit and dinner in Boston. Following the red-eye flight from Boston, we arrived in Keflavik International Airport just before 6:00 a.m. local time. As the sun began to peek over the horizon we rolled into the capital of Iceland—Reykjavik. A few hours later, our hosts took us into the Icelandic countryside.

After more than 30 minutes of taking in the scenic, snow-covered beauty, we arrived at “Logberg” (Law Rock). This is an opening between two rocky cliffs where the Icelandic Parliament fist began meeting in 930 A.D.

The next morning we traveled to Iceland’s “Geyser” geothermal area. The original Icelandic “Geysir” is where the English language eventually derived the name for the same natural formation, geyser. The Geysir area is comprised of large and small geysers, which are aptly named as such (The Great Geysir & Litli-Geysir). The smaller geysers consist of nothing more than tiny holes filled with bubbling water. One of the large geysers erupts every ten minutes.

After we left there, we toured Iceland’s largest prison, Litla-Hraun, which features living quarters more extravagant than a college dormitory. Many inmates have single rooms with flat-screen televisions and computers. As we toured the living quarters, inmates were preparing a meal with fresh ingredients and knives.

The highlight of the day, however, was the opportunity to speak with Iceland’s prisoners. The inmates with whom we met advocate for prisoner’s rights. They shared their concerns about Iceland’s justice system. For over an hour, two drug dealers, a computer scientist-turned meth lab proprietor, attempted murderers, and an organized crime enforcer educated us on Iceland’s prison and legal systems. One of their biggest concerns was the lack of a jury trial—a cornerstone of the American legal system. One of the inmates declared that after he witnessed a judge sleeping during his appeal, he decided a jury would be a nice check on the all-powerful Icelandic judge!

To relax after an exciting yet exhausting day, we headed to downtown Reykjavik to explore the local nightlife. We discovered Icelanders have a bit of Ohio Northern school spirit as well—Polar Beer is one of their national brews! To make an Icelandic toast, raise your glass and say, “Skal,” which is pronounced like “scowl” without the “l.”

The third day began with a trip to downtown Reykjavik to see the branches of government. Alþingishúsið (The Parliament House) is in Reykjavik and houses Alþingi, the Icelandic parliament. We were shown the debating room where the parliament members argue and vote on issues. The 65 members of parliament represent five different political parties and are seated by drawing names from a bowl. Often, members are assigned seats next to members of opposite political parties with very different beliefs and agendas. After our tour of Parliament, we met with Ragnheiður E. Arnadóttir who represents the Independence Party for the Southwest Constituency of Iceland and an attorney who helps all of the members of the Independence Party. They informed us that Iceland’s government recently voted a new party into the majority in hopes of solving a major banking crisis in the country.

A few blocks from parliament is Iceland’s new Supreme Court building that opened in 1996. We learned that Iceland’s judicial system consists of two levels of courts, the district courts and one Supreme Court. The Supreme Court consists of nine justices, two of which hold office as president and vice president for two years. Cases are either heard by three justices in a small court room or five justices in a large court room.

After enjoying the cultural and political conversation for a few hours, we departed to a posh restaurant, which offered us some foreign fare we had yet to experience. At the restaurant we traded parts of our dishes, consuming such things as whale (both raw and cooked), horse and puffin (penguin-like creature). The final sunrise came a little too early, and we barely made it to the bus station in time to exchange heart-felt goodbyes with those who have become certain lifelong connections with whom we still regularly keep in contact.
125th ANNIVERSARY Shirts

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Faculty Recognized at Annual Honors Banquet

The College of Law held its annual Honors Banquet on April 14, 2010. Academic honors were presented, as well as awards for Law Review, Moot Court and Student Bar Association. Several faculty members were also recognized:

Professor John P. Christoff and Dean David C. Crago. 

- Professor John P. Christoff, JD '77, was selected for the Ella A. & Ernest H. Fisher Chair in Law. Appointment to the Fisher Chair in the College of Law is recognition of singular achievement as a legal educator. Because the selection is made by colleagues on the faculty based primarily on sustained excellence in legal scholarship and teaching, the appointment reflects the highest recognition the College of Law has to offer to a member of its faculty.

Christoff was also honored by the Student Bar Association with the Most Effective Teacher award, which recognizes the professor who, in the students’ view, has been the most effective teacher.

Professor John H. Martin and Dean David C. Crago. 

- Professor John H. Martin was recognized with the Fowler V. Harper Faculty Scholarship Award. A faculty committee selected him based on his contribution to legal scholarship during the current year. This is the first time Martin has received the award.

Karen Elliott, JD ’83, adjunct instructor of legal research and writing, was recognized by the Student Bar Association with the Faculty Appreciation Award.

Professor Jean-Marie Kamatali and Brian D. Anderson, editor in chief, Law Review. 

- Jean-Marie Kamatali, assistant director of the LLM program and visiting assistant professor of law, was recognized by Law Review with its Dean Daniel S. Guy Award for Excellence in Legal Journalism.

Congratulations to the following College of Law staff members who were recognized for their years of service to Ohio Northern at a special recognition dinner on August 18, 2010: 

- Peggy Cain, 35 years of service
- Paula Butler, 15 years of service
- Lena Smith, 10 years of service
- Sharon Stechschulte, 5 years of service
Streib Retires

Victor L. Streib, professor of law and former dean of the College of Law, retired at the conclusion of the Fall, 2010, semester. Streib, who came to ONU Law in 1996, taught legal profession, death penalty seminar, criminal law, criminal procedure and juvenile law.

A reception in Streib’s honor was held Nov. 17, 2010, at the Inn at Ohio Northern. We wish Victor and his wife, Lynn Sametz, all the best as they transition into the next phase of their lives!
So much more than just a place to rest your head. Nestled in Hardin County, Ohio The Inn at Ohio Northern University is a destination like no other. Conveniently located on the campus of Ohio Northern University, offering an exciting location with top entertainment, theater, music, walks, and art galleries. Enjoy truly luxurious accommodations, exquisite amenities, distinctive cuisine, and fine dining in a warm and elegant atmosphere. Drinks by the fireplace, live jazz, lunch in the garden courtyard, traditional high tea, special wine tasting events are just some of the activities at The Inn. The Executive boardroom and meeting rooms that accommodate up to 100 people are also available at The Inn.
Nancy A. Armstrong
Director of the Law Library and Professor of Law

Professor Nancy Armstrong participated in the ONU law alumni trip to Iceland commemorating the 50th anniversary of the Icelandic Legal Exchange program. During the dinner program she presented four books by ONU law faculty to the dean of the law school at the University of Iceland. While presenting the books she read the special greetings each author had written inside the book recognizing the long-standing friendships and success of the Icelandic Legal Exchange program. Earlier this year, Armstrong was a member of an American Bar Association law school site inspection team. These teams are responsible for visiting law schools during the reaccreditation process and writing reports documenting the visit. This was her fourth time serving on an ABA site inspection team.

Joanne C. Brant
Professor of Law

Professor Joanne Brant spent the summer teaching her seminar on church-state relations at the University of Alabama School of Law. She is also preparing a new seminar on Media Law, which will be offered at Ohio Northern in the Fall of 2010. Brant recently completed a solicited book review of Law and the Humanities: An Introduction (Ed’s Sarat, Anderson and Frank, Cambridge 2010), which will soon be published in the peer-reviewed journal, America Journal of Legal History.

C. Antoinette Clarke
Professor of Law

Professor Toni Clarke was elected to the Executive Committee of the Ohio American Civil Liberties Union Board of Directors (OACLU) as Affirmative Action Officer and will serve in that capacity for the next two years. She appeared on a WGTE-TV (Toledo Public Television) program discussing current issues with the ACLU. In May, she spoke to over 500 Reynoldsburg High School students on the dangers of “sexting.” In addition, she was the keynote speaker at the Toledo OACLU chapter’s, annual dinner, speaking on “(de)Criminalizing Kids: The Call for Juvenile Justice Reform.” Clarke moderated a panel and gave a presentation titled, “From Cradle to Prison,” discussing the case with which juveniles are incarcerated in Ohio.

Howard N. Fenton III
Director of LLM Program and Professor of Law

Professor Howard Fenton was elected Chair-elect of the American Association of Law Schools Section on Post-Graduate Legal Education for 2010-11 at the AALS 2010 Annual meeting. In January 2010, he presented a one week course on legislative drafting to approximately 50 lawyers in Adama, Ethiopia as part of a United States Agency for International Development capacity building program to assist Ethiopia in its efforts to become a member of the World Trade Organization. Fenton was the 2010 Law Day speaker for the Hancock County Bar Association in Findlay, Ohio, where he spoke on “Law in a Globalizing World: What America Offers and What We Can Learn.”

Bruce Comly French
Professor of Law

Professor Bruce French serves as a Chapter 7 Trustee in Bankruptcy for the Office of the United States Trustee, Region 9, Cleveland, Ohio. He has also been appointed as an out-of-district trustee for a liquidating business bankruptcy in Detroit. This role has allowed French to manage a portion of the College of Law’s Bankruptcy Clinic, wherein law students with an Ohio Legal Intern Certificate are assigned for a semester each to the Trustee, a chapter 7 debitors’ attorney and a United States Bankruptcy Judge. French’s principal interests at the moment include monitoring debt relief agencies. He also serves on the Board of Trustees for Legal Aid of Western Ohio (LAW’S) and Advocates for Basic Equality, Inc. (ABLE), which are the providers of legal aid for western Ohio from Toledo to Dayton. He is on the Executive Committee on the Lima Branch of the Lima Chapter or the National Association for the Advancement of Colored People (NAACP), and serves as a member of the Attorney Constituent Group for the United States Bankruptcy Court for the Northern District of Ohio, Cleveland, as a convener of the Allen County Citizens for the Environment, Inc. (ACCE), Lima, and as a guest lecturer on the Bill of Rights for the past 16 years at North Middle School, Lima. He is the administrator and a frequent presenter at the William Howard Taft American Inn of Court at Ohio Northern University, Ada. He continues to engage in pro bono public work in representing low-income domestic relations’ clients in the Courts of Common Pleas of Hardin and Allen Counties. His recent scholarship, Willowbrook Reclaimed, will be published at 2 Charlotte L. Rev. 297 (2010).

Bruce P. Frohnen
Associate Professor of Law


Elena Helmer
Visiting Assistant Professor of Law

During the last academic year, Professor Elena Helmer was appointed Vice Chair of the American Bar Association Section of International Law Anticorruption Committee. She has also become editor of the Anticorruption Committee Newsletter, a monthly electronic publication of the Committee (available online at www.abanet.org/dch/committee.cfm?com=IC700600). Concurrent JD/LLM students serve as student editors, and a number of the ONU LLM graduates have become regular contributors to the newsletter. Several ONU law students have also published their articles in the newsletter. Last spring, Helmer launched the Anticorruption Teaching Literature, an email list intended to facilitate the exchange of ideas and information among the professors and practitioners involved in teaching corruption-related courses and in anticorruption training and education. She also delivered a presentation, “Comparison of the Judicial Systems of the
United States and Ukraine,” in November at the Supreme Court of Ohio to a group of Ukrainian judges. The program was part of the ongoing exchange between the Supreme Courts of Ohio and Ukraine.

Jean-Marie Kamatali
Assistant Director of LLM Program and Visiting Assistant Professor of Law

From February–March 2010, Kamatali served as consultant for United States Agency for International Development (USAID), training judges, prosecutors and attorneys on professional practice for two weeks in Rwanda. He is currently a consultant for the United States Justice Department as an expert advisor and witness on ongoing genocide trials in the U.S.


Kamatali attended the 104th Annual Meeting of the American Bar Association (ABA), where he participated in debates at Columbia University School of Law, George Washington University School of Law, The Ohio State University Moritz College of Law, the University of Tulsa School of Law and the University of Pennsylvania School of Law. He also moderated a panel at the American Association of Law Schools conference in New Orleans on the “Transformation of U.S. Interrogation Policy,” which examined the changes in interrogation policy that the Obama administration made during its first year. Panel members were Sanford Levinson of Texas, Diane Amann of University of California-Davis, Nathan Sales of George Mason and Julian Ku of Hofstra.

Michael Lewis
Associate Professor of Law
Professor Michael Lewis published a number of articles, including: “Should Bush Administration Lawyers Be Prosecuted for Authorizing Torture?” 158 U. Pa. L. Rev. PENNumbra 195 (2010), http://www.penumbra.com/debate/pdfs/AuthorizingTorture.pdf; [Debate with Prof. Claire Finkelstein of the University of Pennsylvania], “A Dark Descent Into Reality: Making the Case for an Objective Definition of Torture”, 67 Wash. & Lee L. Rev. 77 (2010), and “Battlefield Perspectives on the Laws of War” in The War on Terror and the Laws of War: A Military Perspective, Oxford University Press (2009). He also published “Comedy or Tragedy: The Tale of Diversity Jurisdiction Removal and the One-Year Bar” 62 SMU L. REV. 201 (2009) which, among other things, criticized the Lowery v. Alabama Power decision of the 11th Circuit, was cited by the 11th Circuit Court of Appeals in Pretka v. Kolter City Plaza II which limited Lowery to its facts and overturned Lowery’s policy impact. His submission on the use of drones in Pakistan, “Examining the Legality of Unmanned Targeting,” was included in the Congressional Record as a submission to the United States House of Representatives, Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, April 28, 2010 hearing. Lewis gave lectures at Northwestern University College of Law and the University of Chicago School of Law, participated in debates at Columbia University School of Law, George Washington University School of Law, The Ohio State University Moritz College of Law, the University of Tulsa School of Law and the University of Pennsylvania School of Law. He also moderated a panel at the American Association of Law Schools conference in New Orleans on the “Transformation of U.S. Interrogation Policy,” which examined the changes in interrogation policy that the Obama administration made during its first year. Panel members were Sanford Levinson of Texas, Diane Amann of University of California-Davis, Nathan Sales of George Mason and Julian Ku of Hofstra.

Vernon L. Traster
Professor of Law
Professor Vernon Traster attended the American Association for Justice (AAJ) 2010 Annual Convention July 10-14 in Vancouver, British Columbia, Canada and the “Litigating The Uninsured & Underinsured Motorist Claim” National Business Institute (NBI) seminar July 23 in Toledo. Traster is writing a book for the American Bar Association Book Publishing Insurance Company titled Bad Faith, Fraud, and Other Misconduct.

Mindi L. Wells
Assistant Dean for Administration & Student Services
Dean Mindi Wells concluded her service on the Florida Bar Association Young Lawyers Division Board of Governors, where she served three two-year terms as an elected representative for the out-of-state members. She chaired the YLD’s Law Practice Transition committee tasked with developing resources for a statewide mentoring initiative for young lawyers, including the development of a mentoring website. She also served on the YLD’s Quality of Life and Budget committees and served as a liaison to the Out-of-State Practitioners Division of the Florida Bar. Wells served on the legal education committee of the National Association of College and University Attorneys (NACUA), where she worked with the Spring employment law continuing legal education program in San Diego, Calif. She attended NACUA’s 50th anniversary conference held in Washington, D.C. Wells was selected to be part of the 2011 Fellows Class of the Ohio State Bar Foundation.

Allison Mittendorf
Instructor of Legal Writing
Allison Mittendorf served as an assistant editor for Vol. 16 of The Journal, published by the Legal Writing Institute. Mittendorf also served on the mock trial case committee through the Ohio Center for Law Related Education. The committee developed and prepared materials for the high school mock trial competition, which focused on student speech on the internet.

Victor L. Streib
Professor of Law


Allison Mittendorf
Instructor of Legal Writing
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The College of Law is pleased to announce the appointment of four new professors for 2010-11:

Deidré A. Francis
Professor Deidré A. Francis joined the College of Law faculty in August 2010 as assistant professor. She teaches property, law and literature and advanced trademark and copyright. Her teaching interests also include First Amendment (freedom of speech). Prior to joining the faculty, Francis practiced law in Atlanta, Ga., with the firms of Sutherland, Asbill and Brennan, LLP, and Seyfarth Shaw, LLP. She specialized in the procurement, registration and enforcement of intellectual property rights with a particular emphasis on trademarks and copyrights. Francis’s experience includes trademark portfolio management, counseling clients on matters including the adoption of trademarks, potential defenses to copyright infringement and issues related to litigating patent disputes. Francis has represented both plaintiffs and defendants in patent, trademark and copyright litigation. Her clients ranged from start-ups to publicly traded companies. She earned her JD with honors form Emory and her BA from Yale.

Bruce P. Frohnen
Professor Bruce Frohnen joined the College of Law in 2008 as visiting associate professor of law and was named associate professor of law in 2010. Prior to joining the faculty, he served as a visiting scholar with the Johns Hopkins School of Advanced International Studies, as a legislative aide to United States Senator Spencer Abraham, and as a senior fellow at Liberty Fund, Inc. His co-edited volume *American Conservatism: An Encyclopedia* was the subject of a front page article in the New York Times. His two most recent volumes, *The American Nation: Primary Sources and Rethinking Rights* (edited with Kenneth Grasso) were named Outstanding Academic Titles by *Choice: Current Reviews for Academic Libraries.* His articles have appeared in journals including the *George Washington Law Review, Harvard Journal of Law & Public Policy* and the *American Journal of Jurisprudence.* His research interests focus on the nature, development and prospects for constitutionalism and human rights given changing views regarding the nature of human community and the person. He holds a JD from the Emory University School of Law and a Ph.D. in Government from Cornell University.

Hilary R. Kao
Professor Hilary Kao joined the College of Law faculty in August 2010 as assistant professor. He teaches Business Organizations I, Business Organizations II and Securities Regulation for the JD program and Legal Concepts of American Business for the LLM in Democratic Governance and Rule of Law program. His current research focuses on legal and public policy elements of federal and state incentives to the renewable energy electrical generation industry. Before joining the College of Law faculty, Kao practiced law for over a decade at the international law firm of Milbank, Tweed, Hadley & McCloy, LLP in the Global Project Finance Group in their New York offices. While at Milbank, he represented syndicates of domestic and international lenders and private investors in a wide range of domestic and international finance and corporate transactions across many industries, including conventional and renewable energy, oil and gas, biofuels, transportation infrastructure and telecommunications industries. He earned his JD from Georgetown and BA from Brandeis University.

Boris N. Mamlyuk
Professor Boris Mamlyuk joined the College of Law faculty in August 2010 as visiting assistant professor of law. He is teaching International NGOs, Administrative Law and Jurisprudence and will lead the Rule of Law Seminar. Mamlyuk joins ONU from Cornell Law School, where he served as a visiting scholar in 2007-08 and 2009-10. He earned his JD from the University of California (Hastings) in 2005. He then practiced in the Irvine, Ca., office of Watt, Tieder, Hoffar & Fitzgerald, a leading nationwide litigation and construction law practice, representing clients in local complex commercial litigation. In the 2007-08 academic year, Mamlyuk returned to academia to pursue doctoral work at the CLEI Centre, a research center founded by Cornell Law School and the University of Turin, Faculty of Law. During the course of his doctoral studies, Mamlyuk held a number of joint appointments, including visiting scholar at Columbia University’s Harriman Institute for Russian, Eurasian and Eastern European Studies. In 2008-09, he was selected as a Fulbright Fellow to study Russian law and transition at Moscow’s Institute of State and Law. While in Russia, Mamlyuk taught courses on Civil Society and Russian Law and Politics at Moscow’s Higher School of Economics. Mamlyuk’s research interests include international legal theory, law and development and issues of legal transition and Rule of Law reforms in developing and post-socialist states. His current research project focuses on Russia’s attempts to harmonize domestic legal structures in anticipation of WTO accession. Mamlyuk has delivered numerous conference presentations on these topics in more than five countries.
African Trip Unraveled

By Bruce Comly French, professor of law

Professor Bruce Comly French and retired Union County Common Pleas Judge Richard Parrott, JD ’60, visited southern and eastern Africa this summer for the purpose of French making presentations on the rights of African Americans under the U.S. Constitution and Parrott making presentations on the state judicial systems. Speaking engagements were planned at the law schools at the University of Nairobi, Malawi and Lesotho.

But a new plan emerged as the trip continued. The visit to Nairobi occurred on the day after Kenya adopted its new constitution and was celebrating the occasion. All schools were closed, so no presentation was made. However, extensive review of the College of Law Library resulted in an initiative by Judge Parrott to provide for the delivery of up-to-date legal materials not needed by the Union County Law Library.

The visit to the Malawi school was aborted after Judge Parrott’s passport was lost or stolen on the train from Nairobi to Mombasa. The U.S. Embassy in Nairobi efficiently issued a new temporary passport, but the limited air service to Lilongwe precluded a rescheduled visit.

The final visit to the National University of Lesotho Law School in Roma saw the initial discussions of a possible student or faculty exchange program with students and faculty at ONU. A proposal is being readied for law faculty consideration. The National University served as the university for Lesotho, Botswana and Swaziland prior to the three nations’ independence in the 1960s from colonial relationships with the United Kingdom. The law school faculty and the university administration welcomed a number of law school books that the faculty of the ONU Law School had collected and sent in the past several years. In 2005, French had visited the National University and made a presentation on the rights of African Americans under the U.S. Constitution. The summer visit included a tour of facilities and meetings with faculty, as well as an in-depth study of the law library and an inspection of how the books donated by ONU faculty supplemented the library collection.

When French and Parrott arrived at the Maseru, Lesotho Airport, it was quickly determined that President Jacob Zuma of the Republic of South Africa (which completely surrounds Lesotho) was in the capital for a state dinner. The Commandant of the Lesotho National Police inquired of French “are you the Ambassador from Libya?” French advised the officer that he was from the United States. The officer responded that it did not appear that the American Ambassador (presumed to be French) was not on the state dinner’s invitation list. Zuma was staying at the hotel where French and Parrott stayed.

Finally, before leaving Johannesburg for the United States, the intrepid travelers visited the Apartheid Museum and its recognition of President Nelson Mandela.
The U.S. First Amendment Versus Freedom of Expression in Other Liberal Democracies and How Each Influenced the Development of International Law on Hate Speech

By Jean-Marie Kamatali, assistant director of LLM program and visiting assistant professor of law

I. INTRODUCTION

There is a large gap between the American concept and delimitation of the freedom of speech and freedom of the press and those of other liberal democracies. The protection afforded to free speech under American law is much stronger than that of other liberal democracies. Unlike the First Amendment of the United States Constitution, which removed the power to adopt laws “abridging the freedom of speech or of the press” from Congress, constitutional provisions in most other liberal democracies are more flexible and open-ended in balancing the exercise of freedom of expression with other rights, goals, and interests. This contrast has brought some to see the First Amendment as both a “recalcitrant outlier” to an international consensus on what freedom of expression entails and a reflection of American exceptionalism.1

Beyond the differences of approach between the United States and most other liberal democracies, each side has tried to influence the concept and interpretation of the freedom of expression in international law. This article attempts to analyze how these two camps have shaped the interpretation of freedom of expression in both international human rights law and international criminal law, particularly with regard to hate speech. While acknowledging that the influence of the United States in the development of freedom of expression in international human rights law seems to have been low compared to that of other liberal democracies, this article highlights how recent developments in international criminal law demonstrate a different trend. Examining how international criminal courts, from the Nuremberg Tribunal to the recently created International Criminal Court, via the ad-hoc tribunals, have tried to interpret the concept and delimitations of the freedom of speech, particularly with regard to hate speech, this article argues that unlike international human rights law, international criminal law seems to more closely follow the American approach to First Amendment jurisprudence. Further, these new developments prove that international human rights law is not correcting the blind spots of international criminal law on hate speech, as some have argued.2 Rather, hate speech is likely to develop separately in international human rights and international criminal law, the latter more closely following the First Amendment track and the former following that of a majority of other liberal democracies.

II. COMPARING THE FREEDOM OF EXPRESSION IN THE UNITED STATES TO OTHER LIBERAL DEMOCRACIES

A. Early Tests for Protected and Unprotected Speech in the United States

The standard test to define what speech is protected or unprotected under the First Amendment of the United States Constitution has evolved over time. The “bad tendency” test that dominated the pre-World War I era1 was later overturned by the “clear and present danger” test that, in turn, was later replaced by the “imminent lawless action” test.14 Despite this evolution, however, the Supreme Court of the United States has remained consistent in refusing to distinguish protected from unprotected speech on the basis of the point of view espoused.

Reliance on the “bad tendency” test is most clearly illustrated by Patterson v. Colorado.6 Thomas M. Patterson, a Senator from Colorado, owned and edited newspapers in his home state. In his editorials, cartoons, and letters, he ridiculed the Supreme Court of Colorado for invalidating the home rule amendment on state constitutional grounds and overturning elections in Denver.15 Essentially, he accused the judges of acting as tools of the utility corporations, which controlled the Republican Party. Following his conviction in Colorado,16 Patterson appealed to the Supreme Court of the United States, arguing that his conviction constituted a violation of his First Amendment rights.17 The Court, in an opinion authored by Justice Oliver Wendell Holmes, Jr., rejected Patterson’s claim.18 Justice Holmes wrote that the First Amendment prevents all “previous restraints upon publications[,]” but allows “the subsequent punishment of such as may be deemed contrary to the public welfare.”19 In supporting his argument, he alluded to Blackstone’s Commentaries, which defined criminal libel as a writing “of immoral or illegal tendency.”20

The “clear and present danger” test was first developed by the Court in Schenck v. United States.21 Charles Schenck was convicted for distributing 15,000 leaflets to young men of draft age, advocating opposition to the draft.22 In a unanimous decision, the Court held that Schenck’s conviction was constitutional.23 Justice Holmes, writing for the Court, argued that “[t]he question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”24

Brandenburg v. Ohio serves as the genesis of the “imminent lawless action” test, which still prevails today. At least one commentator has argued that with this case, the Court “combined significant aspects of several previous First Amendment cases into a single, high standard of protection for all speech advocating violation of the law.”25

A comparison between Brandenburg in the United States, Muggera in Canada, and Jersild in Denmark is necessary here in order to understand how these three similar cases were dealt with in those countries.

The protection afforded to free speech under American law is much stronger than that of other liberal democracies.
B. The Brandenburg Case

Brandenburg began when Clarence Brandenburg, the leader of a local chapter of the Ku Klux Klan ("KKK"), invited a Cincinnati television reporter to a Klan rally being held at a farm in Hamilton County, Ohio. The rally was filmed and portions were later broadcasted on both local and national networks. Hooded individuals, some holding guns, were present at the rally. Brandenburg made speeches conveying racist and anti-Semitic statements to those present. In one of these statements, he said that "the Klan has more members in the State of Ohio than does any other organization. We're not a revengent [sic] organization, but if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revenge [sic] taken." Brandenburg was convicted for violating Ohio's criminal syndicalism statute, which prohibited "advocat[ing] . . . the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing . . . political reform."

He was sentenced to a year in prison and fined $1,000. The state intermediate appellate court and the Supreme Court of Ohio affirmed his conviction, but the Supreme Court of the United States reversed. In doing so, the Court held that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to incitement or producing imminent lawless action and is likely to incite or produce such action.

C. The Mugesera Case

The statements leading to Brandenburg's conviction in the state courts, for example, "[p]ersonally, I believe the nigger should be returned to Africa, the Jew returned to Israel[,]" were similar to those of Leon Mugesera. In November 1992, Mugesera, during a political rally in Rwanda, stated, referring to the Tutsi, "I am telling you that your home is in Ethiopia that we will send you by the river Nyabarongo so you can get there quickly." Though Mugesera's speech contained other words likely to be qualified as hateful and incendiary, his speech was mostly remembered for this particular portion. Following these statements, in August 1993, Mugesera immigrated to Canada. In 1994, Rwanda suffered a genocide that claimed close to one million lives. In July 1996, a Canadian adjudicator concluded that Mugesera's speech constituted "an incitement to murder, hatred and genocide, and a crime against humanity" and issued a deportation order. The Immigration and Refugee Board (Appeal Division) ("IAD") upheld the decision. After different levels of appeals, the Canadian Federal Court of Appeals reversed several findings of fact made by the IAD and ultimately the deportation order itself. The case was appealed to the Supreme Court of Canada, which interpreted Mugesera's speech in the context of Rwandan history of the Tutsi massacres and the dominant teaching about Tutsi's immigration from Ethiopia to Rwanda. In earlier massacres, the Tutsi had been killed and their bodies thrown into the Nyabarongo River, which runs through Rwanda to Ethiopia. Thus, Mugesera's request that Tutsi return to Ethiopia by way of the Nyabarongo, a river unnavigable by boat, was interpreted as a call for the former. As a result, the Court held that Mugesera's speech constituted an incitement to murder, hatred, and genocide and a crime against humanity.

D. The Jersild Case

The circumstances of Brandenburg can also be compared to those of Jersild v. Denmark in two respects: the words of Brandenburg with those of the “Greenjackets” ("grønJjakkerne") and the fate of Jens Olaf Jersild, the Danish Journalist who produced and broadcasted the interview with the "Greenjackets" with that of the journalist who covered the KKK rally where Brandenburg gave his problematic speech.

Jersild began on May 31, 1985 when a newspaper, Information, published an article describing the racist attitudes of a number of young people, all members of a group who called themselves “the Greenjackets” ("grønJjakkerne"). In response, the Sunday News Magazine, which had
a reputation “as a serious television program[] intended for a well-informed audience, dealing with a wide range of social and political issues, including xenophobia, immigration and refugees[,]” decided to produce a documentary on the “Greenjackets.” 49 Subsequently, its journalist, Jens Olaf Jersild, set up a television interview with three representatives of the group.50

During the interview, the “Greenjacket” members made “abusive and derogatory” statements about immigrants and ethnic groups in Denmark.51 After being asked by Jersild if they were racists, one of the “Greenjackets” responded, “Yes, that’s what I regard myself as. It's good being a racist. We believe Denmark is for the Danes.”52 Expressing their support for the KKK, one said “[t]he Ku Klux Klan, that’s something that comes from the States in the old days during - you know - the civil war and things like that, because the Northern States wanted that the niggers should be free human beings, man, they are not human beings, they are animals, right, it’s completely wrong, man, the things that happened. People should be allowed to keep slaves, I think so anyway.”53

Asked if this was due to the fact that “because blacks are not human beings[,]” the member responded, No, you can also see that from their body structure, man, big flat noses, with cauliflower ears etc., man. Broad heads and very broad bodies, man, hairy, you are looking at a gorilla and compare it with an ape, man, then it is the same [behavior], man, it’s the same movements, long arms, man, long fingers etc., long feet . . . . Just take a picture of a gorilla, man, and then look at a nigger, it’s the same body structure and everything, man, flat forehead and all kinds of things.54

After being asked what the KKK means to him, he said, “It means a great deal, because I think what they do is right. A nigger is not a human being, it’s an animal, that goes for all the other foreign workers as well, Turks, Yugoslavs and whatever they are called.”55 Based on this speech, the Danish court convicted the three “Greenjackets.”56 Jersild and his program controller, Lasse Jensen, were also convicted for aiding and abetting the three “Greenjackets” by conducting and broadcasting the interview.57

A comparison between Jersild and Brandenburg illustrates how the United States, Denmark, and Europe, generally, differ in dealing with hate speech. More specifically, the European Court of Human Rights noted, in Jersild, that “there can be no doubt that the remarks in respect of which the Greenjackets were convicted were more than insulting to members of the targeted groups and did not enjoy the protection of Article 10”58 of the European Convention on Human Rights. Further, while finding that Jersild was protected by Article 10, the court held it was undisputed that the interference with Jersild’s rights was “prescribed by law” and pursued a legitimate aim, “namely the, ‘protection of the reputation or rights of others.’”59 The only point with which it disagreed with the Danish court was on the question of whether the measures were “necessary in a democratic society.”60 Accordingly, the court did not dispute the need for Denmark to adopt such laws.61 Rather, it was more concerned that “the means employed were disproportionate to the aim of protecting , ‘the reputation or rights of others.’”62

The Danish provisions criminalizing hate speech can be found in a number of other liberal democracies. For instance, the South African Constitution does not extend the right to freedom of expression to “advocacy of hatred that is based on race, ethnicity, gender and religion, and that constitutes incitement to cause harm[;]”63 the Canadian Criminal Code prohibits communicating statements in a public place to incite hatred against any identifiable group and communicating statements, other than in private conversation, to willfully promote hatred against an identifiable group;64 the French Criminal Code punishes those who by publication by any of various means, provoke discrimination, hatred, or violence with regard to a person or a group of persons by reason of their origin or their membership or non-membership in an ethnic group, nation, race, or particular religion . . . . by a term of imprisonment of one year and by a fine[;]65 and the German Criminal Code provides “for the punishment of those who incite hatred, or invite violence or arbitrary acts against parts of the population, or insult, maliciously degrade, or defame part of the population, in a manner likely to disturb the public peace.”66

Unlike the countries mentioned above,67 the United States, pursuant to Brandenburg, sets the bar very high. In proscribing the “imminent lawless action” test, the Court held that incitement to violent racial hatred is simply not enough for a conviction.68 Such an incitement has to be “unmistakably call[ing] for immediate violent action, and even then only under the more rare still circumstances in which members of the listening audience are in fact likely immediately to act upon the speaker’s suggestion.”69 Based on this test, federal and state courts have reversed rulings and ordinances prohibiting or restricting racial intimidation,70 membership in racial groups,71 or racist speech on university campuses.72

A comparison between Jersild and Brandenburg illustrates how the United States, Denmark, and Europe, generally, differ in dealing with hate speech.

Despite this evolution, however, the Supreme Court of the United States has remained consistent in refusing to distinguish protected from unprotected speech on the basis of the point of view espoused.
The courts in Collin v. Smith and National Socialist Party v. Village of Skokie considered regulations that prohibited the Nazi Party from marching, wearing the swastika, distributing pamphlets, or displaying materials inciting or promoting hatred against Jews or persons of any faith, ancestry, or race to be a form of speech protected by the First Amendment. 79

III. Freedom of Expression in International Human Rights Conventions Ratified by the United States

From the early stages of the negotiation of the International Bill of Human Rights, the United States did not hide its opposition to clauses restricting free speech. 80 When the draft of the Universal Declaration of Human Rights was being debated by the Commission on Human Rights, its chair, Eleanor Roosevelt, opposed several attempts by countries such as the U.S.S.R., France, Belgium, China, Chile, and Lebanon to include in Article 19 of the UDHR a specific provision limiting the freedom of expression. 81 Despite her effort, however, Articles 29 and 30, both limitation clauses on the Declaration, were generally understood as providing a legal basis for restricting freedom of speech. 82 Regardless, many countries were waiting to reintroduce their restriction to free speech in the more binding convention, the International Covenant on Civil and Political Rights (ICCPR), which was already being drafted by the UN Commission on Human Rights at the time. 83

Since the beginning of the negotiation of the ICCPR in 1947, two blocs were created: one supporting the inclusion of an anti-hate clause in the provisions on freedom of expression and another opposing it. 84 The former was mainly supported by the U.S.S.R., France, and Third World countries, while the latter was led by the United States. 85 From the early phases of negotiations, the United States cautioned against including in the Covenant “any provision likely to be exploited by totalitarian States for the purpose of rendering the other articles null and void.” 86 Regarding the inclusion of specific provisions prohibiting incitement to hatred, Eleanor Roosevelt warned that this would be an “extremely dangerous” move, “since any criticism of public or religious authorities might all too easily be described as incitement to hatred and consequently prohibited.” 87 While the majority of other liberal democracies shared the United States’ views that including anti-hate provisions would be handing totalitarian regimes a tool to “silence free men[,]” 88 they were not comfortable with the “absolutist” 89 position of the United States, which was viewed as wishing “to permit full freedom of expression for the purpose of incitement to hatred and violence.” 90 This attitude seems to have favored the inclusion of the anti-hate clause in the ICCPR provisions on freedom of expression. 91 The result was the adoption, by vote, of Article 19, 92 which contains restrictions going beyond those permissible under current First Amendment jurisprudence, and Article 20, 93 which is “in plain conflict with the strictures of the U.S. Constitution.” 94

Although some have argued that the controversial Article 20, which the United States opposed the most, was overwhelmingly adopted with the support of a broad range of political and economic systems, 95 the record of the vote on this article shows that most liberal democracies joined the United States in voting against it. 96 The opposition of most liberal democracies to the provisions of Article 20, Paragraph 2, however, was not transformed into resisting its incorporation into their domestic laws. 97 Rather, of the 165 countries which have ratified the ICCPR, only Malta and United States have made a reservation to this provision. 98 In 1992, when the United States finally ratified the ICCPR, it included a reservation aimed at blocking the application of Article 20 domestically. 99 This reservation, which came first on the list of U.S. reservations to the ICCPR, states that “Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States.” 100

The Human Rights Committee, a body in charge of monitoring the implementation of the ICCPR, has been supportive of countries that strictly implement the terms of Articles 19 and 20. 101 It has found, for instance, France’s punishment of Robert Faurisson, for his speech denying the existence of certain extermination tactics used in the Holocaust, to be in conformity with these articles. 102 The committee also found that Canada did not violate Article 19 by taking disciplinary action against a teacher who published anti-Semitic tracts outside the classroom. 103

However, the opposition and outcry of the United States regarding the provisions of Article 20 of the ICCPR did not stop or intimidate the wide adoption of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) under the auspices of the United Nations. Article 4 of CERD went beyond simply prohibiting hate speech; it made it a criminal offense. 104 This Article requires that States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof[,] 105

It also places a duty on state parties to “declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by

Since the beginning of the negotiation of the ICCPR in 1947, two blocs were created: one supporting the inclusion of an anti-hate clause in the provisions on freedom of expression and another opposing it.
Having failed to convince other UN members of the efficacy of its First Amendment interpretation of free speech, the United States decided to join other delegations in voting in favor of Article 4, but its representative declared that the United States interpreted the “due regard” clause as “not imposing on a State party the obligation to take any action impairing the right to freedom of speech and freedom of association.” When it ratified the Convention, the United States distanced itself even further from the Convention’s provisions by adopting a reservation stating that

declaration that the United States interpreted the “due regard” clause as “not imposing on a State party the obligation to take any action impairing the right to freedom of speech and freedom of association.” When it ratified the Convention, the United States distanced itself even further from the Convention’s provisions by adopting a reservation stating that

the Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 4 and 7, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.

The Committee on the Elimination of Racial Discrimination, the body in charge of monitoring the implementation of CERD, has continuously recommended that states go beyond enacting criminal provisions punishing hate speech to effectively enforcing them. Further, it has found states refusing to punish hate speech, under the theory that such speech is incompatible with the right to free speech, to be in breach of Article 4.

The European Commission and European Court on Human Rights, which has become a reference in the development of human rights jurisprudence, have been consistently in support of states’ prosecution of hate speech. For instance, in Glimmerveen v. Netherlands, the European Commission on Human Rights found the Netherlands’ conviction of Glimmerveen and Hagenbeek, for distributing racist leaflets, to be in conformity with the provisions of the ECHR. Similarly, in Garaudy v. France, France was found not to have violated Garaudy’s freedom of speech when it condemned him for his revisionist theories denying the existence of crimes against humanity. Also, in B.H. v. Austria, the Commission found the applicants’ claim that their conviction, for adhering to National Socialist doctrine, was a violation of their freedom of expression to be manifestly ill-founded.

On November 28, 2008, the European Union moved a step further and adopted a supranational law requiring EU member States to adopt the necessary measures to ensure that the following intentional conduct is punishable:

(a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin;
(b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;
(c) publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court.

Effective December 2008, this Framework Decision also orders EU Member States to punish any instigation and aiding or abetting of the commission of crimes mentioned above.

IV. INTERNATIONAL CRIMINAL COURTS AND THE FREEDOM OF EXPRESSION: FINDING THE MIDDLE GROUND

A. The Nuremberg International Military Tribunal (IMT)

The Nuremberg International Military Tribunal was the first interna-
tional criminal tribunal to try acts tantamount to incitement to genocide. Its first case in this regard concerned Julius Streicher, the editor of Der Stürmer, an anti-Semitic weekly newspaper, from 1923 to 1945. In 1935, Der Stürmer's circulation was nearly 600,000 people. Streicher's regular anti-Semitism and incitement of German people to active persecution can best be illustrated by a September 1938 article that termed the Jew a “germ and a pest, not a human being, but ‘a parasite, an enemy, an evil-doer, a disseminator of diseases who must be destroyed in the interest of mankind.” In January 1943, Streicher wrote and published an article stating that “Hitler’s prophecy was being fulfilled, that the world Jewry was being exirpted, and that it was wonderful to know that Hitler was freeing the world of its Jewish tormentors.” In February 1944, he published yet another article that stated, “Whoever does what a Jew does is a scoundrel, a criminal. And he who repeats and wishes to copy him deserves the same fate: annihilation, death.” Since incitement to commit genocide was not yet part of international criminal law, Streicher was convicted of committing a crime against humanity, which “involved, among other things, the murder and persecution of all who were or who were suspected of being hostile to the Nazi Party and all who were[,] or who were suspected of[,] being opposed to the common plan.”

The second IMT case concerned Hans Fritzsche, the head of the Radio Division of the Propaganda Ministry and Plenipotentiary for the Political Organization of the Greater German Radio. Fritzsche was subordinate of Joseph Goebbels, the Reich Minister of Propaganda. However, near the end of World War II, Fritzsche was the sole authority for radio activities within the Ministry. He was accused of “inciting and encouraging the commission of [war] [crimes] by deliberately falsifying news to arouse in the German people those passions which led them to the commission of atrocities.” Though the Tribunal found that the “[s]ecrets in evidence from his speeches show[ed] definite anti-Semitism on his part[,]” it concluded that these “speeches did not urge persecution or extermination of Jews.” Unlike Streicher, Fritzsche was acquitted of a crime against humanity.

These IMT cases made two important contributions to the issue of incitement in international criminal law. First, it was agreed that hate speech, even in crucial times such as the Holocaust, was not punishable as long as it does not urge the commission of genocide or crimes against humanity. Second, even in cases where it does, it was not a separate crime. Rather, it requires that the criminal act it was inciting actually occur for the speech to be punishable. This last point came to be the subject of long discussions during the drafting of the United Nations Genocide Convention, leading the “direct and public incitement to commit genocide” to be a punishable act “even when such incitement failed to produce the result expected by the perpetrator.”

B. Hate Speech in the Genocide Convention

The drafting history of the Article III (c) of the Genocide Convention, which prohibits “direct and public incitement” to commit genocide, illustrates the different conception of and commitment to free speech between the United States and other countries and how this difference influences the outcome of international treaties.

The Original Draft Convention on the Crime of Genocide, as prepared by the Secretary General of the United Nations, contained two key provisions likely to conflict with the freedom of expression. First, Article II (II) (2) prohibited “direct public incitement to any act of genocide whether the incitement be successful or not.” Second, Article III prohibited “all forms of public propaganda tending by their systematic and hateful character to provoke genocide, or tending to make it appear as a necessary, legitimate or excusable act[.]” Commentary of the UN Secretariat indicates that the term “incitement,” as used in Article II (II) (2), “refers to direct appeals to the public by means of speeches, radio or press[] inciting it to genocide.” In proposing this article, drafters were worried that the “lightly or imprudently spoken word of a journalist or speaker himself capable of doing what he advises will be taken seriously by some of his audience[,] who will regard it as their duty to act on his recommendation.” Furthermore, the commentary to Article III explains that general propaganda should be prohibited because it “would, if successful, persuade those impressed by it to contemplate the commission of genocide in a favorable light.” According to the Secretariat's report, in order to be punishable, “the propaganda must necessarily be heavily charged with hatred and must be systematic, that is to say, repeated methodologically.”

In its comments on this Draft Convention, the United States categorically opposed these two provisions as contradictory to the First Amendment, arguing that “free speech is not to be interfered with unless there is a clear and present danger that the utterance might interfere with a right of others.” Later, as the Ad Hoc Committee on Genocide was reviewing the Draft Genocide Convention in light of comments from member states, the United States worked hard to get these two articles
removed from the draft. Ultimately, the United States successfully managed to get the majority of the Ad Hoc Committee to reject Article III on propaganda, but could not convince them to reject Article II (II) on incitement to genocide. Accordingly, the majority vote of the Ad Hoc Committee endorsed a draft that punished “direct public or private incitement to commit the crime of genocide[,] whether such incitement be successful or not.”

When the Sixth Committee of the General Assembly was revisiting the Ad Hoc Committee’s draft of the Genocide Convention, the United States once again expressed its worries that “[i]f it were admitted that incitement was an act of genocide, any newspaper article criticizing a political group, for example, or suggesting certain measures with regard to such group for the general welfare, might make it possible for certain States to claim that a [g]overnment . . . was committing an act of genocide; and yet that article might be nothing more than the mere exercise of the right of freedom of the [p]ress.”

The United States, therefore, submitted an amendment aimed at deleting the provision dealing with incitement, but it was defeated. Faced with this defeat, the United States declared that it reserved its position on the subject of incitement to commit genocide, and it abstained during voting on the entire article.

The U.S. efforts were not, however, fruitless because they persuaded the Sixth Committee to defeat numerous attempts by countries, such as the U.S.S.R., to reintroduce the “propaganda provision” that had previously been rejected by Ad Hoc Committee. Additionally, its effort contributed to the persuasion of the Sixth Committee to adopt the Belgian proposals to remove the phrases “or in private” and “whether such incitement be successful or not” from the original draft of the Ad Hoc Committee that read “[t]he following acts shall be punishable: . . . (c) direct incitement in public or in private to commit genocide whether such incitement be successful or not.” Therefore, the final text adopted as Article III of the Genocide Convention became narrower, stating, “The following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.”

It was not, until recently, with the creation of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), that the interpretation of Article III, particularly with regard to the application of subsection (c), was undertaken.

C. The International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY)

There have been a number of attempts to prosecute hate speech as a crime against humanity and genocide before the ICTR and ICTY. In Prosecutor v. Kordic & Cerkez, the ICTY was the first to deal with an indictment for “instigating and promoting hatred . . . by propaganda and speeches.” Dario Kordic, a former journalist, was indicted for publicly advocating the political-military campaign to persecute and terrorize Bosnian Muslims and for encouraging and instigating the ethnic hatred, strife, and distrust, “which involved, or resulted in, the commission of serious violations of international humanitarian law.” The indictment stated that his “persecution against Bosnian Muslims was . . . accomplished by encouraging, instigating and fomenting hatred, distrust and division on political, racial, ethnic or religious grounds, by propaganda, speeches and otherwise.”

However, the Tribunal rejected this indictment, arguing that convicting the accused for such acts would violate the principle of legality. The Tribunal based its legality decision on three arguments, stating that “First, this act] is not enumerated as a crime under the International Tribunal Statute . . . [Second, such an act] does not rise to the same level of gravity as the other acts enumerated in [the Statute] . . . [Third,] the criminal prohibition of this act has not attained the status of customary international law.” Curiously, however, this last argument was based on the balancing of a long list of countries decisions regarding hate speech and a number of treaties, which called for its prosecution, on one hand and the United States’ free speech standards, which the tribunal itself acknowledged as “exceptional in the extent of its free speech guarantees,” on the other.

As illustrated in Prosecutor v. Nahimana, et al. hereinafter “the Media Case”, the contribution of the ICTR was significant because it decided whether international criminal law would follow the practice of the majority of most liberal democracies and international human rights treaties or the American exceptional free speech approach, a higher bar than the other approaches. Most notably, the tribunal’s decision in the Media Case was “the first judgment since the conviction of Julius Streicher at Nuremberg[,] after World War II[,] in which the role of the media was examined in the context of international criminal justice.” Surely, this case made a significant contribution in the development of “direct and public incitement to commit genocide” by radio and printed media; however, more relevant to the present discussion is how the ICTR Trial Chamber and its Appeal Chamber diverged on which approach the court should follow when defining elements of “direct and public incitement to commit genocide.”

D. The Media Case before the ICTR Trial Chamber

In the Media Case, Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Ngeze Hassan were accused of “direct and public incitement to commit genocide, complicity in genocide, and crimes against humanity.” Nahimana was director of the Rwandan Office of Information from 1990 to 1992 and one of the founding members of the initiative committee to set up the notorious Radio Television Libre des Mille Collines, S.A. (RTLM). Barayagwiza was also a member of the initiative committee that organized the founding of the RTLM. Hassan worked as journalist since 1978 and was the founder and Editor-in-Chief of Kangura, a Rwandan newspaper.

Kangura was mainly known for its publication of the “Ten Commandments” of the Hutu. The commandments included the following:

4. Every Hutu male must know that all Tutsi are dishonest in their business dealings. [ ]They are only seeking ethnic supremacy[;]
7. The Rwandan Armed Forces should be exclusively Hutu . . . . No soldier must marry a Tutsi woman[;]
8. Hutu must cease having any pity for the Tutsi.

However, the tribunal also considered the cover of Kangura No. 26, which had a drawing of a machete accompanied by the words “what weapons shall we use to conquer the Inyenzi once and for all[,]” as evidence of incitement to genocide. Additionally, in a number of Kangura’s editorials, “Hutu were portrayed as generous and naive, while the Tutsi were portrayed as devious and aggressive[ ].” Also, making reference to snakes, the Tutsi were portrayed as mean and vengeful, and their weapons were again defined . . . to be women and money.” The editorials also highlighted “the divide between the wily, devious Tutsi and the innocent, vulnerable Hutu, and the association of the Tutsi population with the Inyenzi-Inkotanyi.”

The ICTR also referenced a long list of statements made by the RTLM it considered “direct and public incitement to commit genocide.” Included within those statements were the broadcasts of May 13 and June 4, 1994. In the May broadcast, the statement was made that “[s]omeone must have signed the contract to exterminate inkotanyi . . . to make them disappear for good . . . to wipe them from human memory . . . to exterminate the Tutsi from the surface of the earth . . . to make them disappear for good.” Likewise, the June broadcast consisted of the following statement:

One hundred thousand young men must be recruited rapidly. They should all stand up so that we kill the Inkotanyi and exterminate them, all the easier that . . . the reason we will exterminate them is that they belong to one ethnic group. Look at the person's height and his physical appearance. Just look at his small nose and then break it. Moreover, the RTLM provided the names of people to be targeted for killing. On May 28, 1994, for example, they broadcasted:

8. Hutu must cease having any pity for the Tutsi.

It proceeded to cite hate speech jurisprudence from the UN Human Rights Committee and the European Court of Human Rights as useful guides for determining the factors to be considered in defining the elements of the crimes of “direct and public incitement to commit genocide.”

For example, the decision in Faurisson was cited as a reference case in determining “whether . . . the purpose in publicly transmitting the material was of a bona fide nature[;]” and Jerold was used to emphasize the need for the “interviewer to distance[;] himself from the racist remarks made by his subject[,]” and the Sverrek v. Turkey (No.I) and Sverrek v. Turkey cases, both European Court of Human Rights decisions, were used to assess whether the “the language intended to inflame or incite to violence” and to determine the scope of liability for editors and publishers.

In examining the jurisprudence on incitement, the Trial Chamber “highlight[ed] the importance of taking context into account when considering the potential impact of expression[ ]” and once again referenced Faurisson, in which the Human Rights Committee argued that “challenging the existence of gas chambers, a well-documented historical fact, would promote anti-Semitism.” For the same purpose, the Trial Chamber referenced Incl v. Turkey, another decision of the European Court of Human Rights, noting that “a text may conceal objectives and intentions different from the ones it proclaims.” Again referencing European Court of Human Rights jurisprudence, the Trial Chamber agreed that “[i]n cases where there are issues of national security and where statements incite to violence, a wider margin of appreciation is given to the discretion of authorities to restrict freedom of expression.”

The Trial Chamber only used the United States’ jurisprudence on hate speech to show that it “accept[ed] the fundamental principles set forth in international law.” In this regard, the Trial Chamber cited Virginia v. Black. However, instead of interpreting Black for its majority holding, that “the actual intent behind the words and deeds [were] important, not how that speech was interpreted[,]” the Trial Chamber understood this case from Justice Clarence Thomas’ dissent, which advocated a finding of “intent through the plain meaning of the words and actions.” It is clear that the Trial Chamber's approach, using international and European jurisprudence on hate speech as “point of reference for its consideration of these issues,” was trying to fill the “lacuna in the Genocide Convention with respect to hate propaganda.” Indeed, the Trial Chamber did not bother to clearly distinguish “mere hate speech” from speech that directly and publicly incites one to commit genocide. Rather, it limited its discussion of the point by noting that “[h]ate speech is not protected speech under international law.” Thus, no distinction was made between hate speech in international human rights law and international criminal law.

Accordingly, the Trial Chamber’s exercise of analyzing International Human Rights treaties and the practices of different countries, which sought to limit free speech, was likely done in an effort to support the Chamber’s conclusion that customary international law calls for prohibition and prosecution of hate speech. This is best illustrated by the chamber’s statement that

"[the Chamber considers, in light of well-established principles of international and domestic law, and the jurisprudence of the Streicher case in 1946 and the many European Court and domestic cases since then, that hate speech that expresses ethnic and other forms of discrimination violates the norm of customary international law prohibiting discrimination. Within this norm of customary law, the prohibition of advocacy of discrimination and incitement to violence is increasingly important as the power of the media to harm is increasingly acknowledged.

Moreover, Navanethem Pillay, the presiding judge in the case and the current UN High Commissioner of Human Rights, has recently reiterated this conclusion.

E. The Media Case Before the ICTR Appeal Chamber

Although the Appeal Chamber was prudent not to embarrass the Trial
Chamber, it is clear that it disagreed with it on fundamental issues. One of the fundamental disagreements was over the role international human rights law should play in interpreting genocide provisions on direct and public incitement to commit genocide.\textsuperscript{203} Regarding this, the Appeal Chamber adopted the position that “to the extent that not all hate speeches constitute direct incitement to commit genocide, the jurisprudence on incitement to hatred, discrimination and violence is not directly applicable in determining what constitutes direct incitement to commit genocide.”\textsuperscript{204}

Additionally, the Appeal Chamber sought to make a clear and unequivocal distinction between hate speech in general (or inciting discrimination or violence) and direct and public incitement to commit genocide.\textsuperscript{205} Accordingly, it held that direct incitement to commit genocide assumes that the speech is a direct appeal to commit an act referred to in Article 2(2) of the Statute; it has to be more than a mere vague or indirect suggestion. In most cases, direct and public incitement to commit genocide can be preceded or accompanied by hate speech, but only direct and public incitement to commit genocide is prohibited under Article 2(3)(c) of the Statute.\textsuperscript{206}

While the prosecutor argued that Trial Chamber did not confuse speech which amounted to an incitement to commit genocide with general hate speech, its ambiguous statements and failure to draw a clear line between the two concepts made many worry that the Trial Chamber’s decision “could be interpreted to subsume hate speech that does not contain a call to action of violence under the rubric of direct and public incitement to commit genocide.”\textsuperscript{207} Accordingly, the Appeal Chamber answered its call and clarified that speech that does not incite its audience to commit genocide does not constitute the crime of direct and public incitement to commit genocide.\textsuperscript{208} Thus, in reaffirming that hate speech without incitement to commit genocide is not punishable under international criminal law and that jurisprudence on incitement to hatred, discrimination, and violence is not directly applicable to the determination of what constitutes direct incitement to commit genocide, the Appeal Chamber reaffirmed that there is a difference between hate speech in international human rights law and international criminal law.\textsuperscript{209}

V. CONCLUSION

The ICTR Appeal Chamber’s refusal to allow the use of human rights jurisprudence on incitement to hatred, discrimination, and violence to determine what constitutes direct incitement to commit genocide, the conclusion in Cerkez that the criminal prohibition of hate speech has not attained the status of customary international law, and the Statute of the International Criminal Court that makes incitement a crime only insofar as it is direct and public and aimed at the commission of genocide alone, not simply one of the other crimes within its jurisdiction,\textsuperscript{210} illustrate where international criminal law stands with regard to hate speech. Those opinions demonstrate that hate speech standards in international criminal law have been influenced more by U.S. standards than those of the majority of other liberal democracies and international human rights law. Recent developments in international criminal law, as illustrated in this article, demonstrate that its refusal to punish hate speech is not a lacuna but a deliberate choice. This choice proves the exceptionalism of international criminal law when compared to the rest of international law, just as the United States is considered an exception when its free speech standards are compared to other liberal democracies.

See William A. Schabas, Hate Speech in Rwanda: The Road to Genocide, 46 McIL L.J. 141, 162-71 (2000). Schabas argues that although the drafters of the Genocide Convention “rejected efforts to include the prohibition of hate propaganda within the scope of the convention”. The convention’s blind spot has, to a certain extent, been corrected by subsequent international human rights instruments dealing with racial discrimination.” Id. at 162-63.


See 205 U.S. at 462-63 (stating that if the speech or publication “tends” to “to obstruct the administration of justice” then the speech is not protected).

See The People ex rel. The Attorney General v. Newton Times Publ’g Co., 54 Ill. 3d, 326, 335 (1978), aff’d sub nom. Patterson, 205 U.S. 454, 462 (1907).

See Newton Times, 84 at p. 918, 923, 25.

See id. at 913-14.

See id. at 956.

See Patterson, 205 U.S. at 458, 462.

See id. at 458, 463.

Id. at 462 quoting Commonwealth v. Brandt, 3 Pol. 304, 313, 314 (Mass. 1825); Republica v. Godard, 1 Dal. 339, 335 (Fla. 1858).


249 U.S. at 52.

See id. at 485-50.

Id. at 485.

Id. at 52.

249 U.S. at 448-49.

David Goldberg, Protecting Speech We Hate, 32 LEGISLATION 40, 42 (2006).

395 U.S. at 444-45.

Id. at 445.

Id. at 445-46, n.1.

Id. at 446.

Brandenburg, 395 U.S. at 444-45.

Id. at 445.

See id.

See id.

See id.

See id.

See generally Mugyana v. Canada, (1992) 5 S.C.R. 100 (Can.).

Id. at app. II, ¶ 25.

See generally id. at app. III (reprinting speeches).

See generally Gregory S. Gordon. From Incitement to Victimization? Prosecuting Iran’s President for Advocating Iran’s Destruction and Picking Up where集成的 Law and the Prevention of Incitement to Certain Acts that are Committed with Prejudice Against Any National, Racial, or Religious Group or Social Character. 31 Brandenburg, 395 U.S. at 447.

Id. at 39.

Id. at 37.

28 Id. supra note 96, ¶ 19.

27 Id. supra note 96, ¶ 20.

26 Brandenburg, 395 U.S. at 444-45.

25 Id. at ¶ 11.

24 Id. at ¶ 10.

23 Id.

22 Id. at 445.

21 See id. at ¶ 9.

20 See id. at ¶ 8.

19 249 U.S. at 448-49.

18 249 U.S. at 446-47.

17 See id. at 913-14.

16 See id. at 912-13.

15 See id. at 907-10.

14 See id. at 910.

13 See id. at 909.

12 Compare Jersild, 298 Eur. Ct. H.R. 128, 129 (1979) (noting that the speaker, Brandenburg, not the reporter, was convicted under the Ohio Criminal Syndicalism statute).


9 See id. at 907-10.

8 Compare Faurisson v. France, ¶¶ 1, 2, 9, 28, 38, 42, 49, 61, 62, 136, 142, 144 (1994).

7 See The People ex rel. The Attorney General v. Newton Times Publ’g Co., 54 Ill. 3d, 326, 335 (1978), aff’d sub nom. Patterson, 205 U.S. 454, 462 (1907).

6 See 205 U.S. at 462-63 (stating that if the speech or publication “tends” to “to obstruct the administration of justice” then the speech is not protected).


2 Id. supra note 96, ¶ 11.


FOOTNOTES

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Jean-Marie Kamatali

Biographical Note:
Jean-Marie Kamatali is visiting assistant professor of law and assistant director of the LL.M. program at Ohio Northern. He previously served as dean of the Law School at the National University of Rwanda and contributed to the post-genocidal legal and institutional rebuilding in Rwanda. He has served as a visiting professor in different universities throughout Africa, Europe and North America. Kamatali is a consultant for USAID project in Burundi and is a consultant for the United Nations Children’s Fund (UNICEF) and the Food and Agricultural Organization of the United Nations (FAO), among others. Kamatali earned his bachelor’s degree in law and his licence en droit from the National University of Rwanda and received a master of arts from the University of Notre Dame and a doctor of laws from the Institute of International Law and International Relations at the Karl-Franzens Universität Graz in Austria.
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