Ohio Northern University Pettit College of Law

THE Writ

Fall 2006
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John H. Martin

WRIT STAFF

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Ohio Northern Breaks New Ground with LL.M. for Lawyers from Transitional Democracies

For some emerging democracies, the road to stronger institutions and the rule of law may run through the small village of Ada, Ohio. The College of Law inaugurated the new Democratic Governance and Rule of Law LL.M. program this fall with its first class of twelve students. Working under a grant from the United States Department of State, the law school has brought young lawyers from Ukraine, Georgia, Uzbekistan, Kyrgyzstan, Kazakhstan and Bosnia-Herzegovina to Ada for a year-long program that emphasizes the skills needed to help build a strong legal framework for democracy in their home countries. This is the first graduate law program of its kind in the United States focused on building democracy and the rule of law.
The program is directed toward lawyers who have been active in the public or non-profit sector in their countries, and who are willing to make a two-year commitment to continue their efforts upon their return home. Unlike international L.L.M. programs at other law schools, Ohio Northern is requiring these students to take seven newly designed courses that will enhance their understanding of the issues in transitional democracies and provide them with new skills to address those issues. The program also includes a variety of weekend seminars and field studies of local community groups, governments, and courts.

Ohio Northern presents an ideal environment for teaching American and comparative legal and democratic values. Professor Howard Fenton, the program director with over ten years of experience in working with transitional democracies, and new faculty members provide both classroom and individual instruction for the students. The students live on campus and are a part of the law school, university, and Ada communities while having ample distraction-free time to pursue the rigorous program of instruction.

The numerous opportunities the program provides for observing local and state government activity in Ohio offers governance at a scale much closer to what most of the students will be experiencing at home. By observing not only government bodies and courts, but community groups, bar associations, and other non-governmental organizations, the students are

This is the first graduate law program of its kind in the United States focused on building democracy and the rule of law.
exposed to democracy at the grassroots level in the middle of America. For example, through observing the election in Ohio this fall that features some of the most hotly contested, partisan races in the country and a swirling controversy over voting fairness, the students are getting a realistic view of the dynamics of the electoral process.

Origins of the Program

The genesis of the program can be traced to the active role played by the Ohio Supreme Court under the leadership of Chief Justice Thomas Moyer in the mid-1990’s in providing judicial training and advice to newly independent former Soviet republics. Members of the law faculty of Ohio Northern University, including Professor Fenton and Associate Dean for Academic Affairs John Christoff participated in these training sessions in Ukraine. Three years ago, Dean David Crago asked the faculty to consider the possibility of using the close relationships between students and faculty and the small town environment that have long been strengths of Ohio Northern to provide graduate legal study. Professor Fenton, who had just returned from a year in Tbilisi, Georgia as chief of party for the United States Agency for International Development Rule of Law project, suggested a program aimed at young lawyers working to enhance democracy in their developing countries. Dean Crago appointed an LL.M. committee that examined other international graduate law programs, consulted with active international reform lawyers in the United States, law reform advocates from developing democracies, and conferred with academics and government officials from a range of countries. The result was a recommendation for a highly structured and focused program that would address the central issues in establishing the rule of law in a nation transitioning to democracy.

However, the faculty realized that young lawyers committed to political and legal reforms in developing countries, even more than young American lawyers interested in public interest law, lack the resources for graduate study in the United States. Because the benefits from this kind of training are so significant, the law school decided to develop a program that would provide the education with little or no cost to the LL.M. students.

Working with U.S. Senator Michael DeWine and his staff, Ohio Northern was able to secure an initial grant from the State Department’s Bureau of Educational and Cultural Affairs to cover virtually all of the costs of this graduate program for twelve lawyers in its first year. In consultation with the State Department, the law

LL.M. for Lawyers from Transitional Democracies


LL.M. FACULTY AND STAFF

The faculty and administrators of the LL.M. program have exceptional academic credentials, teaching experience in a variety of cultures, and a range of experiences with democracy and governance programs in transitional democracies. The following are brief biographies of those directly involved with the program.

Howard N. Fenton

Professor Howard N. Fenton is the Director of the LL.M. program. He received both his B.S. and J.D. with honors from the University of Texas. He has over 30 years of experience in administrative and legislative law, and public international and international trade law. For the past ten years he has consulted on law reform in developing democracies, focusing on reforms in administrative law and procedure, the legislative process, and public participation and awareness. He has authored numerous materials on law reform and served as chief of party for the USAID funded Rule of Law Project in Tbilisi, Georgia, from 2001-2002.

Stephen J. Larrabee

Stephen J. Larrabee is the Assistant Director of the LL.M. program. He received his J.D. with honors and MBA from the George Washington University in Washington, D.C. Larrabee is the former regional director for the International Center for Not-for-Profit Law for Central Asia, and has worked in Uzbekistan and other parts of the former Soviet Union for the past 10 years.

Stephen C. Veltri

Professor Stephen C. Veltri is a Professor of Law. He received his J.D. cum laude from Georgetown University and his LL.M. from Columbia University. He has taught a wide range of courses, including constitutional law seminars and jurisprudence. He is particularly noted for his work in commercial law, including serving on national advisory committees and publishing a well-recognized guide to the American commercial law code.
school identified three regions for its focus: Central Asia, Eastern Europe, and the Middle East. Through cooperation with the U.S. embassies and U.S. Agency for International Development offices in these countries, and a variety of non-governmental organizations such as the American Bar Association Central European and Eurasian Law Initiative, the National Democratic Institute, and International Republican Institute, the law college was able to recruit twelve very talented young lawyers with significant experience in law reform and democratization efforts in their home countries.

The Law School’s Commitment

To present this kind of novel program at a small school away from the national centers of international activity, the law college recognized that it needed to make a substantial commitment to enhancing its research and teaching resources. Professor Fenton’s work in transitional democracies has focused on reform of their administrative and regulatory structures, and has given him an exceptional range of experiences and insights into issues in democratic reform. He has been recognized as one of the leading U.S. experts on administrative law reform in transitional democracies and co-authored a guide to administrative law reform for U.S. Agency for International Development democracy and governance officers.

Two visiting faculty were recruited for the first year of the program. Professor Elena Helmer is a former professor and deputy dean of the St. Petersburg Institute of Law in St. Petersburg, Russia with an LL.M. from Yale and significant teaching experience in the United States in comparative law and law reform topics. Professor Jared Levinson, recently the human rights program liaison in Uzbekistan for the American Bar Association Central European and Eurasian Law Initiative and a former Fulbright Scholar in Indonesia, has his LL.M. in International and Comparative Law from Georgetown University. Other members of the Ohio Northern faculty with strong international and comparative experience will also teach in the program. Steve Larrabee, the new assistant director, with both a J.D. and MBA from George Washington University, came to the program after managing law reform and civil society programs in Central Asia for 8 years.

In addition to the program’s required courses, four weekend seminars are scheduled throughout the year to bring in international experts on particular topics for a focused discussion by the LL.M. students and faculty. During the fall semester, Dr. Gustavo Vega-Canovas, Professor and Director of the Center for International Studies of El Colegio de Mexico will conduct a seminar entitled “Transition from One Party Rule” and Professor Julie Mertus of the American University School of International Service...
LL.M. for Lawyers from Transitional Democracies

“The chance to make an investment in the future of liberal democracy and the rule of law around the world from a small town in Ohio is incredibly exciting. It helps us all recognize that these are truly universal values.”

–Howard Fenton

Open air market, Tbilisi, Georgia, 2006.

will lead a seminar on “Women’s Rights in Transitional Democracies.” These short courses will also be open to a small number of J.D. students.

Central to the LL.M. experience at Ohio Northern is the opportunity to conduct research and develop new approaches to democratization issues, including the Rule of Law Seminar in the spring semester which requires a significant research paper addressing a particular problem of the students’ home country. As the law school became committed to creating this program, the library began to expand its collection to accommodate the research needs of the LL.M. students and faculty. While already the highest rated private law school library in Ohio with a growing international collection, the library has significantly expanded its foreign and comparative materials, including new electronic resources. Thus the LL.M. students will have access to world-class resources in the friendly and supportive environment of small town Ohio.

The students are living on campus in new university apartments together with other law students in the J.D. program. They are linked with International Peer Advisors, second and third year law students with international background and interests, who help the LL.M. students to acclimate to the university and the village. The LL.M. faculty, the program director and the assistant director serve as advisers to the small number of LL.M. students, providing personal and professional support to help them with both the transition to life in the U.S., and the achievement of academic success in the program.

A Tradition of Public Service

Helping young lawyers from around the world learn new skills for building democracy is just the latest chapter in a 130 year history of training lawyers for public service at the College of Law.
LL.M. for Lawyers from Transitional Democracies

From the four members of the U.S. Senate in 1920 who were graduates of the law college to ranking among the top law schools for percentage of graduates in judicial positions in the 1980’s, Ohio Northern has a long history of educating lawyers in both the law and public service. The Democratic Governance and Rule of Law LL.M. program is taking this Ohio Northern tradition to new countries and legal systems but is still firmly grounded in the close relations between teachers and students and the small town ethic that has been the school’s strength.

Helping young lawyers from around the world learn new skills for building democracy is just the latest chapter in a 130 year history of training lawyers for public service at the College of Law.

The 12 students in the new LL.M. are:

- Ms. Daniela Ritan
  Bosnia-Herzegovina

- Ms. Rusudan Tabatadze
  Georgia

- Mr. Givi David Kutidze
  Georgia

- Ms. Tamar Vashakidze
  Georgia

- Ms. Sofiya Yerzhigitovna Issenova
  Kazakhstan

- Mr. Yuri Fyodorovich Khvan
  Kyrgyzstan

- Mr. Jenishbek Nuretovich Arzymatov
  Kyrgyzstan

- Mr. Akylbek Abdyldaevich Sarbagyshov
  Kyrgyzstan

- Ms. Olena Igorivna Zadorozhna
  Ukraine

- Mr. Oleksandr Oleksandrovich Kondratyuk
  Ukraine

- Ms. Dilrabo Ramazanovna Djurakulova
  Uzbekistan

- Ms. Nigora Yulkunovna Shayusupova
  Uzbekistan

Citizen group meeting, Rustavi, Georgia, 2001.
Ohio Northern University
College of Law Commencement

May 14, 2006
The College of Law celebrated its 2006 commencement ceremony on May 14, 2006, with approximately 100 graduating students. Michael Mario Michetti of Medina, Ohio, who ranked academically at the top of the graduating class, gave the student address, and Dean David C. Crago, provided further remarks.

Graduating students Michael Joseph Palumbo of Canfield, Ohio, and Bonnie Lee Wolf of Saverna Park, Maryland, gave the invocation and benediction, respectively. Classmate Leah Erin Bumbalough of Manchester, Tennessee, was the featured vocalist.

Dean Crago, assisted by members of the tenured law faculty, placed the academic hood upon the candidates, who were then presented with their diplomas by President Kendall Baker.

Mr. Kenneth W. Gideon delivered the commencement address and was also awarded an honorary degree during the ceremony. As a partner in the Washington, D.C. office of Skadden, Arps, Slate, Meagher & Flom, LLP, Gideon’s work focuses on three often overlapping areas of law: representation of clients before the U.S. Department of the Treasury and the Internal Revenue Service; seeking guidance on novel transactions; and issues of federal tax law, tax controversy, and tax planning.

Gideon serves as co-leader of the firm’s national tax litigation practice and was listed as a “Leading Tax Lawyer” in July 2005 in Legal Times, which praised him for his “high-level government experience and formidable track record in court.” He was also selected for inclusion in Chambers USA: America’s Leading Lawyers for Business 2004-2005.

Gideon is a frequent speaker on tax-related subjects before government, trade associations, and continuing legal education programs. He is also the author of one tax treatise and several articles. From 1990 to 1992, he served as vice chairman of the Committee on Fiscal Affairs of the Organization for Economic Cooperation and Development in Paris, France. He earned his J.D. from Yale Law School and his B.A. from Harvard University.

[CONTINUED ON NEXT PAGE]
During the last few days, I have been in search of inspiration for this speech. I looked high and low, with little success, until I was inexplicably drawn to Room 129 of the law school, the Celebrezze Moot Court Room. I sat down in that now familiar room and finally realized that almost everyone here has been in that room at one point or another during the past three years.

For the Class of 2006, it’s a room with history. First, it’s a place where we started the journey that culminates today - by attending either a Legal Scholars Day or law school orientation. We sat in that room, in a group of people we didn’t realize would become some of our closest friends and met members of the administration and faculty for the first time. I remember hearing about how hard we would have to work to succeed, about the importance of professionalism, and the demands of the career path we have chosen. I’m sure that I’m not the only student in this room who was nervous about writing that first case brief during orientation. How little we knew about how second nature that practice was about to become!

In that room we’ve had events and receptions, we’ve listened to amazing speakers, we’ve met visitors from other countries, and we’ve met new recruits to the law school. We’ve sweated through six semesters of examinations in that room, and we’ve seen sights that we may never want to see again - such as the Mr. ONU pageant during our second year (and I’m not saying anything else about that)! It’s a room that has, for all rights and purposes, permeated the last three years of our lives.

It is also a room that many of our family and friends have visited, either when we visited campus for the first time three years ago, through attending a reception or event, or by providing support to a competitor in one of our many Moot Court competitions.

Professors and administrators have taught classes, debated, socialized, and supported the student body in that room. At college coffees on Thursdays, the college has come together to drink gallons of free coffee (the life blood of a law student) and eat breakfast in that room, and we have shared many successes there. Even if you haven’t been in the room, through the many stories that come home with law students, I’m sure that everyone feels like they have been there.

Since we all have some connection to that room, I presume that we’ve also all looked around and noticed the sayings on the back wall. If you are a student, maybe it was during a “what’s going on moment” in class, or maybe it was during one of those moments during an exam where we look around the room frantically, hoping that divine intervention will bring us a sign of the answer we need! For parents and friends, maybe it came during your first visit, when you wondered what your loved one was getting into, or during a moot court competition when you thought that you couldn’t endure listening to one more impassioned legal argument about some obscure nuance of the small claims court or other such topic.

No matter when it was that we have seen the quotes, the simple fact that they make a perfect summary of the last three years remains:

The first quote on the wall is “Know Thyself” by Socrates, and seems to be the most fitting for this achievement. Over the past three years, we have learned a ton of information - an amount that I’m sure none of us thought was possible before we did it. One day, I tried to estimate just how many pages that we had to read and study during a year - and came to the conclusion
that over the past three years, we’ve read over 12,500 pages, not including study aids or research for our papers, etc. - which seems to me to be quite a testament to the work ethic and the academic achievement that this degree represents.

Through those studies, we learned not only about law, but also learned about our individual values and beliefs, about the structure of society, about the formulation of public policy, and the effect of law on real people, by being pushed by our professors to understand how the law shapes the world that we live in.

We didn’t just learn this from our classes but also by our daily interactions with our classmates and other members of the university community. We learned to support each other, to help each other, and that we could overcome our fears by pulling together as a class.

The second quote on that wall is “Control Thyself” by Cicero. This is a lesson that I think we all sometimes thought was slow in coming, after one of the interminable e-mail wars that law students use to vent their frustrations and sharpen their newly acquired debating skills. However, I’m sure that we have learned control, in two different ways.

The first thing that comes to mind when I think of control is the ability to control our own desires - which is the ability to make personal sacrifices. We have had to learn to not go to the Regal Beagle as often as we would like, or to go to Easton or Polaris to go shopping as much as we would like, or to not watch Boston Legal as much as we would like, so that we could achieve our dreams. Our demanding schedules taught us the value of “deferred compensation” and delayed benefits!

However, we also learned control from watching the examples of others who sacrificed to allow us to succeed. Our families have sacrificed to support us and give us the opportunity to be here. I’m sure that I speak for the entire class of 2006 when I say thank you to our families, but especially to all of the mothers who are with us today, celebrating Mother’s Day by celebrating our accomplishments. Let’s take a moment to give all of the mothers a round of applause to show our thanks!

We also watched our professors and administrators sacrifice their personal time to support us - from advising our student organizations and participating in our extra-curricular events, to purchasing countless items from all of the sales in the informal lounge and being supportive mentors for our personal and professional lives. They gave us support and time during each semester, and we would not be here without their sacrifices.

We also benefited from the sacrifices of alumni and friends whose gifts gave use a wonderful environment to study in, by renovating various areas of the law school, and supporting us through funding scholarships and extra-curricular opportunities.

The last quote on the wall tells us to give ourselves. Like I mentioned above, many people have given so that we could sit here today. However, throughout the last three years, we also gave to each other. During our tenure, we started a flag football tradition that started with one game, and is now a multiple game extravaganza during the fall semester. We also started the Mr. ONU pageant, which I am sure some of us would like to forget. We gave of ourselves to make outstanding student organizations, and we supported each other throughout law school - making friends that we will never forget!

We came together as a class time and time again, giving to each other whenever there was need - and this is what makes ONU a special place, a place that we will be proud to call our alma mater. We came together to remember the classmate who we lost before we received our degrees, and we came together to give back to future classes through a very generous class gift. From examples, but also from our character, we have learned to give.

As we go forward from today, with the memories of the past three years, if we can continue to do what we started here - to continue to know ourselves, to continue to control ourselves, and to continue to give of ourselves, we would hopefully fulfill each of the dreams that we hold deep in our hearts and to make each person who gave to us proud to know that they participated in the success of the class of 2006.
Office of Development Established

The College of Law’s new Office of Development opened in February, 2006, but has remained relatively empty while Director of Development Carla Willis has been traveling to meet College of Law alumni and friends. Willis has followed the tracks of alumni through Washington, D.C., cities in Ohio, Pennsylvania, Washington, Florida, and even the country of Iceland.

In addition to being on the road developing new relationships, Willis has also been reviewing development practices at other law schools, establishing goals, gaining an understanding of the fundraising culture at ONU, and developing a strong fundraising plan for the College of Law.

Two of the primary goals for Willis over the next 12 months are to raise the support of College of Law alumni through the Northern Fund from 16% to a 20% participation rate (although aspirations will move toward 30% over time) and to raise funds for the recently announced Eugene N. Hanson Reading Room and Fellows Program, which will hold interest for many College of Law alumni of several different decades.

The Eugene N. Hanson Reading Room will be housed in the College of Law Library and will provide 2,664 square feet of newly renovated and reconfigured space for quiet study and reading. The space will consist of a main reading room area, two soft-seating group discussion rooms, and two special-use study alcoves.

In addition to the Reading Room component, the College of Law will also remember and honor Eugene N. Hanson by naming a newly created Fellows Program. The program will provide annual, renewable, need-based scholarship awards to students who demonstrate financial need and exemplify undergraduate academic excellence. The fundraising campaign for this project was launched in June, 2006, at the College of Law Alumni Board Meeting in Washington, D.C., with the announcement of a $500,000 anonymous lead gift for the project. The Eugene N. Hanson Reading Room and Fellows Program has an approximate cost of $1 million, and all funds raised in excess of this amount will support the Fellows component of the project.

Professors Emeriti Al Baillis, Dan Guy, and George Vaubel are the honorary co-chairs of the fundraising campaign.

In addition to this multitude of projects, Willis is also focusing on increasing the overall level of support for both endowed and named scholarships and professorships.

For more information on these and other development-related initiatives, contact the College of Law Office of Development at 419-772-2256 or at lawdevelopment@onu.edu.
Ohio Northern University College of Law
Graduates Surpass the National
Employment Rate Again This Year

BY CHERYL A. KITCHEN
DIRECTOR OF LAW ALUMNI AND CAREER SERVICES

2005 marks the 32nd year in which NALP, the National Association for Law Placement, has compiled annual statistics on the employment rates of law graduates throughout the United States. Nationally, for the first time in five years, there was a slight increase in the overall placement rate. In 2005, the national placement rate was 89.6%; however, Ohio Northern graduates continue to secure employment at higher rates than the national average. The statistics for the 2006 graduating class will not be gathered until nine months after graduation.

93% of Ohio Northern’s 2005 law graduates were employed within nine months of graduation compared to 89.6% nationally. Comparing the last five graduating classes, in addition to 2005, in 2004 and 2003 the national rate 88.9%, in 2002 it was 89%, and in 2001 it was 90%. For Ohio Northern during those same years, we had 94% in 2004, 91.4% in 2003, 94.3% in 2002, and 95.1% in 2001. Although, NALP statistics show a slight weakness in the legal employment economy, Ohio Northern continues to maintain stable employment rates.

This employment rate is due to the hard work and tenacity on the part of the students along with the help and support of the faculty and alumni, as well as 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. Over 600 employers from across the country post job announcements.

In 2005, the national placement rate was 89.6%; however, Ohio Northern graduates continue to secure employment at higher rates than the national average, with 93% of the 2005 graduates employed.
Over 600 employers from across the country post job announcements with our office. In addition to posting job announcements with our office, this past school year 35 employers participated in our resume collection program and another 50 employers conducted on-campus interviews. 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 40 states and their job searches span nationwide.

Thank you again for your ongoing support and assistance in the success of Ohio Northern University College of Law.
Ohio Northern University College of Law seeks a student body with a broad spectrum of backgrounds, cultures, life experiences and interests. Diversity is of paramount importance in a law school, where perspectives need to reflect the wide array of ideas, viewpoints and experiences of our society-at-large.

Our nationally recognized faculty not only trains its multi-talented student body to analyze and interpret the law, but to consider competing viewpoints and to pose persuasive arguments in a variety of forums. Our law students are among the most serious law students in the nation and are being prepared for practice in any jurisdiction. The Princeton Review’s Best 159 Law Schools, 2006 Edition, lists Ohio Northern University Law as having the sixth most

**Entering Class of 2006**

**THE ENTERING CLASS OF 2006 PROMISES TO BE ONE OF THE MOST ACADEMICALLY TALENTED CLASSES IN THE HISTORY OF THE LAW SCHOOL.**

**OVER FOURTEEN HUNDRED APPLICATIONS WERE CAREFULLY REVIEWED IN SELECTING THE MEMBERS OF THE 2006 ENTERING CLASS.**

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**2006 Ohio Northern College of Law Class**

Students in the 2006 entering class hail from 27 states. States represented by the entering class are:

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*40% of 2006 entering class is from Ohio
60% of 2006 entering class is out-of-state*
The 120 first year students hail from 27 states and the District of Columbia and received their bachelor’s degrees from nearly 90 colleges and universities throughout the nation including institutions such as Cornell University, George Washington University, Boston University, Howard University, Northwestern University, Washington and Lee University, The Citadel, Ohio Northern University, Franklin and Marshall, Colby, Centre, Allegheny, Gettysburg, Kenyon, Rhodes, Smith, Dickinson and Clark (Massachusetts).

In addition to the more traditional pre-law majors in history, political science, criminal justice and English, a variety of undergraduate majors are represented including:

- Accounting
- Anthropology
- Biology
- Business/Commerce
- Business Management
- Communications
- Computer Engineering
- Economics
- Environmental Studies
- Fine Arts
- Finance
- French
- Government
- Human Development and Family Studies
- Journalism
- Liberal Arts
- Literature
- Marketing
- Mechanical Engineering
- Mining Engineering
- Management Information Systems
- Performing Arts
- Philosophy
- Physics
- Psychology
- Real Estate
- Sociology and Spanish

Although the majority of entering students is traditionally-aged and has recently graduated from a bachelor’s program, the age range is 21-50. The percentage of minority students has significantly increased, and the gender ratio continues to be approximately 50:50. Collectively these 120, outstanding individuals contribute to the dynamic personality of the College of Law community.

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 2006 entering class is showing great promise not only in continuing a rich history and tradition of excellence at ONU Law, but in demonstrating great potential for being “architects of justice” in a complex and dynamic society.

2006 entering class members have held a variety of jobs including:
- Paralegal, congressional intern, financial analyst, certified EMT, phlebotomist, reporter, editor, assistant photographer, research assistant, banker, lifeguard, teacher, coach, waiter, counselor, therapist, loan officer, nanny, construction worker, and dental hygienist.

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 2006 promises to be one of the most academically talented classes in the history of the law school. Over fourteen hundred applications were carefully reviewed in selecting the members of the 2006 entering class. The 120 first year students hail from 27 states and the District of Columbia and received their bachelor's degrees from nearly 90 colleges and universities throughout the nation including institutions such as Cornell University, George Washington University, Boston University, Howard University, Northwestern University, Washington and Lee University, The Citadel, Ohio Northern University, Franklin and Marshall, Colby, Centre, Allegheny, Gettysburg, Kenyon, Rhodes, Smith, Dickinson and Clark (Massachusetts).
College of Law
Homecoming 2006 Schedule

Saturday, Oct. 14, 2006

8:00 – 9:15 a.m.
   Law Alumni & Friends Breakfast -
   Wishing Well, McIntosh Center
   Alumni & friends of the College of Law are invited to
   join Dean David C. Crago, as well as current faculty,
   faculty emeriti, and former deans for breakfast.

9:00 a.m.
   Your Law School in the 21st Century -
   College of Law Moot Court Room, Room 129
   Learn how the College of Law is positioning itself in
   today’s competitive legal education market. We are
   meeting the challenges of the 21st century through
dynamic growth in technology, student job placement,
student excellence, the international curriculum
and the LL.M. program. It is an exciting time in the
college and we look forward to sharing it with you!

10:30 a.m.
   ONU Homecoming Parade on Main Street

11:30 a.m.
   Law Alumni & Friends Tailgate Party -
   Dial-Roberson Field (Tent provided)
   ALUMNI OF ALL AGES! A Ferris Wheel, the Super
Slide, Scrambler, the Loop-O-Plane, Helicopter and
Skyfighter, food, games, and much more for your
enjoyment!

1:00 p.m.
   Football game - ONU vs. Capital

To register or for additional information call
(419) 772-1980, e-mail lawalumni@onu.edu, or
visit www.law.onu.edu.

Avoiding Wrongful Convictions in Criminal Cases
CLE sponsored by Ohio Northern and
Phi Alpha Delta
Friday, October 13, 2006
1:00–5:15 p.m.

Topics covered: false confessions, eyewitness identification procedures, and forensic science issues.

$70 registration includes CLE, refreshments, and copy of the book, “Achieving Justice: Freeing the Innocent, Convicting the Guilty”

To register or for additional information call (419) 772-1980, e-mail lawalumni@onu.edu, or visit www.law.onu.edu.

SBA Law Alumni Golf Outing
Hawthorne Hills Golf Club
1000 Fetter Rd. Lima, OH
(419) 221-1891

Shotgun Start……..10 a.m.
Lunch...............12:30 p.m.
Foursome 9 holes $130
Individual 9 holes $35
Foursome 18 holes $180
Individual 18 holes $50
Hole Sponsorship $100
Lunch Only $8

To register or for additional information call (419) 772-1980, e-mail lawalumni@onu.edu, or visit www.law.onu.edu.
College of Law Hosts First Iceland Alumni Trip

For over 45 years, Ohio Northern’s Icelandic Exchange Program has provided law students with the opportunity to visit Iceland. On May 18, 2006, several College of Law alumni, as well as staff and friends of the College of Law traveled to Reykjavik, Iceland, for the first Law Alumni Iceland Trip. Alumni, and in particular those who participated in the Icelandic Exchange as law students, were invited to attend.

James Pry (L’70) chaired the trip. The delegation of 17 arrived Friday, May 19, had breakfast and toured the University of Iceland. The University welcomed the ONU group and hosted an informal reception, followed by a tour of the law school, and a demonstration of their classroom technology. Following lunch, the group was free to explore Iceland. Some enjoyed the geothermal pool at the Blue Lagoon, visited the Golden Circle, toured Reykjavik and its surrounding areas by bus, and visited the United States Embassy. On their final day, the group toured the Althingi, Iceland’s Parliament, and were greeted by Berglind Steinsdottir, a member of parliament and former exchange participant. After a whirlwind, but very memorable trip, the group returned to the United States on Monday, May 22.

There has been talk of organizing another alumni trip to Iceland in 2010 to commemorate the 50th anniversary of the exchange program. If you are interested in participating, please contact Law Alumni at lawalumni@onu.edu.

Iceland is the youngest land mass in the world, having been formed by a volcano approximately 20 million years ago and still contains active volcanoes and geysers. In fact, the word geyser first came from the Icelandic language when they, along with hot springs, were originally discovered. The country’s interior is made up of four large glaciers, one of which is the largest in Europe. The country’s population is only 270,000 and is about the size of Kentucky. The town of Reykjavik, with a population of approximately 150,000 people, is heated with geothermal water. The country is virtually pollution-free and the glacier fed streams are abundant with salmon and trout. The literacy rate in Iceland is 90%.

Six and one-half hours after leaving Baltimore on Thursday, May 18, 2006 (on a nonstop flight of over five hours), we were visiting the law school in Reykjavik. Shortly after lunch, we visited the Icelandic Supreme Court.

After a short afternoon nap on Friday, we attended a banquet with 60 lawyers from Iceland to commemorate the 46th anniversary of the exchange program with Ohio Northern Law School. All of the people at the banquet from Iceland spoke Icelandic, Danish and English. My wife and I spoke to a young lady seated at our table, and we asked her how far back she could trace her ancestry. She told us that since there had been little immigration into Iceland, she could trace her ancestry back 1,000 years.

Saturday and Sunday were spent visiting the countryside, talking with people, and sight-seeing. Monday morning, we had the pleasure of attending the Althingi, which is their form of parliament, and is one of the oldest parliaments in the world, dating back to 930 A.D. Besides seeing the beautiful countryside, we dined on Icelandic lobster, lamb chops, and other delicacies of Iceland.

I only hope that graduates from Ohio Northern College of Law will be able to take this trip in the future.

– Written by Jim Pry (L’70)
Ohio Northern University College of Law
United States Supreme Court
Admission Ceremony

By Cheryl A. Kitchen
Director of Law Alumni and Career Services

Ohio Northern University College of Law held its fourth United States Supreme Court group admission ceremony on June 19, 2006. The event began with a reception and dinner at The Madison Hotel on the Sunday evening before the Monday morning admission ceremony. Over 100 alumni, family, and guests attended the dinner. In addition, area alumni joined the group in celebration of the swearing-in ceremony.

Robert Ryan (L‘79), president of the Law Alumni Association, welcomed the group to D.C. and shared with them the extreme importance of taking part in the upcoming ceremony. Johnnie Johnson, III (L‘70), was introduced as the movant for the Supreme Court ceremony. Mr. Johnson had also been the movant for Ohio Northern during the previous three ceremonies. Dean David Crago also welcomed and congratulated the inductees on their accomplishments.

The evening was a sharing of achievement by alumni who are active in many different fields of law across the country. It was also a night of celebration, mixed with the anticipation of the upcoming admittance ceremony the next morning.

Thirty-seven ONU graduates and friends were admitted into the U.S. Supreme Court during this impressive alumni group ceremony. Each participant felt a sense of pride in being a part of the Ohio Northern group, as each individual was sworn-in to the highest court in the nation.

“Equal Justice Under Law” in these words, written above the main entrance to the Supreme Court building, express the ultimate responsibility of the Supreme Court of the United States and of each individual who takes the oath and is admitted into the Court.

The morning began as two buses of ONU attorneys and guests loaded and headed for the Supreme Court. Once through security, the group was escorted to the Lawyers Lobby to prepare for the ceremony. Security was tight and the rules of the court were strict as the group of 130 inductees, family members, and guests assembled in the Lawyers Lobby and organized in Supreme Court fashion to enter the court room. The group from Ohio Northern was striking; one of the largest to be sworn in that day. The Court’s session commenced soon after the inductees were escorted into the courtroom.

The inductees and guests had the opportunity to hear the Court present its decisions on several cases. After the cases were heard, the inductees of Ohio Northern were asked to stand and the group’s movant, Johnnie L. Johnson, was called by the clerk and proceeded to the rostrum. He addressed the court, saying, “Mr. Chief Justice and may it please the court, I move the admission of the following attorneys.” Each individual was called by name, in the order of the attorney’s state. When all inductees had been called, Mr. Johnson made a motion to move the group. Chief Justice John G. Roberts, Jr., accepted the motion and the inductees’ admission to the Court was complete. Each inductee experienced a wonderful sense of accomplishment, and the fact that each was able to share this moment with fellow ONU graduates made the experience even more rewarding.

The group was escorted back to the Lawyer’s Lobby, where a reception was held to celebrate the admission.

ONU is looking forward to having another group admitted to the U.S. Supreme Court in the summer of 2009.

LIST OF 2006 INDUCTEES:

Philip Attina, Pennsylvania
Charlotte Bahner-Luckach, Pennsylvania
Samuel Castle, Kentucky
John Carter, Ohio
Thomas Dupple, Ohio
James Dobbs, Ohio
Diane French, Ohio
Scott Gerber, Massachusetts
Gifford Gunstain, New Jersey
James Gutglus, Wisconsin
Elena Holman, Ohio
Tai Hu, Texas
Randy Horn, Michigan
Tony Henry, Virginia
Margaret Jensen-Schuck, Ohio
Richard Kahn, New Jersey
Charles Lafferty, Ohio
Jill Leefker, Ohio
Dale Libsh, Michigan
Eric Libsh, Michigan
Victoria Manch, Ohio
Holly McCluskey, Ohio
Steven Miller, Illinois
Carol Morehouse, Ohio
George Muscher, Ohio
Martha Mullins, Ohio
Yvonne Navarro, Pennsylvania
Steven Orf, Michigan
Jeffrey Feam, Pennsylvania
Timothy Rice, Ohio
Alice Robinson, Ohio
Robert Schuck, Ohio
LeRoy Stickland, Pennsylvania
Martha Stofley, Kentucky
Seth Weinstein, New Jersey
Richard Wurman, California
Ann Zgrodnik, Indiana

Ohio Northern presents the annual lecture series in honor of Laurence Neal Woodworth, former chief of staff of the Congressional Joint Committee on Taxation. Dr. Woodworth, a 1940 graduate of Ohio Northern and former trustee who passed away in 1977, is still a legend in the tax world and particularly to the members of the Joint Committee. Dr. Woodworth was renowned for his encyclopedic knowledge of the federal tax law, his wisdom, his fairness to members of both parties, and his support of a generation of tax professionals who have gone on to success in government service and private practice.

Paul Oosterhuis, an international tax expert at Skadden, Arps, Slate, Meagher & Flom LLP who had served on the staff of the Joint Committee under Dr. Woodworth, gave a presentation entitled, “The Evolution of International Tax Policy: What Would Larry Say?”

Oosterhuis learned about tax law from two giants of tax policy—Prof. Stanley Surrey, his mentor at Harvard Law School, and Dr. Woodworth, his first boss. He recommended that all parties to issues regarding tax law keep in mind Dr. Woodworth’s approach to tax policy: In addition to looking for a theoretically pure proposal, lawmakers should take into account the practical implications of tax law and seek a realistic compromise. As Dr. Woodworth frequently discovered, the proposal that is a second-best approach according to the theoreticians on both sides of a question may be the best compromise and the most workable solution. Instead of a complete reinvention of the federal tax law applicable to international transactions, Oosterhuis favors keeping the current approach of the Internal Revenue Code, which allows United States corporations to avoid tax on their international income until those earnings are repatriated into this country. The Code also includes Subpart F, which prevents companies from taking advantage of the deferral scheme to abuse the federal tax system. According to Oosterhuis, continuing the current system with amendments to Subpart F to stop current abusive tax schemes, is the kind of practical compromise approach that Dr. Woodworth would have appreciated.

The 2006 Woodworth Lecture was a great success. It continued the opportunity for the College of Law to invite experts in federal tax law and policy to address the most important, contemporary questions in the field, to recognize the pivotal role that Dr. Woodworth played in federal tax policy, and to give Dr. Woodworth’s family, friends and successors a chance to join his alma mater in celebrating his memory.

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The Ohio Northern College of Law was proud to host Professor James J. White as its guest speaker for the 2005 Kormendy Lecture. His presentation, “Against E-Mail,” focused on evidentiary and litigation consequences of the explosion in the use of e-mail communications.

White has written on many aspects of commercial law and has published the most widely recognized treatise, Uniform Commercial Code. He is also the author of several casebooks on commercial, bankruptcy, and banking law. White practiced privately in Los Angeles before beginning his academic career at the University of Michigan in 1964. He currently serves as the Robert A. Sullivan Professor of Law. He is a member of the National Conference of Commissioners on Uniform State Laws and has served on several American Law Institute and NCCUSL committees dealing with revision to the Uniform Commercial Code. Additionally, White received the L. Hart Wright Award for Excellence in Teaching for 2001-02 and the Homer Kripke Achievement Award given by the American College of Commercial Finance Lawyers. He earned his B.A. from Amherst College and his J.D. from the University of Michigan Law School.

The Kormendy Lecture was established through an endowment from the estate of Helen B. and Dr. Steven Kormendy, L’28/Hon.’85. For the past 17 years, this endowment has brought prominent legal scholars to the ONU campus to address matters of law in a public forum.

A panel discussion on the U.S. Constitution took place on September 19, 2005, in Ohio Northern University’s Freed Center for the Performing Arts. The event was moderated by ONU Professor of Law Scott Gerber, and several ONU faculty members acted as panel presenters: Visiting Professor of Applied Politics Robert R. Cupp (L’73), who discussed the history of the Constitution; Professor of Political Science Dr. Jo Ann Scott, who talked about selected amendments and how they currently affect American citizens; and Professor of Law Joanne Brant, who presented comments on the judicial appointment process. A question and answer session followed the presentations.

Ohio Northern organized the panel discussion in accordance with a federal mandate passed in 2004, which stipulates that every school and college that receives federal money must teach about the Constitution on or near the date of September 17, the day the document was adopted in 1787. ONU used the panel discussion to observe this newly designated “Constitution Day and Citizenship Day.”
DEAN’S LECTURE SERIES

Nationally Recognized Legal Scholars Visit ONU

The Dean’s Lecture Series provides the law school community access to nationally recognized legal scholars. During the 2005-06 year, three outstanding speakers visited Ohio Northern and presented topics in a variety of fields to the law school community.

Lawrence E. Mitchell, the Theodore Fey Research Professor of Law at The George Washington University Law School, began the series of lectures in September with a presentation entitled, “The Trouble with Boards: Direct Election of CEOs.” After receiving his J.D. from Columbia, Mitchell practiced corporate law in New York City for six years. His teaching and scholarly interests include corporate law and finance, and jurisprudence. Mitchell has published articles on corporate law in the Cornell, Pennsylvania, NYU, Duke, Vanderbilt, Texas, and Toronto law reviews, among others. He is the editor of Progressive Corporate Law (1995) and has written several books, including Stacked Deck: A Story of Selfishness in America (1998), which was submitted for the Pulitzer Prize in general non-fiction.

Theresa M. Beiner, professor of law at the University of Arkansas at Little Rock William H. Bowen School of Law, continued the lecture series in February by presenting, “Diversity and Judicial Appointments.” Before entering teaching, Beiner was an associate in the San Francisco law firm of Howard, Rice, Nemerovski, Canady, Falk & Rabkin. Her main practice area was civil litigation, with an emphasis on employment discrimination, antitrust, and environmental litigation. Prior to practicing law, she was a law clerk to the Honorable John E. Grady, United States District judge for the Northern District of Illinois, located in Chicago. She is a graduate of Northwestern University School of Law, where she was named to Order of the Coif and was Editor-in-Chief of the Journal of Criminal Law & Criminology. Beiner researches and writes in the areas of employment discrimination law as well as the interaction between civil procedure and civil rights law.

Douglas A. Berman, professor of law at The Ohio State University Michael E. Mortiz College of Law, concluded the series in March with his presentation entitled, “A Capital Waste of Time? A Critical Examination of the Supreme Court’s Choice in Criminal Cases.” After graduating from Harvard Law School, Berman served as a law clerk for two judges on the United States Court of Appeals. After clerking, he was a litigation associate at the law firm of Paul, Weiss, Rifkind, Wharton, and Garrison in New York City. Berman’s principal teaching focus is criminal law and criminal sentencing. During the 1999-2000 school year, Berman received the Ohio State University Alumni Award for Distinguished Teaching. He was one of the youngest faculty members to ever receive this award. He is also the sole creator and author of the widely-read and cited web log, Sentencing Law and Policy.

Dean’s Lecture Series events are free and open to the public.

SPEAKERS SCHEDULED FOR THE DEAN’S 2006-2007 LECTURE SERIES

September 21, 2006
“The Sordid Business of Democracy”
–Daniel P. Tokaji
Assistant Professor of Law
Moritz College of Law, The Ohio State University

October 23, 2006
Kormendy Lecture
“Ohio and the Electoral College: Past, Present, and Future”
–Akhil Reed Amar
Southmayd Professor of Law, Yale Law School

February 22, 2007
“The Transformation of the U.S. Rulemaking Process—For Better or Worse”
–Jeffrey Lubbers
Practitioner in Residence, Law and Government Program, Washington College of Law, American University

March 8, 2007
“Trends in the Admissibility of Scientific Evidence in Criminal Cases”
–Paul C. Gianell
Weatherhead Professor of Law at Case Western University
Your Home is Your Castle…or is it?

Two Perspectives on Eminent Domain Law in Traditional Debate Format

By Robert Luther, L’07 and Jessica Weinberg, L’07

One of the Supreme Court’s most controversial decisions in recent memory was handed down in the July, 2005, case of Kelo v. The City of New London. The Court’s ruling was followed by public outcries across the nation as citizens contended that the “Court had gone too far” in affirming a lower court’s decision that a private residence could be seized and sold to another private party on the theory of eminent domain and for the purpose of “public use.” Despite claims that this decision offended virtually every principle on which America was founded, one might be surprised to learn that throughout the past 50 years, the Supreme Court has upheld eminent domain decisions that have varied quite substantially from the “stereotypical” cases where the subject comes to mind. Why, if at all, was this case any different? Was this just another decision handed down by “activist judges?” When, if ever, will this case affect private property rights of Ohioans?

The preceding questions were addressed on February 6, 2006, when the College of Law’s branch of Phi Alpha Delta sponsored a debate between two authorities on eminent domain law. Professor Stephen C. Veltri’s reputation as a scholar and teacher is well known throughout the country but is perhaps most respected in Ada, Ohio. Having received his J.D. from Georgetown University and his LL.M. from Columbia University, Professor Veltri is now a nationally recognized expert on Property Law and consistently regarded as one of the finest teachers at Ohio Northern University’s College of Law, where the student body has voted him the “Most Effective Teacher” four times. During the debate, Professor Veltri took the position that the Supreme Court was correct in deciding Kelo v. The City of New London.

In defense of Ms. Kelo’s position was Mr. Terry Lodge, Esq. Mr. Lodge received his B.A. from Vanderbilt University and his M.A. and J.D. from the University of Toledo. In over 25 years of practice, Mr. Lodge has argued in front of the Ohio Supreme Court and the 6th Circuit Court of Appeals. He most recently represented the homeowner’s position in a controversial Ohio eminent domain case similar to Kelo. This case, Kim’s Garage, was initially accepted by the U.S. Supreme Court but was returned after their decision in Kelo. Mr. Lodge is also an active member of the ACLU and has been recognized for his service to their causes.

The Court’s ruling was followed by public outcries across the nation as citizens contended that the “Court had gone too far” in affirming a lower court’s decision that a private residence could be seized and sold to another private party on the theory of eminent domain and for the purpose of “public use.”
Third District Court of Appeals in Ada

Judges from the Ohio Third District Court of Appeals came to Ohio Northern University on March 28, 2006, to give future lawyers a snapshot of the real world.

As part of its traveling education initiative, court was held in the Moot Court Room at the College of Law. Judges, law students, and others had a chance to listen to attorneys argue their cases.

After the two cases were heard, Judge Thomas Bryant (L’66) introduced the court and held an informal question and answer session. Law Professor Toni Clarke asked the judges how formal attorneys must operate before the court.

Each judge had a different response but the consensus was that attorneys must showcase their own individual strengths while maintaining the dignity of the court. The conversation in an appellate court often becomes an informal exchange between attorneys and judges, but unless an attorney has prior experience with a judge, the attorney should start out behaving as formal as possible.

Judge Stephen Shaw (L’75) said arguments are often decided according to which attorney best answers the judge’s questions.

When another person asked how to be the most persuasive before the court, Judge Bryant said clarity and accuracy are important. “The pinpoint of accuracy of a citation is what counts,” he said.

The judges also stated the legal briefs that attorneys file explaining their arguments are vital to an ultimate decision. Bryant said he almost always knows how he will rule based on the written arguments and rarely has an attorney convinced him otherwise during oral arguments.

Shaw said the most important part of the legal argument is the statement of facts, explaining that the statement is what is most closely examined to determine how the law applies.

Final Round of Celebrezze Competition Held

The final round of the 31st Annual Anthony J. Celebrezze Appellate Advocacy Competition was held on Saturday, April 8, 2006, in the Moot Court Room of the College of Law. This competition annually showcases the top oral advocates at ONU.

This year’s competitors litigated whether federal proceedings should include a journalist privilege under either the First Amendment or federal common law. Krista Gesaman (L’07, Massillon, Ohio) topped opponent Curtis Fifner (L’07, Powell, Ohio).

Three members of the judiciary were on hand to judge the final round, including Federal Magistrate Judge Paul R. Cherry (L’78), Ohio 3rd District Court of Appeals Judge Robert Cupp (L’76), and Judge Mark L. Pietrykowski (L’79).
Blackstock Speaks on Free Markets

By Robert Luther, L’07

The Federalist Society of the College of Law brought Dr. Robert Blackstock (L’77) to campus on January 23, 2006, for a lecture entitled, “Free Markets and Free Lives: The Case for Limited Government.” Blackstock serves as Provost and Professor of Law at Hillsdale College in Michigan. Although Blackstock touched on a variety of issues facing young college graduates and young lawyers, his central theme was that recipients of a legal education have a special responsibility to act as “servant leaders” because “[o]nly a people who are virtuous and educated to the purpose of freedom can hope to sustain a free society.” As he recalled the American experience of “ordered liberty” implemented by the Framers, he traced the intellectual history of our forefathers and articulated his belief that their great success was due to the fact they were all classically trained and educated in the liberal arts tradition. Blackstock argued that because most university educations today fail to instruct students in the subjects of the liberal arts, consequently, many Americans take their freedoms for granted.

As he closed his remarks, Blackstock left the audience with a poignant set of statements to consider: “The defining good fortune of our lives is to be born Americans. We know a level of prosperity most of the world has never seen. It is a freedom born on the blood, sweat, tears—and ideas—of our forefathers. We owe it to them, ourselves, and our children to stand up for those ideas.”

Jessup Team Earns Honors

The College of Law’s Moot Court team continued its tradition of excellence in earning fifth place honors, both overall and for their brief, at the Jessup International Law Regional Competition. The team was comprised of Ann Marie McLoughlin (L’06, Marion, Ohio), Richard T. Ernsberger (L’07, Pittsburgh, Pennsylvania), Krista M. Gesaman (L’07, Massillon, Ohio), and Nicole A. Hamilton (L’07, Columbus, Ohio), and was coached by L. Erin Bumbalough (L’06, Manchester, Tennessee) along with Professor Howard N. Fenton, III. Individually, Gesaman earned the award of Runner-Up Best Oralist in the competition.

The International Law Students Association has sponsored the Philip C. Jessup International Law Moot Court Competition on an annual basis. This competition is regarded as one of the elite Moot Court competitions throughout the world, with schools competing internationally. The 2006 regional competition attended by ONU was held February 17-19, at the Wayne State College of Law in Detroit, Michigan.
Phi Alpha Delta Sponsors CLE

The College of Law and Phi Alpha Delta, the international law fraternity, presented, “Dotting Your I’s and Crossing Your T’s: What Every Attorney Needs to Know” on Thursday, Nov. 10.

The event provided continuing legal education for practicing attorneys.

Among the program’s speakers were Edward W. Erfurt, III, Esq. (L’77); Kelton Smith, Esq. (L’86); Rebecca Diller, MS, L.P.C.C.; and The Honorable Mark Painter.

Tax Team Places Third in National Competition

Ohio Northern College of Law’s Tax Moot Court team continued its tradition of excellence in earning third place honors at the Florida Bar Association’s National Tax Moot Court Competition. The team was comprised of Jeffrey B. Garber (L’07, Lima, Ohio), and Jacqueline M. Mikita (L’07, Cincinnati, Ohio), and was coached by student, Jonathan A. Jamieson (L’06, Mesa, Arizona), along with practitioner, Todd Kohlrieser (L’02).

In earning third place honors, the team swept through the preliminary rounds, defeating the University of Louisville Louis Brandeis School of Law and Syracuse University while earning a bye into the quarterfinals. After defeating Brooklyn Law School (who won the nation’s only other tax competition last year), ONU faced defending champion Louisiana State University in the semifinal round. In what was referred to by the judges as a very close round, LSU edged out ONU. However, the ONU team recovered to tie Capital University and earn a share of third place. Their final round was argued before judges from the United States Tax Court.

The Florida Bar Tax Section sponsors the National Tax Moot Court Competition on an annual basis. This competition is regarded as one of the elite Moot Court competitions throughout the nation. The 2006 competition was held February 9-11, at the Sandpiper Hotel in St. Petersburg, Florida.
Twenty-Ninth Annual Law Review Symposium

Would You Be a Source?

Reporter Privilege in the Post 9-11 World

By KRISTEN BELL, L’07


The exceptional speakers were heard by numerous practitioners, reporters, faculty, and students. Professor Joanne Brant moderated the event. Brant currently teaches at Ohio Northern University’s College of Law with interests in Constitutional Law, Law and Religion, Federal Courts, Corporations, Law and Literature, Employment Discrimination, and Legal Ethics. Brant previously practiced with the firms of Thompson, Hine & Flory and Squire, Sanders & Dempsey where she specialized in labor and employment litigation.

Professor Jane Kirtley began the day discussing whether the demise of a reporter’s privilege will mean the end of investigative reporting and whether judges should care if it does. Kirtley is the Silha Professor of Media Ethics and Law at the University of Minnesota where she teaches Contemporary Problems in Freedom of Speech and Press, Mass Communication Law, Internet Law, and Comparative Media Law.

Susan Gilles, Professor of Law at Capital University, spoke about the image of a good reporter and the impact of tort law, constitutional law and codes on the profession.

Buzz Portune continued the day with a discussion on the “Historical Context and Current Developments in the Inherent Conflict Between the Advertising and Editorial (News) Departments of Media Organizations.” Portune’s legal practice is concentrated in the areas of labor and employment, general business, media/First Amendment, construction, and municipal law. Portune received the 2005 award for “Best Defense of the First Amendment” from the Ohio Society of Professional Journalists for his representation of a local television station and newspaper in a lawsuit seeking access to public records.

The morning session concluded with a presentation by Richard Sauber entitled “The Confidential Source Privilege and Waivers: How Can A Journalist Determine Whether He is Released from his Promise of Confidentiality?” Sauber is a partner and co-chairman of the litigation department in Fried Frank’s Washington, D.C., office. His representation of Time Magazine’s Matthew Cooper in the CIA leak investigation involving the identity of Valerie Plame added an inside perspective on the subject of reporter’s privilege.

The afternoon session began with a presentation by Professor Lillian BeVier, John S. Shannon Distinguished Professor and the Sullivan and Cromwell Research Professor at the University of Virginia Law School. Her presentation expressed the implications of a reporter’s privilege on press accountability and provoked several questions. BeVier’s position added a different perspective on the reporter’s privilege and fostered academic debate.

Joel Kurtzberg, a litigation partner with Cahill Gordon & Reindel LLP in New York where he specializes in First Amendment, intellectual property, and media work, was the next speaker, giving a presentation entitled, “Judge Tatel’s Proposed Test for Reporter Privilege.” He is also teaching as an adjunct professor at Fordham University School of Law. Kurtzberg’s litigation experience in representing numerous journalists in reporter’s privilege cases (including former New York Times Reporter Judith Miller and Time Magazine reporter Matthew Cooper) added yet another viewpoint from a litigator’s perspective.

The day of academic discussion concluded with Rex Heinke, a partner in the Los Angeles office of Akin Gump Strauss Hauer & Feld, LLP and head of its national appellate and litigation strategy practice. Heinke provided an interesting contrast of several reporters’ privilege cases with publicity of private information cases.

The Ohio Northern University Law Review hosts the annual symposium in order to bring distinguished speakers to the university to provide academic discussion on important legal issues. An upcoming issue of the Law Review will include articles from this symposium.

If you are interested in submitting an article for publication or would like to subscribe to the Ohio Northern University Law Review you may email law-review@onu.edu.
Daniel S. Guy Competition

One of the first opportunities Ohio Northern law students have to present their oral advocacy skills occurs each spring during the College of Law’s annual Daniels S. Guy Appellate Advocacy Competition. Each year the competition is coordinated by the Moot Court program. The competition is named in honor of Daniel S. Guy, professor emeritus and former dean of the College of Law. Dean Guy continues to be a very strong supporter of the Moot Court program and serves as a judge annually for this competition.

This year, the Final Round of the 2006 Guy Competition was held April 22, 2006. In addition to Dean Guy, serving on the three-judge panel, were The Honorable Thomas Bryant, (L’66) Third District Court of Appeals Judge, and Nicole Hamilton (L’07, Canton, Ohio), who is the incoming Chief Justice of Moot Court.

All first-year law students participated in the advocacy tournament as part of the legal research and writing course. More than 110 students participated in this year’s event, progressing through four rounds while litigating statutory interpretation and the constitutional effects of an Ohio Civil Protection Order. Ultimately, the final round consisted of four finalists arguing before the panel. Winning the competition was Ashley Schweizer (L’08, Salem, Kentucky), followed by First Runner-Up Ellen Kuhler (L’08, Huron, South Dakota), Second Runner-Up Zachary Bushatz (L’08, LaRue, Ohio), and Third Runner-Up Ryan McLelland (L’08, Salt Lake City, Utah). Along with prizes, all four members have been invited to join the Moot Court Board of Advocates and the program.

DeWine Speaks on Work with Haiti and the Sudan

Senator Mike DeWine, R-Ohio, visited Ohio Northern College of Law on April 20, 2006, to talk about his work with Haiti and the Sudan. DeWine (L’72), was the guest of the Black Law Student Association (BLSA), the Student Bar Association (SBA), and the Christian Legal Society. DeWine has served in the Ohio State Senate, the U.S. House of Representatives and as Ohio’s Lieutenant Governor. He has represented Ohio in the U.S. Senate since 1995 and is currently running for re-election.

Daniel S. Guy Competition Judges and Competitors

The Moot Court Executive Board announced the winners and the runners-up of the 2006 Daniel S. Guy Competition.

WINNER
Ashley Schweizer (Salem, Kentucky)

FIRST RUNNER-UP
Ellen Kuhler (Huron, South Dakota)

SECOND RUNNER-UP
Zachary Bushatz (LaRue, Ohio)

THIRD RUNNER-UP
Ryan McLelland (Salt Lake City, Utah)
Law students at Ohio Northern University College of Law continue the history of public service in actively seeking ways to make a difference in our society. In the summer of 2006, six of our students received public interest stipends of $1,000 each for their work in various organizations across the country.

The Public Interest Summer Fellowship Program began back in 1994 to create opportunities for our students to pursue their goals and dreams of becoming public interest attorneys. The program is funded each year by holding the public interest auction on the last day of spring classes. In addition to attending the auction, alumni, faculty, staff, friends of the university, and students donate items or match funds for the auction. This annual event 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.

This fellowship program has given some of our students, who otherwise would not have been able to work on a volunteer basis during the summer, the opportunity of participating in public interest employment. During their summer 2006 break, the students had a variety of experiences.

- **Jazmine Greer** (L'07), from Cleveland, OH, interned with the Cleveland City Law Department and assisted with the criminal litigation section.
- **Jeana Harbison** (L'07), from Garrisonville, VA, volunteered at the Public Defender Corporation for the 23rd Judicial Circuit in Martinsburg, WV.
- **Karen Manning** (L'08), from Knoxville, TN, volunteered in the Community Law Office of Knoxville, TN.
- **Ashley Sorgen** (L'07), from Mansfield, OH, volunteered for both Equality Ohio on a research project and a non-profit organization, End to Capital Punishment Movement (ECPM), which advocates the abolition of the death penalty throughout the world.
- **Lia Sprague** (L'07), from Elyria, OH, volunteered at the Earth Day Coalition in Cleveland, OH. This policy-based internship allowed her to assist in raising community awareness of the pertinent environmental laws that enable neighborhoods to fight and resist environmental polluters in impoverished areas.
- **Robert Luther** (L'07) from Pittsburgh, PA, interned at The Rutherford Institute in Charlottesville, VA. The Rutherford Institute is a civil liberties organization that provides free legal services to people whose constitutional and human rights have been threatened or violated. He attended classes on the Constitution and civil liberties and researched and wrote legal memoranda.

**The Public Interest Summer Fellowship Program began back in 1994 to create opportunities for our students to pursue their goals and dreams of becoming public interest attorneys. The program is funded each year by holding the public interest auction on the last day of spring classes.**

**These students, along with the ones who have gone through this 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.**

For information about this program, please contact Cheryl A. Kitchen, Director of Law Alumni and Career Services at (419) 772-2249 or email at c-kitchen@onu.edu

THE WRIT FALL 2006
The university recognized Professor of Law Stephen Veltri for 20 years of service to the college during its annual Recognition Dinner. Professor Emeritus, Albert Baillis, served as attestor and gave the following citation in Veltri’s honor:

Every law faculty has a genius. Steve Veltri is our local genius. His expertise is not confined to the law. I am constantly impressed with the depth of his knowledge about numerous subjects. In fact, there are times when I believe that there is not anything that Steve does not know something about.

As a law professor and as a lawyer, he is highly respected, both nationally and locally. He has established himself as a scholar with his publications which include a book on the Commercial Code. From the time he joined the law faculty, he has been an excellent teacher. He has received the outstanding teacher award several times.

Some day, I would like to sit down with Steve and ask him some of the following questions:

Steve, do you know that recently I sent for a book titled, Learn to Speak Italian? This book does not deal with words. It contains some 150 pages devoted only to Italian gestures. Do you know that when I receive it, I will study it and learn those gestures just because I know how it will please you to be able to communicate with another person who understands and appreciates how meaningful Italian gestures are?

Steve, do you know that I think you look a lot like Supreme Court Justice Scalia? Do you know that I think that you are better looking and that your intellect is every bit as powerful as his?

Steve, do you know that when you recently requested me to make a novena for the Pittsburgh Steelers, I really did not mind? In fact, if you want me to, I will include some prayers to St. Jude, the patron saint for the impossible. For a loyal, dedicated, die-hard Cleveland Browns fan to engage in intercessory prayer for the improvement of those evil, Neanderthal Pittsburgh Steelers requires making the supreme sacrifice. Do you know that I will pray for your Steelers, assuming that I can get a dispensation from the Pope to do so? Do you know that such a sacrifice by me is conclusive proof beyond a reasonable doubt about how much having a friend like you means to me? Dear paison, that’s amore!
Ward Participates in Oxford Round Table

Bryan Ward, Director of Clinical Programs and Associate Professor of Law at Ohio Northern, attended a week long conference on Criminal Law at Lincoln College in Oxford during March of 2006. There were approximately 40 participants from across the U.S. including educators from both law schools and undergraduate institutions. Ward presented a paper entitled "Is Modern Crime Too Complicated for the Modern Jury?"

The prestigious conference is shaped by its history. In August, 1989, the Oxford Round Table convened in Oxford, England for the first time to consider major issues in contemporary educational policy in the United States, the United Kingdom, and other selected countries. The membership of this meeting was limited to Ministers of Education from several nations and a number of governors from the United States. Based on this experience and the associated initiatives, the participants of the Oxford Round Table considered further meetings to be highly desirable and even necessary to examine educational issues at both the national and international levels.

The purpose of the Oxford Round Table is to promote human advancement and understanding through the improvement of education. To this end, the Oxford Round Table provides a forum for the study and consideration of current issues facing state and national systems of education. The Round Table meets periodically and at each session is comprised of a small select group of leaders from both the public and private sectors of several countries.

Invitations are sent to selected persons throughout the country. These individuals are identified through several screening processes: by nomination of previous participants in the Round Table; from recommendations to the Round Table directors who, also, are actively involved in higher education and public school leadership; from recognized presentations and awards of state and national organizations; and by invitations to an individual in a successful university or school district.

The foundation of the success of the Round Table is the assurance that this learning community will be composed of outstanding educational leaders. Past membership has included Ministers of Education, State Governors from the United States, Members of Parliament, Executive Officers of international corporations, educational administrators, pastors, attorneys, and academicians from major universities.
Elena V. Helmer

Elena V. Helmer joined the Ohio Northern College of Law faculty as a visiting professor of law in August, 2006. She received her LL.M. from Yale Law School and a J.D., with highest honors, from Kazakh State University School of Law in Alma-Ata, Kazakhstan.

She was an assistant professor at her alma mater of Kazakh and later, a professor and assistant dean for academic affairs at St. Petersburg Institute of Law in St. Petersburg, Russia where she taught courses in Civil Law, Business Law, Contracts, Torts, Housing Law, Family Law, Copyright, International Commercial Arbitration, Introduction to Legal Profession and Legal Education, Lawyering, and Contract Drafting and Negotiation. At the same time, she maintained an active private legal practice in business, copyright and arbitration, both domestic and international.

In 2001, she published a book, International Commercial Arbitration, written under an International Policy Fellowship from the Open Society Institute. She also published a number of articles on various issues of law. Helmer was a recipient of the American Bar Association/CEELI award for law professors and served on the Board of Directors of the International Center for Not-for-Profit Law in Washington, D.C.

Prior to coming to Ohio Northern, Helmer taught International Commercial Arbitration and Legal Reform at the University of Michigan Law School and Arbitration at Capital Law School. Professor Helmer served as the Distinguished Scholar in Residence at ONU during 2005–06.

Michael W. Lewis

Michael W. Lewis joined the Ohio Northern College of Law faculty as assistant professor of law in August, 2006. He received his B.A. from Johns Hopkins University and J.D. cum laude from Harvard Law School. Lewis will teach Law of War Seminar, Commercial Law: Sales & Secured Transactions and International Law at Ohio Northern. Prior to coming to ONU, he was a litigation associate with McGuire Wood, LLP, in Norfolk, Virginia. He also co-taught a class at the University of Richmond titled "Law of War" in the Fall of 2005. Lewis has guest lectured at Harvard, NYU, and Fordham law schools, and was a symposium panelist at American University, Washington College of Law.

Lewis also served as a Naval Flight Officer/Recruiter from 1987 to 1995. He was deployed twice, from 1989 to 1993, as an F-14 Naval Flight Officer, flying F-14s and as a squadron training officer.


Jared L. Levinson

Jared L. Levinson, a specialist in the field of human rights and international law, joined the Ohio Northern College of Law faculty as visiting assistant professor of law in August, 2006. He is teaching in the LLM program.

Levinson received his B.A. in political science from The American University in Washington, D.C., and went on to study law at the University of Baltimore School of Law before returning to D.C. and earning his LLM in international and comparative law from Georgetown University Law Center.

Prior to coming to ONU, Levinson acted as a human rights program liaison as part of the American Bar Association Central European and Eurasian Law Initiative in Tashkent, Uzbekistan, and participated in private practice. He has taught at a multitude of schools, including Gonzaga University, the University of Baltimore, and The Johns Hopkins University, and he gave special lectures on international and comparative law subjects at Airlangga University in Surabaya, Indonesia.

Additionally, he has published several articles for law journals such as the Arizona Journal of International and Comparative Law and Across Borders International Law Journal.
Maximilian B. Torres, Jr.

Maximilian B. Torres, Jr., joined the Ohio Northern College of Law faculty in August, 2006, as an assistant professor of law. He earned his B.S. from the University of California-Berkeley, his J.D. from Harvard Law School, and his Ph.D., summa cum laude, in Business Administration from the University of Navarra in Barcelona, Spain.

Prior to coming to ONU, he taught at Ave Maria and Southern New England law schools, in the business programs at Dartmouth, Stanford, and the Institute for Media and Entertainment, and internationally at University of Navarra (Spain) and Bled School of Management (Slovenia). He spent a number of years working in the investment and securities fields with Merrill Lynch, Pierce, Fenner & Smith and Dean Witter Reynolds, Inc. Torres teaches in the areas of business organizations, securities regulation, professional responsibility, business ethics, human resource management, and church-state regulations.

John H. Martin

John H. Martin joined the Ohio Northern College of Law faculty as visiting professor of law in January, 2006. He earned the A.B. and J.D. from the University of Michigan. Martin is Of Counsel with Warner, Norcross & Judd, LLP, in Muskegon and Grand Rapids, Michigan. He previously taught at the University of North Carolina School of Law - Chapel Hill, where he received the McCall Award for Excellence in Teaching, and at the University of Texas, the University of Michigan, and the University of Virginia. Martin’s teaching interests lie in estate planning, estate and trust administration, charitable organizations, federal income, and estate and gift taxation law.

Martin served as speaker at the 2006 Annual Meeting of the America College of Trust and Estate Counsel held in Maui, Hawaii, on March 9 and 10. His presentation was entitled, “The Role of the Joint Trust in a New Planning Environment.” He spoke on the same topic at the 2006 spring meeting of the Ohio Fellows of the American College of Trust and Estate Counsel held in Cleveland, Ohio, on April 28, 2006. He also had an article published this past summer in the Probate Law Journal of Ohio entitled, “The Joint Trust for an Uncertain Planning Environment.” Additionally, he continues to serve as a member of the Executive Committee governing board of The Institute of Continuing Legal Education and is an appointee of the State Bar of Michigan.

Over 50% of our full-time faculty hold a PhD or LLM degree in addition to their JD
Nancy Paine Sabol
Associate Professor of Law and Director of Academic Support
Education: B.A., Ohio University, J.D.; The Ohio State University
Teaching Interests: Employment Discrimination and Remedies

Nancy Paine Sabol was a panelist at the LSAC Regional Academic Assistance Workshop at Roger Williams University School of Law in Bristol, Rhode Island, on June 15 and 16. The conference was targeted toward legal academics who are new to the field of academic support. Sabol discussed her experience in establishing and then refining an academic support program.

Joanne C. Brant
Professor of Law
Education: A.B., Cornell University; J.D., Case Western Reserve University

Joanne Brant is providing pro bono amicus support in the case of Petruska v. Gannon University, a ministerial exemption case recently decided by the U.S. Court of Appeals for the Third Circuit. She is currently waiting to learn whether Gannon wishes to pursue rehearing en banc or proceed directly to certiorari petitions. Brant is also drafting an article on whether Lawrence v. Texas should affect the contours of obscenity regulation.

Victor L. Streib
Professor of Law
Education: B.I.E., Auburn; J.D., Indiana-Bloomington
Teaching Interests: Legal Profession, Capital Punishment, Criminal Law and Juvenile Homicide

Victor Streib, Ella and Ernest Fisher Professor of Law, recently completed a book that is currently in press through Ohio University entitled, The Fairer Death: Executing Women in Ohio. He has also written chapters on topics such as juvenile justice, false confessions, and defense council practices in the recent law books, State of Criminal Justice and Achieving Justice: Freeing the Innocent, Convicting the Guilty. In addition, Streib published an article in 33 Fordham Urban Law Journal entitled, “Rare and Inconsistent: The Death Penalty for Women.” He has also given several lectures since the first of the year at varying places including Indiana University School of Law, the ABA Mid-Year Meeting, Villanova University, and Trinity College.

Mindi Wells
Assistant Dean for Administration and Student Services
Education: B.S.B.A., J.D., Ohio Northern University

Mindi Wells was re-elected to another two-year term on the Florida Bar Association’s Young Lawyers Division Board of Governors, where she chairs its technology committee and serves on the Out of State Practitioners Executive Council. She provided pro bono legal services to victims of Hurricanes Katrina and Wilma as part of FEMA’s Disaster Legal Services.
Scott D. Gerber

Associate Professor of Law

Education: B.A., College of William and Mary; J.D., University of Virginia School of Law; Ph.D., University of Virginia

Teaching Interests: Constitutional Law and Legal History

Scott Gerber spent most of the summer at the Social Philosophy and Policy Center at Bowling Green State University working on his next book, The Origins of an Independent Judiciary: A Study in Early American Constitutional Development, 1606-1787. He received a substantial research grant from the center to work on the project, in addition to a summer stipend from the law college. He presented portions of the book to the Ohio Legal History Seminar, the Eighth Annual Federalist Society Faculty Conference, the Ohio Legal Scholarship Workshop, the annual meeting of the Midwest Political Science Association, and at colloquia at the Social Philosophy and Policy Center and ONU’s own Pettit College of Law. Gerber also participated on a Heritage Foundation panel chaired by former U.S. Attorney General Edwin Meese III, concerning “The ABA and the Radicalization of Law Schools.” He wrote several op-eds for Findlaw.com and Jurist, and a book review for the Journal of American History. Gerber was re-elected to the university council and continues to chair the law college’s faculty development committee and the president’s student professionalism award committee.

Vernon L. Traster

Professor of Law

Education: B.S., J.D., Drake University

Teaching Interests: Torts, Insurance Law, and Trial Advocacy

In October, 2005, Thomson West published a new text “Tort Law” as part of the Baldwin’s Ohio Practice series. Professor Traster is the author of Chapter 7, Insurance Bad Faith in Ohio, which includes analysis of key court decisions in Ohio and several other state and federal courts. A supplement to the chapter was published in July. Professor Traster attended the Association of Trial Lawyers of American (ATLA) Annual Convention in Seattle, in July, the Ohio Academy of Trial Lawyers (OATL) Annual Convention in Columbus in May, and the OATL Annual Insurance Law Seminar in Toledo in January.

C. Antoinette (Toni) Clarke

Professor of Law

Education: B.S., Rochester Institute of Technology; J.D., University of Toledo

Teaching Interests: Domestic Relations, Juvenile Law, Criminal Law, Criminal Procedure - Pretrial, and Media & Entertainment Law

C. Antoinette Clark spoke at the DePaul Law Review Symposium last March on the topic, “Bridging the Gap: An Interdisciplinary Approach to Juvenile Justice.” Her lecture asserted that new research findings about the way adolescents think and behave is useful in shaping juvenile justice policy. She presented useful applications of these findings at all three stages of a delinquency proceeding: adjudication, disposition, and correction. She gave the same lecture at the ACLU Brown Bag Luncheon in Cleveland, Ohio, at the end of July. Clarke is serving a four-year term as an at-large member of the ACLU’s Ohio Board of Directors.
CONSEQUENCES OF FEDERAL ESTATE TAX CHANGES

By John H. Martin | Visiting Professor of Law

The value excluded from the reach of the federal estate tax has increased markedly over the past decade. It has moved from an exclusion amount of $600,000 to its present $2 million figure. The quixotic 2001 Tax Act promised total elimination of estate tax for taxpayers willing to die in 2010, but it re-imposed a much lower exclusion amount for those who lived beyond that point. Planners and their clients apparently will not enjoy such an erratic ride. Congress now seems willing to settle partisan differences and enact a per taxpayer exclusion of $5 million.

Whatever might remain to be said about the merits of a total repeal or alternative compromises, it is clear that even now the federal estate tax affects very few taxpayers. Once the exclusion moves from the current $2 million to the greater compromise figure, only a handful of taxpayers will have any need to pay attention to the federal estate tax.
There are numerous consequences that flow from a narrowing of the federal estate tax base. The obvious intended consequences are significantly lower rates* that apply to a very small group of taxpayers. However, there are several less obvious consequences that affect both clients and attorneys. Old estate planning approaches will be replaced with new thinking. Different documents will be required to implement new strategies for transmission of wealth. At the same time, new planning obstacles have appeared. Estate taxes are being imposed by the different states. With higher federal exclusion amounts, compliance with a remote and seemingly irrelevant law will be difficult to attain. Moreover, the locus of the estate planning practice for those taxpayers who continue to have exposure to a federal estate tax liability will shift. Sophisticated tax planning most likely will migrate to large firms or boutique trust and estate firms located in large metropolitan areas. Finally, the near demise of the federal transfer taxes will affect the law school curriculum.

NEW ESTATE PLANNING APPROACHES
Since 1948 the contours of the federal estate tax law have dictated the design of the estate plans for a married couple whose combined wealth approaches or exceeds the value of one estate tax exclusion. A large segment of the middle class was affected when the exclusion was modest. Under the traditional planning model, husband and wife are advised to split assets to create a separate estate for each. Then, each spouse executes a will, possibly with a revocable trust, stipulating that if he or she dies first, that spouse’s assets will be allocated initially to a bypass trust, a trust typically to benefit the survivor but always designed to escape taxation at the survivor’s death. The value of the first decedent’s estate that exceeds the exclusion amount passes either outright to the survivor or into a trust that qualifies for the marital deduction. This prototype arrangement, in current estate planning documents for hundreds of thousands of married couples, postpones estate tax until the second death and allows each spouse to shelter assets from tax in amounts up to the exclusion available to each.

For most married couples today, that prototype arrangement is unnecessary. It is unnecessary for vast numbers of clients who already have signed estate planning documents that follow the tradi-

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All of this dictates that attorneys develop new approaches to planning for these clients.

Estate Tax Changes
tional approach. And it is unnecessary for many of those who are doing an estate plan for the first time. For couples whose combined wealth is less than the exclusion amount, there simply is no need to split assets to create separate estates. There is no need to establish a trust, irrevocable at the first death and to last for the lifetime of the survivor, solely for tax reasons, because there is no estate tax to avoid at the second death. All of this dictates that attorneys develop new approaches to planning for these clients.

There will continue to be an uncertain threat of an estate tax liability for some couples. Those who have value approaching $2 million today likely will have no liability if at least one of the couple expects to live to 2010 or beyond. After the anticipated exclusion of $5 million takes effect, the threshold for anxiety over estate tax consequences will be combined wealth of something short of that amount or if portability of a first decedent’s exclusion also becomes law, the point of concern for an estate tax liability moves to combined wealth nearing the $10 million figure.

One of the vehicles that can be employed to address an unlikely but possible estate tax threat is a so-called disclaimer joint trust. The disclaimer joint trust is a single trust having both spouses and then the surviving spouse as beneficiaries. Both spouses and then the survivor possess authority to amend the trust. While both are living, each may revoke and take a specified portion of the trust. The trust, however, is prepared with the anticipation that there may be a threat of an estate tax liability that appears at the first decedent’s death. If that threat materializes, the survivor may disclaim the portion of the joint trust over which the first decedent had sole power of revocation. As a consequence of the disclaimer and pursuant to directions contained in the joint trust, a portion of the trust falls into a bypass trust that pays income to the survivor. The principal of the bypass trust may be invested for the survivor’s benefit, and the value remaining escapes the reach of the estate tax law at the survivor’s death.

The joint trust, with or without the disclaimer mechanism, will be an attractive planning solution for substantial numbers of married clients. For those who clearly never will have an encounter with the federal estate tax, the joint trust, without a disclaimer mechanism, offers a convenient, understandable arrangement for control, probate avoidance, and asset management while both live and during the survivor’s lifetime. For couples who aspire to join the ranks of the very well to do and have that potential, the addition of terms to allow the survivor to shunt assets into a bypass trust via a disclaimer will be desirable. If substantial wealth is not attained, the survivor simply enjoys and controls the whole of the trust. Otherwise, a disclaimer can be made to reduce the value that will be exposed to a tax at the survivor’s death.

The joint trust with the disclaimer feature may continue to be attractive even if a $5 million exclusion is adopted as a feature of the estate tax compromise. The ability to create a bypass trust by the survivor’s disclaimer permits a postponement of decisions until the first death. This is a valuable tool in an uncertain environment. The feeling of uncertainty will not disappear just because Congress passes a ‘permanent’ solution. Attorneys and clients will find it difficult to ignore completely the possible expansion of the federal estate tax. The estate tax has been a fixture for nearly a century. What goes up may come down. Under a different Congress in a different political climate, the exclusion amount may be lowered to ensure taxpayers who thought themselves outside the reach of the estate tax. Certainly if the tax is not repealed but continues under a compromise reached in the current debate, it will be easy for a future Congress simply to adjust the exclusion amount and rates. The joint trust with the disclaimer mechanism offers a partial hedge against unanticipated tax liability.

The prospect of a future exposure to estate tax liability also is likely to encourage the continued formation of dynasty trusts that skip
transfer taxation at intervening generations even though those generations enjoy economic benefits of the trusts. Indeed, cautious attorneys may well promote these dynasty trusts as a safeguard against the unknown future.

Because the federal estate tax will no longer be an immediate concern to most clients, they and their attorney can focus on the clients’ true dispositive objectives and concerns uninfluenced by requirements to obtain the marital deduction and unencumbered by limitations on use and enjoyment necessary to escape estate taxation at the second death. Clients can tailor an estate plan to address non-tax concerns without the hindrance of the tax law. This freedom does not mean that most clients will or should retreat to using a simple will that leaves all assets to the survivor or to descendants. While many substantial estates have been freed from the reach of the estate tax, trusts will remain necessary for asset management, for preservation and enhancement of capital, for protection of beneficiaries from themselves and from creditors, and to segregate inherited family wealth from marital assets.

Many persons will believe they don’t need to engage in estate planning when they hear that estate tax is no longer a concern. Those who have current documents that reflect the traditional approach to estate tax issues may believe they are protected. These reactions are potentially harmful. Getting persons to an attorney, however, to revise or create an estate plan will be a challenge in the absence of motivation supplied by the threat of an impending tax.

**EFFECT OF STATE TAXATION AT DEATH**

Until amended in 2001, the federal estate tax law allowed a credit against the federal tax in an amount equal to estate or inheritance taxes paid to a state, subject to a cap determined by statutory formula. The credit was available only to the extent a tax actually was paid to a state. Thus, the credit did not operate as an additional burden on the taxpayer but operated solely as a revenue sharing device between federal and state governments. Accordingly, every state imposed an estate tax in a minimum amount equal to the federal credit available to the taxable estate. In the period leading up to the 2001 Act, there was relative uniformity between the states as to taxation of transfers at death. Indeed, nearly 75% of the states imposed only a tax at death equal to the available federal credit.
Congressional tax writers altered the landscape. In a move that took revenue from the states and diverted it to the federal government, the federal credit was phased out over a three-year period and then replaced by a deduction. The elimination of the federal credit had a predictable and unfortunate consequence. States missed the revenue they formerly enjoyed. Roughly 50% of the states now impose their own separate regimes taxing transfers at death. Some have continued a tax equal to what previously was allowed as a federal credit. Others have unique and individualized estate tax systems, no two of them being identical.

Different tax systems in the several states might sound at first like a benign consequence of a federal system. However, the emergence of unique state transfer tax schemes complicates estate planning for many clients, even those of modest wealth. Imposition of tax generally depends on domicile at death. Clients move. They change domicile. Documents prepared for the tax system in effect in the client’s original domicile may be inadequate under the law of the domicile at death. Even if clients stay in place, their asset composition changes and assets often are spread over several states. The estate planner who is licensed to practice in the client’s domicile must be diligent to ascertain if the distant locale where assets are situated imposes an estate tax, provision for which must be made and avoidance or mitigation of which should be examined. Counsel in those other jurisdictions must be consulted (and compensated) for advice and review (or preparation) of pertinent portions of the estate planning documents.

Not only do differing state tax systems impose a substantial burden on individual clients in the planning phase, they also will have an insidious effect on choice of domicile. A state tax imposed at relatively low marginal rates may still be a significant amount for very large estates. The wealthy will have motivation to move. A potential tax liability, especially one that can be avoided by stepping across a state line, also will affect decisions regarding domicile by persons of modest means. If Ohio imposes a tax (as it does in 2006) at 6% on estate values exceeding $338,333 and Florida imposes no estate tax (a blessing guaranteed by the Florida constitution), a couple who retire from careers of working in Ohio may well migrate to the tax free sunshine state. Even if the couple possesses only a modest collection of assets, the psychological impact of a prospective death tax in one state but not another may be a decisive factor in selection of domicile. Most states appreciate the economic benefit of having retirees as residents, and states work to attract or retain them. Presence of a state estate tax, however, will be a negative factor in competition among the states for retirees.

IMPACT ON ESTATE PLANNING PRACTICE

The application of the federal estate tax to a shrinking portion of the population will have a direct effect on the estate planning practice. Attorneys who counsel clients and prepare trusts and wills will continue to enjoy a substantial practice. It will be a different mix of work, however, from that enjoyed in the past. Far fewer clients will need estate tax oriented planning. Obviously, those who do need it will be owners of substantial wealth. Attorneys who practice in rural communities or small to medium sized urban areas will find far fewer persons in their client base who need estate tax expertise. If an attorney makes infrequent forays into estate tax planning and drafting, it is reasonable to assume the attorney will have less incentive to keep current and will find it increasingly difficult to justi-
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fy the time and expense of maintaining a high level of skill in this practice area. Over time, the attorney’s expertise will erode. New attorneys in those geographic areas will not be enticed to acquire the specialized knowledge base for estate tax work.

Estate tax expertise will continue to exist and to be needed so long as the tax affects some clients. Gradually, that expertise is likely to become concentrated in two places. One will be large firms who have very wealthy clients in sufficiently substantial numbers to justify the devotion of time and expense to acquire, maintain, and update skills. The other repository of expertise will be the boutique trusts and estates firm that, because of its specialization and reputation, has attracted a sufficient client base. But, it is most likely that the estate tax and high end estate planning practice will become almost exclusively a big city practice. There will be boutique firms that stand out as exceptions. Whether located in a large firm or boutique entity, however, the individual estate planner will serve clients from a broader geographic area.

Expanding the reach of his or her practice will be necessary just to acquire a critical mass of clients who possess the need for estate tax expertise.

The high end estate planning practice already has evolved from an earlier emphasis on marital deduction and credit shelter planning.9 For some years now, the focus has been on arrangements that offer valuation discounts. Family limited partnerships became the vogue.21 Grantor retained annuity trusts22 and sales to intentionally defective grantor trusts23 are standard fare. So too are qualified personal residence trusts.24 These and devices not yet named or even discovered, but almost certainly of escalating complexity, will be the routine work of those who, in the future, advise and plan for the very wealthy.

Advisors who have clients of moderate wealth will focus, as noted previously, on property management issues and protective devices for beneficiaries who should not receive outright transfers. The practice of these attorneys will change in other ways, as well. Indeed, their practice will need to change if these attorneys are to have work sufficient to employ them full time in the trusts and estates field. Sub-specialties will need to be developed and promoted. Trusts and estates litigation will occupy some. For others, a central activity will be the practice of elder law. Other attorneys will develop an expertise in advising non-profit organizations and become known for crafting charitable gifts. Still others may decide to offer fiduciary services to clients. Whatever the new emphasis, the traditional estate planner will face the challenge of developing procedures and acquiring the expertise to deliver a new service to clients.

Effect on the Law School Curriculum

A course in federal estate and gift taxation has long been a common offering in the curricula of many law schools. Often it is a prerequisite to an estate planning drafting course or seminar. If both the federal estate and federal gift taxes threaten to become extinct or to become rara avis, fewer students will want to elect a course devoted to them. The greatly diminished importance of the subject matter challenges the presence of an entire course devoted to federal transfer taxes.

Faculty at many law schools may well decide to de-emphasize federal transfer taxes in the curriculum. They could do this by developing a new course that will retain an analysis of transfer tax policy and concepts (eschewing the detail usually covered in current offerings) and add other topics that are core bases of knowledge for those who engage in the estate planning practice. These other core areas certainly include elder law,3 fiduciary income taxation, asset protection, retirement plans, life, disability, and long term care insurance, and principles of prudent fiduciary investing. The goal of this curriculum change will be to substitute a course intended to supply a basic level of fiduciary tax and financial literacy in place of an exclusive emphasis on a transfer tax system that is shuffling into irrelevancy.

In Conclusion

It is clear that clients and attorneys especially face daunting tasks as the effects of estate tax changes take hold. Both must learn new ways of thinking about client objectives and needs, thinking that is relatively free of concern for estate tax liability and dispositive patterns dictated by the present federal estate tax. New thinking will lead to the need for new document language and new forms to implement client decisions. The attorney will find unexpected complexity arising from the myriad approaches that states are taking to tax wealth at death. And many attorneys will find their practices must evolve into new subspecialties that complement their wealth transmission practice. While the practice changes, law schools may also take note of the shift. The consequence is quite likely to be an elimination or reformation of the common course in federal transfer taxation.
The amount excluded from tax was $600,000 for decedents who died in years 1987 through 1990. The amount increased to $625,000 for 1998; to $650,000 for 1999; and to $675,000 for 2000 and 2001. Then, the amount excluded from tax jumped to $1,000,000 for 2002 and 2003; moved to $1,500,000 for 2004 and 2005; and became $2,000,000 for years 2006-08. It is scheduled to be $3,500,000 during 2009.


2 Under the 2001 Tax Act, the estate tax is repealed for those dying in 2010. Smaller provisions cause the changes wrought by the 2001 Tax Act to expire at December 31, 2010. As a consequence, the provisions of the estate tax that would have been in effect without adoption of the 2001 Tax Act come into effect at January 1, 2011. Under prior law, the exemption would have increased to $1,000,000 by 2006. Therefore, the $1,000,000 exclusion is scheduled to be effective in 2011 and thereafter.

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4 HR 5638, known as the Permanent Estate Tax Relief Act of 2006, was introduced into the House of Representatives on June 19, 2006. It passed the House on June 22, 2006 by a vote of 269-156, and it now is pending a vote by the Senate. The bill calls for a $5 million per taxpayer exclusion (10 million for a married couple) for gift, estate, and generation-skipping tax purposes, tax on estates up to $25 million in value at capital gains rates, tax at twice the capital gains rate for estates over $25 million (in 2002, 2003, 2004, and 2005, the capital gains rate for estates over $25 million is scheduled to jump to $1,000,000 for 2002 and 2003; moved to $1,500,000 for 2004 and 2005; and became $2,000,000 for years 2006-08. It is scheduled to be $3,500,000 during 2009.

5 Even prior to the 2001 Tax Act (when the exclusion amount was $675,000), less than two percent of all estates were subject to the federal estate tax.


6 In 1999, only 3.283 estates for which estate tax returns were filed had a value of $5 million or more. JOINT ECONOMIC COMMITTEE, MYTHS ABOUT THE ESTATE TAX: RHETORIC VERSUS REALITY 6-7 (1998).

7 The rates proposed in HR 5638, note supra, are pegged to the tax rate on capital gains. The present capital gains rate is 15 percent, set to increase to 20 percent in 2011.

8 Revenue Act of 1948, Pub. L. No. 80-471, ch. 168 § 301(d), 62 Stat. 110,114 (1948) introduced the marital deduction. It allows some or all of transfers to the decedent’s spouse to be deducted from the value subject to estate tax. Under present law, the exclusion is not portable between spouses. This means that if all assets simply are left to the surviving spouse, the survivor has but one exclusion to use. Consequently, planning to use the total of two exclusions available to a married couple becomes necessary when their wealth approaches the value of one exclusion.

9 This assumes Congress will not allow the $1 million exclusion to return in 2011, but instead will adopt HR 5638 or a similar proposal with a $5 million exclusion amount.


11 A dynasty trust commonly is created with assets having value up to the exclusion from the tax on generation skipping transfers that is imposed by Section 2601 of the Internal Revenue Code. That exclusion is the same amount as the exclusion for estate tax purposes.

12 Those who lack an estate plan still need to transmit wealth to the proper testator’s desires and recipient’s needs. Those who have traditional documents that mandate creation of an irrevocable trust at the first death may find the documents to be unwise and unresponsive. The plan is unwise if it calls for an unneeded bypass trust that incurs trustee fees, accounting expense, and that produces inconvenience at best. Existing plans are surely unresponsive both to the desires of testators and the needs of beneficiaries if they do little more than reflect compliance with an inapplicable tax law.

13 IRC § 2011.

14 CHARLES D. FOX, IV, Ramification for Estate Planners of the Phase-Out of the Federal State Death Tax Credit: Boom, Bust, or Unknown, Appendix B, 2003 Annual Meeting of American College of Trust and Estate Counsel. (Copy in possession of author.)

15 IRC § 2011(b)(2).

16 IRC § 2058.

17 As of May 1, 2006, 13 states impose an estate or inheritance tax. Another 13 have retained a tax that traces its origins to the tax formerly imposed to absorb the federal credit for taxes paid to a state. Information derived from chart maintained on website of American College of Trust and Estate Counsel.

18 This is the amount sheltered from Ohio estate tax by the present credit against tax under Ohio Rev. Code § 5731.02(B) given the present tax rates stated in Ohio Rev. Code § 5731.02(A). House bill 589 introduced in the General Assembly in May 2006 proposes to increase the exemption from Ohio estate tax to the amounts excluded from liability for federal estate tax.

19 Const. of Florida, Art. VII, Sec. 5(a).

20 See note 6, supra.

21 See note 8, supra, and accompanying text.

22 After formation of a limited partnership and contribution of substantial assets to the older generation, that generation transfers limited interests to younger family members retaining the general interest (being a small percentage interest with total or majority control). The value of the transferred interests are discounted to reflect minority status, lack of control, and lack of marketability.

23 Grantor annuity trusts are sanctioned by I.R.C. § 2702. The grantor of such a trust retains a fixed annuity that, under the valuation rules, has a value close to the value of the assets put into the trust. If the investment return of the trust, including appreciation, exceeds the payments back to the grantor in satisfaction of the annuity, there will be value remaining in the trust at the expiration of its term. This excess value is distributed to the remainder beneficiaries (likely to be children of grantor) at virtually no transfer tax cost.

24 An intentionally defective grantor trust contains a deliberate violation of the rules stated in I.R.C. §§ 672-79 such that the grantor remains taxable on trust income. The income, however, belongs to the trust or its beneficiaries. Because the grantor remains owner of the trust (i.e., taxpayer), transactions between the grantor and the trust may be ignored for income tax purposes. Rev. Rul. 85-13, 1985-1 C. B. 184. This may permit the sale of appreciated assets to the trust without recognition of taxable gain.

25 The qualified personal resident trust device is sanctioned by I.R.C. § 2702(a)(3)(ii). Transfer of a personal residence into a trust that complies with the provisions of Tex. Rev. Stat. arts. 4394, 4395-2-5 results in an immediate gift of the remainder interest in the home to the trust remainder beneficiaries. If the grantor survives the trust term, the entire value of the home has been transferred to those (younger generation) beneficiaries at a very favorable tax cost.

26 Elder law focuses on the legal problems encountered by an aging populace. It covers planning for incapacity, including financial & health care powers of attorney, analysis of long term care alternatives and insurance, planning for residential alternatives during retirement, and qualifying and maintaining eligibility for governmental benefits.
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