Driving Change Through Service to the Community
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IF THE IVORY TOWER EVER EXISTED, IT'S LONG GONE.

Sure, top-quality legal education and cutting-edge scholarly research are vital parts of the mission at the University at Buffalo School of Law. But a university does not exist apart from the society around it. And because lawyers have special knowledge of how to make progress in a society of laws, UB law faculty and students engage the world – from Buffalo and Western New York to the global community – in varied and effective ways. It's an investment that pays off in a thousand ways.

Here is a small sampling of their community engagement:

Professor Jessica Owley wrote a blog about land use law (4)
Professor David Westbrook presented internationally about financial regulation for the State Department (4)
Lecturer Nan Haynes '92 represented Erie County Holding Center prisoners (5)
Assoc. Professor Anthony O’Rourke wrote an amicus brief for an Arizona immigration case (5)
Professor Guyora Binder consulted with prosecutors and defense attorneys in felony murder trials (6)
Lecturer Monica Wallace ’94 takes activism to public office (6)
Professor David Engel gave keynote addresses to scholars in Southeast Asia (7)
Sarah Washington ’16 worked to help people represent themselves in court (7)
Professor James Milles volunteers for bar association ethics committee (8)
Professor Mark Bartholomew gave press interviews on Internet and privacy issues (8)
Professor Rebecca French edits a Buddhism and Law journal (9)
Teaching Faculty Lise Gelernter presented a CLE in NYC on labor arbitration (9)
Professor Kim Diana Connolly provided invaluable research for environmental advocacy (10)
Steven Maffucci ’16 found new ways to use his new learning (10)
Professor S. Todd Brown testified before Congress about award trusts for asbestos victims (11)
Professor Meredith Lewis demystified TPP for television viewers (11)
Professor Jessica Owley

‘Thinking out loud’ in her blog

The old way: Keep up with the law in your field of specialty and write a law review article every year or so.

The new way: Keep up with the law, and write a blog post about new developments as often as once a week.

As with so much of everyday life, the immediacy and reach of the Web has become an integral part of academic life. Professor Jessica Owley, for one, makes vigorous use of blogging to discuss cases in land use law and build community with fellow scholars nationwide.


“I see my job as a legal academic, and blogging is part of reading and understanding new laws and cases and articles that come out,” Owley says. “Each time a case comes up, I don’t just read it and put it in a file for a law review article, I blog about it, too. It’s kind of thinking out loud – a way to continue the conversation with myself and sometimes with commenters.”

That interactivity can be both blessing and curse. The typical commenter, Owley says, is a lawyer who was part of the case at issue, and thus privy to facts and nuance not always reflected in a court’s decision.

“Sometimes attorneys in the case email me and tell me what I’ve missed,” she says. “I remember one 1,500-word email, plus attachments, answering some questions I raised and saying some things I got wrong and some things they agreed with.”

It’s all grist for the academic’s intellectual life. “A lot of times I’m blogging about ideas for an article I am writing,” Owley says. “It takes a lot of time, and I don’t necessarily recommend it. But blogging definitely helps me make connections with people. For me, it works.”

Professor David Westbrook

An American abroad

International diplomacy, Louis DelCotto Professor David A. Westbrook explains, operates on two levels. There are the official U.S. agents speaking on behalf of the nation. And then there’s “public diplomacy” – State Department-sponsored cultural and intellectual exchanges intended to build people-to-people connections and advance America’s reputation in the world.

That program of broad outreach has called on Westbrook many times. A specialist in the legal regulation of financial markets, he has logged many thousands of frequent-flier miles traveling to places like China, Pakistan, Jamaica, Portugal and Brazil. “I was offering an American – if not the official – view of political economy in an age of globalization and radical financial uncertainty,” he says.

It’s a task that needs to be done with care. “You don’t want to preach,” Westbrook says. “You are there to offer something from your own thinking and research about the American experience, particularly with regard to capitalism, but you need to be aware that often you’re talking to people in a different situation. They’re delicate conversations, they’re hugely fun, and they’re really tiring.”

Part of what he brings is the idea that in a robust democracy like ours, reasonable people can disagree with government policies and find their opinions welcomed. “In many places there isn’t much sense that you can be modestly critical of the government without being radically against it,” he says. So for the State Department to sponsor a trip in which he brings measured criticism of U.S. policy – that turns heads. “I think it’s impressive that the U.S. government is so confident,” he says.

The audiences vary widely: business executives, media, bankers, policymakers. And the lasting effects of the appearances are obscure. “In profound ways you don’t really know what you did,” Westbrook says. “You can’t say we successfully negotiated X. You spend a lot of time listening and trying to understand where the people you’re talking to are coming from. You want to be able to speak from a position of both strength and humility.”

“I see my job as a legal academic, and blogging is part of reading and understanding new laws and cases and articles that come out.”

“I was offering an American – if not the official – view of political economy in an age of globalization and radical financial uncertainty.”
Important ideas are hashed out in the nation’s appellate courts, and UB law professors are sometimes in the thick of the argument. That’s true especially in the filing of amicus curiae briefs, in which “friends of the court” make a pertinent legal argument, sometimes a persuasive one.

Associate Professor Anthony O’Rourke found himself in that position in 2013, when a lawyer familiar with the case reached out to him to suggest he lead an amicus filing in an Arizona immigration case on appeal to the U.S. Court of Appeals, Ninth Circuit.

O’Rourke served as counsel to a group of 13 professors, including his colleague Professor Rick Su, in creating the brief. O’Rourke drafted and filed a 26-page brief in support of the American Civil Liberties Union’s en banc petition. The case challenged an Arizona law that categorically denied bail to undocumented immigrants who are charged with a crime.

The law in question, called Proposition 100, required judges to deny bail for a range of offenses to any person who “has entered or remained in the country illegally.” The brief argued that the law impermissibly curtails defendants’ due process rights, and that a three-judge Ninth Circuit panel erred in ruling that the liberty restrictions imposed by the law “were not excessive in relation to the goal of managing flight risk.”

As it turned out, the appeals court did review the case en banc and overturned the Arizona law, and the U.S. Supreme Court declined to hear any further appeal.

O’Rourke says writing the brief also inspired his thinking in an article published in Michigan Law Review—First Impressions drawing parallels between the Arizona case and the due process hurdles that have faced same-sex couples seeking to marry. Both, he noted, “have been the target of laws that single out politically subordinated groups.”

“It was extremely rewarding,” he says of the amicus experience. “It’s the sort of thing law professors should do, but often not the sort of thing that people regard as their primary task as professors. I was grateful for the opportunity to do it.”
**Prosecutors call. Defense lawyers call. And police detectives. Sometimes investigative reporters. SUNY Distinguished Professor and Hodgson Russ Faculty Scholar Guyora Binder fields those calls regularly. As author of the 2012 book *Felony Murder*, he’s an acknowledged authority on the legal rules that apply when death results during the commission of a felony. So interested parties want to pick his brain.**

“I get inquiries from public defenders who ask me to explain arcane aspects of felony murder law,” says Binder, who also serves as the Law School’s vice dean for research and faculty development. “They present a wrinkle in felony murder law in their own state, wondering if they can use an argument that was successful in another state to fashion an appeal to their state supreme court or justify a habeas claim to a federal court. Usually the answer is no, but sometimes the answer is yes.”

He has consulted on felony murder cases in New York, Washington and Ohio. The co-author of his criminal law casebook, whose eighth edition is being published this year, defends capital cases and sometimes asks for his help.

“On one occasion there was a capital defendant coming up for trial who had a background as a guerrilla revolutionary in a Central American dictatorship,” Binder says. “As a result of that he had been a political prisoner there. His defense attorneys were concerned about the possibility that his imprisonment would be used against him in the penalty phase of the trial. I had written about international criminal law, and they called me. I wrote a research memo for them on international law arguments they could use to keep that material out of the death sentencing phase, if he was convicted.”

In another case, Binder provided a Canadian court an expert opinion on whether a defendant could face felony murder liability if he were extradited back to the United States (Canada has no felony murder rule).

Binder is happy to share his knowledge with whoever calls. “Being a scholar is a public trust,” he says. “Besides, I always learn more from them than they learn from me.”

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**Consulting when the stakes are high**

**Monica Piga Wallace ’94**

**It takes a community**

**Lawyers make things happen. Case in point: Monica Piga Wallace ’94.** After a career in private practice and public service, she now teaches research and writing at UB School of Law and co-directs the school’s Post-Incarceration Re-entry Practicum, in which students help former inmates with legal issues as they rejoin society.

For Wallace, her law degree is a tool for making life in Western New York better – a tool that she feels a responsibility to use wisely and often. “I think most lawyers see ourselves as guardians of legal institutions,” she says. “You need good people to step up and be the change you want to see in the world.”

That means, for example, helping to lead the effort to change the racially offensive nickname of the school system where she and her family live. It used to be the Redskins; now it’s the Legends. “I think I’m on the right side of history on that,” Wallace says. “I knew it wasn’t in the best interests of the community. We fought it not only because it was the right thing to do – the name was a racially defined slur – but also because it was a violation of anti-bullying statutes and Title VII anti-harassment statutes that didn’t exist when the name was adopted.”

In another case, Wallace was at the forefront of a lawsuit that blocked a sovereign Indian nation from building a casino in the heart of her town. Her legal training, she says, helped her explain the consequences of transferring land to a sovereign nation, removing it from the tax rolls and exempting it from the laws that would normally apply there.

Most recently, Wallace has taken her activism to public office, making a run for a New York State Assembly seat. “Whether or not I win,” she says, “I hope this will inspire other women to put themselves out there, and to recognize the importance of being active in your community and having a say in issues affecting the community.”

“Being a scholar is a public trust. Besides, I always learn more from them than they learn from me.”

“You need good people to step up and be the change you want to see in the world.”
When a citizen comes to his own defense, Buffalo law students have his back. In two practicum programs – one in Erie County Family Court, the other in the Western District of New York – students work to give pro se civil litigants the tools they need to seek justice.

Sarah M. Washington '16 worked in both programs in the first semester of her 2L year, giving hands-on assistance to people navigating the court system. She says the experiences were very different.

For one thing, in family court the emotions run high. “You had people crying in front of you,” she says of her time conducting intake interviews. “You have to keep your own emotions in check. They would take you back years and years, and you have to be strong enough to say, ‘We have to work on this particular thing.’ You have to be able to decipher what facts are relevant and figure out the legal issue.” Then, she says, she could direct them to the volunteer lawyers or other legal resources that they needed.

By contrast, she says, litigants in federal court typically are involved in a case that has been pending for years. That had its own challenges, Washington says, because the program was not designed to provide continuing legal advice. “We had some frequent visitors,” she says. “I would have to remind clients that we could not assist them at every stage of their litigation because we did not represent them.”

Washington loved the practicum because, as an aspiring litigator, she had the opportunity to watch the District Court proceedings. “Judge [William] Skretny would come down and talk to us sometimes,” she says. “It was invaluable.

“You can learn all the doctrinal law in law school,” she says, “but the practical experience of practica and moot courts is just as valuable. You have to know the law, of course, but you should also have hands-on practical experience during law school.”

And here is how doing good leads to doing well: Having survived the bar exam, Washington is beginning work with the boutique litigation firm Connors LLP.

With Asian colleagues to bring together legal scholars in diverse countries and been a catalyst for the growth of this critical discipline.

So, for example, in 1992 he helped to organize the first meeting of Southeast Asian Law and Society scholars, held in Chiang Mai, Thailand. He later served as president of the Law and Society Association and worked to strengthen its connections to Asian counterparts.

Most recently he was asked to work with a group of Asian academic leaders to establish the new Asian Law and Society Association. He kicked off an inaugural conference in Shanghai with a keynote address titled “The Places Where Law Doesn’t Go.” “I was delighted to be invited to give the address there,” he says. “It really felt like we were launching something important.” He also serves as an editor in chief of the Asian Journal of Law and Society, published by Cambridge University Press.

“Legal studies in Asia have been heavily influenced by traditional European approaches emphasizing philosophy of law,” Engel says. “Scholars have not been encouraged to do empirical work or to collaborate with their colleagues in the social sciences. We’re trying to break down those barriers between disciplines and promote more research on how law actually works in society.

“There’s a payoff in terms of better policy. If you have a clearer understanding of law’s effects and how people are really using it, then you can design better laws and better policy. It’s been rewarding to see more and more young Asian scholars doing exciting interdisciplinary research on law. Their work will contribute immensely to legal developments in their countries.”
Professor James Milles

**Shining light on the gray areas**

Teaching, Professor James Milles acknowledges, can be isolating. So when he joined the New York State Bar Association, he saw it as a way to stay in touch with the realities of practicing law. "I want to know what's going on in real practice," he says, "and I thought one way of getting a good angle on that is by working with lawyers in the bar."

It also helped that the bar association's Commercial and Federal Litigation Section has a committee looking at social media and ethics—a perfect fit, given Milles' tech background as a law librarian and his teaching interest in legal ethics.

So he was able to add his comments as the committee produced a new edition of guidelines for lawyers' use of social media—a report that has drawn interest from bar associations nationwide and in Canada.

And he has brought his knowledge to Continuing Legal Education presentations, often in the Rochester area. "They've all been primarily on social media and ethics, because it's an area that lawyers are concerned about," Milles says.

And rightly so. The New York Rules of Professional Conduct are clear but not all-encompassing, especially given the speed of technological change.

So, for example, is it ethical for a lawyer to look at jurors' Facebook profiles in order to fine-tune their arguments? That's common practice, Milles says. In their instructions to jurors, should judges tell them that the lawyers might be looking them up? Can a lawyer have an associate in her firm surreptitiously friend a juror or the defendant? (Uh, no, Milles says.)

Even how lawyers use social media needs discussion. "It's not just a matter of 'should I be on social media or not?" Milles says. "There are indications there may be a professional obligation to be familiar enough with social media to be able to use it for your research. So that's part of your duty of competence."

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Professor Mark Bartholomew

**Not just another talking head**

There's an art, Professor Mark Bartholomew says, to being interviewed by print or broadcast media.

"You try to make it short and snappy without being misleading," says Bartholomew, to whom reporters often come when they're doing a piece on the web or computer privacy issues.

"There's technospeak that you have to decipher for a lay audience, and you have to really boil down the law for someone who is not familiar with it."

Also, it helps to be flexible with your schedule. Local TV stations sometimes will call him at 3 p.m., looking to interview him in time for the 6 p.m. newscast.

And it pays to keep the house clean—his basement office has been on TV more than enough.

Media inquiries come to Bartholomew through UB's News Services department, and more often than not he finds it easy to say yes.

"I figure it's important that people know about the Law School," he says, "and maybe if they see the school mentioned in the New York Times or USA Today or the Wall Street Journal, it's on their radar where it wouldn't be otherwise."

As well, he says, "sometimes these are issues I feel strongly about or have a position on, so maybe you influence things a little bit because you have an informed opinion about whether, for example, this kind of data collection is OK. Because I write in the space of technology, these are brewing problems, things that haven't been addressed yet. The hope would be that public opinion would be galvanized so that state legislatures or Congress would take a harder look at these issues."

And really, Bartholomew says, talking to a reporter isn't all that different from facing down a class of law students. "It's a nice challenge," he says. "I'm involved in a certain amount of boiling things down, trying to make things more clear and accessible, every time I teach, so for me it's good mental practice to do that."
Breaking new ground on an old tradition

Hundreds of academic journals, says Professor Rebecca French, concern themselves with the intersection of religion and law. But only her new journal, Buddhism, Law & Society, looks at the influence of Buddhist legal thought on laws and governments throughout Asia. Though libraries are filled with books examining the influence of Judaism, Christianity and Islam on law, almost no scholarship exists on Buddhist influences, according to French.

The peer-reviewed journal, to be published by William S. Hein & Co., was launched as part of “Buddhist Law and State Law in Comparative Perspective,” a major conference on Sept. 30 and Oct. 1 at the Law School. It was sponsored by the school’s interdisciplinary Baldy Center for Law & Social Policy.

French sees Buddhism, Law & Society as the beginning of a movement—engaging her fellow scholars in many disciplines who want to explore the ways in which the Buddhist law code has influenced laws and governments. The journal’s articles, she says, “will range from very old to modern materials,” looking at how Buddhist law works in different countries and different monasteries around the world, and how Buddhist institutions, monks and nuns have interacted with secular governments.

One of the common points of reference will be the vinaya, Buddhism’s canonical legal texts. Largely, French says, those texts consist of narratives about law: “Someone presents an infraction to the Buddha, he asks questions and then he responds—there is a ruling and a sanction. The vinaya is said to have been transmitted directly from the Buddha or his followers.”


“Most of this has not been thought about, discovered or written about. We’re literally doing the very beginning of it.”

Sharing ‘the big picture’

Every year there’s something new, and that affects an arbitration practice,” says Lise Gelernter, a member of the Law School’s teaching faculty who specializes in labor and employment law and arbitration. “There are a lot of processes out there and types of contracts that are now subject to arbitration that you didn’t see 10 years ago.”

That growing use of arbitration, part of the toolkit of the emergent field of alternative dispute resolution, has led to a need for more education of practicing lawyers. Gelernter has helped to fill that gap with Continuing Legal Education presentations, including one sponsored by the Law School’s New York City alumni chapter and held at the office of Hodgson Russ there.

Gelernter, who was recently inducted into the National Academy of Arbitrators, spoke from her experience as a neutral arbitrator in cases arising in unionized workplaces, where arbitration is a commonly denoted last step in the grievance process. “Virtually every collective bargaining process ends in binding arbitration,” Gelernter says. And “binding” means just that: the parties have very little recourse once the arbitrator has made her decision. “There are very strict review standards,” she says. “It’s very hard to get judicial review.”

In the CLE presentation, as part of a panel of attorneys, Gelernter reviewed a series of U.S. Supreme Court decisions over the past eight years that affect the practice of arbitration. She also took questions, helping the attendees wrestle with knotty issues that had arisen in their own experiences with the practice.

“The people who are interested in arbitration are self-selecting,” Gelernter acknowledges. “I can follow the changes in arbitration law from an academic perspective as well as being a practicing labor arbitrator. I have a little more luxury of time than most practitioners do, and I have more of the big picture because I teach arbitration. In that sense, it’s fun and interesting to share what I learn and teach.”
For students in the Environmental Law and Policy Clinic, one of a suite of instructional clinics at the School of Law, everything is coming up green.

“Students are getting significant experience, they are interacting with exceptional community partners and alumni, and from this they are finding great jobs,” says Professor Kim Diana Connolly, director of clinical legal education, who teaches the environmental clinic.

“It is a win-win-win.”

In the clinics, students work with live clients with special admission to practice law under supervision. A new client of the environmental clinic is the Western New York Environmental Alliance, which coordinates the work of about 100 member organizations. Its chair is Ryan McPherson ’02, UB’s chief sustainability officer.

McPherson says clinic students were invaluable during spring 2016 in researching two projects. One was in helping to draft a request for proposals to create the Lake Effect Center for Environmental Entrepreneurship, envisioned as a shared space for environmental organizations and environmental-solutions companies. (Among other things, students researched whether the phrase “lake effect” is copyrighted. It isn’t.) Students also provided legal research on land ownership on Buffalo’s Outer Harbor, as the alliance played a key role in development planning for that waterfront property.

Alumni say their clinic experience helped blaze a trail to permanent employment.

Andrea DiNatale ’16 is going to work with the state Department of Environmental Conservation through a New York State Excelsior Service fellowship. “By being involved in the clinic, I was putting my lawyering skills to work for the benefit of my community,” she says. “The North Campus sometimes feels disconnected from the rest of the area. Being involved in the clinic gave me the opportunity to learn and practice skills outside the classroom and all around the city. It was a great learning experience.”

And Joseph C. Smith ’15 now practices environmental law with the Buffalo firm Phillips Lytle. “For me,” he says, “one of the best parts of being involved with the clinic was working on issues at a very high level while still a student attorney.

“Being able to work with professionals, advocacy groups and outreach groups in the community was something I don’t think you can substitute for the classroom experience.”

Steven Maffucci ’16

New ways to use his new learning

Smart students take advantage of the many avenues UB School of Law provides for placements that teach them the practical skills of lawyering. Along the way, they often make a powerful difference in the lives of those they serve.

Here is how Steven Maffucci ’16 accomplished all of that in a single semester.

Maffucci, an Army veteran, was a Pro Bono Scholar, a new program in which a handful of talented students take the bar exam in February and then spend the final semester of their legal education serving the public in a legal services agency.

Maffucci worked at the Volunteer Legal Services Project in his native Rochester, an organization that matches low-income clients with private attorneys who agree to represent them pro bono. “There’s a lot of family law,” he reports, “and a lot of consumer law, like bankruptcy cases and people who are being sued by creditors. There were also a lot of wills and health care proxies for individuals who are terminally ill, and the agency did a lot of reaching out to rural areas to target individuals who might not have access to the offices in Rochester.”

With a staff of only a few attorneys and paralegals, the agency made good use of the additional manpower, assigning Maffucci to interview new clients, advise clients who were planning to represent themselves in court, email attorneys to connect clients to pro bono legal representation, and help with the legal clinics that it ran as an outreach effort.

“I was very eager to get out of the classroom and get practical experience, so this was a great opportunity for me,” Maffucci says. “And it really helped me to get a greater understanding of the need for pro bono service. That’s something I’m going to carry into my own practice, and hopefully become an advocate for doing pro bono with other lawyers as well.”
The Trans-Pacific Partnership is getting heated attention as an issue in the presidential campaigns. Donald Trump has said that ratifying the trade agreement would be “the death blow for American manufacturing”; Hillary Clinton, originally a proponent of the deal, now says she opposes it.

What’s a voter to make of the TPP? Professor Meredith Kolsky Lewis, an expert on international trade law and free trade agreements, helped demystify the issue for viewers of WGRZ-TV, Buffalo’s NBC affiliate, in a late July feature by reporter Danny Spewak.

The criticisms brought against TPP come largely from industrial sectors that could lose market share to global competitors, such as manufacturing and the auto industry, Lewis told the reporter. “If you’re one of the industries that is going to face increased competition as a result of the TPP, you might see it as a negative,” she acknowledged. Nevertheless, she added, “In general, I would say the business community as a whole is largely in favor.” The agreement’s positives, she said, include potential growth in the United States’ overall GDP; benefits to banking, agriculture and education; lower prices for American consumers; and a relative advantage for the United States against China, which is not among the 12 nations that are part of the TPP. The pact, she said, “provides an opportunity to upgrade NAFTA, to address some issues that have come to light or that weren’t addressed in the initial negotiations.”

and though many politicians blame job losses at home on international trade deals, Lewis says that’s a mistake. “I think it’s probably misguided to say that the cause of losing manufacturing jobs in the U.S. is very significantly due to NAFTA,” Lewis said. “That may be a small part of it, but really, the bigger issue is just the increasing globalization of the economy.”

At the School of Law, Lewis also serves as vice dean for international and graduate programs, as well as director of the Cross-Border Legal Studies Center.