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## Considered Opinions: in Three New Books, UB Law Professors Pull Together Research and Advocacy

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# Considered opinions

*In three new books, UB Law professors pull together research and advocacy*

Prime examples of the Law School's interdisciplinary strengths, three new books by prominent UB Law professors range widely into the social sciences, international policy-making and the intricacies of legal study. Together they reflect the quality of research and writing that have come to characterize the law faculty's increasing prominence in the world of legal scholarship.

Now out in paperback, **Professor David Westbrook's** *Deploying Ourselves: Islamist Violence and the Responsible Projection of U.S. Force* (Paradigm Publishers) was, he says, a long time in coming.

"I've been working on it since the breaking apart of Yugoslavia in the early 1990s," he says. "It crystallized right after 9/11, but other books got in the way."

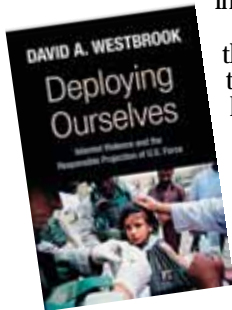
In *Deploying Ourselves*, Westbrook makes the case for a re-evaluation of U.S. foreign policy that recognizes the rise of powerful competing worldviews and the need to act responsibly and constructively in the use of military force. "What the United States has committed itself to since World War II is the creation of an integrated global order," he says. "But that cannot remain a U.S. project. The U.S. plays the role of the nation that is most capable of projecting military force. We do have profound commitments globally. But the challenge is to find a way to reconceived security policy in a way that we can find respectable."

Working with some of the ideas of 19th century German military theorist Carl von Clausewitz, who spoke of war as a "political instrument," Westbrook addresses the competing "idioms" that have arisen on the world stage, including "an Islamic political grammar and ideology ... that has been articulated violently. This is a way of talking about the world. Bin Laden is promoting a different order of the modern world."

In response, he says, the United States has a responsibility, when it con-



Professor David Westbrook, left, Professor James A. Gardner, lower left, and Professor Charles Patrick Ewing, below.



siders the use or the threat of military force, to consider how that "speaks" on the world stage. "The argument here," he says, "is that U.S. violence means things, and the consequences of that violence mean things. How we fight matters because how we fight is how we signal our violence. ... A great deal of the security concerns of the United States are understandable to people around the world. The question is, how do we pursue those concerns, and how do we involve other actors?"

The book, which carries endorsements from thinkers in several disci-



plines and across the political spectrum, is targeted at senior policy-makers in the federal government. "I've worked hard to make the book seem useful to them," Westbrook says. "It's very plain-spoken."

*New Frontiers of State Constitutional Law: Dual Enforcement of Norms* is the plain-spoken title of a new volume of essays co-edited by UB Law **Professor James A. Gardner**, with Florida State University law professor Jim Rossi.

The volume, published by Oxford University Press, grew out of a 2006 conference of judges and academics

who are interested in state constitutional law. It reflects a growing edge in the field of constitutional law: research not in issues around the U.S. Constitution but in those arising from the 50 individual state constitutions.

“We should be thinking about it as a system in which constitutional norms and values can be generated independently at two levels,” both state and federal, Gardner says. “There is no one fountain of constitutional values. The process is really dialogic. The thesis of the volume is that there is a constant, ongoing conversation about constitutional values and norms.”

The movement in academic scholarship has gained steam, he says, as the Supreme Court has reflected an increasingly narrow understanding of the individual rights guaranteed by the U.S. Constitution. Legal theorists pushing a more expansive view of rights increasingly have turned to state constitutions, each of which, Gardner says, contains its own bill of rights.

“There is nothing that prevents states from being more generous with rights than the federal Constitution,” he says. “Exhibit A for the past several years has been gay marriage. The federal courts have said, forget it. But individual states have extended that right.”

Gardner has an essay in the volume – “on a technical aspect of constitutional interpretation,” he says – and also did the principal work on the introduction. “I think of it as a coherent way of thinking about the field.”

*Justice Perverted: Sex Offense Law, Psychology, and Public Policy* (Oxford University Press) is **Professor Charles Patrick Ewing’s** evaluation of public policy around how the law and the criminal justice system handle sex offenders. Ewing discusses the role of mental health professionals in society’s response to these offenders, casting a

critical eye on whether punishment and treatment as they are currently administered are effective – and, in a strained fiscal climate, cost-effective as well.

The book focuses on four aspects of the law: civil commitment statutes, in which offenders can be confined indefinitely after their prison sentence is complete if they are deemed at risk for reoffending; sex offender registration, notification and restriction laws; child pornography laws; and laws against using the Internet to sexually solicit minors.

“It is hard not to be a public policy advocate if you’re writing about these things,” Ewing says. “We’re spending tons of money, and there is really no evidence that it is doing any good.”

For example, he says, the academic literature indicates that “Megan’s Law” – a network of laws requiring that sex offenders register with law enforcers and that their names be publicized – “makes re-entry so difficult and stigmatizes offenders so much that in many ways it drives them underground” and actually increases recidivism. In addition, he says, these sex offender registries – encompassing offenders from forcible rapists to partygoers who miscalculated the age of an attractive young woman – are riddled with errors and expose those on the list to vigilante justice. One conclusion Ewing draws is that access to these registries should be limited to police and those involved in hiring people who work with children.

Similarly, he says, states that have passed civil confinement laws – including, just recently, New York – are spending huge amounts of money to lock up offenders. The Supreme Court has ruled that such detention is permissible if it’s for treatment purposes. “But these programs are not about treatment, they’re about incarceration,” Ewing says. “Clear-

ly there’s no evidence that the guys who are in this program are getting anything out of it.” It costs New York taxpayers \$175,000 a year for each person in civil confinement.

Ewing argues instead for the more cost-effective approach taken by Texas, where released sex offenders are closely monitored in a kind of “super parole” and treated on an outpatient basis. If they violate that parole, it’s a crime, and they go back to prison.

He makes a similar argument around the fight against child pornography – an unquestioned evil, but one that carries wildly unequal and disproportionate penalties. “We’re treating possession of child pornography the way we would treat murder,” Ewing says. “It’s a horrible, horrible crime, but the cost of the law is staggering. It’s kind of like the drug problem – we’ve aimed our guns at the users and not so much the suppliers.”

So, for example, federal sentencing guidelines have resulted in “draconian” sentences for possession of child pornography.

“Twenty-year sentences are not unheard of,” Ewing says. “The annual cost of keeping convicted child porn defendants in the federal prison system is estimated at \$247 million,

and will keep getting higher.” Meanwhile, he says, for no discernible reason, some offenders are tried only in state courts and face much lesser penalties.

What’s most important? Ewing asks. Protecting the young victims. And so he argues for a new focus on efforts such as the FBI’s Innocent Images National Initiative to shut down the makers of child porn. That initiative was funded at \$60 million in 2008, he says, and rescued 187 children: “You talk about bang for your buck. That’s where we can really be effective.”

