

# Faculty Briefs



**Frank C. Aiello,**  
Assistant Professor

**Presented,** "Michigan Model Conservation Easement Revision Project Status Update" at the Heart of the Lakes Center for Land Conservation Policy Member Summit, Dec. 2, 2008, in Lansing, Mich.

**Represented,** the Six Rivers Regional Land Conservancy with approximately 60 hours of *pro bono* legal service in Hilary Term 2009.



**Ron Bretz, Professor**

**Published,** an article, "New Era or Will the High Court Retain Its Radical Ways?" in *Dome Magazine*, February 2009, online at domemagazine.com.

**Lectured,** with Professor Jim Peden, Criminal Law Update, Wayne County Criminal Advocacy Program, Detroit, Mich., Nov. 21, 2008.

**Spoke,** at Lansing Community College's Constitution Day Symposium, Sept. 17, 2008.

**Lectured,** on "The Michigan Criminal Justice System" at the People's Law School, Lansing, Mich., Oct. 21, 2008.



**Mark Cooney,**  
Associate Professor

**Published,** "The Runaway Verdict," in Vol. 88, No. 2 *Michigan Bar Journal*, 40 (February 2009).

**Appointed,** to the State Bar of Michigan's Standard Criminal Jury Instructions Committee.



**Mary Phelan D'Isa, Professor**

**Published,** "The Removal-Remand Shuffle: Is a Remand Order Based on a Discretionary Decline of Supplemental Jurisdiction Reviewable?" *PREVIEW of United States Supreme Court Cases*

(ABA Div. for Pub. Ed.) Issue No. 5, Vol. 36, Pg. 307, Feb. 23, 2009, 2008-2009 Term.

**Published,** "What is the Appropriate Standard of Review for Forfeited Error?" *PREVIEW of United States Supreme Court Cases* (ABA Div. for Pub. Ed.) Issue No.4, Vol. 36, Pg. 247, Jan. 12, 2009.



**Norman Fell, Professor**

**Attended,** the 2009 Innocence Network Conference, March 19-22, 2009, in Houston, Texas.

**Attended,** the National Institute of Justice Post-Conviction DNA Case Management Symposium Jan. 21-23, 2009, in Palm Harbor, Fla.

**Attended,** the National Association of Criminal Defense Lawyers "A New Legal Architecture – Litigating Eyewitness Identification Cases in the 21st Century," March 14-15, 2009, at New York University Law School.

**Spoke,** on "Wrongful Convictions, Actual Innocence and the Innocence Project," at The Wrongful Convictions and the Innocence Project Presentation on Jan. 26, 2009, at the University of Michigan Law School.

**Spoke,** on "Ineffective Assistance of Counsel and the Wrongly Convicted; The Public Defender Clinic," at The State of Indigent Defense in Michigan on Feb. 26, 2009 at Cooley Law School.

**Spoke,** on "Criminal Justice and Actual Innocence," at the Criminal Justice Department Presentation on March 2, 2009 at the University of Michigan Department of Criminal Justice.

**Spoke,** on "Wrongful Convictions, Actual Innocence and the Innocence Project," at the Michigan Psychiatric Society Annual Meeting Nov. 14, 2008, at the Center for Forensic Psychiatry in Ann Arbor, Mich.

**Named,** A Leader in the Law, by *Michigan Lawyers Weekly*, on March 25, 2009.



**Alan Gershel, Associate Professor**

**Appointed,** Chair, of the United States Federal Magistrate Judge Merit Selection Committee by Chief Judge, United States District Court, Eastern District of Michigan.

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# eDISCOVERY

DISCOVERING THE BENEFITS AND CHALLENGES OF



Derek S. Witte, an e-discovery expert and assistant professor at Cooley Law School's Grand Rapids campus

## THE SMOKING GUN IN AN INCREASING NUMBER OF LEGAL CASES ISN'T A SURPRISE WITNESS, IT'S A DELETED E-MAIL, TEXT MESSAGE, OR VOICE MESSAGE.

Yet tracing the e-trail of potentially explosive data during the discovery phase of a case can be an overwhelming and costly process. It can also mean the difference in winning or losing a case; consider Clark Hill PLC's (Detroit office) *DaimlerChrysler Motors v. Bill Davis Racing, Inc.* (2005 WL 3502172 [E.D. Mich.]), which netted a \$6.5 million settlement for Chrysler based on spoliation or destruction of e-evidence.

"It's a vast sea of data out there in the e-universe, which can often be more retraceable than not," said Derek S. Witte, an e-discovery expert and assistant professor at Cooley Law School's Grand Rapids campus. "Many companies and individuals have no idea how long and how deep e-mails, text messages, instant messages, and voice messages can exist in cyberspace. This has a lot of implications for litigation, and the ultimate question is whether e-discovery helps or hinders cases."

### No e-mail is safe from discovery

For instance, Witte explained that one e-mail can "live" on a multitude of servers, even after the e-mail has been deleted. "Assume that it will never be totally gone," said Witte.

The plethora of data, combined with its "staying power," presents a multitude of legal and IT issues for businesses and individuals, many of whom may never be part of any future litigation but should consider preventative policies to keep potentially reckless e-data from surfacing.

"People can become very informal and unprofessional in all of the new ways there are to communicate, and that is often how missteps are made," said Witte. In the *Chrysler v. Bill Davis* case, for instance, the racing company was found guilty of passing confidential information to Toyota based on e-mails sent from the private AOL account of one of Bill Davis' engineers to a Toyota employee.

Many states are now just catching up with the speed and sophistication of e-discovery. In January, Michigan adopted a series of electronic discovery amendments, including a party's ability to object to a subpoena for e-files based on "reasonable inaccessibility."

### Cooley takes the lead in e-discovery conversation, education

Cooley is taking a lead role in educating the legal community – and its students – about the implications of these new rules.

Witte recently moderated Tackling Michigan's new E-Discovery Rules and Cross-Examining the Experts, a major panel discussion at Cooley's Grand Rapids campus for area attorneys and Cooley students, hosted by Cooley and sponsored by Lumen Legal and the Grand Rapids Bar Association. The roundtable featured a slew of experts on the topic, ranging from computer forensic professionals to a trial and litigation attorney.

"It's about being on the forefront of this growing issue and helping the legal community and Cooley students become very comfortable and skilled in navigating through this area," said Curt Benson, a Cooley associate professor and panelist. Benson is a member of the Rules Committee responsible for drafting the new e-discovery rules.

Because e-discovery can be a big expense on a case (basic e-discovery activities can carry a \$50,000 price tag), e-discovery can pose ethical implications as it may prohibit smaller cases from going to trial.

"Unfortunately, in these economic times, companies don't want to spend the money on the front-end; yet, if there is ever a legal issue, the costs to comb through mountains of data can be staggering," said Witte.

As e-discovery becomes a core competency of practice, Cooley continues to offer students a variety of course options, including Advanced Document Discovery.

### Cooley grads ready to navigate e-discovery

In addition to teaching students about the latest approaches to successful e-litigation, Witte ensures students are armed with solid e-litigation prevention policies.

"I am always amazed at the number of sophisticated businesses that do not have a company policy for basics like e-mailing, document storage, and retrieval," explained Witte. "Instant messaging, which by its nature fosters a more relaxed, less professional form of communication between two people, can be another danger zone for a company," he said. "That data is more recoverable than people think. People need to ask themselves if this were (broadcast) on the front page, how would I feel about it. Just because it's marked 'private,' it's not. In litigation, you have to disclose all data sources."

According to Gary Hayden, director of Intelligent Discovery Solutions, Arlington, Va. and adjunct professor at Cooley Law School, Cooley students are well prepared to tackle this growing area of discovery and litigation.

"This area of law continues to grow and will continue having a profound impact on our students' careers," said Hayden. "Cooley is committed to helping our students and the legal community keep ahead of the curve; e-discovery is here to stay."



**Christopher Hastings,**  
Associate Professor

**Appointed**, as chair of the Standing Committee on the Unauthorized Practice of Law for 2008-2009, State Bar of Michigan, by State Bar President Edward M. Pappas.



**Victoria Kremski,**  
Assistant Professor

**Spoke**, "On Blizzard Lines, Atticus Finch & Not Getting Lost: What it Means To Be a Lawyer in These Times & How to Deal With Difficult Opposing Counsel," at the South Carolina Bar Convention on Jan. 24, 2009, in Myrtle Beach, S.C.



**Daniel W. Matthews,**  
Associate Professor

**Published**, an article, "'Joe the Plumber Redux' and a Discussion of the Obama Tax Plan," which was featured as the February 2009 spotlight article in the *Mertens Treatise on the Law of Federal Income Taxation*.

**Organized**, and supervised the Volunteer Income Tax Assistance (VITA) program for the Auburn Hills campus. Eight Cooley students volunteered to prepare tax returns for low income taxpayers in Pontiac. This was the third year of the program and about 50 taxpayers were assisted.

**Co-authored**, with Cooley Professor Emily Horvath, a survey article on "Trusts and Estates," in the *Wayne Law Review* - 54 *Wayne Law Review* 476 (2008).



**Donna McKneelen,**  
Assistant Professor

**Published**, an article, "Legal Barriers to Post-Conviction DNA Testing," in *CDAM The Right to Counsel*.

**Presented**, on Feb. 12, 2009, "The Innocence Project – What Do We Do?" before the Oakland County Bar Association in Novi, Mich.

**Presented**, on March 3, 2009, "Criminal Justice and Actual Innocence" at the University of Michigan in Ann Arbor.

**Presented**, on March 17, 2009, "Seeking Justice" at the Thomas Cooley Law School Auburn Hills campus ACLU meeting.

**Interviewed**, and appeared in the Artis White production, "Living Accused" shown at the Lansing Mall Cinema on Feb. 18, 2009.

**Argued**, and won DNA testing in the following Innocence Project post-conviction cases: *People v James Harris* and *People v Charles Evans*.

**Attended**, the NACDL Mid-Winter Conference, "Jazzing Up Your Defense," in New Orleans, La., on Feb. 25, 2009.

**Attended**, the National Institute of Justice Post Conviction DNA Case Management Symposium, on Jan. 22-23, 2009, in Palm Harbor, Fla.



**Nelson P. Miller, Associate Dean and Associate Professor**

**Published**, "Beyond Bias: Cultural Competence as a Lawyer Skill," in *87/6 Michigan Bar Journal* 38 (2008).



**Monica P. Navarro,**  
Visiting Professor

**Appointed**, to the Editorial Board of the ABA's *Health Lawyer*.

**Named**, a Michigan Super Lawyer by *Law and Politics Magazine*.

**Elected**, into the Top 50 Women Lawyers by *Law and Politics Magazine*.

**Appointed**, Co-Chair of the Health Law Committee of the Federal Bar Association, Eastern District of Michigan.

**Presented**, Health Care in America, Due Process, Channel 56 Detroit Public Television, December 2008.

**Published**, "Never Discount the Importance of Having a Plan to Combat Allegations of Unprofessional Behavior," in *Michigan Medical Law Report*, Fall 2008.

**Attended**, Emerging Issues in Health Law, Annual Conference of the American Bar Association, Orlando, Florida.



**John Nussbaumer,**  
Associate Dean and Professor

**Presented**, updated research findings on minority law school

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# THE LIBRARY OF TOMORROW

To ensure that Cooley students have the very best resources available to them, the school is ready to embark on an unprecedented expansion of its law library in Lansing.

## The Library of Tomorrow

The layout of the Lansing campus' Thomas E. Brennan Law Library is engrained in the memories of many Cooley graduates. Countless students have spent hours upon hours in the library that fills what was a retail space at the corner of South Washington Square and West Kalamazoo Street, one block east of the Cooley Center and one block south of the Temple Building.

Time spent in a law library is part of becoming a lawyer, a reminder of the importance of research. And now, more than ever before, law libraries are at the core of providing a top-notch legal education to the lawyers of tomorrow. Law libraries today are about more than just books, instead serving as centers of study, topical discussions, and social interaction.

## Unprecedented expansion

To ensure that Cooley students have the very best resources available to them, the school is ready to embark on an unprecedented expansion of its law library in Lansing. Once completed, the library will nearly double in size to over 138,600 square feet, becoming the nation's second largest law library in physical size. The \$6 million project will be funded in part by Cooley's first-ever capital fundraising effort called the Campaign for Knowledge. More than \$1.5 million has already been raised toward the library's fundraising goal of \$3 million. The Campaign for Knowledge also creates an endowed scholarship fund (see next page).

"We're extremely pleased with the early support that we've seen from the Cooley family," said James D. Robb, Cooley Law School's associate dean of development and alumni relations. "The need for this expansion is great, and the early donations show that student access to a top-notch center filled with legal resources is a passion shared by many."



“The expansion of the Thomas E. Brennan Law Library with the Center for Research and Study will form a crown jewel in downtown Lansing to be noted by legal libraries around the country,” said Cooley President and Dean Don LeDuc. “We’re pleased that Cooley alumni and friends are stepping up so quickly to support this growth.”



Once completed, the library will nearly double in size, becoming the nation’s second largest law library in physical size. The \$6 million project will be funded in part by Cooley’s first-ever capital fundraising effort called the Campaign for Knowledge.

When the Brennan Law Library opened in 1993, Cooley’s student enrollment was 1,566, and the library contained 307,000 volumes. Cooley now has 2,600 students at its Lansing campus, and the Brennan Library now houses nearly 600,000 volumes. The library is thus nearing the limit of its capacity in all respects as demand for library resources has increased by two-thirds since its opening in 1993.

In keeping with Cooley’s dedication to rehabilitating existing structures rather than building new ones, the library will expand to the west into the neighboring two-story Town Center Building at 333 Capitol Avenue across from the Cooley Center. The newly expanded library will offer 24-hour student access to the study hall on the first floor of the expansion. The area will have seating for more than 100 students and will include a 43-seat student lounge.

“Offering access to our library 24 hours a day is a great step for Cooley,” said Cooley Law School President and Dean Don LeDuc. “We need to be available when our students are available, and this expanded center will allow us to do so.”

The expansion, called the Center for Research and Study, will provide greatly expanded study space throughout the rest of the structure as well. Seating for approximately 270 students will be added to the spacious study center on the upper floor, including two 38-seat classrooms and many private study rooms. This area will be the building’s hub for individual study, small group meetings, and informal gatherings that enrich the educational experience at Cooley.

“The need for additional seating for study areas in the library is acute,” said Robb. “The limitations of available library study space have led us to use the lobby of the Cooley Center as a study hall, a use that is not completely satisfactory for students.”

Most of the expansion’s first floor will hold additional volumes of legal writings. Built on a slab floor, this area has the unique load-bearing capacity needed by Cooley.

“We have been running out of room to add legal texts for some time,” said LeDuc. “The current library building was not designed to serve as a library at all. In fact, it originally was a JC Penney department store.

“Because of its design, the floors above the basement lack sufficient load bearing capacity to support standard library shelving, limiting our ability to add texts. To compensate, the basement level was transformed with moveable shelving for both books and microfiche, but it is now reaching its limits.”

The expansion also will update the library’s technology to the latest standards.

“When we renovated the current library structure in 1993, we did not anticipate the transformation in technology that affects how students study, learn, and use of the library resources,” said Robb. “This expansion will allow us to update the technology to the very best in legal academia.”

Preliminary work on the expansion began in the spring of 2009.

“The expansion of the Thomas E. Brennan Law Library with the Center for Research and Study will form a crown jewel in downtown Lansing to be noted by legal libraries around the country,” said LeDuc. “We’re pleased that Cooley alumni and friends are stepping up so quickly to support this growth.”



**COOLEY**  
CAMPAIGN FOR KNOWLEDGE

**Cooley Law School’s Campaign for Knowledge is the school’s first major fundraising campaign. The campaign has two components.**

1. The renovation of the Town Center Building next to the Brennan Law Library into a Center for Research and Study to provide more student study space, student gathering space, library stack area, conference rooms, and small classrooms. The campaign aims to raise \$3 million for the \$6 million library expansion. More than \$1.5 million already has been raised.
2. The creation of an endowed scholarship fund for students with financial need. The campaign aims to raise \$1 million. Cooley also will contribute \$1 million to the fund. Approximately \$750,000 has been donated already by alumni and friends.

**Alumni and friends interested in contributing to the Campaign for Knowledge should call the Cooley Development Office at (517) 371-5140 ext. 2045 or visit [www.cooley.edu/campaignforknowledge](http://www.cooley.edu/campaignforknowledge)**

Make your Mark  
on Greatness

enrollment at the American Association of Law Schools 2009 Annual Meeting program titled "Progress? The Academy, the Profession, Race and Gender."

**Appointed**, to the Eastern District of Michigan Federal Bar Association Diversity Task Force.

**Moderated**, the State Bar of Michigan Equal Access Initiative at Cooley-Auburn Hills on March 6, 2009, titled "We Can, We Will, We Must: Creating Opportunities for the Next Generation of Lawyers."

**Invited**, by Admiral Bruce MacDonald of Navy JAG to become a consultant to the Navy JAG Diversity Task Force.

**Provided**, *pro bono* legal services to Alpha Company, 125th Combat Infantry Battalion, as part of Cooley's Service to Soldiers Program.



**Donald Petersen, Associate Professor**

**Appeared**, on numerous radio stations to discuss sports law issues.

**Performed**, stand-up comedy in Michigan and surrounding states.

**Authored**, a supplement to *Security Interests in Personal Property*, 3rd Edition, 2008-2009, Thomson/West Publishers.

**Authored**, Chapter 1 and Chapter 2 in *Cyber Liability & Insurance: Managing the Risks of Intangible Assets*, publishing in 2009. Chapter 1 is "Understanding Intangible Assets" and Chapter 2 is "Valuation of Intangible Assets."

**Authored**, Chapter 6 titled "Foreclosure Sales & Disposition," in Raymond Nimmers' *Commercial Asset Based Financing*, publishing in 2009.



**James D. Robb, Associate Dean of Development and Alumni Relations/General Counsel**

**Published**, "Who Is the Client?," an essay concerning the value of in-house corporate counsel as a lawyer-statesman in times of corporate trouble, in 23 *Michigan Lawyers Weekly*, pg. B1, Feb. 16, 2009.

**Appointed**, chairperson of the city of Birmingham, Michigan's Board of Ethics. He has served on the board since 2003.



**John Rooney, Professor**

**Translated**, a speech of Professor Rooney's called 'The Misuse of Language in the Pursuit of Justice' has been translated into Portuguese and will soon be published in Recife, Brazil.



**Marjorie Russell, Professor**

**Presented**, on trial skills, Making Your Case Come to Life, for the California DUI Lawyers Association, March 21, 2009, San Francisco, Calif.



**Devin Schindler, Associate Professor**

**Published**, an article, "A Response to Noah Felman's 'When Judges Make Foreign Policy,'" in *New York Times Magazine*, in October 2008.



**Charles Senger, Professor**

**Elected**, Chair of the State Bar of Michigan's Aviation Section for 2008-2009.



**Paul Shagen, Visiting Professor**

**Delivered**, a two-day presentation on Indian Taxation for the Falmouth Institute Indian Taxation Training, in Las Vegas, Nev., on Jan. 27-28.



**Otto Stockmeyer, Emeritus Professor**

**Published**, "The Rose of Aberlone" in *Chronicle*, Vol. 31, No. 4 (Historical Society of Michigan, Winter 2009).

**Published**, "Using Microsoft Word's Readability Program," in the January 2009 issue of the *Michigan Bar Journal*. This is his 10th article to be published in the Journal.



# A - d - v - a - n - c - i - n - g OPPORTUNITIES

## New Corporate Law and Finance Program Adds to Cooley's Master of Laws Degree Offerings

As today's global marketplace becomes more complex, so do the laws that shape, define, and regulate a new breed of business transactions.

That is why Cooley Law School is broadening its advanced degree program offerings for students interested in deepening the knowledge, skills, and ethics they will need in specialized areas of practice.

In addition to its master of laws (LL.M.) degrees, one in Intellectual Property and another in Taxation, Cooley will begin offering a Corporate Law and Finance LL.M. program in September 2009, making it the only American Bar Association-approved law school in the country to provide this distinct combination of degrees.

### At the Table of World Commerce

"Cooley continues to prepare students to be at the table of world commerce with confidence," said Don LeDuc, Cooley's President and Dean. "Our advanced degree offerings reflect the needs of the global marketplace."

Yet the advanced degree offerings are only part of Cooley's vision of educational excellence. It's Cooley's expert faculty who give students an edge in the business world. Look no further than E. Christopher Johnson, Jr., director of Cooley's Corporate Law and Finance program for example.

Johnson, who is developing the Corporate Law and Finance curriculum, is a sought-after national speaker on topics ranging from diversity as a business imperative to providing global legal counsel. He has created a rele-

vant curriculum based on his years of experience as a practicing attorney and as vice president and general counsel at General Motors North America.

"I am blessed to have served with a group of extraordinary professionals on the GM legal staff for 20 years, and my goal is to translate that experience into training the corporate lawyers of the future," Johnson said.

At the core of the 24-credit program will be classes involving advanced corporate transactions, corporate governance and finance, business organizations, and corporate professional responsibility. Included in the professional responsibility course is a segment on a lawyer's professional obligations to embrace diversity and provide *pro bono* and community service, which is consistent with Cooley's nationally recognized professionalism program.

In addition to a Corporate Law and Finance master of laws degree, students can choose to specialize in Global Public Companies Law, which will allow students to be introduced to the full range of issues within the corporate setting including litigation, intellectual property, and regulatory matters. This specialization will specifically prepare attorneys to represent large global companies whether they are on staff with the company or providing outside counsel.

Johnson also is forming an advisory board of prominent attorneys, including general counsel of global public companies and major law firm partners who provide legal counsel to those companies to support further the development of the curriculum.

### Expert Faculty

Directors of the other master of laws programs at Cooley also bring their in-depth and pertinent experience to their respective programs. Gina Torielli, director of the Taxation master of laws program, led a legal team of more than 100 attorneys in her role as president and chief executive officer of Howard & Howard Attorneys, P.C. and ran her own practice specializing in taxation and public finance before coming to Cooley.

Gerald T. Tschura and David Berry collaborate to lead the Intellectual Property master of laws program, tapping into their combined experience in their respective fields. Tschura was the Divisional Vice President of Intellectual Property Law with Kmart Corporation and worked with an intellectual property firm handling patent and trademark litigation matters before joining Cooley. Berry was a partner at Testa, Hurwitz & Thibault, LLP, a 400-plus-attorney firm with a national practice in venture capital and technology law, and represented companies in patent and license disputes in private practice prior to his Cooley faculty position.

These expert faculty and program directors not only give students a first-hand perspective, but keep Cooley close to the practicing legal and business communities and ahead of the curve in advancing opportunities for its students.

"We are always looking ahead to the needs of the profession and how we can deliver a relevant education taught by top-notch faculty with exceptional and practical legal experience," LeDuc said.



E. Christopher Johnson



Gina Torielli



Gerald T. Tschura



David Berry