

Keeping Up with New Legal Titles*

Compiled by Creighton J. Miller, Jr.** and Annmarie Zell***

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* © Creighton J. Miller, Jr. and Annmarie Zell, 2009. The books reviewed in this issue were published in 2008 and 2009. If you would like to review books for “Keeping Up with New Legal Titles,” please send an e-mail to creighton.miller@washburn.edu and annmarie.zell@nyu.edu.

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Carlson, A. Cheree. *The Crimes of Womanhood: Defining Femininity in a Court of Law*. Urbana, Ill.: University of Illinois Press, 2009. 189p. \$40.

Reviewed by Yasmin Alexander

¶1 Murderous step-daughters. Insane wives. Innocence betrayed. Salacious elements like these, fraught with dramatic questions of gender and morality, formed the narratives at the heart of several notorious trials that captured the popular imagination in the late nineteenth century. Themes of women “behaving badly,” contravening conventional notions of womanhood and virtue, made for tremendously compelling stories. Outside the courtroom, the media spun sensationalized tales for public consumption based on facts appropriated from scandalous cases. Inside the courtroom, the lawyers on both sides of such cases crafted their own stories. The lawyers’ narratives, devised for the consumption of a jury, were woven not only from the facts, but also from contemporary ideals of femininity and womanhood. In *The Crimes of Womanhood: Defining Femininity in a Court of Law*, A. Cheree Carlson recounts several nineteenth-century legal battles situated at the intersection of gender and morality, examines the arguments crafted by trial lawyers, and demonstrates how such arguments manipulated popular assumptions about women to yield convincing accounts.

¶2 Carlson is a professor of communication with a background in rhetorical theory. As such, she approaches trials as rhetorical constructions and legal arguments as stories. She examines these stories using the framework of rhetorical theory. Specifically, she relies on the theories of rhetorician Kenneth Burke to disassemble and analyze arguments used in the courtroom. This approach may pose a challenge for readers unfamiliar with rhetorical criticism, because such Burkean concepts as “symbolic perfection” and “dramatistic pentad” are used liberally throughout the book. Although Carlson provides extensive explanations of rhetori-

cal concepts in both the introduction and first chapter, it can be difficult to ascertain how these ideas apply when used in later analyses. Readers who lack a firm grounding in rhetoric may benefit from a particularly close reading of chapter one, which introduces Carlson's analytical methods, explains her treatment of legal arguments as stories, and describes Burkean theories and concepts in some detail.

¶3 The book's remaining six chapters each examine particular popular trials. The chapters are organized chronologically, beginning with a case from 1864 and ending with one from 1925. In each chapter, Carlson provides similar background information on the case in question: a brief biography of the woman at the center of the trial, a description of her community, and a summary of the pertinent law. Carlson also calls on cultural history to contextualize the case discussed in each chapter. In a chapter on Mary Todd Lincoln's sanity hearing, for example, Carlson discusses popular ideas about spiritualism and femininity in some detail. The remainder of each chapter is devoted to rhetorical analysis of the legal arguments. For each case, Carlson discusses the stories presented by the lawyers, specifically analyzing how the attorneys employed popular notions of femininity to sway the jury. She then applies rhetorical theory to further illuminate how each lawyer manipulated and framed such notions to suit his own ends.

¶4 Often, this approach works quite well, as in chapter two, which analyzes the sanity trial of Elizabeth Parsons Ware Packard and is one of the strongest chapters in the book. Packard was accused of being insane essentially because she defied her minister husband's religious precepts. Carlson examines the lawyers' arguments in the trial using Burke's conception of rhetorical framing.¹ She shows how both the prosecutor and the defense attorneys employed the same ideals of femininity—the same “norms of True Womanhood” (p.26)—but achieved very different effects by narrating Packard's story using frames that Burke labeled, respectively, the burlesque and the comic.

¶5 Chapter seven, another strong chapter, examines *Rhineland v. Rhineland*.² This is the only chapter that delves into questions of both race and femininity. In *Rhineland*, a husband instituted annulment proceedings against his wife, claiming she deceived him about her race. Carlson demonstrates how the wife's lawyer convinced the jury to apply notions of “white femininity,” rather than “black femininity,” to the case by putting Mrs. Rhineland's white mother on the stand. The mother, according to Carlson, acted as a “bridging device,”³ prompting the jury to evaluate Mrs. Rhineland “according to ideals of white womanhood and making her an icon of her sex” (p.154).

1. According to Carlson, “Burke reminds us that all stories are ‘framed’ by the larger cultural genres that surround them. Casting identical events in different frames leads to dramatically different interpretations of the ‘meanings’ of those events” (p.26).

2. This trial was decided by a jury in the Supreme Court in Westchester County, New York in 1925. Subsequent history is available at *Rhineland v. Rhineland*, 219 N.Y.S. 548 (N.Y. App. Div. 1927), *aff'd* 157 N.E. 838 (N.Y. 1927).

3. Carlson explains that, “A common tactic in narrative manipulation is using ‘bridging devices,’ . . . A bridging device is a symbol that shares substantive elements of more than one social category, creating those ‘areas of ambiguity’ from which one can transform meaning” (p.20).

¶6 Unfortunately, not every chapter is so well done. For example, in chapter six, Carlson discusses the trial of notorious abortion doctor, Madame Restell. Although the story is fascinating and the background research is clearly exhaustive, the application of rhetorical concepts seems uncertain.

¶7 The book ends with a strong conclusion that synthesizes common threads found amongst the various cases and discusses the present-day implications of themes developed throughout the book. The substantive material is followed by an extensive bibliography, which should prove useful for researching gender issues and legal history, and by a comprehensive index. Overall, I recommend *The Crimes of Womanhood* for academic law libraries and general academic libraries with collections covering legal history or women's studies.

Colker, Ruth. *When Is Separate Unequal? A Disability Perspective*. New York: Cambridge University Press, 2009. 280p. \$85.

Reviewed by Anna Blaine

¶8 In *When Is Separate Unequal? A Disability Perspective*, Ruth Colker, author of four previous books on disability law, explores equality for individuals with disabilities from an anti-subordination perspective. This approach, based on Catharine MacKinnon's work in feminist theory, views inequality not as "a matter of sameness and difference, but of dominance and subordination" (p.12). Colker contends that the basis of inequality is lack of power rather than difference in treatment—an understanding of inequality that focuses on the group actually facing mistreatment. Within this framework, discrimination against individuals with disabilities is understood as worse than discrimination against those without disabilities. *When Is Separate Unequal?* applies this anti-subordination perspective to discussions of individuals with disabilities in K–12 education, higher education, employment, and voting.

¶9 Colker's discussion of K–12 education is the book's strongest section. She begins by summarizing cases in which courts have rigidly applied the integration presumption. This theory, which is codified in the Individuals with Disabilities Education Act (IDEA) of 1974,⁴ asserts that the mainstreaming of children with disabilities into the general educational system is presumptively the best option for such children. Colker rebuts this general presumption with a review of relevant case law and empirical literature on the education of children with mental retardation, emotional or behavioral impairments, and learning disabilities. Rejecting the integration presumption, she suggests various factors to help guide school districts and courts seeking to better configure education resources for children with disabilities. Primarily, Colker urges the Department of Education and the courts to give more weight to IDEA's continuum of services rule than to integration. Continuum of services involves the provision of various alternative placement options for children with disabilities, such as regular class instruction, special classes, special schools, and supplementary services provided in conjunction with regular class treatment. Despite these suggestions, Colker fairly presents the justification behind the inte-

4. 20 U.S.C. §§ 1400–1482 (2006).

gration presumption—namely, that segregated education historically constituted warehousing in inhumane conditions—and acknowledges that her assertions are controversial.

¶10 Coverage of many other topics in the book is also quite good. No book on U.S. disability law would be complete without a look at the Americans with Disabilities Act (ADA) of 1990,⁵ and Colker does not disappoint. She praises the ADA for an anti-subordination approach, recognizing individuals with disabilities as members of a discrete minority that has been relegated to powerlessness. She then summarizes with appropriate disappointment the Supreme Court's narrow—practically to the point of nullifying—interpretation of the statute. Unfortunately, it seems the book must have gone to press before passage of the 2008 amendments to the ADA,⁶ as these go unmentioned.

¶11 Equally effective is Colker's chapter on voting. She details various barriers to voting faced by individuals with disabilities—both at the polls and in the absentee voting process—and makes policy recommendations intended to overcome these barriers. These recommendations remain true to Colker's rejection of the integration paradigm, focusing primarily on improving absentee voting procedures rather than on accommodations to polling facilities and mechanisms.

¶12 Less valuable is the book's analysis of higher education and testing accommodations, a discussion that focuses solely on "speededness" in the LSAT and law school exams. Colker belabors her point that speed is overly emphasized at the expense of knowledge or aptitude assessment, while failing to demonstrate in detail how this emphasis negatively affects students with disabilities. That such an emphasis would disproportionately impact those with disabilities may seem obvious, but evidence like that which Colker employs in her discussions on K–12 education and voting is notably lacking. Also less effective is the book's final chapter, addressing the Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1*,⁷ a race integration case. While this chapter would make a very strong standalone article, it is tied so vaguely into the subject matter of this particular book that it appears out of place as the work's conclusion.

¶13 Regardless of a few such weaknesses, however, the high quality of Colker's sections on K–12 education, voting, and the ADA makes *When Is Separate Unequal?* a sound addition to the scholarship on disability law. Indeed, the excellence of the K–12 chapter alone makes this book worthy of inclusion in all academic collections dedicated to disability law and, perhaps, in the collections of practitioners who focus on education law.

5. Pub. L. No. 101-336, 104 Stat. 327 (codified as amended in scattered sections of 29, 42, and 47 U.S.C.).

6. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (amending scattered sections of 29 and 42 U.S.C.).

7. 551 U.S. 701 (2007).

Cullen, Robert W. *The Leading Lawyer: A Guide to Practicing Law and Leadership*. St. Paul, Minn.: Thomson West, 2009. 170p. \$35.

Reviewed by Margaret K. Maes

¶14 The available literature on leadership for lawyers is small but growing, and *The Leading Lawyer: A Guide to Practicing Law and Leadership* is a solid addition to the mix. The author, Robert Cullen, is a mediator and adjunct law professor at Santa Clara University, where he developed one of the first semester-long courses on leadership for lawyers. Cullen's book is driven by a series of interviews with ten "leading lawyers"—each an attorney—chosen by the author for specific insights into leadership and success, who "challenges the status quo, has vision, and helps to initiate positive change through collaboration, determination, and persuasion, in addition to using the traditional advocacy model" (p.14). Rather than simply reproducing ten interview transcripts, the book is organized into five chapters structured around a set of leadership skills that the author identifies as critical to success in businesses and professional service firms. Using a business model, Cullen builds a persuasive case for lawyers to develop these skills both as individuals and as members of legal organizations.

¶15 A fundamental premise of the book is that leadership is for everyone. Cullen recognizes that some people have natural leadership tendencies, but he believes that others can learn the skills needed to become successful leaders. These skills, as highlighted in the book, are: "credibility, drive and determination, communication and persuasion, creative thinking, vision, and relationship and team building" (p.9). Each of the five skill sets earns a chapter in the book, and each is described using quotations from and stories about the ten leading lawyers.

¶16 The first chapter, "Establish Credibility," relies heavily on the work of leadership gurus James Kouzes, Barry Posner, and Warren Bennis. It focuses on characteristics of credibility, including expertise and integrity, and presents several charts outlining key elements that help to establish credibility, such as competence, honesty, and vision. The text illustrates these traits with real life examples drawn from the legal profession. Following the chapter on credibility is a chapter on drive and determination—traits common to legal professionals. Leading lawyers not only work hard, they also strive to become experts, work for positive and ethical change, and motivate and inspire others. The chapter contends that leading lawyers possess a strong moral compass, with values that they vigorously promote and defend.

¶17 The book's strongest chapter discusses the need for leaders to establish a vision and think creatively. It compares analytical and creative approaches to problem solving, with an emphasis on innovation and creativity. Cullen details various stages in the creative process, from identifying problems to implementing solutions, and provides examples derived from business and the legal profession. This chapter references a number of published studies that describe the concept of vision in some depth, and this presentation can serve as an excellent overview of vision as it relates to leadership.

¶18 The next chapter, covering effective communication, draws on the author's background in negotiation and dispute resolution and on scholarly research from the field of communication. Cullen discusses the need for good general communi-

cation skills as well as the application of persuasion and influence to specific situations. Cullen emphasizes that lawyers need more than just traditional skills in advocacy—effective communication must be “strategic and persuasive” (p.108).

¶19 Relationship building, the final leadership skill Cullen marks as necessary for success, is described in a chapter on collaboration and teamwork. Cullen emphasizes the importance of understanding people, building positive relationships, shaping the way people work together, and motivating team members. He discusses working collaboratively with opponents, crossing boundaries, and using negotiation to resolve issues. He presents models for team building and reviews eight characteristics of an effective team. Finally, he explores emotional intelligence and the importance of understanding both ourselves and those around us.

¶20 In the end, this is not a book about ten famous lawyers, but a well-researched look at theories of leadership, the qualities of successful leaders, and the value and use of leadership within the legal profession. Cullen does not limit his examination to the ideas of his ten interviewees. Instead, he presents a variety of perspectives on approaches to leadership culled from the fields of government, business, science, and athletics. Written in a tone that is often conversational, *The Leading Lawyer* provides an accessible alternative to more research-oriented works, and it is recommended as both an introduction to leadership for legal professionals and as an addition to libraries with leadership collections.

Dupre, Anne Proffitt. *Speaking Up: The Unintended Costs of Free Speech in Public Schools*. Cambridge, Mass.: Harvard University Press, 2009. 289p. \$29.95.

Reviewed by Mary Rice

¶21 I don't know about you, but I laugh every time I see “BONG HiTS 4 JESUS,” a phrase that has become the unofficial name for the U.S. Supreme Court's 2007 decision in *Morse v. Frederick*.⁸ *Morse* is one of many cases on educational speech rights discussed by Anne Proffitt Dupre in *Speaking Up: The Unintended Costs of Free Speech in Public Schools*, a new book that provides an insightful and eminently readable history of this fascinating topic. From the turbulent 1960s through the present day, educators and judges have grappled with conflicts between the educational mission of public schools and the free speech rights of both students and teachers. In 1965, the Vietnam era sparked the first major controversy, when students in Des Moines were sent home from school for wearing black armbands to protest American involvement in the war. This incident eventually led to *Tinker v. Des Moines Independent Community School District*,⁹ a seminal U.S. Supreme Court decision protecting student expression in public schools. By 2002, however, perhaps one of the most unintended costs of this protection had become the substitution of prank for protest. In contrast to the war protestors in *Tinker*, *Morse* addressed the fate of a high school student disciplined by his principal for unfurling a fourteen-foot “BONG HiTS 4 JESUS” banner as the Olympic Torch Relay passed through Juneau, Alaska.

8. 551 U.S. 393 (2007).

9. 393 U.S. 503 (1969).

¶22 Dupre has spoken and published extensively about freedom of expression within a public education setting. Formerly a schoolteacher, she is currently an endowed professor at the University of Georgia School of Law, where she teaches education law, children and the law, and contracts.

¶23 Professor Dupre begins her book with a chapter entitled, “Outside the Schoolhouse Gate: A Free Speech Primer,” in which she introduces her topic and provides the historical background for her analysis. This chapter should prove especially helpful for anyone unfamiliar with the subject area. Dupre quotes some intriguing sources—namely, both Abraham Lincoln and *Goldilocks and the Three Bears*—as she seeks to illustrate the courts’ struggle to strike the right balance between the state’s responsibility to educate and the students’ rights to freedom of expression.

¶24 Dupre focuses her next chapter largely on *Tinker*, the watershed case that determined that schools cannot restrain student expression unless the expression causes a “substantial disruption of or material interference with” the educational process.¹⁰ In writing for the Court in *Tinker*, Justice Abe Fortas said, “It can hardly be argued that either students or teachers shed their constitutional right to freedom of speech or expression at the schoolhouse gate.”¹¹ Dupre reports that this is “one of the most famous quotations in any case dealing with schools,” (p.15) one that continues to be quoted by courts to the present day.

¶25 The remaining chapters in *Speaking Up* cover freedom of expression as it relates to student publications; dress codes; school prayer; the Pledge of Allegiance; religious organizations; teacher speech; off-campus speech, including postings on the Internet; and the “right to receive speech,” (p.110) both in the form of books and by other means. Using plain, but never condescending, language, Dupre provides clear analysis for each of the cases and legal theories discussed in the book. She carefully grounds her discussions on the significant historical and cultural changes that took place between the 1969 decision in *Tinker* and the BONG HiTS 4 JESUS case of 2007.

¶26 *Speaking Out* is a fascinating, thoughtful treatment of a subject of great importance to our nation, and I thoroughly enjoyed the book. The author is a highly skilled storyteller, and the book is further enhanced by Dupre’s liberal use of apt and often surprising quotations from such historical and cultural icons as Albert Einstein, Justices Hugo Black and Oliver Wendell Holmes, Mark Twain, and Def Leppard. The work is logically arranged and thoroughly covers its topics. The text is not cluttered with case citations and other documentation—such references are included, instead, as endnotes. The book contains both a case index and a subject index, though it lacks a bibliography, which would have been useful. These qualities and features help make *Speaking Out* one of very few books on school speech accessible to the general reader as well as to members of the legal community, and the work would be an excellent addition to any library.

10. *Id.* at 514.

11. *Id.* at 506.

Hiskes, Richard P. *The Human Right to a Green Future: Environmental Rights and Intergenerational Justice*. New York: Cambridge University Press, 2009. 171p. \$90.

Reviewed by Darla W. Jackson

¶27 Richard Hiskes is a professor of political science at the University of Connecticut and serves both as editor of the *Journal of Human Rights* and associate director of the Human Rights Institute. Impressed by these credentials and enthusiastic about the prospect of “new conceptualizations” (p.i) of human rights and intergenerational environmental justice, I embarked on a journey through Hiskes’s latest book, *The Human Right to a Green Future: Environmental Rights and Intergenerational Justice*. Unfortunately, I found the journey somewhat arduous. Although the book’s table of contents promises an entire chapter on “Instituting Intergenerational Environmental Justice,” there was scant discussion of practical implementation in what appears to be more a survey of the human rights theory underlying support for environmental justice.

¶28 In the course of presenting his survey, Hiskes references the work of Edith Brown Weiss, the Francis Cabell Brown Professor of International Law at Georgetown University Law School and an author whose work received the Certificate of Merit Award for creative scholarship from the American Society of International Law in 1990. First published in 1989, Weiss’s *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*¹² remains the standard work on environmental concerns relevant to present and future generations. While Hiskes discusses Weiss’s work, he neglects the work of Paul A. Barresi,¹³ a well-known critic of *In Fairness to Future Generations*.

¶29 A comparison of the Hiskes and Weiss texts reveals why Weiss’s book remains the standard. Weiss’s work is well organized and flows logically from one point to the next. Although it develops a theoretical framework for intergenerational equity, significant portions of the book also address implementation strategies, and an appendix outlines provisions on environmental rights and duties contained in the constitutions of various nations. In contrast, *The Human Right to a Green Future* lacks such practical detail. For example, while Hiskes discusses in chapter six the importance of constitutional status to environmental rights, his analysis of potential sources of environmental rights in national constitutions is quite limited and relies primarily on the U.S. Constitution. Equally problematic is that *The Human Right to a Green Future* at times proves difficult to follow. Particularly in the early chapters, Hiskes displays a tendency to address issues only briefly and then provide references to other portions of the book that have more fully developed analyses. While brief comments supported by such references are

12. EDITH BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY* (1989). Similar ideas are presented in a lecture by Weiss that is available on video. Edith Brown Weiss, *The Principle of Intergenerational Equity*, http://untreaty.un.org/cod/avl/ls/Weiss_EL.html (last visited May 7, 2009).

13. Paul A. Barresi, *Beyond Fairness to Future Generations: An Intragenerational Alternative to Intergenerational Equity in the International Environmental Arena*, 11 TUL. ENVTL. L.J. 59 (1997); Paul A. Barresi, *Essay, Advocacy, Frame, and the Intergenerational Imperative: A Reply to Professor Weiss on “Beyond Fairness to Future Generations,”* 11 TUL. ENVTL. L.J. 425 (1998).

to be expected in an introduction, extensive use of this organizational style is distracting. In addition, I often found that I needed to read a significant portion of a chapter before I understood its central theme. To overcome this problem, I began reading the conclusion to each chapter first.

¶30 Further problems with the Hiskes text include the dense nature of the book's language and the author's presumption that his readers are familiar with the work of lesser-known political and human rights theorists. In addition, rather than including footnotes or endnotes for each chapter, Hiskes utilizes a parenthetical reference style. While this citation style is not unusual in interdisciplinary works, it can be off-putting for those accustomed to the footnotes utilized by legal scholars.

¶31 In his acknowledgments, Hiskes states: "Several pieces of the following argument were presented at the American Political Science Association annual meeting, and early versions of them appeared in *Human Rights Quarterly*, *Human Rights Review*, and *Public Affairs Quarterly*" (p.x). He indicates that comments on these earlier pieces helped to improve the development of the ideas in his book. However, in my reading of one of the *Human Rights Quarterly* pieces from 2005,¹⁴ I found a more concise and readable presentation of some of the same ideas included in the book. This leads me to wonder if Hiskes actually benefited from the comments of others, or if the feedback simply distracted him from his original, well-formulated ideas.

¶32 Despite its limitations, this book is not without merit. While not particularly useful as an introduction to the concepts of intergenerational justice in an environmental context, it is nonetheless an informed and well-researched book that draws from work in several different disciplines. Although law students and practitioners will likely prefer the Weiss book, academic law libraries looking to improve the depth of their collection in theoretical works or to increase the multidisciplinary nature of their collections in general may wish to consider purchasing *The Human Right to a Green Future*.

Lacovara, Philip Allen, ed. *Federal Appellate Practice*. Arlington, Va.: BNA Books, 2008. 955p. \$325.

Reviewed by John Dickinson Moore

¶33 *Federal Appellate Practice* is a major new contribution to a critical field of law, and it is priced accordingly. On the cover, where the author's name is usually found on BNA books, is the name of a law firm—Mayer Brown LLP. Clearly, the book is intended to serve, in part, as an advertisement for Mayer Brown's Supreme Court and Appellate Practice Group, but keep in mind that it is one of the largest and most experienced groups of its type in the United States. Although individual chapters were written by different lawyers based on their particular expertise, the book has an overall consistency of tone and purpose that is readable and practical, lightened from time to time with a little wit.

14. Richard P. Hiskes, *The Right to a Green Future: Human Rights, Environmentalism and Intergenerational Justice*, 27 HUM. RTS. Q. 1346 (2005).

¶34 The tone and its consistency are probably due to the presence of Editor-in-Chief Philip Allen Lacovara at the helm of the project. Lacovara has enjoyed a long and interesting career committed to appellate work, one with more than a few historical highlights. After graduating from Columbia Law School, he clerked for Judge Harold Leventhal on the D.C. Circuit. Lacovara briefly became an assistant to Thurgood Marshall, then solicitor general of the United States, right before Marshall left for the Supreme Court. After various other jobs, Lacovara joined the Watergate Special Prosecutor's Office. He held a ringside seat for Nixon's firing of Archibald Cox and was picked to help argue the Watergate tapes case before the Supreme Court, a case that the Office won in a unanimous decision.¹⁵ In an interview with *Washington Lawyer* that covers his unusual career, Lacovara comes across as straightforward, articulate, and interesting.¹⁶

¶35 Lacovara's present project includes chapters that are arranged to reflect the stages in the appeals process. The first chapter covers the period before an appeal is started and offers advice on preserving issues for appeal. Later chapters cover appellate jurisdiction, motions, interlocutory appeals and mandamus, and appeals of federal agency rulemaking and decisions. The crucial task of compiling the record and preparing the appendix receives eighty-eight total pages of analysis, with separate sections explaining each circuit's requirements. The chapter on brief writing is well-done; surprisingly, however, most of the examples are not particularly compelling. Various types of briefs—opening briefs, response briefs, reply briefs, and amicus curiae briefs—are covered in individual chapters, as are both oral argument and rehearing.

¶36 One of the work's few major shortcomings is the lack of any substantial discussion of mediation and settlement. Most federal appellate courts now have active civil mediation programs. A good settlement during the appeals process may help a client who has lost the battle to win the war. On the criminal side, though, the chapter on criminal appeals spends considerable time on communications with the client and stresses the importance of informing criminal defendants about the perils associated with pursuing appeals.

¶37 Other chapters discuss costs and attorneys' fees, Supreme Court review, and—my personal favorite—the Federal Circuit. Entire books have been written about Federal Circuit practice,¹⁷ yet this chapter provides a clear overview of the court's jurisdiction and practice, covering not just the sexy patent cases but the other, unique matters that the court hears. A lengthy subsection details the various standards of review employed by the court.

¶38 The book provides a comprehensive index, a table of cases, a useful separate summary, and detailed tables of contents. The appendixes are also helpful. One appendix consists of a table presenting practical nuggets distilled from the Federal Rules of Appellate Procedure. The table indicates, among other things, which appeal documents must be filed and by whom, the format and contents required for each filing, and particular court practices that apply to the various filings and

15. *United States v. Nixon*, 418 U.S. 683 (1974).

16. Tim Wells, *Legends in the Law: Philip Allen Lacovara*, WASH. LAW., Jan. 2005, at 28.

17. See, e.g., DONALD R. DUNNER ET AL., COURT OF APPEALS FOR THE FEDERAL CIRCUIT (1973–).

documents. Another appendix does the same with the local rules for each circuit. Lastly, the book contains a current copy of the Federal Rules of Appellate Procedure. At some point this published version of the Rules will become outdated; it is unfortunate that the publisher has not clarified how often the book will be updated or supplemented.

¶39 The preface states that the book is a companion to BNA's *Supreme Court Practice*¹⁸ by Eugene Gressman et al. and that it is intended to perform similar functions for the appellate bar. This is a lofty goal, because *Supreme Court Practice* is the standard work on advocacy before the high court. Once upon a time, Robert L. Stern, former coauthor of *Supreme Court Practice*, penned *Appellate Practice in the United States*,¹⁹ also from BNA Books. That work's most recent edition was published in 1989 and is now quite dated. More recent is West Group's *Federal Appeals: Jurisdiction and Practice*, by Michael E. Tigar and Jane B. Tigar, published in 1999 and supplemented by pocket part.²⁰ It has a similar arrangement to the book presently under review. So, if it wants to become a standard work along the lines of *Supreme Court Practice*, BNA's *Federal Appellate Practice* faces competition, but the competition is getting a bit old.

¶40 *Federal Appellate Practice* should be purchased by all academic libraries. Students participating in moot court appellate advocacy contests will find it helpful in their preparations. It would also be appropriate as a textbook for an appellate advocacy course, although its price might argue against this. In addition, law firm and court libraries—both appellate and trial level—might considering purchasing a copy of *Federal Appellate Practice*, as lawyers and judges can use it as both a reference book and a treatise.

Newman, Abraham L. *Protectors of Privacy: Regulating Personal Data in the Global Economy*. Ithaca, N.Y.: Cornell University Press, 2008. 221p. \$39.95.

Reviewed by Jennifer L. Lunt

¶41 Abraham L. Newman, currently an assistant professor at the Edmund A. Walsh School of Foreign Service at Georgetown University, received his doctorate in political science from the University of California at Berkeley in December 2005. His dissertation, titled "Creating Privacy: The International Politics of Personal Information," was nominated in 2006 for the American Political Science Association's Helen Dwight Reid Award for Best Dissertation in International Relations. *Protectors of Privacy: Regulating Personal Data in the Global Economy* is a product of Newman's research for this dissertation.

¶42 In the book, Newman contrasts the data privacy regulations of the United States with those of European Union countries. He argues that strong data privacy regulations coupled with the independent regulatory agencies known as data privacy authorities have increased Europe's ability to translate its market size into

18. EUGENE GRESSMAN ET AL., *SUPREME COURT PRACTICE* (9th ed. 2007).

19. ROBERT L. STERN, *APPELLATE PRACTICE IN THE UNITED STATES* (2d ed. 1989).

20. MICHAEL E. TIGAR & JANE B. TIGAR, *FEDERAL APPEALS: JURISDICTION AND PRACTICE* (3d ed. 1999).

international clout. He examines the origins of European data privacy rules and challenges the view that the United States will continue to dominate Europe in international affairs.

¶43 Although the subject of the book is timely and potentially interesting, the work is written in an excessively formal and wordy style. The book suffers from a lack of conciseness, coherence, and clarity. The following sentence from the first chapter of the book illustrates Newman's sometimes convoluted approach: "Building on comparative historical institutional work, which isolates the importance of timing and temporality within national institutional trajectories, I examine the relative sequencing of events globally" (pp.9–10). To add to the confusion, Newman freely makes use of technical terms and acronyms, sometimes without defining or explaining them for readers from other disciplines.

¶44 A further shortcoming is the book's use of endnotes instead of footnotes. I found distracting the need to flip between the text and endnotes. In some instances, necessary citations to authority have been omitted. For example, Newman indicates that "the data privacy commission in France has more than doubled its staff since the 1980's, with a budget of 7 million Euros and eighty employees in 2004" (p.28) but does not cite the source of this statistical information. This flaw makes it difficult to verify the accuracy of the book's information.

¶45 A separate book, titled *Negotiating Privacy: The European Union, the United States and Personal Data Protection*²¹ and written in the same year as Newman's dissertation, also addresses the data protection dispute between the European Union and the United States. *Protectors of Privacy* pales in comparison. *Negotiating Privacy* is just as scholarly as *Protectors of Privacy* but is clearer, more concise and coherent, and better organized.

¶46 *Protectors of Privacy* closely follows Newman's dissertation and appears to be intended more for academics in the fields of political science and international relations than for legal scholars. As such, it would be most appropriate for a government or general academic library, not necessarily for an academic law library. Yet, because the book addresses important economic, political, and social issues, and because there are few other works on this subject, academic law libraries may wish to consider purchasing this book in spite of its shortcomings—particularly those libraries with patrons specializing in privacy regulation. However, I do not recommend purchasing a copy of the book if the library has online access to Newman's original dissertation, which is available through the ProQuest Dissertations & Theses database.²²

21. DOROTHEE HEISENBERG, *NEGOTIATING PRIVACY: THE EUROPEAN UNION, THE UNITED STATES, AND PERSONAL DATA PROTECTION* (2005).

22. Abraham L. Newman, *Creating Privacy: The International Politics of Personal Information* (2005) (unpublished Ph.D. Dissertation, University of California, Berkeley), available at <http://proquest.umi.com/pqdlink?did=1126764891&Fmt=7&clientI%20d=13235&RQT=309&VName=PQD> (subscription required).

Ogletree, Charles J., Jr., and Austin Sarat, eds. *When Law Fails: Making Sense of Miscarriages of Justice*. New York: New York University Press, 2009. 349p. \$70.

Reviewed by Jennifer L. Behrens

¶147 What do we really mean when we declare that “justice has failed” someone? Should wrongful convictions and other unjust legal outcomes be considered isolated mistakes by an individual court, or are they evidence of fundamental problems with the American legal system? How can we identify systemic injustices before they impact a particular defendant’s case, rather than attempting to correct them individually through the appellate process?

¶148 Editors Charles J. Ogletree, Jr. (Harvard Law School) and Austin Sarat (Amherst College) have assembled a collection of ten thought-provoking, original essays that reflect upon these difficult questions. *When Law Fails* is the second entry in N.Y.U. Press’s Charles Hamilton Houston Institute Series on Race and Justice; Ogletree and Sarat also collaborated in editing the initial volume.²³ As did its predecessor in the series, *When Law Fails* explores its theme from an interdisciplinary perspective, with contributions from sociologists and public policy scholars supplementing those authored by law professors.

¶149 Based on the series title, prospective readers may imagine that *When Law Fails* once again revisits those most dramatic and familiar examples of American judicial injustice: wrongful and racially biased capital convictions exposed as unjust by DNA evidence. To its credit, though, *When Law Fails* defines “miscarriages of justice” far more expansively, exploring failures caused by harmless error rules and mandatory sentencing requirements—contemplating even “miscarriages of mercy,” a term used by essay author Linda Ross Meyer to encompass unjustified leniency in prosecutions of military personnel. This broader-than-expected scope is demonstrated effectively by the first essay, “The Case of ‘Death for a Dollar Ninety-Five.’” Here, legal historian Mary L. Dudziak recounts the story of Jimmy Wilson, a 53-year-old black man sentenced to Alabama’s death row in 1957 for stealing pocket change from an elderly white woman. Dudziak goes beyond the obvious breakdown of the legal system in this case to explore a second, less evident failure: when worldwide outrage and media attention spurred the governor to commute Wilson’s sentence to life imprisonment, the subsequent celebration curiously ignored the fact that “*Life for a Dollar Ninety-Five*” was only a slightly more reasonable outcome than “Death.”

¶150 It is clear from the distinct voices in *When Law Fails* that the editors encouraged creative approaches to the topic, generally to positive effect. Dudziak’s essay and Ogletree’s own contribution on the 1921 Tulsa race riot both employ absorbing biographical narrative to illustrate their points. In “Margins of Error,” Stanford Law School Professor Robert Weisberg concocts a Socratic dialogue between an anthropomorphic legal system and various defendants in order to tease out the boundaries between harmless and harmful errors. Sarat’s chapter combs clemency petitions for evidence of miscarriages of justice. Daniel Givelber of Northeastern University School of Law takes an empirical view, comparing data from a classic study of jury

23. FROM LYNCH MOBS TO THE KILLING STATE (Charles J. Ogletree, Jr. & Austin Sarat eds., 2006).

behavior with a follow-up conducted nearly fifty years later. The only disadvantage to this freewheeling style is that the organization of the book occasionally feels disjointed. Although the essays in *When Law Fails* are loosely divided into three discrete sections (“On the Meaning and Significance of Miscarriages of Justice,” “Miscarriages of Justice and Legal Processes,” and “Reconceptualizing Miscarriages of Justice”), these distinctions are fairly arbitrary, as each essay tends to touch upon all three topics.

¶51 *When Law Fails* raises far more questions than it offers solutions, but the essays are sure to stimulate further discussion on the nature of injustice at all levels of the legal system. The book is recommended for all academic law libraries, and these institutions may also want to consider a standing order for this promising monograph series.

Robertson, Carol. *The Little Red Book of Wine Law: A Case of Legal Issues*. Chicago: American Bar Association, 2008. 165p. \$19.95, paper.

Reviewed by Susanna M. Leers

¶52 This sparkling little volume takes a look through a legal lens at the history of wine in the United States. Author Carol Robertson is both a self-confessed oenophile and a San Francisco lawyer who has represented grape growers and winemakers, and her knowledgeable book is clearly a labor of love. This work is neither a traditional casebook nor a scholarly tome but rather a smart, well-written, and often fascinating book that will prove a pleasurable read for anyone with a passion for wine and an interest in legal history.

¶53 *The Little Red Book of Wine Law* begins with an introduction subtitled “A Methuselah of Factoids About Wine (and Law).” A Methuselah, for those who may be wondering, is a specific size of wine bottle: larger than a magnum or a jeroboam, it holds a volume equivalent to eight bottles of champagne. (The book is filled with such interesting tidbits.) This particular, metaphorical Methuselah skillfully distills the history of wine in America into a useful eight-page timeline that serves as an excellent reference.

¶54 The book’s wine theme continues with a clever organizational scheme that deliberately parallels a mixed case of wine—hence the volume’s subtitle. In each of twelve chapters, Robertson tells the story of an interesting wine law court case in her own lively and informative style. Although these disputes focus on a variety of legal issues, wine always remains the primary subject. Like a good mixed case of wine, the twelve chapters combine to offer a perfect selection, highlighting the range of legal disputes that have defined and shaped America’s wine industry.

¶55 “Wine law” cases involve a wide range of legal topics, and Robertson has chosen examples that nicely illustrate this variety. There are cases from as early as 1910 and as recent as 2008. Again, this is not a casebook—no actual court opinions are included. Instead, the book recounts the story surrounding each case and explains the court’s reasoning and decision in clear and entertaining prose. For example, the book’s first chapter, “‘Tipo Chianti’: Can a Type of Red Be Trademarked?” looks at *Italian Swiss Colony v. Italian Vineyard Co.*²⁴ In that case

24. 110 P. 913 (Cal. 1910).

the California Supreme Court was asked to decide whether a wine producer could trademark the word “Tipo” (Italian for “type”) to describe a particular Chianti. The court eventually ruled that other wineries remained free to use the word so long as they did not also copy the packaging or label of the original “Tipo” Chianti. Adding an entirely different note, chapter two, “When is Wine Not A Beverage?,” narrates the legal wrangling in *Dumbra v. United States*.²⁵ Occurring five years after Prohibition began, *Dumbra* addressed issues stemming from the raid of a family grocery store that sold wine for “religious purposes” (as legally allowed but with lax oversight). The case also provides Robertson with an opportunity to launch into an informative exposition on the history of the wine industry during Prohibition and the various effects that the era had on the production and sale of wine in America.

¶56 Other cases in the book concern thorny wine-related legal issues flowing from labor law, contract, and the regulation of wine transportation and distribution. Such issues are often rooted in the nation’s past, because all fifty states and the federal government have long histories of regulating and taxing alcoholic beverages. More recently, the global economy and international law have added further complications. Cases such as *Granholm v. Heald*²⁶ (chapter nine), dealing with the direct shipment of wine to consumers from in-state and out-of-state vineyards, and *Costco Wholesale Corp. v. Hoen*²⁷ (chapter ten), challenging under the Commerce Clause restrictions that impose a “three tier system” of producers, distributors, and retailers, have failed to completely clarify the overarching issues. Robertson contends that “the battle is far from over” (p.113).

¶57 Interspersed amongst the book’s principal material are engaging “vignettes” that offer further vinaceous information and add detail and depth to the book. (The word “vignette” in French is the diminutive of *vigne*, or “vine,”²⁸ which comes, in turn, from the Latin *vinum*, meaning “wine.”²⁹ So, “vignette” might be translated as “little wine.”) Following a chapter describing a bitter will contest involving a California winery, for example, appears a vignette that tells of another family feud—this one for control of the famed Chateau d’Yquem. Other vignettes discuss wine labels in the United States and compare our labeling system to that of the French.

¶58 The stories surrounding the twelve cases discussed in this book, the legal issues raised by these cases, and the analyses and resolutions advanced by the courts that have addressed these issues reflect and at the same time help shape American attitudes toward wine. For anyone interested in the domain of wine, from viniculture to wine consumption, *The Little Red Book of Wine Law* is an entertaining and thoroughly enjoyable book by an author who clearly knows her stuff.

25. 268 U.S. 435 (1925).

26. 544 U.S. 460 (2005).

27. 538 F.3d 1128 (9th Cir. 2008).

28. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, UNABRIDGED 2551 (1986).

29. *Id.* at 2553.

Tucker, Judith E. *Women, Family, and Gender in Islamic Law*. New York: Cambridge University Press, 2008. 255p. \$32.99, paper.

Reviewed by Deborah Dennison

¶59 General and scholarly interest in Islamic culture, history, and law has increased dramatically in recent years. Given our increasingly multicultural communities and the impact of the global economy, this is as it should be. Despite expanding news coverage, however, many of us continue to lack significant knowledge of Middle Eastern society. While we hear reports of the poor treatment suffered by women in many such cultures, including harsh punishments inflicted on female rape victims, we know little about the true position of women in Islamic society. In the introduction to *Women, Family, and Gender in Islamic Law*, author Judith Tucker, who does possess such knowledge, spotlights precepts in Islamic culture that demand protection of the weaker, more vulnerable members of society and asks how such precepts can be reconciled with news reports of gender-based atrocities and the contemporary focus on rigid social codes for women in the Islamic world. The tension illuminated by this question implicitly underlies the remainder of her book.

¶60 As a professor of history at Georgetown University's Center for Contemporary Arab Studies, Tucker is a distinguished and prolific scholar.³⁰ Much of her work focuses on addressing Arab women's issues in historical context. *Women, Family, and Gender in Islamic Law*, a valuable addition to existing scholarship, helps expand an understanding of theory versus practice in Islamic law. Tucker's primary concern is with examining the relationship between law and gender in historical perspective, which is central to understanding personal status within the Islamic world. As such, she examines the roles of legal institutions and legal theories throughout Islamic history, with a particular focus on "the lived experience of the law, the way laywomen and men understood their rights and options and the actions they made as a result" (p.36). For Tucker, the living law is both reflected in and interpreted through culture.

¶61 Tucker's introductory chapter provides essential overviews of basic concepts, namely gendered law, Islamic law and authority, and Islamic law and gender. The remainder of the book is divided into topical chapters covering the marriage contract, divorce rights, property issues, and gendered space (i.e., physical or metaphorical spaces that are linked to a specific gender). Throughout the book, Tucker discusses the legal doctrines underlying the major schools of Islamic jurisprudence, studies the development of law and codification efforts throughout history, and explores tensions relevant to gender issues for each of her topics.

¶62 In the chapter on marriage, Professor Tucker impresses on the readers the centrality of marriage as an institution in Islamic law. This is an absorbing chapter—readers learn the esteem in which marriage is held and the purpose for which marriage is intended in Islam: it is both the "fulfillment of a moral imperative . . . as an essential part of leading a good Muslim life, and . . . a binding legal contract

30. See, e.g., JUDITH E. TUCKER, IN THE HOUSE OF THE LAW: GENDER AND ISLAMIC LAW IN OTTOMAN SYRIA AND PALESTINE (1998); JUDITH E. TUCKER, WOMEN IN NINETEENTH-CENTURY EGYPT (1985).

that must meet certain conditions in form and content” (p.41). Tucker’s discussion moves from the rights and duties of marriage to codifications and laws marking the “modernization” of Islamic marriage law.

¶63 While marriage is, indeed, the cornerstone of community, Islamic law nonetheless recognizes that divorce may sometimes be in the best interests of all parties involved. As Tucker points out, “there is no moral dictum of ‘till death do us part’” (p.84) within Islamic law. Tucker’s chapter on divorce discusses various divorce actions and remedies but also notes, in its conclusion, a great diversity of opinion on the rules that should govern divorce, with some Muslim jurists still uncomfortable with the very concept. Although legal reforms were instituted in the nineteenth century, this is an area of Islamic law that remains subject to active calls for reform.

¶64 The next chapter, entitled “Woman and Man as Legal Subjects: Managing and Testifying,” discusses a variety of issues not related directly to personal status, including contracts and property rights. These topics address individuals as subjects of laws and the ways in which gender impacts individuals’ capacity “to participate in the economic activities of their society” (p.134). While many of these topics involve less obviously discriminatory laws, Tucker carefully analyzes how the law is constructed and who it empowers, in order to trace the role played by gender in Islamic economic culture.

¶65 The book’s final chapter discusses gendered space, and this is a particularly engaging and rather groundbreaking analysis. I know of no other scholar who has provided such a cohesive treatment of the many disparate elements comprising social space, particularly not a treatment encompassing applications ranging from the historical through the modern. Tucker correctly states, “this is an area . . . where modern concerns threaten to skew our understanding of Islamic law” (p.175). Thus, her historical perspective on gender and law proves particularly valuable.

¶66 Writing a comparative history and analysis of this scope is quite an undertaking, and Professor Tucker has done a fine job, delivering an interesting, well-researched, and quite readable treatise. The summaries on gender and law found in the first chapter prove particularly valuable, and they help make approachable the topical treatments that follow. Tucker articulates complex ideas clearly, so her work should be intelligible to a wide-ranging audience. Those not well-versed in feminist legal theory, for instance, will come away with an understanding of the basic theory applicable to issues at the intersection of gender and law, while more erudite readers will more fully appreciate the substantive discussion. Tucker supplements her scholarly material with useful reference tools—footnotes, a bibliography, an index, and a glossary of terms—and readers who desire further information will appreciate the author’s suggested reading list. For its historical, legal, and social significance, I recommend this book for law, academic, and larger public libraries.

The Washington Post Supreme Court Year in Review 2009: Major Cases and Decisions of 2008. New York: Kaplan Publishing, 2009. 401p. \$27.95.

Reviewed by Betsy McKenzie

¶67 *The Washington Post Supreme Court Year in Review 2009: Major Cases and Decisions of 2008* surveys fifteen U.S. Supreme Court cases decided during the October 2007 Term³¹ and selected for their historical and legal importance. The cases are arranged in nine topical chapters addressing, in turn: habeas corpus; the First, Second, Eighth, and Fourteenth Amendments; federal sentencing guidelines; criminal law; employee benefits; and torts. Each chapter covers one or more cases. For each case, the book generally provides excerpts from the majority and dissenting opinions and analysis of the case from a variety of perspectives, in the form of both previously published *Washington Post* articles and other, uncredited commentary.

¶68 While one can always argue with the selection, the fifteen cases chosen for inclusion in the book are a good representation of landmark cases from the 2008 docket. They include *Medellin v. Texas*³² and *Boumediene v. Bush*,³³ for instance, in the habeas corpus chapter. The selection of precise excerpts is also well done. The editing leaves the majority opinions and dissents largely intact. All major points are present in the edited documents, and the excisions have not distorted the flavor of the opinions. Omissions from the full text of the decisions are noted with asterisks and ellipses, and pin-point citations have been removed.

¶69 *The Washington Post Supreme Court Year in Review 2009* includes a table of contents, a useful index, and a timeline in the back of the book. Index entries include case names, statutes listed by popular name, and other, relevant subject headings. The timeline lists all October 2007 Term opinions of the Court by month of decision, including those opinions not excerpted in the book. Cases are identified in the timeline and throughout the main text by case names, decision dates, and docket numbers.

¶70 This book is designed not for legal professionals, but for the lay public or, perhaps, a college audience. The editing seems useful and fair for those purposes. The *Washington Post* articles, which often emphasize tensions within the Court, should be particularly useful for the book's principal audiences. These articles clearly report on the oral arguments and the give-and-take among the justices and attorneys. Such a focus helps bring the decisions to life by highlighting elements that dramatize the cause of action for the reader.

¶71 I was troubled, however, by the legal commentary offered in *The Washington Post Supreme Court Year in Review 2009*. In the introduction, the book promises

31. Each Term of the U.S. Supreme Court encompasses the period from the first Monday occurring in October of a particular year through the day preceding the first Monday in October of the next year. SUP. CT. R. 3. Thus, the October 2007 Term ran from Monday, Oct. 1, 2007, through Sunday, Oct. 5, 2008. All but one of the cases included in *The Washington Post Supreme Court Year in Review 2009: Major Cases and Decisions of 2008* were decided and released in 2008. The lone exception, *Kimbrough v. United States*, 128 S.Ct. 558 (2007), was decided on Dec.10, 2007.

32. 128 S.Ct. 1346 (2008) (considering whether international treaties and court decisions are binding on U.S. domestic law).

33. 128 S.Ct. 2229 (2008) (declaring the Military Commissions Act of 2006 unconstitutional).

“commentary by legal experts” (p.v.). This “legal experts” commentary, though, appears to be completely uncredited material. One cannot determine from the book who wrote this commentary or when. The *Washington Post* articles also lack adequate attribution. The articles sometimes include bylines, but authors are usually only identified as “*Washington Post* Staff writers.” As law librarians, we teach our patrons to look for indications of authority. Sadly, beyond the masthead of the newspaper itself, this book provides none.

¶72 Moreover, while republishing articles is a nice way for a newspaper to generate revenue, and while I do hope newspapers continue to survive into the future, I cannot characterize this book as offering the caliber of commentary expected by law librarians and needed by patrons with a legal background. The commentary does not rise to the level we would expect from a hornbook, nutshell, or similarly law-oriented work. The caliber is, perhaps, sufficient for a lay or undergraduate reader, but the book does not provide the depth of analysis necessary for a law student and is certainly not what lawyers or law school faculty require.

¶73 This book would be a good choice for a public library, a college library, or a law library that serves the public. The editors of the work do not expect readers to have any legal background, and present issues at only a lay level. Thus, while some academic law libraries may also choose this book, I can recommend it only for those few with budgets that allow generous enrichment of the collection.