



Buffalo Law Review

Alumni Newsletter

A NEWSLETTER FOR BUFFALO LAW REVIEW ALUMNI

SPRING 2012

Law Review Honors Powers & Franasiak

The *Buffalo Law Review* is delighted to announce that Jean C. Powers '79 and David Franasiak '78 will be honored for their distinguished service to the SUNY Buffalo Law School and the SUNY Buffalo legal community at the *Law Review's* 23rd Annual Dinner on April 17, 2012 at the Buffalo Club in Buffalo, New York.

Jean Powers is a Partner at Jaeckle Fleischmann & Mugel LLP in Buffalo, New York. She earned her B.A. and M.A. from St. John's University in 1968 and 1971 respectively. In 1979, she graduated with her J.D. from SUNY Buffalo Law School.

Ms. Powers has over 30 years of experience in all aspects of Commercial Real Estate, Real Estate Finance, Commercial Leasing, Title Insurance Law, and Title Opinion Law. Ms. Powers has represented developers, lenders, and business entities in the acquisition, financing, leasing, and disposition of commercial and industrial real property.

Ms. Powers's contributions to the Buffalo legal community are too numerous to list. She is

an emeritus member of SUNY Buffalo Law School's Dean's Advisory Council, a past president of the UB Law Alumni Association, and a past recipient of the UB Law Alumni Association Distinguished Alumna Award for Community Service.

Ms. Powers is also a past president of the Volunteer Lawyers Project, Inc., and a Past President of the Erie County Bar Foundation.



Jean C. Powers

The *Law Review* is proud to honor Jean Powers in recognition of her distinguished career in private practice, coupled

with her steadfast dedication to SUNY Buffalo Law School. Ms. Powers has shown unwavering integrity in the practice of law while serving the Buffalo legal community with distinction.

Most importantly, Ms. Powers is committed to the students of SUNY Buffalo Law School, regularly making time in her busy schedule to mentor UB students. Her professional achievements and commitment to public service are at the heart of what the *Law Review* aspires to instill in its members.

The *Review* is privileged to

honor Jean Powers for her service to the students of SUNY Buffalo Law School.

David E. Franasiak is a Principal of Williams & Jensen, PLLC in Washington, DC. He completed his undergraduate studies at the Buffalo State University and earned his J.D. and MBA from SUNY Buffalo in 1979. Mr. Franasiak has over 25 years of experience working on public policy issues with corporate executives, not-for-profit organizations, accounting firms, broker dealers, hedge funds, financial institutions, and associations.

Prior to joining Williams & Jensen, Mr. Franasiak was a Principal in the Office of the Chairman at Ernst & Young LLP, working on tax, securities, and financial institution issues. He also worked for British Petroleum on tax, finance, environment, and energy issues, and was Director of Tax at the U.S. Chamber of Commerce.

Mr. Franasiak has also served as staff director of the Tax Oversight Subcommittee of the U.S. House of Representatives Small Business Committee.

In addition to serving Williams & Jensen clients, Mr. Franasiak teaches a public policy seminar in the SUNY Buffalo New York City Program in Finance and Law and serves on the UB Alumni Board for Washington, DC. He is also a member of the Board of the International Stock Exchange Executives Emeriti.

Mr. Franasiak's contributions to SUNY Buffalo Law School are immense. His dedication to serving UB Law and its students is unquestioned, as *Law Review* members

who had the privilege of working with Mr. Franasiak as part of the New York City Finance Program can attest. "My goal is to give back, as I had many people help me throughout my career for no apparent reason. I mentor as many law students, young lawyers, and others as I can fit into my schedule."

The *Review* is privileged to honor Mr. Franasiak.

The members of the *Review* hope you will join us in recognizing the accomplishments, dedication, and service of Ms. Powers and Mr. Franasiak.



David E. Franasiak

Year in Review: 2011-2012

The 2011-2012 academic year has been great for the *Buffalo Law Review*. Our current *Law Review* Editors and Associates have worked diligently to continue the traditions of the *Review* by publishing five quality issues, recruiting new members, and giving back to SUNY Buffalo Law School and the Buffalo legal community.

As we put the finishing touches on another volume of the *Buffalo Law Review*, it's fitting to reflect on where we have been. Every member of our staff has contributed to the success of the *Review* over the past year. Last summer, our Note & Comment Team reviewed nearly one hundred casenotes in selecting our Associate class. In the fall, we welcomed the new class and introduced them to the *Review*'s process at orientation.

Our Articles Team selected a slate of high-quality articles for publication, making it a priority to maintain our generalist focus by selecting articles on a variety of topics. From there, our Publication Team worked tirelessly to ensure that we presented every piece in the best light possible. From our Associates checking every detail of every cite, to our Executive Publication Editors reviewing proofs line by line, we strove to provide our authors with a positive experience while producing five issues that reflect the high standards of the *Buffalo Law Review*. The result is a body of work that is scholarly, thoughtful, relevant, and provocative.

For example, Todd E. Pettys's *Judicial Retention Elections, the Rule of Law, and the Rhetorical Weaknesses of Consequentialism* contributed to the current debate concerning controversial judicial elections. Pettys presents a well-reasoned proposal to allow judges to participate in public debate

regarding their controversial decisions. The type of reaction that Pettys's contentions have engendered is evident from Professor Jordan Singer's response, *Meaningful Information, Meaningful Retention*, coming soon to the *Buffalo Law Review*'s online extension, *The Docket*.

The *Buffalo Law Review* was also honored to publish a series of essays by three prominent legal historians memorializing this year's impressive Mitchell Lecture event, *From Nuremberg to Buffalo: Justice Jackson's Enduring Lessons of Morality and Law in a World at War*. The essays reflect on the profound vision of Justice Robert H. Jackson's 1946 address at the University of Buffalo Centennial, given just days after his return from the Nuremberg trials.

The *Law Review* staff also made it a priority to venture outside the office and contribute to the SUNY Buffalo community. Our members have been involved in a variety of activities within the law school, and their success in everything from moot court to trial advocacy is a testament to the quality of our membership. Our staff also gave back by participating in the BLR Mentoring Program, in which Editors and Associates were paired with first year students to provide advice and encouragement as they transitioned into law school. We are also proud to be a part of SUNY Buffalo Law School's upcoming Day of Service.

We would like to thank our alumni for your continuing support of the *Buffalo Law Review*. Your dedication to the *Review* makes everything we do possible.

Cristin L. Murray
Editor-in-Chief

Past *Law Review* Honorees

Each year the *Buffalo Law Review* honors outstanding members of the legal community. Below is a list of past honorees. This year we recognize Jean C. Powers and David E. Franasiak.

Louis A. Del Cotto.....	1991
Jacob D. Hyman.....	1992
Hon. John T. Curtin.....	1993
Markus D. Dubber, John B. Sheffer II & Nancy Staudt.....	1994
Thomas E. Headrick.....	1995
Kenneth Joyce.....	1996
William A. Niese & Elizabeth Mensch.....	1997
Albert R. Mugel.....	1998
Herald Price Fahrigner.....	1999
James A. Wooten.....	2000
Hon. Michael A. Telesca.....	2001
Hon. Hugh B. Scott.....	2002
Hilary P. Bradford.....	2003
Hon. Barbara Howe.....	2004
Robert B. Conklin.....	2005
Denise O'Donnell & Robert Schwenkel.....	2006
Barbara D. Klippert & Dennis R. McCoy.....	2007
Jeffrey Crandall & Paul Battaglia.....	2008
Hon. Kevin M. Dillon & George M. Williams, Jr.....	2009
Hon. Eugene F. Pigott, Jr. & Professor David M. Engel.....	2010
Hon. Julio M. Fuentes & Garry M. Graber.....	2011

Law Review Members Selected for Publication in 2011-2012

Four student pieces were selected for the honor of publication in the *Buffalo Law Review* during the 2011-2012 academic year. The *Law Review* members chosen for publication were Jennifer L. Karnes, Joseph L. Guza, Nicole J. Ettlinger, and Mary E. Saitta (pictured, from left, at last year's dinner).

In *A Cure for Laryngitis: A First Amendment Challenge to the NLRA's Band on Secondary Picketing*, published in December, Joseph L. Guza examines section 8(b)(4)(ii) (B) of the National Labor Relations Act and the potential constitutional challenges it poses by its sweeping prohibitions on "union secondary boycotts" and "secondary picketing." Used to "indirectly pressure employers with which they [have] a labor dispute," via the targeted picketing of an employer's suppliers and associates, Guza argues that secondary picketing is not "coercive" and is protected speech under the First Amendment. Guza concludes that section 8(b)(4)(ii) (B) may be unconstitutional because it "constitutes viewpoint discrimination" by regulating labor speech which is arguably political in nature, or, alternatively, because section 8(b)(4)(ii)(B) is vague.

Mary E. Saitta's Note, published in January, is entitled *The Power to Tax Is the Power to Foreclose: Reuniting Law and Logic in Tribal Immunity from Suit*. The Note explores the Second Circuit's decision in *Oneida Indian Nation of New York v. Madison County*, in which the court held that while the county could collect real property taxes on non-



reservation land owned by the Oneida Indian Nation, it could not enforce taxation through foreclosure. The Note begins by exploring the concepts of tribal immunity from suit and the different types of Indian land. Next, the piece demonstrates that tax assessment and tax enforcement are two sides of the same coin, and thus the power to tax implies the power to enforce. The Note concludes by assessing the harm to local governments that may result from the Second Circuit's decision.

Nicole J. Ettlinger's Note, slated for publication in April, is entitled *You Have the Right to Remain Thirteen: Considering Age in Juvenile Interrogations in J.D.B. v. North Carolina*. The Note examines the implications of the Supreme Court's holding in *J.D.B. v. North Carolina*, which found that age is an objective factor a court may consider when determining

whether an individual subjected to police interrogation was in custody for purposes of issuing *Miranda* warnings. The Note suggests mandating parental or guardian presence at interrogations of children under sixteen to provide a workable method for protecting the rights of juveniles. Likewise, Ettlinger advocates for continuing the totality of the circumstances analysis traditionally associated with *Miranda*. By including age as an objective factor in the totality of the circumstances analysis, the Note contends, the courts can better protect the rights of vulnerable children.

As Jennifer L. Karnes points out in her Comment, *Pirates, Inc.: The Uncertain State of Corporate Liability Under the Alien Tort Statute*, since the Second Circuit's controversial 2010 decision in *Kiobel v. Royal Dutch Petroleum*, which disallowed the extension of liability to corpo-

rations for human rights violations abroad under the Alien Tort Statute, human rights activists have felt devastated, while corporations have felt confused because of the split among other circuits. The Comment provides an objective analysis of the confusion in the court leading up to this point, and a bit of the legislative history that has gotten us here. Karnes ultimately leaves the reader with the clear impression that without further guidance from Congress, or perhaps the Supreme Court, human rights organizations and corporations will continue to expend large amounts of money to deal with these cases, while the circuit courts wander their way through "varying interpretations of the historical record, treaties, and pre-existing international human rights enforcement mechanisms." Karnes's Comment will be published in May.

Unique Summer Experiences Among Associate Class

This past summer, *Law Review* associate members worked in both diverse and specialized legal fields nationwide.

Some Associates spent their summer gaining knowledge and experience from judges in New York State. Aaron Saykin and Chloe Hall both interned for the Hon. John A. Michalek in the Commercial Division of New York State's Supreme Court, Eighth Judicial District. Tyson Prince interned for the Hon. Michael A. Telesca of the U.S. District Court for the Western District of New York.

Several *Law Review* associates were fortunate enough to intern in various prosecutorial offices throughout New York State, at city, county, and federal levels. Michael Das experienced a memorable summer with the Gang and Major Case Squad for the Bronx District Attorney's Office. While there, he wrote numerous briefs for the senior trial attorney on staff, as well as the deputy chief for the unit. He also acted as co-counsel and second chair on a first-degree murder trial.

Two of our Associates worked for the Erie County District Attorney's office. During his summer there, Nicholas Romano

focused on felony trials, while Stewart Forbes directed his efforts in the white-collar crime unit.

Kimberly Rowles and Reg Miller worked for local county attorney's offices. Kimberly spent her summer in the Ontario County Attorney's Office, while Reg interned for the Erie County Attorney's Office, where he contributed his writing skills to litigation on redistricting in the Erie County legislature and issues concerning the Erie County Holding Center.

Both Caitlin Higgins and Kinsey Davidson worked at the U.S. Attorney's Office. Caitlin Higgins interned with the organized crime and public corruption units for the Southern District of New York. Kinsey, in the Western District of New York, was assigned to two Assistant U.S. Attorneys in the criminal division. Under a student practice order, Kinsey appeared on behalf of the government for a half-dozen hearings, pleas, and sentences. Kinsey's internship was generously supported by a fellowship provided by the Buffalo Public Interest Law Program.

Ashley Fasso and Eric Glynn worked in the arena of public defense. Ashley interned with

Erie County's Assigned Counsel Program, which provides free counsel to indigent defendants charged with misdemeanors and felonies. Eric spent his summer with the Niagara County Public Defender's Office. He shadowed public defenders while they appeared at arraignments, sentencing, suppression hearings, and trials.

Outside of New York State, Erin Kulesus interned in the Domestic Violence Division of the Cook County State Attorney's Office in Chicago, Illinois. Erin gained valuable experience through multiple trial observations and also accompanied Assistant State Attorneys as they interviewed complaining witnesses.

Working at the federal level, Adam Penna interned with the Federal Bureau of Investigation in its Buffalo, NY headquarters. After a polygraph and an extensive background investigation, Adam was granted Top Secret security clearance. He was assigned to the White Collar Crime Squad, but he also often experienced investigations of criminal drug and gang activity with a FBI Special Agent. He remarks that this was an incredible experience that was both challenging and

rewarding.

In the private sector, Jenn Yates spent this past summer working for Blackbird Asset Services, a boutique auction and valuation firm that specializes in commercial sales of machinery, equipment and real estate. She worked alongside the owner and president of the company to solidify his business plan, create a marketing strategy, and improve the company's operations. According to Jenn, she received a first-hand look at the joys and woes of running a business in the very early stages.

David Burress, Laura Powalski, Karalyn Rossi, Kenneth Bostick, Tyler Ellis, and Kathryn Exoo summered with local private law firms. Laura noted that while working for Brown & Kelly, LLP, she learned a lot from watching experienced attorneys take and defend depositions. David learned the plaintiff's side of personal injury by working on several noteworthy cases for local trial attorney Francis M. Letro.

The *Law Review* is proud that this year's Associates have had the opportunity to take part in these skill-enhancing experiences, which will surely benefit the *Law Review*.

Law Review Members Succeed School-Wide

From overseas legal adventures to victories in legal competitions, *Buffalo Law Review* members continue to strive for success beyond the classroom.

Our staff made significant contributions to the SUNY Buffalo and Greater Buffalo legal communities. In September, Patrick Sheldon argued before the Appellate Division for the Fourth Department, successfully representing the defendant in a criminal case involving questionable identification procedures.

Allison Welsh and Karalyn Rossi participated in the Women, Children & Social Justice Clinic, which recently launched a first-of-

its-kind database to help victims of domestic violence.

Members also contributed to the rich student life at SUNY Buffalo Law School. Fueled by a passion for labor and employment law, Articles Editor Joseph Guza founded the SUNY Buffalo Law School's Labor & Employment Relations Society ("LERS"). In its first year in existence, LERS has presented a series of lecture events, including an event featuring NLRB Chairman Mark Pearce.

Adam Hayes organized a week-long Earth Day event which will feature an open forum with Senator Mark Grisanti, while Laura

Powalski and Kimberly Rowles helped organize SUNY Buffalo's Mediation Competition as part of the Alternative Dispute Resolution organization.

In addition, *Law Review* members experienced success in moot court and trial advocacy competitions. Nicholas Romano, Adam Penna, and Angelyn Delgado competed in SUNY Buffalo's Charles S. Desmond Moot Court Competition. In February, Delgado and Associate Michael Das participated in the Jessup International Moot Court Competition in Chicago, while Cristin Murray and Joseph Sroka competed in the American Bar Association National Appellate Advocacy Competi-

tion in Boston.

In March, Erin Kulesus and her trial team traveled to Brooklyn to take part in a Trial Advocacy Competition. *Law Review* members Laura Groschadl, Karalyn Rossi, and Angelyn Delgado were also part of UB Law's Trial Team.

In January, Daniel Kelly traveled with a group of eleven law students to Chiang Mai, Thailand, for a two-week course focused on the legal culture of Thailand.

Meanwhile, Andrew Devine gained experience with international law by working with one of its leading experts, SUNY Buffalo Law School Dean Makau Mutua.

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60th Annual BLR Softball Showdown

Bottom of the ninth. Two outs. Bases loaded. Associate Adam Hayes at the plate and Editor Joseph Jansen on the mound. The pitch. A slow arching hurl floats to the plate. Adam Hayes swings. The ball rolls up the middle, between the shortstop and second basemen, for a base hit.

On October 8, 2011, the *Buffalo Law Review* held their sixtieth annual softball game between the second-year Associates and third-year Editors. This

year's game was played at the University at Buffalo's South Campus on Main Street in Buffalo.

The Associates beat the Editors handily, 31-13. Both teams played very well, and the game was neck and neck for most of the afternoon. The Associate's bats, however, kicked it up a notch in the fourth inning and never looked back. After the game, Associate Kimberly Rowles said, "We came out here and gave it our all. You know,

we just joined the *Buffalo Law Review* and we all are so proud to be a part of it. By winning this game, we feel like we are more a part of the tradition."

Editor Jonathan Cantil responded, "Well, the Associates can have their day today. I would love another shot at them, but I know they can't play again...they have cite packs to do." The game's most valuable player honors went to Joseph Jansen of the Editors and Nicholas Romano of the Associates.

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