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**DAVID JAY LUBAN**

Georgetown University Law Center (202) 662-9806  
600 New Jersey Ave., N.W. e-mail: luband@law.georgetown.edu; david.luban@gmail.com  
Washington, D.C. 20001 Fax: (202) 662-9409

Born: January 12, 1949, in Milwaukee, Wisconsin. Married to Judith Lichtenberg; two children, Daniel Henry Luban and Rachel Claire Luban.

**Professional Experience**

Georgetown University Law Center:  
University Professor, beginning 2006  
Frederick Haas Professor of Law and Philosophy, 1997-2006

Institute for Philosophy and Public Policy, University of Maryland:  
Research Scholar, 1979-1997.

University of Maryland School of Law:  
Morton and Sophia Macht Professor of Legal Ethics, 1993-97  
- Adjunct Professor of Philosophy, beginning 1990  
R. F. Stanton Professor of Law, 1989-93  
Professor of Law, beginning 1988  
Associate Professor of Law, 1986-88  
Lecturer, 1979-85

Kent State University:  
Assistant Professor of Philosophy, 1975-79.  
Faculty Associate to the Center for Peaceful Change, 1975- 79.

Yale University:  
Lecturer in Philosophy, 1974-75.

**Education**

Ph.D.: December, 1974, Yale University, Philosophy. Danforth Fellow, 1970-74; Woodrow Wilson Graduate Fellow, 1970.  
M.Phil.: December, 1973, Yale University, Philosophy  
M.A.: December, 1973, Yale University, Philosophy  
B.A.: June, 1970, University of Chicago, Ideas and Methods, with concentration in mathematics. Honors at graduation; Phi Beta Kappa; National Merit Scholar.

**Visiting Positions**

Stanford Law School: Leah Kaplan Visiting Professor of Law, 2005-06.  
Yale Law School: Visiting Professor of Law, 1994-95.  
University of Melbourne: Visiting Research Fellow, 1992.  
Harvard Law School: Visiting Professor of Law, winter term, 1989.  
University of Maryland: Visiting Associate Professor of Law, 1985-86  
Dartmouth College: Visiting Associate Professor of Philosophy, 1984-85.

Max Planck Institute for Foreign and International Private Law (Hamburg): Visiting Scholar, 1982.  
 Max Planck Institute for European Legal History (Frankfurt): Visiting Scholar, 1982.

### **Academic Honors**

Keck Foundation Award and Lectureship for distinguished scholarship on legal ethics and professional responsibility, American Bar Foundation Fellows, 1998.  
 Fellow of the Woodrow Wilson International Center for Scholars, 1996-97.  
 W. M. Keck Foundation Distinguished Senior Fellow in Legal Ethics and Professional Culture, Yale Law School, 1994-95.  
 Phi Beta Kappa lecturer, 1993-95.  
 Sanford D. Levy Prize, awarded by the New York State Bar Association for the best paper on issues of legal professionalism appearing in a New York legal publication (shared prize), 1992.  
 Guggenheim Fellow, 1989-90.  
 Center for Public Resources Book Prize for Excellence and Innovation in Alternative Dispute Resolution (shared prize), 1989.  
 University of Maryland Eminent Scholar, beginning 1989.

### **Teaching Award**

Frank Flegal Teaching Award (Georgetown Law's annual teaching award), 2005.

### **Publications**

#### **BOOKS**

Legal Ethics and Human Dignity (Cambridge University Press, forthcoming).

Legal Ethics: Law Stories (co-edited with Deborah L. Rhode)(Foundation Press, 2005).

HÇritsuka ronri to yÇki hantanroku (Good Judgment in Legal Ethics) (Chuo University Press, Series of The Institute of Comparative Law in Japan 46, Tokyo, 2002). Japanese translation by Hiroshi Sumiyoshi of seven of my papers, with a new preface in English and Japanese: xxxix + 458 pp.

Editor, The Ethics of Lawyers, International Library of Essays in Law & Legal Theory (Dartmouth Publishing [UK]/NYU Press [US], 1994).

Legal Modernism (University of Michigan Press, 1994): xiii + 406 pp.

- Paperback edition, 1997.

- Fa lu xian dai zhu yi, Chinese translation by Yigong Su, with a new preface, Chinese University of Political Sciences and Law (2005).

Legal Ethics (casebook, co-authored with Deborah L. Rhode)(Foundation Press, 1992): xli + 1040 pp. + Teacher's Manual (177 pp.).

- Second edition, 1995: xlv + 942 pp. + revised Teacher's Manual (118 pp.).

- Third edition, 2001: lxxvii + 909 pp. + revised Teacher's Manual (214 pp.).

- Fourth edition, 2004 xlvii + 1044 pp. + revised Teacher's Manual.

Lawyers and Justice: An Ethical Study (Princeton University Press, 1988): xxix + 440 pp.

Chinese translation forthcoming, China University of Political Science and Law (2007).

Editor, The Good Lawyer: Lawyers' Roles and Lawyers' Ethics (Rowman & Allanheld, 1983).

### PAPERS, BOOK-CHAPTERS, ETC.

#### Journal articles, book chapters, review essays

- [1] "The Form of the Good in the Republic," Journal of Value Inquiry, vol. 12, no. 3, pp. 161-68 (1978).
- [2] "A Dilemma in Spinoza's Theory of Knowledge," Proceedings of the Ohio Philosophical Association, pp. 20-37 (1979).
- [3] "On Habermas on Arendt on Power," Philosophy and Social Criticism, vol. 6, no. 1, pp. 80-95 (1979).
- [4] "Professional Ethics: A New Code for Lawyers?" The Hastings Center Report, vol. 10, no. 3, pp. 11-15 (1980).
- [5] "Just War and Human Rights," Philosophy & Public Affairs, vol. 9, no. 2, pp. 160-81 (1980).
- [5a] Revised and republished in International Ethics: A Philosophy & Public Affairs Reader, edited by Charles Beitz, Marshall Cohen, Thomas Scanlon, and A. John Simmons (Princeton University Press, 1985).
- [5b] Reprinted in Justice, edited by Thomas Morawetz (Dartmouth Publishing Co., International Library of Essays in Law and Legal Theory, 1992).
- [5c] Excerpted in The Human Rights Reader: Major Political Essays, Speeches, and Documents From the Bible to the Present, edited by Micheline R. Ishay (Routledge, 1997), pp. 68-77.
- [5d] Reprinted in Darrel Moellendorf and Thomas Pogge, eds., Some "Classics" of Global Justice (Springer Verlag, forthcoming).
- [5e] Excerpted in Larry May, Eric Rovie, and Steve Viner, eds., The Morality of War: Classical and Contemporary Readings (Pearson Prentice-Hall, 2005), pp. 272-80.
- [6] "The Romance of the Nation-State," Philosophy & Public Affairs, vol. 9, no. 4, pp. 392-97 (1980).
- [6a] Reprinted in International Ethics: A Philosophy & Public Affairs Reader, edited by Charles Beitz, Marshall Cohen, Thomas Scanlon, and A. John Simmons (Princeton University Press, 1985).
- [6b] Reprinted in Larry May, Eric Rovie, and Steven Viner, eds., The Morality of War: Classical and Contemporary Readings (Pearson Prentice-Hall, 2005), pp. 344-47.
- [7] "Calming the Hearsed Horse: A Philosophical Research Program for Legal Ethics," Maryland Law

Review, vol. 40, no. 3, pp. 451-76 (1981).

[8] "Why We Mistrust Lawyers," QQ, vol. 1, no. 3 ( Summer 1981).

[8a] Reprinted in Claudia Mills, ed., Values in Public Policy (Harcourt Brace Jovanovich, 1992), pp. 127-31.

[9] "Paternalism and the Legal Profession," Wisconsin Law Review, vol. 1981, no. 3, pp. 454-93 (1981).

[10] Ethics and the Legal Profession: A Model Course, Center for Philosophy and Public Policy booklet (1982), 29 pp.

[11] "The Twice-Told Tale of Mr. Fixit: Reflections on the Brandeis/Frankfurter Connection" (review essay of Bruce Allen Murphy, The Brandeis/Frankfurter Connection), Yale Law Journal, vol. 91, no. 8, pp. 1678-1707 (1982).

[12] "Explaining Dark Times: Hannah Arendt's Theory of Theory," Social Research, vol. 50, no. 1, pp. 215-48 (1983).

[12a] Revised and reprinted in Lewis Hinchman and Sandra Hinchman, Hannah Arendt: Critical Essays (SUNY Press, 1994).

[12b] Revised and reprinted in Legal Modernism.

[13] "The Adversary System Excuse," in The Good Lawyer: Lawyers' Roles and Lawyers' Ethics (Rowman & Allanheld), pp. 83-122 (1983).

[13a] Reprinted in slightly abridged form in Readings in the Philosophy of Law, edited by John Arthur and William H. Shaw (Prentice-Hall, 1983).

[13b] Reprinted in Luban, The Ethics of Lawyers (Dartmouth, 1994).

[13c] Excerpted in Richard L. Abel, Lawyers: A Critical Reader (New Press, 1997), pp. 3-12.

[13d] Japanese translation by Hiroshi Sumiyoshi, Comparative Law Review, vol. 33, no. 1 pp. 93-142 (1999)(part 1); vol. 33, no. 2, pp.183-210 (1999)(part 2).

[13e] Substantially revised and updated in Legal Ethics and Human Dignity.

[14] "Epistemology and Moral Education," Journal of Legal Education, vol. 33, no. 4, pp. 636-61 (1983).

[15] "Group Portrait With Lawyers," Social Responsibility, vol. 9, pp. 20-36 (1983).

[16] "The Legal Profession Protects Itself," The Hastings Center Report, vol. 14, no. 1, pp. 20-21 (1984).

[17] "The Sources of Legal Ethics: A German-American Comparison of Lawyers' Professional Duties," Rabels Zeitschrift für ausländisches und internationales Privatrecht, vol. 48, no. 2, pp. 245-88 (1984).

[18] "Against Autarky," Journal of Legal Education, vol. 34, no. 2, pp. 176-89 (1984).

[19] "Mandatory Pro Bono: A Workable (and Moral) Plan," Michigan Bar Journal, vol. 64, no. 3 (1985); a

version appeared in QQ: Report from the Center for Philosophy and Public Policy, vol. 5, no. 1.

[19a] Excerpted in Robert F. Cochran, Jr. & Teresa S. Collett, Cases & Materials on the Rules of the Legal Profession (West Publishing, 1996), pp. 279-82.

[20] "Bargaining and Compromise: Recent Work on Negotiation and Informal Justice," Philosophy & Public Affairs, vol. 14, no. 4, pp. 397-416 (1985).

[21] "Political Legitimacy and the Right to Legal Services," Business and Professional Ethics, vol. 4, nos. 3-4, pp. 43-68 (1985).

[22] "Fish v. Fish, or, Some Realism About Idealism," Cardozo Law Review, vol. 7, no. 3, pp. 693-711 (1986).

[23] "The Paradox of Deterrence Revived," Philosophical Studies, vol. 50, no. 2. (1986), pp. 129-41 (1986).

[24] "Legal Modernism," Michigan Law Review, vol. 86, no. 8, pp. 1656-95 (1986).

[24a] Revised and reprinted in Legal Modernism.

[25] "The Legacy of Nuremberg," QQ, vol. 6, no. 1 (Winter 1986). This is an abridged version of [32].

[25a] Reprinted in Claudia Mills, ed., Values in Public Policy (Harcourt Brace Jovanovich, 1992), pp. 322-27.

[26] "Judging Judges," QQ, vol. 6, no. 2 (Spring 1986).

[26a] Reprinted in Court Review, vol. 23, no. 4

[26b] An abridgment appeared as an op-ed in the Tampa Tribune-Times: "Judging the Judges" (August 24, 1986).

[27] "Should Legal Services Rise Again?" QQ, vol. 6, no. 4 (Fall 1986).

[27a] Reprinted in Claudia Mills, ed., Values in Public Policy (Harcourt Brace Jovanovich, 1992), pp. 158-63.

[28] "The Lysistratian Prerogative: A Response to Stephen Pepper," American Bar Foundation Research Journal vol. 1986, no. 4, pp. 637-49 (1986).

[28a] Excerpted in Andrew Kaufman, Problems in Professional Responsibility, 3rd ed. (Little-Brown, 1989), pp. 265-73.

[29] "A Fierce Blindness" (review essay of Kenneth Mann, Defending White-Collar Crime), Criminal Justice Ethics, vol. 5, no. 1, pp. 69-78 (1986).

[30] "Some Greek Trials: Order and Justice in Homer, Hesiod, Aeschylus, and Plato" Tennessee Law Review, vol. 54, no. 2, pp. 279-325 (1987).

[30a] Revised and reprinted in Legal Modernism

[30b] Excerpted in Anthony D'Amato and Arthur J. Jacobson, eds., Justice and the Legal System: A Coursebook (Anderson Publishing, 1992).

[31] "Law: The Decline of the Public Service Ideal," The Hastings Center Report, vol. 17, no. 1, special supplement, pp. 11-12 (1987).

[32] "The Legacies of Nuremberg," Social Research, vol. 54 no. 4, pp. 779-829 (1987).

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[32b] Reprinted in The International Library of Essays in Law & Legal Theory, War Crimes Law, Vol. 2 (Ashgate Publishing Group, 2006).

[33] "Action and Reaction in International Law," Proceedings of the American Society of International Law, 1987, pp. 420-426 (1987).

[34] "Judicial Activism vs. Judicial Restraint: A Closer Look at the Bork Nomination," QQ, vol. 7, no. 4 (Fall 1987).

[34a] Reprinted in Claudia Mills, ed., Values in Public Policy (Harcourt Brace Jovanovich, 1992), pp. 164-70.

[35] "The Noblesse Oblige Tradition in the Practice of Law," Vanderbilt Law Review, vol. 41, no. 4, pp. 717-40 (1988).

[36] "Should Lawyers Advertise?" QQ, vol. 8, no. 3 (Summer 1988).

[36a] Reprinted in Claudia Mills, ed., Values in Public Policy (Harcourt Brace Jovanovich, 1992), pp. 152-57.

[37] "The Quality of Justice," Denver University Law Review, vol. 66, no. 3, pp. 381-417 (1989). The symposium containing this paper shared the 1989 Center for Public Resources Book Prize for Excellence and Innovation in Alternative Dispute Resolution.

[38] "Difference Made Legal: The Court and Dr. King," Michigan Law Review, vol. 87, no. 8, pp. 2152-2224 (1989).

[38a] Reprinted in Joel Feinberg and Jules Coleman, eds., The Philosophy of Law, 6th ed. (Wadsworth, 1999), pp. 227-53.

[38b] Revised and reprinted in Legal Modernism.

[39] "Two Cheers for Punitive Damages," QQ, vol. 9, no. 4 (Fall 1989). This is an abridged version of [55].

[39a] Reprinted in Claudia Mills, ed., Values in Public Policy (Harcourt Brace Jovanovich, 1992), pp. 178-83.

[40] "Freedom and Constraint in Legal Ethics: Some Mid-Course Corrections to Lawyers and Justice," Maryland Law Review, vol. 49, no. 2, pp. 424-62 (1990).

- [41] "Partisanship, Betrayal and Autonomy in the Lawyer-Client Relationship: A Reply to Stephen Ellmann," Columbia Law Review, vol. 90, no. 4, pp. 1004-43 (1990). This paper shared the New York Bar Association's 1991 Sanford D. Levy Prize.
- [42] "Incommensurability, Rational Choice, and Moral Absolutes," Cleveland State Law Review, vol. 38, nos. 1-2, pp. 65-84 (1990).
- [43] "The Abortion Dilemma: Constitutional Issues," Report from the Institute for Philosophy and Public Policy, vol. 10, no. 2 (Spring 1990).
- [44] "Smith Against the Ethicists," Law and Philosophy, vol. 9, no. 4, pp. 417-33 (1990-91).
- [45] "The Disengagement of the Legal Profession: Keller v. State Bar of California," Supreme Court Review 1990, pp. 163-205 (1991).
- [46] "Legal Traditionalism," Stanford Law Review, vol. 43, no. 5, pp. 1035-060 (1991).
- [46a] Revised and reprinted in Legal Modernism.
- [47] "Conscientious Lawyers for Conscientious Lawbreakers," University of Pittsburgh Law Review, vol. 52, no. 4, pp. 793-813 (1991).
- [48] "Hannah Arendt," [49] "Legal Ethics," [50] "Secrecy and Confidentiality," in Encyclopedia of Ethics (Lawrence C. Becker & Charlotte B. Becker eds., Garland Publishing 1992). "Hannah Arendt" -- vol. 1, pp. 52-53; "Legal Ethics" -- vol. 2, pp. 686-88; "Secrecy and Confidentiality" -- vol. 2, pp. 1131-33.
- [48a], [49a], [50a] Revised edition, 2001.
- [51] "Ethics and Malpractice," Mississippi College Law Review, vol. 12, no. 1, pp. 151-60 (1992).
- [52] "Tassled Loafers," Report from the Institute for Philosophy and Public Policy, vol. 12, no. 3/4 (Summer/Fall 1992).
- [53] "Moral Responsibility in the Age of Bureaucracy" (with Alan Strudler and David Wasserman), Michigan Law Review, vol. 90, no. 8, pp. 2348-92 (1992).
- [53a] Excerpted in Vincent Barry and William H. Shaw, Moral Issues in Business, 7<sup>th</sup> ed. (Wadsworth Publishing, rev. ed. 1997).
- [53b] Reprinted in Thomas Donaldson and Thomas W. Dunfee, Ethics in Business and Economics, vol. 1 (Dartmouth Publishing, 1997).
- [54] "Justice Holmes and Judicial Virtue," in John W. Chapman and William A. Galston, eds., Virtue: Nomos XXXIV (Yearbook of the American Society for Political and Legal Philosophy)(NYU Press, 1992), pp. 235-64. This is an abridged and revised version of [60].
- [55] "Poetic Justice: Punitive Damages and Legal Pluralism" (with Marc Galanter), American University Law Review, vol. 42, no. 4, pp. 1393-463 (1993).
- [56] "The Legal Ethics of Radical Communitarianism" (review essay of Thomas Shaffer & Mary Shaffer,

American Lawyers and Their Communities), Tennessee Law Review, vol. 60, no. 3, pp. 589-608 (1993).

[57] "Getting the Word" (review essay of Milner S. Ball, The Word and the Law), Michigan Law Review, vol. 91, no. 6, pp. 1247-65 (1993).

[58] "Are Criminal Defenders Different?" Michigan Law Review, vol. 91, no. 7, pp. 1729-66 (1993).

[58a] Japanese translation by Hiroshi Sumiyoshi, Gendai Keijiho [Modern Criminal Law], vo. 27, no. 7, pp. 67-89 (2001).

[58b] Japanese translation by Hiroshi Sumiyoshi reprinted in Good Judgment in Legal Ethics, pp. 155-217.

[59] "Adjudication as a Public Good," APA Newsletters, vol. 93, no. 1 (Spring 1994), pp. 72-74.

[60] "Justice Holmes and the Metaphysics of Judicial Restraint," Duke Law Journal, vol. 44, pp. 449-526 (1994).

[61] "Judicial Activism and the Concept of Rights," Report from the Institute for Philosophy and Public Policy, vol. 14, no. 1/2 (Winter/Spring 1994), pp. 12-17. This is an abridged and revised version of [88].

[62] "Good Judgment: Ethics Teaching in Dark Times" (with Michael Millemann), Georgetown Journal of Legal Ethics, vol. 9, no. 1, pp. 31-87 (1995).

[62a] Excerpted in Alex J. Hurder, Frank S. Bloch, Susan L. Brooks, Susan L. Kay, Clinical Anthology: Readings for Live-Client Clinics (Anderson Publishing Co., 1997), pp. 100-08.

[62b] Japanese translation by Hiroshi Sumiyoshi in Good Judgment in Legal Ethics, pp. 1-100.

[63] "Settlements and the Erosion of the Public Realm," Georgetown Law Journal, vol. 83, no. 7, pp. 2619-62 (1995).

[63a] Excerpted in Stephen C. Yeazell et al., Civil Procedure (4th ed., 1997).

[63b] Excerpted in Charles B. Wiggins and L. Randolph Lowry, Negotiation and Settlement Advocacy (West, 1997).

[64] "Reducing or Redirecting Consumption: Political and Economic Challenges," Report from the Institute for Philosophy and Public Policy, vol. 15, no. 4 (Fall 1995), pp. 29-32. This is an abridged version of [83].

[65] "A Friendly Amendment to Model Rule 8.5," South Texas Law Review, vol. 36, no. 3, pp. 1015-25 (1995).

[66] "Speculating on Justice: The Ethics and Jurisprudence of the Contingency Fee," in Stephen Parker and Charles Sampford, ed. Legal Ethics and Legal Practice: Contemporary Issues, Oxford University Press (1995), pp. 89-126.

[66a] Japanese translation by Hiroshi Sumiyoshi in Good Judgment in Legal Ethics, pp. 319-82.

[67] "The Social Responsibility of Lawyers: A Green Perspective," George Washington Law Review, vol.

63, no. 6 (1995), pp. 955-83.

[68] "A Report on the Legality of Evil: The Case of the Nazi Judges," Brooklyn Law Review, vol. 61, no. 4, pp. 1139-49 (1995).

[69] "The Self: Metaphysical Not Political," Legal Theory, vol. 1, no. 4, pp. 401-37 (1995).

[70] Co-Editor, special issue on legal ethics of The Canadian Journal of Law and Jurisprudence, vol. 9, no. 1 (1996), including "Introduction: A New Canadian Legal Ethics?", pp. 3-4.

[71] "The Publicity Principle," in Robert E. Goodin, ed., The Theory of Institutional Design, Cambridge University Press (1996), pp. 154-98.

[72] "The Posner Variations (Twenty-Seven Variations on a Theme by Holmes)," (review essay of Richard A. Posner, Overcoming Law) Stanford Law Review, vol. 48, no. 6, pp. 1001-036 (1996).

[73] "Social Choice Theory as Jurisprudence," Southern California Law Review, vol. 69, no. 2, pp. 521-88 (1996).

[74] "A Conversation about Heidegger with Eduard Baumgarten," in Berel Lang, Heidegger's Silence (Cornell University Press, 1996), pp. 101-11.

[75] "Legal Ideals and Moral Obligations: A Comment on Simon," William and Mary Law Review, vol. 38, no. 1, pp. 255-67 (1996).

[76] "Stevens's Professionalism and Ours," William and Mary Law Review, vol. 38, no. 1, pp. 297-317 (1996).

[77] "A Theological Argument Against Theopolitics," Report from the Institute for Philosophy and Public Policy, vol. 16, no. 1 (Winter 1996), pp. 10-15.

[78] "What's Pragmatic About Legal Pragmatism?," Cardozo Law Review, vol. 18, no. 1, pp. 43-73 (1996).

[78a] also in Morris Dickstein, ed., The Revival of Pragmatism: New Essays on Social Thought, Law, and Culture, Duke University Press (1998), pp. 275-303.

[79] "The Merits of Merit" (with Judith Lichtenberg), Report from the Institute for Philosophy and Public Policy, vol. 17, nos. 1-2 (Winter/Spring 1997), pp. 21-25.

[79a] reprinted in Business and Society Review, nos. 100/101 (1998), pp. 85-90.

[80] "Lawyers Rule: A Comment on Patterson's Theories of Truth," SMU Law Review, vol. 50, no. 5, pp. 1613-27 (1997).

[81] "The Bad Man and the Good Lawyer: A Centennial Essay on Holmes's The Path of the Law," NYU Law Review, vol. 72, no. 6, pp. 1547-83 (1997).

[81a] also in abridged form, in Steven Burton, ed., The Path of the Law and its Influence: The Legacy of Oliver Wendell Holmes, Jr. (Cambridge University Press, 2000), pp. 33-49.

[82] “Heroic Judging in an Antiheroic Age,” Columbia Law Review, vol. 97, no. 7, pp. 2064-90 (1997).

[83] “The Political Economy of Consumption,” in David A. Crocker and Toby Linden, eds., Ethics of Consumption: The Good Life, Justice, and Global Stewardship (Rowman & Littlefield, 1998), pp. 113-30.

[84] “On Dorfman’s Death and the Maiden,” Yale Journal of Law and the Humanities, vol. 10, no. 1, pp. 115-34 (1998).

[84a] Excerpted in David R. Papke, ed., Law and Popular Culture: Text, Notes and Questions (Lexis Nexis, forthcoming).

[85] “Milgram Revisited,” Researching Law, vol. 9, no. 2, pp. 1-11 (1998). This is an abridged, preliminary version of [95].

[86] “A Flawed Case Against Punitive Damages,” Georgetown Law Journal, vol. 87, no. 2, pp. 359-80 (1998).

[87] “Rediscovering Fuller’s Legal Ethics,” Georgetown Journal of Legal Ethics, vol. 11, no. 4, pp. 801-29 (1998).

[87a] also in Willem J. Witteveen and Wibren van der Burg, eds., Rediscovering Fuller: Essays on Implicit Law and Institutional Design (Amsterdam University Press, 1999), pp. 193-225.

[87b] Japanese translation by Hiroshi Sumiyoshi in Good Judgment in Legal Ethics, pp. 383-439.

[88] “The Warren Court and the Concept of a Right,” Harvard Civil Rights-Civil Liberties Law Review, vol. 34, no. 1, pp. 7-37 (1999).

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[89] “Reason and Passion in Legal Ethics,” Stanford Law Review, vol. 51, no. 4, pp. 873-901 (1999).

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[90b] excerpted in Sanford H. Kadish and Steven Schulhofer, Criminal Law and Its Process (7<sup>th</sup> ed.).

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[92] “Faculty Pro Bono and the Question of Identity,” Journal of Legal Education, vol. 49, no. 1, pp. 58-75 (1999).

[93] “Twenty Theses on Adversarial Ethics,” in Helen Stacy and Michael Lavarch, Beyond the Adversarial System (Federation Press, 1999), pp. 134-54.

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- [95a] Japanese Translation by Hiroshi Sumiyoshi in Good Judgment in Legal Ethics, pp. 219-70.
- [96] “A Man Lost in the Gray Zone,” Law and History Review, vol. 19, no. 1 (2001), pp. 161-76.
- [97] “Natural Law as Professional Ethics: A Reading of Fuller,” Social Philosophy and Policy, vol. 18, no. 1 (2001), pp. 176-205.
- [97a] also in Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul, eds., Natural Law and Modern Moral Philosophy (Cambridge University Press, 2001), 176-205.
- [98] “Value Pluralism and Rational Choice,” SSRN paper no. 264335, Georgetown Working Papers in Business, Economic, and Regulatory Law; Georgetown Working Papers in Public Law and Legal Theory (2001).
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- [100] “Law’s Blindfold,” in Michael Davis & Andrew Stark, eds., Conflicts of Interest in the Professions (Oxford University Press, 2001), pp. 23-48.
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- [102] “The Art of Honesty,” Columbia Law Review, vol. 101, no. 7 (2001), pp. 1763-74.
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- [104] “Legal Scholarship as a Vocation,” Journal of Legal Education, vol. 51, no. 2 (2001), pp. 167-74.
- [105] “Intervention and Civilization: Some Unhappy Lessons of the Kosovo War,” in Pablo de Greiff & Ciaran Cronin, eds., Global Justice and Transnational Politics: Essays on the Moral and Political Challenges of Globalization, (MIT Press, 2002), pp. 79-115.
- [106] “Silence! Four Ways the Courts and Congress Silence Poor Peoples’ Lawyers,” Legal Affairs, vol. 1, no. 1 (May/June 2002), pp. 54-58. This is an abridged version of [110].
- [107] “A Midrash on Rabbi Shaffer and Rabbi Trollope,” Notre Dame Law Review, vol. 77, no. 3 (2002), pp. 889-923.
- [108] “The Publicity of Law in the Regulatory State,” Journal of Political Philosophy, vol. 10, no. 3 (2002), pp. 296-316.
- [109] “The War on Terrorism and the End of Human Rights,” Philosophy & Public Policy Quarterly, vol. 22, no. 3 (Summer 2002), pp. 9-14.

- [109a] reprinted in Fellowship, vol. 68, no. 11-12, (Nov./Dec. 2002), pp. 20-23.
- [109b] reprinted in Verna V. Gehring, ed., War After September 11 (Rowman & Littlefield, 2002).
- [109c] reprinted in Thomas Shipka, ed., Philosophy: Paradox and Discovery, 5<sup>th</sup> ed. (McGraw-Hill, 2004).
- [109d] reprinted in Mark V. Tushnet, ed., The Constitution in Wartime (Duke University Press, 2005), pp. 219-31.
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- [110] "Taking Out the Adversary: The Assault on Progressive Public Interest Lawyers," California Law Review, vol. 91 (2003), pp. 209-46.
- [110a] Excerpted in George M. Cohen and Susan P. Koniak, eds., Foundations of the Law and the Ethics of Lawyering (Foundation Press, 2004), pp. 389-404.
- [111] "Professional Ethics," in Christopher Wellman and R. G. Frey, eds., The Blackwell Companion to Applied Ethics (Basil Blackwell, 2003), pp. 583-96.
- [112] Guest editor, with editor's introduction, symposium on legal ethics, American Philosophical Association Newsletters, vol. 2, no. 2 (Spring 2003).
- [113] "The Owl of Minerva Goes to Law School: Philosophy, Legal Ethics Teaching, and Skepticism," American Philosophical Association Newsletters, vol. 2, no. 2 (Spring 2003), pp. 157-62.
- [114] "Integrity: Its Causes and Cures," Fordham Law Review, vol. 72, no. 2 (2003), pp. 279-310.
- [115] "A Theory of Crimes Against Humanity," Yale Journal of International Law, vol. 29, no. 1 (2004), pp. 85-167.
- [115a] "Crimes Against Humanity: What's in an Name?," in Charles Jones, ed., Crimes Against Humanity (McGill University Press, forthcoming). This is an abridged version of [115].
- [116] "Preventive War," Philosophy & Public Affairs, vol. 32, no. 3 (2004), pp. 207-248.
- [117] "The Coiled Serpent of Argument: Reason, Authority, and Law in a Talmudic Tale," Chicago-Kent Law Review (2004), vol. 79, pp. 1253-88
- [118] "Folktales of International Justice," Proceedings of the 98<sup>th</sup> Annual Meeting, American Society of International Law (2004), pp. 182-85.
- [119] "Eight Fallacies on Liberty and Security," in Richard Ashby Wilson, ed., Human Rights in the War on Terror, (Cambridge University Press, 2005), pp. 242-57.
- [120] "Liberalism, Torture, and the Ticking Bomb," Virginia Law Review, vol. 91, no. 6 (2005), pp. 1425-61.

- [120a] “Liberalism, Torture, and the Ticking Bomb,” in Karen Greenberg, ed., The Torture Debate in America (Cambridge University Press, 2005), pp. 35-83. This is a substantially expanded version of [120].
- [120b] “Liberalism, Torture, and the Ticking Bomb,” in Steven Lee, ed., Intervention, Terrorism, and Torture: Challenges to Just War Theory in the 21<sup>st</sup> Century (Springer Verlag, forthcoming). This is an abridged version of [120].
- [120c] “Torture and the Ticking Bomb,” Georgetown Law (Spring/Summer 2005), pp. 48-51. An op-ed length adaptation of [120.]
- [120d] Excerpted in Harper’s Magazine, March 2006, pp. 11-16.
- [120e] Translated as “Liberalismus und die Verführung zur Folter,” Die Zeit Kursbuch, vol. 163, special issue “Folter und Feste,” March 30, 2006, pp. 52-71.
- [120f] Abridged and reprinted in The Philosopher’s Magazine, vol. 34 (2006).
- [120g] Reprint of [120c] in Jeffrey Olen, Vincent Barry, and Julie C. Van Camp, eds. Applying Ethics: A Text With Readings, 9<sup>th</sup> ed. (Wadsworth/Thomson, forthcoming 2008).
- [120h] Reprinted in K. Nagra Sri Valli, ed., Torture and Ethics (ICFAI Law Books Division, forthcoming).
- [121] “Lawyers as Defenders of Human Dignity (When They Aren’t Busy Attacking It),” University of Illinois Law Review, vol. 2005, no. 3 (2005), pp. 815-46.
- [122] “Making Sense of Moral Meltdowns,” in Susan Carle, ed., Lawyers’ Ethics and the Pursuit of Social Justice: A Critical Reader (NYU Press, 2005), pp. 355-70.
- [122a] also in Deborah L. Rhode, ed., Moral Leadership: The Theory and Practice of Power, Judgment, and Policy (Stanford University Press, forthcoming).
- [123] “Calling Genocide By Its Rightful Name: A Critique of the United Nation’s Darfur Report,” Chicago Journal of International Law, vol. 7, no. 1 (2006), pp. 303-20.
- [123a] Also in Samantha Besson, Michel Hottelier, and Franz Werro, eds., Les droits de L’homme au centre. Human Right at the Center (Zurich: Schulthess Edition, 2006), pp. 191-208.
- [124] “Preventive War and Human Rights,” in Henry Shue, ed., Preventive War (Oxford University Press, forthcoming).
- [125] “Beyond Moral Minimalism,” in Symposium on May’s *Crimes Against Humanity*, Ethics and International Affairs, vol. 20, no. 3 (2006), pp. 353-60.
- [126] “Fairness to Rightness: Jurisdiction, Legality, and the Legitimacy of International Criminal Law,” in Samantha Besson and John Tasioulas, eds., Philosophy in International Law (Oxford University Press, forthcoming).

## Book reviews

[1] "Professional Ethics in a World Without Trumps" (review of Alan Goldman, The Moral Foundations of Professional Ethics), The Hastings Center Report, vol. 11, no. 3 (1981).

[1a] Reprinted in Perspectives on the Professions, vol. 3, nos. 1-2 (1983).

[2] Review of Stuart Hampshire, Innocence and Experience, Journal of Philosophy, vol. 88, no. 6, pp. 317-24 (1991).

[3] Review of George P. Fletcher, Loyalty: An Essay on the Morality of Relationships, Journal of Philosophy, vol. 41, no. 3, pp. 144-48 (1994).

[4] Review of Mary Ann Glendon, A Nation Under Lawyers, The New York Times Book Review (Dec. 25, 1994).

[5] Review of Anthony T. Kronman, The Lost Lawyer: Failed Ideals of the Legal Profession, Ethics, vol. 105, no. 4, pp. 947-49 (1995).

[6] Review of William Dunham, The Mathematical Universe, The Wilson Quarterly, vol. 21, no. 3, pp. 105-06 (1997).

[7] Review of Stuart Hampshire, Justice is Conflict, Ethics, vol. 112, no. 1 (2001), pp. 156-57.

[8] Review of Aleksandar Jokic, War Crimes and Collective Wrongdoing, Philosophical Review, vol. 111, no. 4 (2002), pp. 620-24.

[9] Review of Dana Villa, ed., The Cambridge Companion to Hannah Arendt, Ethics, vol. 113, no. 3 (2003), pp. 724-30.

[10] Review of Jon Elster, Closing the Books: Transitional Justice in Historical Perspective, Ethics, vol. 116, no. 2 (2006), pp. 409-12.

[11] Review of Luc Reydam, Universal Jurisdiction: International and Municipal Legal Perspectives, International and Comparative Law Quarterly, vol. 54, no. 3 (2005), pp. 804-06.

### **Op-eds, etc.**

[1] "Brünnhilde, Meet Ollie," (op-ed piece), Washington Post, June 4, 1989, p. B5.

[2] "Errata" (with John M. Brumbaugh, Mike Kelly, and M. Sigmund Shapiro), Maryland Law Review, vol. 50, no. 4, pp. 1350-54 (1991)(humor).

[3] "Selling Indulgences," Slate, Feb. 14, 2005.

[4] "Improper Advances: Talking Dream Jobs With the Judge Out of Court" (with Stephen Gillers and Steven Lubet), Slate, Aug. 17, 2005, <http://slate.msn.com/id/2124603/>.

[5] "Roberts' bad decision" (op-ed), Los Angeles Times, Sept. 13, 2005.

[6] "Letter to Senator Arlen Specter, Chairman, U.S. Senate Judiciary Committee" (with Stephen Gillers and Steven Lubet), reprinted in Engage: The Journal of the Federalist Society's Practice Groups, vol. 6, no.

2 (October 2005), pp. 134-37.

[7] "Torture, American-Style" (op-ed), Washington Post, Nov. 27, 2005.

[8] "At war with the law in Iraq" (op-ed), Los Angeles Times, June 13, 2006.

- also in Oakland Tribune, June 14, 2006.

- reprinted as "In killing of Zarqawi, war triumphs over law," San Jose Mercury, June 18, 2006.

[9] "Forget Nuremberg," Slate, Sept. 26, 2006, <http://www.slate.com/id/2150396/>.

**D. Editor's Commentaries in National Reporter on Legal Ethics and Professional Responsibility (written 1986-88)**

[1] "Nix v. Whiteside."

[2] "Confidentiality: The States and the Model Rules,"

[3] "Legal Ethics and Nonlawyers in the Firm."

[4] "Rule 11: Is It a Cure for Motion Sickness?"

[5] "Attorney Fee-Forfeiture Under RICO and CCE: The Fourth Circuit Speaks."

[6] "A Professional Tragedy."

[7] "Client Perjury."

[8] "Ethical Problems in ADR."

[9] "Piper's Progeny."

[10] "Professional Responsibility of Judges I: Judicial Activism/Judicial Restraint."

[11] "Ethics and Malpractice."

[12] "Professional Responsibility of Judges II: Adjudication as a Public Good."

[13] "Gideon's Conscript Army."

[14] "Attorney Fee-Forfeiture Revisited: Constitutional in the Second and Fourth Circuits."

[15] "In Praise of Barratry."

[16] "Two Cheers for Champerty and Maintenance."

[17] "Wheat v. United States."

[18] "Ethics in Negotiation I: Lying and Misleading."

[19] "Mega-".

**Public Lectures and Invited Papers**

PUBLIC LECTURES

"Tortured Evidence," Third Annual Raul Wallenberg Memorial Conference, Toronto, January 2007.

"Peace and Law at Nuremberg," keynote panel at International Law Society, American Section annual meeting, New York, October 2006.

"The Torture Debate in America," Warwick's Bookstore, La Jolla, California, April 2006.

"Liberalism, Torture, and the Ticking Bomb," Public Interest Law series, Washington University, St. Louis, October 2004.

"Humanitarian and Preventive War," University of West Virginia Philosophy Department Alumni Lecture,

October 2004.

“Lawyers as Defenders of Human Dignity (When They Aren’t Busy Attacking It),” Van Arsdell Lecture, University of Illinois College of Law, April 2004.

“Lawyers and Moral Meltdowns,” Rhodes College, February 2004.

“The War on Terror and the End of Human Rights,” Youngstown State University, October 2003.

“War and Law in the Fight Against Terror” - September 11 memorial lecture, University of Texas-San Marcos, September 2003.

“Making Sense of Moral Meltdowns” B keynote address at the Ninth Circuit Judicial Conference on corporate ethics, Kauai, Hawaii, June 2003.

“September 11 and the War on Terror,” The Madeira School, Maclean, Virginia, September 11, 2002.

“Ethics, Legality, and Evil” B Conference on the Nazis and the Rule of Law, Berlin, Germany, July 2002.

“The Challenges Facing Public Interest Lawyers,” keynote address, Arthur Liman Colloquium, Yale Law School, March 2002.

“Taking Out the Adversary: The Assault on Progressive Public Interest Lawyers,” 2001-02 Irving S. Ribicoff Memorial Lecture, Yale Law School, October 2001.

“Lawyers as Defenders of Human Dignity (When They Aren’t Busy Assaulting It),” Society and the Professions Lecture, Washington and Lee University, March 2001.

“Intervention and Civilization: Some Unhappy Lessons of the Kosovo War,” Ethics and Society Program Lecture Series, Stanford University, April 2000.

“Why We Should Abolish the Corporate Attorney-Client Privilege,” 50<sup>th</sup> Anniversary Lecture Series, University of Toronto, February 2000.

“The Trouble With Lawyers,” Wooster College, November 1999.

“Faculty Pro Bono and the Question of Identity,” B Plenary Session, Association of American Law Schools Annual Convention, New Orleans, January 1999.

“Just Following Orders: The Ethics of Wrongful Obedience,” Kennedy School of Government, Harvard University, October 1999.

“Just Following Orders: The Ethics of Wrongful Obedience,” Condon-Faulkner Distinguished Lecture, University of Washington School of Law, May 1999.

“Contrived Ignorance: The Ethics of Deniability” C 16<sup>th</sup> Blankenbaker Lecture on Professional Responsibility, University of Montana School of Law, September 1998.

“Contrived Ignorance” C Inaugural Lecture for the Frederick J. Haas Professorship in Law and Philosophy, Georgetown University, April 1998.

- "Ethics, Truth, and the Adversary System" C Texas Center for Legal Ethics and Professionalism, Austin, Texas, November 1997.
- "What are the Ethical Implications of Changes to a Less Adversarial System?" C Australian Law Reform Commission conference, Brisbane, Australia, July 1997.
- "Stevens's Professionalism and Ours" -- Morris A. Gross Memorial Lecture, University of Toronto School of Law, March 1996.
- "How the Transformation of American Society is Causing a Crisis in the Legal Profession" -- Sarasota Institute for Lifetime Learning, February 1996.
- "The Legacies of Nuremberg" -- Thomas Dodd Center, University of Connecticut, October 1995.
- "A Report on the Legality of Evil" -- Association of the Bar of the City of New York, October 1995.
- "Professors Who Don't Profess," -- Phi Beta Kappa Lecture, Brooklyn College, February 1994.
- "Can a Good Person Be a Good Lawyer?" -- Phi Beta Kappa Lecture, Troy State University, Troy, Alabama, May 1993.
- "The Warren Court and the Concept of a Right" -- 12th Annual Bertram Morris Colloquium, University of Colorado, February 1991.
- "Moral Activism in Legal Ethics" -- Plenary Session, Association of American Law Schools Workshop on Professional Responsibility, Annual Convention, San Francisco, January 1990.
- "Keeping Guilty Secrets" -- University of Wisconsin Law School, March 1989.
- "Keeping Guilty Secrets" -- Smithsonian Institution Fellows Lecture, December 1987.
- "The Quality of Justice" -- Plenary Session, SPIDR (Society of Professionals in Dispute Resolution) Annual Convention, New York, October 1987.
- "Legal Modernism" -- Plenary Session, Canadian Law Teachers Association, Winnipeg, Canada, May 1986.
- "Deterrence and Democracy" -- Conference, "Deciding to Disarm," Vancouver, Canada, October 1984.
- "Against Autarky" -- Plenary Session, Association of American Law Schools Annual Convention, San Francisco, January 1984.
- "Group Portrait With Lawyers" -- annual address on legal ethics, Washington and Lee University, Lexington, Virginia, March 1983.
- "The Adversary System Excuse" -- 7th Annual Catriona Gibson Memorial Lecture, Queen's University Law School, Kingston, Ontario (keynote address in honor of the 25th anniversary of the founding of Queen's Law School), September 1982.

I have given over 170 papers and presentations at more than 120 academic and professional institutions.

### **Other Professional Activities**

Member, D.C. Bar Ethics Committee (beginning 2004).

Chair, AALS Section on Law and Interpretation (2002-04).

Annual ethics class at the Industrial College of the Armed Forces, Fort McNair. Spring 1999, Spring 2000, Fall 2000, Fall 2001, Fall 2002, Fall 2003, Fall 2004.

2002-04 Chair, AALS Section on Law and Interpretation

Member, American Philosophical Association Committee on Law and Philosophy (three-year term beginning July 2000). Chair, 2001-03.

Member, D.C. Bar Special Committee on Civility Implementation (1998-99).

International Advisory Board member, Legal Ethics (beginning 1998).

Trustee and Advisory Board member, The Fantasy Salvage Fund (beginning 1999).

Advisory Board member, Open Society Institute project on the legal profession (1997-2000).

Member, AALS Task Force on Pro Bono and Public Service Opportunities (1997).

Advisory Board member, lawyers' oral history project, University of North Carolina School of Law (1994).

Organized week-long intensive course on legal ethics for Michigan Law School (1994).

Advisory Board member, Texas Center on Professionalism (beginning 1993-95).

Advisory Board member, Hoffberger Center on Professional Ethics (1990-95).

Director, NEH Summer Seminar for College Teachers, "The Changing Roles of the American Judge," summer 1991.

Editor, National Reporter for Legal Ethics and Professional Responsibility 1986-91.

1988 Chair, Association of American Law Schools Professional Responsibility Section.

1989 Secretary, Association of American Law Schools Law and Humanities Section.

Chaired planning committee for Association of American Law Schools quadrennial Professional Responsibility workshop (1987-88).

Consultant for WETA Television: reviewed teaching guide for program "Ethics on Trial" (1987).

Working Group member, Hastings Center Project on Professional Ethics and Public Values.

Faculty member, Association of American Law Schools Professional Responsibility Section quadrennial mini-workshops (March 1984, March 1988).

Application reviewer for the Woodrow Wilson International Center for Scholars.

Manuscript referee for The Johns Hopkins University Press, Yale University Press, Harvard University Press, Prentice-Hall, Princeton University Press, Cornell University Press, Temple University Press, History and Memory, Legal Theory, Ethics, Law & Philosophy, Legal Studies Forum, Peace and Change, Law & Social Inquiry, Law & Society Review, Philosophy Research Archives, Social Theory and Practice, Law and History Review.

### **Grants Received**

Woodrow Wilson International Center for Scholars Fellowship, 1996-97.

Research Fellowship, University of Melbourne, 1992.

NEH grant to direct six-week Summer Seminar for College Teachers, "The Changing Roles of the American Judge," summer 1991.

John Simon Guggenheim Fellowship (1989-90).

Morton and Sophia Macht Foundation grant for research on judicial ethics (1988-90).

University of Maryland DRIF grant for research on law and social choice theory (summer 1988).

John J. Leidy Foundation grant for research on judicial ethics (1987).

Walter and Elise Haas Fund grant for research on judicial ethics (1985).

Morton and Sophia Macht Foundation grant for research on philosophy of law (1985, 1986).

DAAD (German Academic Exchange Service) grant for study visit to German Federal Republic (1982).

NEH Curriculum Development Grant in legal ethics (1981-83).

Participant, NEH Summer Seminar for Law Teachers (Economic Rights: Property and Welfare) (1981).

Maryland Bar Foundation grant for research in legal ethics (1980).

Woodrow Wilson Summer Research Grant (given to top 10% of Wilson Fellows) (1970).

## **Continuing Education**

“Tortured Evidence,” Third Annual Raul Wallenberg Memorial Conference, Toronto, January 2007.

“Lawyers and Moral Meltdowns,” Rhodes College, 2004.

“The Consequences of Buckhannon” - Prettyman-Lowenthal chapter of American Inns of Court, Washington, D.C., February 2003.

“The Assault on Progressive Public Interest Lawyers,” NYU Brennan Center, October 2002.

“Ethics, Legality, and Evil” - Conference on the Nazis and the Rule of Law, Berlin, Germany, July 2002.

“Lawyers as Defenders of Human Dignity (When They Aren’t Busy Assaulting It)” - George Mason University Law School, February, 2001.

“Contrived Ignorance: The Ethics of Deniability” - University of Montana School of Law, September, 1998.

“The Rule of Law and Judicial Decision-Making” - D.C. Superior Court training session, April, 1998

“Ethics, Truth, and the Adversary System” - The Foundations of Legal Ethics conference, Austin, Texas, sponsored by the Texas Center on Professionalism and Legal Ethics, November, 1997

“Twenty Theses on Adversarial Ethics” - Beyond the Adversarial System conference, Brisbane, Australia, co-sponsored by the Australian Law Reform Commission and the National Institute on Law and Ethics, July, 1997.

“Punitive Damages and Retribution” -- University of Wisconsin conference on punitive damages, October, 1996.

"Dilemmas of Confidentiality" -- Hudson County (New Jersey) Inns of Court, December, 1995.

"Ethics and the Adversary System" -- Hudson County (New Jersey) Inns of Court, June 1994.

"The Rule of Law and Justice" -- week-long seminar for state-court judges -- American Academy of Judicial Education, Monterey, California, August 1990.

"Game Theory and Legal Negotiation" -- MICPEL (Maryland Institute for Continuing Professional Education in Law) Negotiation Workshop, December 1986.

"Ethics in Judicial Decision-Making" -- American Academy of Judicial Education seminars given to all state trial and appellate judges in New Mexico, New Mexico Judicial Conclave, June 1988.

Week-long seminar for judges from various states on ethical issues raised by new technologies as these might arise in trial settings -- American Academy of Judicial Education, Jackson Hole, Wyoming, July 1988.

Faculty, The Hasting Center Summer Workshop on Applied and Professional Ethics (July 1982) -- delivered lectures and led a week-long seminar for law teachers and lawyers on ethics and the legal profession.