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ELEVATING THE  
STUDENT EXPERIENCE:

THE 2015  
STRATEGIC PLAN



# THOUGHT LEADERS AND GAME CHANGERS:

**Legal scholars help shape policy, inform lawmakers  
and enhance the educational experience**

By Kathrin **Havrilla**

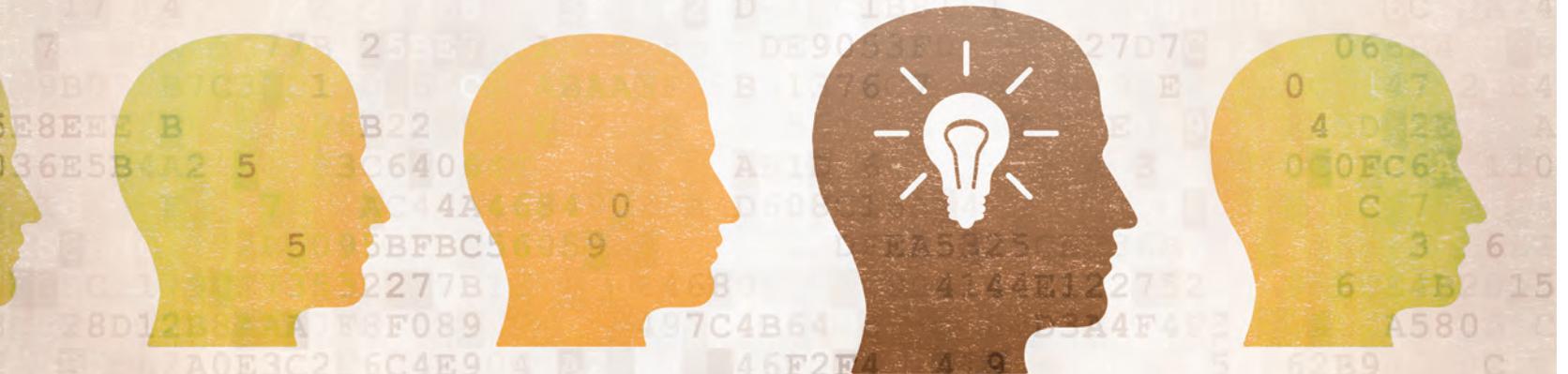
The new strategic plan for the University of Denver Sturm College of Law represents a holistic look at the ways in which the law school seeks to shape the future of law and justice by educating tomorrow's legal leaders. Among the more prominent goals of the plan is the production of high-impact scholarship with real-world applicability that is widely disseminated and contributes to a just society—the careful cultivation of ideas that improve our world for the better.

“Legal scholarship has occasionally been criticized as too theoretical or irrelevant to the work of lawyers and judges,” says Dean Martin Katz. “Others criticize legal scholarship as a distraction from the work of teaching students. Our plan is to demonstrate the value of our scholarship, both to our legal community and to our students.

**“We want to make sure our scholarship has impact. And we are succeeding in a big way.”**

At Denver Law, legal scholarship is seen as an integral part of the law school. It serves as an agent of change, from changes in policy to shifts in social consciousness. Over the past five years, the college's scholarly output has nearly doubled, drawing faculty members into the center of many prominent debates and impacting the legal system in both the immediate and the long term.

What follows are synopses of the scholarship created by various faculty members and examples of the impact this dynamic research has had on some of the most contentious issues of the day. From First Amendment rights in the agricultural industry to the rights of children of same-sex couples to the constitutionality of capital punishment, the work of these and other Denver Law professors makes them stand out as notable trailblazers.





## The Legalization of Same-Sex Marriage

**Professor Catherine Smith**, associate dean of institutional diversity and inclusiveness, played an important role in *Obergefell v. Hodges*, the recent Supreme Court case

that resulted in the landmark decision recognizing the constitutional right of same-sex couples to marry. Smith co-authored an amicus brief about the constitutional rights of children that was cited by the Supreme Court, largely affirming that if the government states that marriage is good for the stability of children of opposite-sex parents, then the same holds true for children of same-sex parents.

This is a powerful example of the far-reaching influence of thoughtful legal scholarship becoming a part of a historic legal decision that has changed the landscape of society. Smith, a prolific legal blogger and op-ed writer, says that it's important to make sure one's research findings don't languish in the law review format—that it's important to strive for greater exposure to the work, allowing it to weave into the public consciousness. "It's imperative to your growth as both a professor and a scholar that you make your ideas accessible to a broader public," Smith says. "It forces you to be clear, succinct and impactful."



## Capital Punishment in Colorado and Across the U.S.

Capital punishment has been a frequent topic in recent news cycles, and two Denver Law professors are at the forefront of this controversial legal issue. **Professor Sam Kamin** (top photo), the Vicente Sederberg Professor of Marijuana Law and Policy, and **Professor Justin Marceau**, the Animal Legal Defense Fund Professor of Law, collaborated on an article that was cited by Colorado Gov. John Hickenlooper in the Nathan Dunlap clemency order. Hickenlooper declined to sign Dunlap's death warrant, pointing to Kamin and Marceau's studies that showed Colorado law leaves too much discretion up to the prosecutors to decide who lives or who dies.

**"One of our highest aspirations as scholars is to affect and inform the public debate about important issues," Kamin says.**

"The work that Professor Marceau and I have been doing in the area of capital punishment has definitely done that."

Kamin and Marceau also produced scholarship called "Death Eligibility in Colorado: Many are Called, Few are Chosen,"<sup>1</sup> which is based on their study of the death penalty in Colorado that showed that almost every murder that has been prosecuted could have been charged as first degree, and almost every first-degree murder had aggravating factors that made it death-eligible. However, the Supreme Court has stated that the death penalty statute must narrow the pool of murderers to fewer—not more—death-eligible criminals. On June 29, 2015, after the Supreme Court upheld the constitutionality of Oklahoma's execution protocols despite several bungled executions, Justice Stephen Breyer wrote a dissent on behalf of Justice Ruth Bader Ginsburg and himself, citing that Kamin and Marceau's article helped them to understand that the death penalty is categorically unconstitutional.

1 [http://lawreview.colorado.edu/wp-content/uploads/2013/11/12.-Marceau\\_610\\_s.pdf](http://lawreview.colorado.edu/wp-content/uploads/2013/11/12.-Marceau_610_s.pdf).



## After the JD: Biases in the Legal Profession

**Professor Joyce Sterling**, associate dean of faculty scholarship, is one of the authors of *After the JD: First Results of a National Study of Legal Careers*, the first-ever longitudinal study of the career outcomes of new lawyers over the first 10 years following law school graduation. The initial cohort of lawyers was surveyed in 2002, the second in 2007, and the third beginning in 2010, and the research has presented impressive data on not only the types of jobs new lawyers obtain, but how often they change positions throughout

their careers and who gets promoted and who doesn't. Clear patterns have developed that have continually, and perhaps unsurprisingly, shown a disparity in pay and promotions for women and minority lawyers.

**For the first time ever, legal educators can review these quantitative results and begin to make a stronger case for greater equity in the legal profession.**

Recently, Sterling presented the study's findings at the National Association for Law Placement Foundation meeting, at both the Association of American Law Schools annual conference and the American Bar Association (ABA) Midyear Meeting, and before the Law and Society Association. Additionally, the Task Force on the Future of Legal Education has used the findings to recommend to the ABA that the process of legal education should place more emphasis on students' career preparation and the importance of building social capital.



## Empirical Scholarship: Impacting the Future of Justice

The faculty and administration at Denver Law know that legal scholarship is closely connected to the real world.

**Sometimes the research shapes conversations over the long term. Sometimes the impact can be seen more immediately.**

In August 2015, **Professors Justin Marceau** (top photo) and **Alan Chen** led a successful First Amendment challenge by helping to represent a coalition of animal rights and civil rights groups against Idaho's anti-whistleblower "Ag-Gag" law, which criminalizes undercover investigations by

agricultural employees. This categorical victory has implications across state lines and will forever change the agricultural industry.

"Professor Chen and I have dedicated a considerable amount of our scholarly efforts in recent years to untangling the relationship between lies and the First Amendment," Professor Marceau says. "We jointly authored an article in the *Vanderbilt Law Review* titled 'High Value Lies, Ugly Truths and the First Amendment.' On August 2, our work as lawyers and scholars was vindicated when a federal district court judge accepted our arguments in a case we are co-counseling challenging an Idaho statute."



## Shaping Renewable Energy Policy

**Professor K.K. DuVivier** is another Denver Law faculty member who recognizes the importance of getting your message out to a larger audience. During DuVivier's 30-year career as a leading expert in renewable energy, she penned a bimonthly column on legal writing called "The Scrivener" for *The Colorado Lawyer* for 17 years, and wrote *The Renewable Energy Reader*, one of the first books to exclusively investigate renewable energy in the U.S.

Currently, DuVivier is part of a new interdisciplinary, multiuniversity, \$9.47 million grant funded by the National Science Foundation that explores the impact of wind farming from legal, economic and natural science viewpoints. Her proficiency in renewable energy law has led her to be a part of numerous pieces of state and national legislation, testifying before the Colorado Senate Commit-

tee on Agriculture, Natural Resources, and Energy and the Colorado House Committee on Agriculture, Livestock, and Natural Resources about wind energy and severance; the Colorado Public Utilities Commission about how to charge consumers who have solar energy panels on their homes; and an Environmental Protection Agency Office of Resource Conservation and Recovery Materials Recovery and Waste Management Division hearing about problems with coal fly ash, among many others.

In the spring of 2016, DuVivier will teach an entirely practical, hands-on, interdisciplinary class that empowers DU students to work with the University's Sustainability Council to examine the scientific, financial and legal ramifications of installing solar panels on campus.



## Mock Juries: Better, Faster, Cheaper

The standard process of convening mock juries is expensive and time-consuming, and it only produces a small amount of usable data. Enter **Associate Professor Bernard Chao** (top photo) and **Assistant Professor of the Practice John Campbell**, who are staging mock juries online using Amazon's Mechanical Turk platform that

recruits people to perform human intelligence tasks. Using 30-minute video simulation trials that include different opening arguments and cross-examinations, Chao and Campbell seek to test the authenticity of conventional legal tactics for both defense and prosecution lawyers. For example, they examined the outcomes during a mock medical malpractice trial in which one plaintiff requested a reasonable sum for damages and the other an exorbitant amount to determine at what point the sum of a plaintiff's request affected the plaintiff's credibility.

Using this method, Chao and Campbell have cut costs to \$3 to \$4 per person, which means they can collect data from 1,000 people for the same expense of 25 to 35 people using the conventional method, and at a much faster rate. Their goal is to improve the justice system by using this empirical data to better understand how people make decisions rather than relying on guesswork.

(See page 35 for an in-depth look at Campbell and Chao's research.)



## On-the-Ground Changes Through Professional Responsibility

**Eli Wald**, Charles W. Delaney Jr. Professor of Law, has been ranked as one of the top cited professional responsibility and legal profession scholars in the country.<sup>2</sup> His work has been cited by state and federal courts, and an article that Wald wrote in 2008 pointing out a contradiction between two rules of client confidentiality has recently led to a revision in the ABA Model Rules of Professional Conduct. The vast majority of states are expected to revise their legislation to reflect this change by 2016.



## Better Scholars Make Better Professors

Law school classes draw on research as a way to highlight trends in the law, the results of empirical research, and debates about the meaning and content of the law. And when professors are engaged in that research themselves, their students benefit. Active scholars are up-to-date on contemporary issues, drawing students into lively debates and dynamic research. From basing assignments on real-life current events to instructing students to apply new legislation to actual patent laws or Supreme Court cases, today's Denver Law students benefit from their professors' research expertise.

Wald also wrote several articles about equality and discrimination in the legal practice, specifically about the experience of and bias toward Jewish and Catholic lawyers at large law firms over the past several decades. One element of this scholarship is the idea of the "flip side of bias," a term that Wald coined postulating that certain groups of people experience negative stereotypes which can then bear positive consequences as ideologies change over time. Author Malcolm Gladwell discussed Wald's scholarly findings in the best-selling book *Outliers: The Story of Success*, which explores the qualities high-achievers share that make them different from the average person.

**This inclusion transported Wald's work from the relatively narrow domain of legal ethics into the world of popular culture and consumption.**

"Lawyers write, in large part, to raise consciousness and solve problems," Wald says. "Disputes that come up in litigation, issues that regulatory bodies confront—these are all matters that affect American society. It's incredibly gratifying to have one's scholarship be cited and used by courts and policymakers to support our end goal: trying to solve people's problems."

"I know that I understand current energy issues much better because of my research," DuVivier says. "Teaching these topics and having to understand them at a higher level not only increases my ability as a professor, but it also highlights areas for additional research and thought, thanks to the opinions and insight of my students."

It's clear that Denver Law faculty members take very seriously their role of both improving the legal system through scholarship and educating ethical, practice-ready professionals who are prepared to solve social and legal problems and promote justice throughout the world.

"As a community, there is a critical mass of people at Denver Law who are committed to doing good, productive work regularly—people who are working to make a difference on the ground," Campbell says. "We're lucky to be a part of an active, vibrant culture that rallies around and supports scholarship and the production of new and important ideas." 

<sup>2</sup> <http://www.legaethicsforum.com/blog/2015/01/top-cited-pr-legal-profession-scholars.html>. Professor Wald is ranked as the fourth "Most Cited 'Junior' Faculty Who Writes Predominantly about Professional Responsibility or the Legal Profession" over the last five years.



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