

Aviva Orenstein

Indiana University Maurer School of Law
211 South Indiana Avenue, Bloomington, IN 47405
aorenste@indiana.edu
(812) 855-8736

FACULTY APPOINTMENTS

Maurer School of Law Indiana University, Bloomington, IN

Val Nolan Fellow (2012-present)

Professor (1999-present)

Associate Professor (1992-1999)

- Courses include Evidence, Civil Procedure, Family Law, and Children and the Law
- Visiting Scholar, China University of Politics and Law June 2015
- London Law Consortium (Fall 2006)
Visiting Professor representing Maurer School of Law
- *Fellow*, Poynter Center for the Study of Ethics and American Institutions, Interdisciplinary Seminar on the Ethics and Politics of Childhood (2005-06)
- *Director*, Child Advocacy Clinic (2000-01)

Benjamin N. Cardozo School of Law, New York, NY

Visiting Professor of Law (2001-03; summers 2007, 2008, 2012)

Cornell Law School, Ithaca, NY

Visiting Associate Professor (Fall 1994)

EDUCATION

Cornell Law School, J.D. 1986, Magna Cum Laude

Order of the Coif (GPA 3.8/4.0)

Articles Editor, Cornell Law Review

Moot Court Finalist (1983)

Member, Moot Court Board

Volunteer, Legal Aid Clinic

Am-Jur Torts Prize

Cornell University College of Arts and Sciences, A.B. 1981, Summa Cum Laude
Distinction in all subjects
Phi Beta Kappa; Dean's List (1978-1981)
College Scholar (1978-1981)
Telluride Scholar (1977-1981)

Hebrew University of Jerusalem, Junior Year Abroad, 1978-1979

LEGAL EXPERIENCE

Volunteer Attorney for CASA (2002-present)

Pro Bono work for children and families in Monroe County (1997-present)

Volunteer Attorney for Protective Order Project (2000-present)

The Late Hon. Edward R. Becker, United States Court of Appeals for the Third Circuit,
Law Clerk (1987-88)

Hughes, Hubbard & Reed, New York, NY
Summer Associate (1985)

Arnold & Porter, Washington, D.C.
Summer Associate (1983)

Pitney, Hardin, Kipp & Szuch, Morristown, NJ
Summer Associate (1982)

PUBLICATIONS

Books

PARK & ORENSTEIN, TRIAL OBJECTIONS HANDBOOK (3d edition) (West 2015)
(forthcoming)

ORENSTEIN, ACING EVIDENCE (West 2014)

PARK, LEONARD, ORENSTEIN & GOLDBERG, EVIDENCE LAW: A STUDENT'S GUIDE TO THE
LAW OF EVIDENCE AS APPLIED IN AMERICAN TRIALS (3d edition) (West 2011)

Articles

Justice Scalia's Concept of Childhood and Children (in progress)

Evidence Law, Juror Decision-Making, and the Emotion of Regret (in progress)

The Seductive Power of Patriarchal Stories ___ Howard L. Rev. ___ (2015)

Forfeiture of Confrontation Rights and the Complicated Dynamics of Domestic Violence: Some Thoughts Inspired by Myrna Raeder ___ Southwestern L. Rev. ___ (2015)

Once We Were Slaves, Now We Are Free: The Legal, Administrative, and Psychosocial Issues Raised by Passover Seders in Prison 41 PEPPERDINE L. REV. 61 (2014)

Empirical Fallacies of Evidence Law: A Critical Look at the Admission of Prior Sex Crimes, 81 U. CIN. L. REV. 794 (2013) (with Tamara Rice Lave)

Friends, Gangbangers, Custody Disputants, Lend Me Your Passwords, 31 MISS. COLL. L. REV. 185 (2012)

Facing the Unfaceable: Dealing with Prosecutorial Denial in Postconviction Cases of Actual Innocence, 46 SAN DIEGO L. REV. 401 (2011)

Sex, Threats, and Excited Words: Regina v. Bedingfield and its Lessons for Modern Evidence Law, 79 FORDHAM L. REV. 115 (2010)

Honoring Margaret Berger with a Sensible Idea: Insisting that Judges Employ a Balancing Test before Admitting the Accused's Convictions under Federal Rule of Evidence 609(a)(2), 74 BROOK. L. REV. 1291 (2010)

Her Dying Words: The Dying Declaration in Domestic Violence Murders as an Exception to and Indictment of Modern Confrontation Jurisprudence, 2010 ILL. L. REV. 1141

Propensity or Stereotype?: A Bad Evidence Experiment in Indian Country, 19 CORNELL J. L. & PUB. POL. 173 (2010)

Presuming Guilt or Protecting Victims? Analyzing the Special Treatment of Those Accused of Rape, in TRAGEDY AT DUKE: LESSONS LEARNED FROM RAPE ALLEGATIONS AGAINST DUKE UNIVERSITY LACROSSE TEAM MEMBERS (Michael L. Seigel, ed.) (Carolina Academic Press 2009)

Special Issues Raised By Rape Trials, in Ethics and Evidence Symposium, 76 FORDHAM L. REV. 1585 (2007)

Children as Witness: A Symposium on Child Competence and the Accused's Right to Confront Child Witnesses, 82 IND. L. J. 909 (2007)

The Ethics of Child Custody Evaluation: Advocacy, Respect for Parents, and the Right to an Open Future, Poynter Center Monograph (2006)

Deviance, Due Process, and the False Promise of Federal Rule of Evidence 403, 90 CORNELL L. REV. 1487 (2005)

Civility in Litigation: How Can the Profession Promote and Enforce Good Behavior? 1 IND. CIVIL LITIGATION LAW REVIEW 77 (2004) (with Torrence Lewis)

What We Say We Do on Review, What We Actually Do on Review, Why They Are So Dissimilar, and How We Manage Not to Notice, LAW PROBABILITY AND RISK: A JOURNAL OF REASONING UNDER UNCERTAINTY (2002),
http://www3.oup.lawpr/hdb/Volume_02/Issue_04.

Evidence and Feminism, in FEMINIST JURISPRUDENCE, WOMEN AND THE LAW: CRITICAL ESSAYS AND ARTICLES (Betty W. Taylor, Sharon Rush, Robert John, eds.) (1999)

Apology Excepted: Incorporating a Feminist Analysis into Evidence Policy Where You'd Least Expect It, 28 SW. L. REV. 221 (1999)

No Bad Men!: A Feminist Approach to Character Evidence in Rape Trials, 49 HASTINGS L. REV. 663 (1998)

Evidence in A Different Voice: Some Thoughts on Professor Jonakait's Critique of A Feminist Approach, 4 WILLIAM & MARY J. WOMEN & L. 295 (1998)

My God!: A Feminist Critique of the Excited Utterance Exception to the Hearsay Rule, 85 CAL. L. REV. 153 (1997)

Is the Evidence All In? ABA JOURNAL (October 1992) (with Edward R. Becker)

The Federal Rules of Evidence After Sixteen Years—The Effect of 'Plain Meaning' Jurisprudence, The Need for An Advisory Committee on the Rules of Evidence, and Suggestions for Selective Revision of The Rules, 60 GEO. WASH. L. REV. 857 (1992) (with Edward R. Becker) (reprinted at 142 F.R.D. 519)

HONORS AND AWARDS

Leonard D. Fromm Public Interest Faculty Award (2011)
Wallace Teaching Award (2005)
Cardozo Service Award (2003)
Indiana University TERA teaching award (2000)
Indiana Bar Foundation, Law-Related Education Award (1997)

SELECTED PROFESSIONAL LECTURES

Cultural Assumptions in American Evidence Law, The Foundations of the Law of Evidence and Their Implications for Developing Countries, Chicago 2014

Forfeiture in Domestic Violence Cases after Giles, Symposium in Memory of Myrna Raeder, Southwestern Law School, Los Angeles November 2014

Effective Brief-Writing, Fifth Circuit Bar Conference, October 2014, New Orleans

The Power of Patriarchal Stories, Taslitz Galaxy: Symposium in Memory of Andrew Taslitz, Howard Law School, September 2014

Justice Scalia Concept of Childhood and Children, International Academy of Law and Mental Health, Amsterdam, The Netherlands, July 2013

Evidence Law and the Emotion of Regret, International Academy of Law and Mental Health, Amsterdam, The Netherlands, July 2013

Ethical Issues Arising in Domestic Violence Representation, Middle Way House CLE January 2013

Religious Diets in Prison under RLUIPA, Cardozo School of Law, New York, NY, July 2012

Evidence Issues Raised by Social Media, Mississippi College of Law, Jackson, MS, February 2012

Once We Were Slaves, Now We Are Free: Legal and Social Issues Raised by Passover Observance in Prison, Florida State University, Tallahassee, FL, January, 2012

Constructions of Deviance in Federal Rules of Evidence: Reliance on False Assertions of Recidivism Rates, International Association of Law and Mental Health, Berlin, Germany, July 2011

Passover Seders in Prison, **Law and Society Association**, San Francisco, CA, June 2011

Prosecutorial Denial, **New Jersey Public Defender**, Newark, NJ, April 2011

Understanding Crawford, **New Jersey Public Defender**, Newark, NJ, October 2010

Confrontation and Gender, **SEALS Conference**, Palm Beach, FL, July 2010

Everything You Always Wanted To Know About Civil Procedure but Were Too Bored to Ask, **Indiana University Maurer School of Law**, Bloomington, IN, July 2010

Ethics on Appeal, **New Jersey Public Defender**, Newark, NJ, April 2010

Confrontation and the Dying Declaration, **Seton Hall School of Law**, Newark, NJ, October 2009

The O.J. Trial of Its Day: The Drama, Pathos, and Legal Sniping of the Then Infamous, Now Forgotten Case of Regina v. Bedingfield and Its Lessons for Modern Evidence Law, **John Marshall Law School, Faculty Roundtable**, Chicago, IL, November 2008

A Famous American Trial: Making Sense of the O.J. Simpson Case, **Warsaw University School of Law**, Warsaw, Poland, May 2005

Civility on Appeal, **Fifth Circuit Bar Conference**, April 2005 (with Judge Tjoflat)

The Ethics of Child Custody: Justice, Intimacy, and Respect for Parents, panel for **Association for Practical and Professional Ethics**, San Antonio, TX, February 2004

Pre-Trial Procedure in American Litigation, **China University of Politics and Law**, Beijing, China, May 2004

Child Protection in the United States, **National Taipei University, Taiwan**, May 2004

Deviance and Due Process: An Analysis of Rule 413-414, **University of Las Vegas-Nevada**, April 2004

Privilege and the Presidency: Examining the Special Problems of Attorney-Client Privilege in the Clinton White House, **Section on Evidence AALS Conference**, San Francisco, January 2004

Addressing Addiction and Depression in the Curriculum, Conference on Attorney Impairment, **NY Bar Association**, June 2003

How (Not) to Teach Evidence Rules 413-415, Section on Evidence, AALS Conference, June 2002

Understanding the Louima Case: Why the Second Circuit Reversed the Conviction on Conflict-of-Interest Grounds, Cardozo School of Law, New York, NY, March 2002

Risky Business: Sex and Business Deals with Clients, Indiana University Continuing Legal Education Program, September 2000

Character Evidence in Indiana, Indiana Judicial Conference, Summer 1999

Ethnicity and Humor: Links between Jewish and Feminist Approaches to Adversity, Cornell Law School, Ithaca, NY, Spring 1996

Conflicts of Interest for Union Lawyers in Cases of Employee-on-Employee Harassment and Violence, AFL-CIO Annual Attorney Conference, San Francisco, CA, April 1995 & 1996

PROFESSIONAL ASSOCIATIONS

Member, American Law Institute (2005-present)
Member, American Bar Association (1990-present)
Member, Executive Committee, Section on Evidence (2007-08)
Chair, Evidence Section, AALS (2006-2007)
Admitted to Practice, Indiana (1996)
Admitted to Practice, New Jersey (1990)

RECENT SERVICE

Law School Liaison and Coordinator, SPEA Law and Public Policy Major
Member, Policy Committee (2014-2015)
Member, Dean's Search Committee
Member, Promotion and Tenure Committee
Chair, IU Press Committee

PERSONAL INFORMATION

Children: David Greenberg, 32, Michael Greenberg, 30, Benjamin Greenberg, 26
Hobbies: Creative writing, Teaching Torah, Reading, Journalism, Singing, Travel
Languages: Fluent Hebrew, Reading and Conversational French, Beginning Chinese