

# RUTGERS JOURNAL OF LAW & PUBLIC POLICY

---

## EDITORIAL BOARD

---

MORGAN JANINE WALSH  
*Editor-in-Chief*

BAILEY GUNNER  
*Executive Editor*

MICHAEL MARCHESE  
*Executive Editor*

RYAN FADER  
*Managing Senior Editor*

MIKE BAUDER  
GARRETT BOLTON  
*Managing Articles Editors*

ANDREW HALL  
ALEXANDRA RUANE  
*Submissions & Symposium  
Editors*

MISSY REBOVICH  
KASSIDY TIRELLI  
*Managing Notes Editors*

NAYOMI TORRES-VELEZ  
*Managing Research Editor*

JAMES SANTORO  
*Business & Marketing Editor*

MICHAEL HATCH  
*Managing Publications Editor*

### *Senior Staff Editors*

KRISTEN BENTZ  
SAMUEL CRAIG  
SKYLAR DEMARTINIS

JACOB HAULENBEEK  
JUSTIN HUDAK  
JONATHAN NENDZE

JULIA PICKETT  
MIRANDA STAFFORD

### *3L Staff Editors*

JACK ANDREAS  
MARY CASPER  
CHRISTINA CHO  
EDIANYS LIMA ENRIQUEZ

KYLE JACKSON  
KEE MIN  
SAUL MOLINA  
CHRISTIAN RODRIGUEZ

KRISTIN SCHLOTTERBECK  
RYAN SHELTON-BENSON  
KIM TAYLOR

### *2L Staff Editors*

SALLY ABDULRAOUF  
NADIA AL KHUNAIZI  
LESLIE BURNETTE  
ALLIE CAPECCI  
ZACH CARR  
JENNA CENTOFANTI  
SILVIA FONG  
SAVANNAH HAYES  
JACOB HONESTY

KRISTINA INGERSOLL  
PAIGE KAERCHER  
MATT LAMORGESE  
MICHELLE MASON  
BYRON MITCHELL  
FAITH PAUL  
RANDY PETRONKO  
YASLIN REYES  
OLGA ROMADIN

EMMA ROTH  
CLAUDIA SANCHEZ  
SIMON SCHMITT-HALL  
MARISSA TERWILLIGER  
AARON USCINOWICZ  
PRIYA VAISHAMPAYAN  
SHAMNAZ ZAMAN

### *Faculty Advisor*

ALEC WALEN

## **About the Rutgers Journal of Law & Public Policy**

The *Rutgers Journal of Law and Public Policy* (ISSN 1934-3736) is published two times per year by students of the Rutgers School of Law – Camden, located at 217 North Fifth Street, Camden, NJ 08102.

The views expressed in the *Rutgers Journal of Law & Public Policy* are those of the authors and not necessarily of the *Rutgers Journal of Law & Public Policy* or the Rutgers School of Law – Camden.

**Form:** Citations conform to *The Bluebook: A Uniform System of Citation* (21st ed. 2021).

Please cite the Rutgers Journal of Law & Public Policy as 20 RUTGERS J.L. & PUB. POL'Y \_\_ (2024).

**Copyright:** All articles copyright © 2024 by the *Rutgers Journal of Law & Public Policy*, except where otherwise expressly indicated. For all articles to which it holds copyright, the *Rutgers Journal of Law & Public Policy* permits copies to be made for classroom use, provided that (1) the author and the *Rutgers Journal of Law & Public Policy* are identified, (2) the proper notice of copyright is affixed to each copy, (3) each copy is distributed at or below cost, and (4) the *Rutgers Journal of Law & Public Policy* is notified of the use.

For reprint permission for purposes other than classroom use, please submit request as specified at <http://www.rutgerspolicyjournal.org/>.

**Manuscripts:** The *Rutgers Journal of Law & Public Policy* seeks to publish articles making original contributions in the field of public policy. The Journal accepts both articles and compelling essays for publication that are related to the expansive topic of public policy. Manuscripts must contain an abstract describing the article or essay which will be edited and used for publication on the website and in CD-ROM format. The Journal welcomes submissions from legal scholars, academics, policy makers, practitioners, lawyers, judges and social scientists.

Electronic submissions are encouraged. Submissions by email and attachment should be directed to [submissions.rjlpp@gmail.com](mailto:submissions.rjlpp@gmail.com).

Paper or disk submissions should be directed to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North Fifth Street, Camden, New Jersey 08102.

**Subscriptions:** Subscription requests should be mailed to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North Fifth Street, Camden, New Jersey 08102, or emailed to [info@rutgerspolicyjournal.org](mailto:info@rutgerspolicyjournal.org).

**Internet Address:** The *Rutgers Journal of Law & Public Policy* website is located at <http://www.rutgerspolicyjournal.org>.

**RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY**  
**RUTGERS LAW SCHOOL**

OFFICERS OF THE UNIVERSITY

JONATHAN HOLLOWAY, A.B., M.A., M.Phil., Ph.D., *President of the University*  
NANCY CANTOR, A.B., Ph.D., *Chancellor of Rutgers University—Newark and Distinguished Professor*  
ANTONIO D. TILLIS, B.A., M.A., Ph.D., *Chancellor of Rutgers University—Camden and Professor of Law*  
DANIEL HART, B.A., Ed.D., *Provost of Rutgers University—Camden and Professor and Executive Vice Chancellor*  
ASHWANI MONGA, B.TECH., M.B.A., Ph.D., *Provost of Rutgers University—Newark and Executive Vice Chancellor*

---

JOHANNA BOND, B.A., J.D., *Dean and Professor of Law*  
SHANI KING, B.A., J.D., *Vice Dean and Professor of Law*  
ARTHUR LABY, B.A., J.D., *Vice Dean and Professor of Law*  
VICTORIA CHASE, B.A., J.D., *Associate Dean for Academic Affairs, Associate Clinical Professor of Law*  
RONALD CHEN, B.A., J.D., *Associate Dean for Academic Affairs, Associate Professor*  
NANCY TALLEY, B.A., M.S., J.D., *Senior Associate Dean for Information Services*  
CAROLINE YOUNG, B.A., J.D., *Senior Associate Dean for Information Services*  
JON C. DUBIN, A.B., J.D., *Associate Dean for Clinical Education and Board of Gov. Dist. Public Service Professor of Law*  
WEI FANG, B.S., M.L.I.S., M.S.C.S., *Associate Dean for Information Technology and Head of Digital Services*  
JILL FRIEDMAN, B.A., J.D., *Associate Dean of Pro Bono & Public Interest and Professor of Law*  
ELLEN P. GOODMAN, A.B., J.D., *Associate Dean of Strategic Initiatives & Special Projects and Professor of Law*  
VANESSA WILLIAMS, B.A., Ph.D., *Assistant Dean of New Programs*  
SUZANNE KIM, B.A., J.D., *Associate Dean of Academic Research Centers and Professor of Law*  
DAVID NOLL, B.A., J.D., *Associate Dean for Faculty Research and Development and Professor of Law*  
SARAH K. REGINA, B.A., J.D., *Associate Dean for Student Affairs*  
ANDREW ROSSNER, B.A., M.A., J.D., *Associate Dean for Professional & Skills Education and Distinguished Professor of Law*  
ROBERT STEINBAUM, B.A., J.D., *Associate Dean for Advancement*  
AMY MILLER, B.A., J.D. Ed.D., M.S.Ed., *Associate Dean of Students Affairs*  
SARAH K. REGINA, B.A., J.D., *Associate Dean of Students Affairs*  
ELIZABETH ACEVEDO, B.S., J.D., *Assistant Dean for Career Development*  
CLIFFORD DAWKINS, B.A., J.D., *Assistant Dean, Minority Student Program*  
RHASHEDA DOUGLAS, B.A., J.D., *Assistant Dean, Minority Student Program*  
SUSAN FEATHER, B.A., M.A., J.D., *Assistant Dean for Public Interest and Pro Bono*  
LINDA GARBACCIO, B.S., *Assistant Dean for Academic Services*  
MATTHEW SALEH, B.A., J.D., Ph.D., *Assistant Dean of Admissions*  
ROBIN L. TODD, B.A., *Assistant Dean for Development*  
REBEKAH VERONA, B.S., J.D., *Assistant Dean for Career Development*  
JEFFREY BALOG, *Director of Finance and Administration*  
JOANNE GOTTESMAN, B.A., J.D., *Director of Clinical Programs and Clinical Associate Professor*  
JOHN C. LORE, III, B.A., J.D., *Director of Trial Advocacy and Distinguished Clinical Professor of Law*  
Margaret McCarthy, *Director of Communications and Marketing*  
PAM MERTSOCK-WOLFE, B.A., M.A., *Director of Pro Bono and Public Interest*  
ELIZABETH MOORE, B.A., *Director of Communications*  
THOMAS RYAN, *Director of Information Technology*  
CAROL WALLINGER, B.S., J.D., *Director of Lawyering and Clinical Professor of Law*

## PROFESSORS OF LAW EMERITI

FRANK ASKIN, B.A., J.D.,  
*Distinguished Professor of Law Emeritus, Robert  
E. Knowlton Scholar, and Director of the  
Constitutional Rights Clinic*  
PAUL AXEL-LUTE, B.A., M.L.S.,  
*Deputy Director of the Law Library Emeritus*  
CYNTHIA A. BLUM, B.A., J.D.,  
*Professor of Law Emerita*  
A HAYS BUTLER, B.A., J.D., M.S. (LIS),  
*Law Librarian Emeritus*  
NORMAN L. CANTOR, A.B., J.D.,  
*Professor of Law Emeritus*  
EDWARD E. CHASE, B.A., J.D.,  
*Professor of Law Emeritus*  
ROGER S. CLARK, B.A., LL.B., LL.M., J.S.D., LL.D.,  
*Board of Governors Professor and Distinguished  
Professor of Law Emeritus*  
RUSSELL M. COOMBS, B.A., J.D.,  
*Professor of Law Emeritus*  
LUCY COX, B.A., M.S., Ph.D., M.L.S., *International  
& Foreign Law Librarian Emerita*  
ANNE V. DALESANDRO, A.B., M.L.S., J.D.,  
*Law Library Director Emerita and Professor of  
Law Emerita*  
JOHN H. DAVIES, B.S., LL.B., LL.M.,  
*Professor of Law Emeritus*  
STUART L. DEUTSCH, B.A., J.D., LL.M., *University  
Professor and Willard Heckel Scholar*  
JACK FEINSTEIN, B.A., J.D.,  
*Clinical Professor of Law Emeritus*  
GEORGE GINSBURGS, B.A., M.A., Ph.D.,  
*Distinguished Professor of Law Emeritus*

ARNO LIIVAK, B.A., M.L.S., J.D.,  
*Professor of Law Emeritus*  
JONATHAN MALLAMUD, A.B., J.D.,  
*Professor of Law Emeritus*  
CRAIG N. OREN, A.B., J.D.,  
*Professor of Law Emeritus*  
JAMES GRAY POPE, A.B., J.D., Ph.D.,  
*Distinguished Professor of Law and Sidney  
Reitman Scholar*  
PATRICK J. RYAN, B.A., M.A., J.D., LL.M., J.S.D.,  
*Associate Professor of Law Emeritus*  
CAROL ROEHRENBECK, B.A., M.L.S., J.D.,  
*Professor of Law and Director of the Law  
Library Emerita*  
RAND E. ROSENBLATT, B.A., M.Sc., J.D.,  
*Professor of Law Emeritus*  
DIANA SCLAR, B.A., J.D.,  
*Professor of Law*  
PETER SIMMONS, A.B., LL.B.,  
*University Professor Emeritus and John M.  
Payne Scholar*  
RICHARD G. SINGER, B.A., J.D., LL.M., J.S.D.,  
*Distinguished Professor of Law Emeritus*  
E. HUNTER TAYLOR, B.A., LL.B., LL.M.,  
*Professor of Law Emeritus*  
PAUL L. TRACTENBERG, B.A., J.D.  
*Board of Governors Distinguished Service  
Professor and Professor of Law*  
ROBERT M. WASHBURN, A.B., J.D., LL.M.,  
*Professor of Law Emeritus*  
ROBERT F. WILLIAMS, B.A., J.D., LL.M.,  
*Distinguished Professor of Law Emeritus*

## FACULTY OF LAW

AARON ARI AFILALO, A.B., J.D., LL.M.,  
*Professor of Law*  
CHARLES AUFFANT, B.A., J.D.,  
*Clinical Professor of Law*  
SAHAR AZIZ, B.SC., M.A., J.D.,  
*Professor of Law*  
CARLOS A. BALL, B.A., J.D., LL.M.,  
*Distinguished Professor of Law*  
BERNARD W. BELL, B.A., J.D.,  
*Professor of Law*  
VERA BERGELSON, J.D., Ph.D.,  
*Distinguished Professor of Law*  
AMY BITTERMAN, B.A., J.D.,  
*Assistant Clinical Professor of Law*  
ELISE BODDIE, B.A., M.P.P., J.D.,  
*Professor of Law*  
LINDA S. BOSNIAK, A.B., M.A., J.D., Ph.D.,  
*Distinguished Professor of Law*  
ESTHER CANTY-BARNES, B.A., J.D.,  
*Clinical Professor of Law*

MICHAEL A. CARRIER, B.A., J.D.,  
*Board of Governors Professor*  
VICTORIA CHASE, B.A., J.D.,  
*Associate Dean for Academic Affairs and  
Associate Clinical Professor of Law*  
RONALD K. CHEN, A.B., J.D.,  
*University Professor and Distinguished  
Professor of Law*  
TODD CLEAR, B.A., M.A., Ph.D.,  
*University Professor*  
LAURA COHEN, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
JEAN-MARC COICAUD, Doctorat D'Etat, Ph.D.,  
*Distinguished Professor of Law*  
JORGE CONTESSE, LL.B., LL.M.,  
*Associate Professor of Law*  
ROSE CUISON-VILLAZOR, B.A., J.D., LL.M.,  
*Professor of Law and Chancellor's Social  
Justice Scholar*

SARAH DADUSH, B.A., J.D., LL.M.,  
*Professor of Law*  
PERRY DANE, B.A., J.D.,  
*Professor of Law*  
KELLY DEERE, J.D.,  
*Assistant Clinical Professor of Law*  
DONNA I. DENNIS, B.A., M.A., J.D., Ph.D.,  
*Professor of Law*  
JON C. DUBIN, A.B., J.D.,  
*Associate Dean for Clinical Education and  
Board of Governors Distinguished Public Service  
Professor of Law*  
DOUGLAS S. EAKELEY, B.A., A.B. (Oxon.), M.A., J.D.,  
*Alan V. Lowenstein Professor of Corporate and  
Business Law and Distinguished Professor of  
Professional Practice*  
KATIE EYER, B.A., J.D.,  
*Professor of Law*  
JAY M. FEINMAN, B.A., J.D.,  
*Distinguished Professor of Law*  
GARY L. FRANCIONE, B.A., M.A., J.D.,  
*Board of Governors Professor and Distinguished  
Professor of Law*  
DAVID M. FRANKFORD, B.A., J.D.,  
*Professor of Law*  
ANN E. FREEDMAN, B.A., J.D.,  
*Associate Professor of Law*  
SANDY FREUND, B.A., J.D., LL.M.,  
*Clinical Professor of Law*  
STEVEN F. FRIEDEL, B.A., J.D.,  
*Professor of Law*  
MATTEO GATTI, J.D., LL.M., S.J.D.,  
*Professor of Law*  
RACHEL GODSIL, B.A., J.D.,  
*Distinguished Professor of Law*  
STEVE C. GOLD, A.B., J.D.,  
*Professor of Law*  
SALLY F. GOLDFARB, B.A., J.D.,  
*Professor of Law*  
CARLOS GONZÁLEZ, B.A., M.A., J.D.,  
*Professor of Law*  
ELLEN P. GOODMAN, A.B., J.D.,  
*Associate Dean of Strategic Initiatives and  
Special Projects, Professor of Law*  
JOANNE GOTTESMAN, B.A., J.D.,  
*Clinical Professor of Law*  
BARBARA GOTTHELF, B.A., J.D.,  
*Professor of Professional Practice of Law*  
STUART P. GREEN, B.A., J.D.,  
*Distinguished Professor of Law*  
ANJUM GUPTA, B.A., J.D.,  
*Professor of Law*  
YULIYA GUSEVA, LL.B., M.A., S.J.D., LL.M., *Professor  
of Law*  
PHOEBE HADDON, B.A., J.D., LL.M.,  
*Professor of Law*  
ADIL A. HAQUE, A.B., J.D.,  
*Professor of Law*

PHILIP L. HARVEY, B.A., J.D., Ph.D.,  
*Professor of Law*  
STACY HAWKINS, B.A., J.D.,  
*Vice Dean and Professor of Law*  
NORRINDA HAYAT, B.A., J.D.,  
*Associate Clinical Professor of Law and Director  
of the Civil Justice Clinic*  
TAJA-NIA Y. HENDERSON, A.B., M.A., J.D., Ph.D.,  
*Professor of Law*  
CHRISTINA S. HO, A.B., M.P.P., J.D.,  
*Professor of Law*  
BARBARA HOFFMAN, A.B., J.D.,  
*Clinical Associate Professor of Law*  
ROBERT HOLMES, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
ALAN S. HYDE, A.B., J.D.,  
*Distinguished Professor of Law*  
RICHARD HYLAND, A.B., M.F.A., J.D., D.E.A.,  
*Distinguished Professor of Law*  
PAM JENOFF, B.A., M.A., J.D.,  
*Clinical Professor of Law*  
JOHN JOERGENSEN, B.A., M.S., M.A.L.S., J.D.,  
*Professor of Law*  
THEA JOHNSON, A.B., J.D.,  
*Associate Professor of Law*  
MARGO KAPLAN, B.S., M.P.A., J.D.,  
*Professor of Law*  
ALEXIS KARTERON, B.A., J.D.,  
*Clinical Professor of Law*  
JOHN R. KETTLE, III, B.A., J.D.,  
*Clinical Professor of Law*  
SUZANNE A. KIM, B.A., J.D.,  
*Associate Dean of Academic Research Centers,  
Professor of Law*  
EMILY KLINE, B.A., J.D.,  
*Assistant Clinical Professor of Law*  
DONALD KOROBKIN, B.A., A.M., J.D.,  
*Professor of Law*  
KATHRYN E. KOVACS, B.A., J.D.,  
*Professor of Law*  
ARTHUR B. LABY, B.A., J.D.,  
*Vice Dean, Professor of Law*  
JOHN LEUBSDORF, B.A., M.A., J.D.,  
*Distinguished Professor of Law*  
MICHAEL A. LIVINGSTON, A.B., J.D.,  
*Professor of Law*  
DAVID LOPEZ, B.A., J.D.,  
*Professor of Law, Prof. Alfred Slocum Scholar*  
JOHN C. LORE, III, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
EARL M. MALTZ, B.A., J.D.,  
*Distinguished Professor of Law*  
RANDI MANDELBAUM, B.S., J.D., LL.M.,  
*Distinguished Clinical Professor of Law*  
KIMBERLY MUTCHERSON, B.A., J.D.,  
*Professor of Law*  
ALISON M. NISSEN, B.A., J.D.,  
*Clinical Associate Professor of Law*

DAVID L. NOLL, B.A., J.D.,  
*Associate Dean for Faculty Research and  
Development, Professor of Law*  
JOHN F. K. OBERDIEK, B.A., M.A., J.D., Ph.D.,  
*Distinguished Professor of Law*  
CHRYSTIN ONDERSMA, B.A., J.D.,  
*Professor of Law*  
BRANDON PARADISE, B.A., J.D.,  
*Associate Professor of Law*  
DENNIS M. PATTERSON, B.A., M.A., J.D., Ph.D.,  
*Board of Governors Professor and Distinguished  
Professor of Law*  
TWILLA PERRY, B.A., M.S.W., J.D.,  
*Professor of Law*  
LOUIS S. RAVESON, B.A., J.D.,  
*Professor of Law*  
HARRY M. RHEA, B.A., M.S., M.A., Ph.D.,  
*Associate Professor of Criminal Justice and Law*  
SARAH RICKS, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
RUTH ANNE ROBBINS, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
ANDREW ROSSNER, B.A., M.A., J.D.,  
*Associate Dean for Professional & Skills  
Education and Distinguished Professor of Law*  
ANDREW J. ROTHMAN, B.A., M.F.A., J.D.,  
*Professor of Professional Practice and  
Managing Attorney of Rutgers Law Associates*  
JACOB HALE RUSSELL, B.A., M.A., J.D.,  
*Associate Professor of Law*  
SABRINA SAFRIN, B.A., J.D.,  
*Professor of Law*  
ADAM SCALES, B.A., J.D.,  
*Professor of Law*  
MEREDITH SCHALICK, B.A., M.S., J.D.,  
*Clinical Professor of Law*  
FADI SHAHEEN, LL.B., LL.M., S.J.D.,  
*Professor of Law*

MATTHEW SHAPIRO, A.B., D.PHIL., J.D.,  
*Associate Professor of Law*  
SANDRA SIMKINS, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
AMY SOLED, B.A., J.D.,  
*Clinical Associate Professor of Law*  
RAYMAN SOLOMON, B.A., M.A., J.D., Ph.D.,  
*University Professor*  
ALLAN R. STEIN, B.A., J.D.,  
*Professor of Law*  
BETH STEPHENS, B.A., J.D.,  
*Distinguished Professor of Law*  
RICK SWEDLOFF, B.A., J.D.,  
*Professor of Law*  
GEORGE C. THOMAS III, B.S., M.F.A., J.D., LL.M.,  
S.J.D., *Board of Governors Professor and  
Distinguished Professor of Law*  
DAVID DANTE TROUTT, A.B., J.D.,  
*Distinguished Professor of Law*  
JENNIFER ROSEN VALVERDE, B.A., M.S.W., J.D.,  
*Distinguished Clinical Professor of Law*  
PENNY VENETIS, B.A., M.A., J.D.,  
*Distinguished Clinical Professor of Law*  
JACOB VICTOR, A.B., J.D.,  
*Assistant Professor of Law*  
ALEC WALLEN, B.A. J.D., Ph.D.,  
*Professor of Law*  
CAROL WALLINGER, B.S., J.D.,  
*Clinical Professor of Law*  
MARK S. WEINER, A.B., J.D., Ph.D.,  
*Professor of Law*  
REID K. WEISBORD, B.S., J.D.,  
*Professor of Law*  
AMY WIDMAN, B.A., J.D.,  
*Clinical Associate Professor of Law*  
ADNAN ZULFIQAR, B.A., M.A., M.L.S., J.D., *Associate  
Professor of Law*

## LAW LIBRARY FACULTY

MARJORE E. CRAWFORD, B.A., M.L.I.S.  
WEI FANG, B.S., M.L.I.S., M.S.C.S.  
DENNIS KIM-PRIETO,  
B.A., M.S.L.I.S., M.F.A., J.D.  
REBECCA KUNKEL, B.A., J.D., M.L.I.S.  
JOOTAEK LEE, M.A., J.D., M.L.S.  
HEATHER MITCHELL, B.A., M.A., M.L.I.S.

CHARLOTTE D. SCHNEIDER, B.B.A., J.D.,  
M.B.A., M.S.L.I.S.  
JUDITH SIMMS, B.A., J.D.  
NANCY B. TALLEY, B.A., J.D., M.S.  
CAROLINE YOUNG, B.A., M.S.L.I.S., J.D.  
JINGWEI ZHANG, LL.B, LL.M

## ADJUNCT FACULTY

BRUCE AFRAN  
ABED AWAD  
MEGAN BANNIGAN  
RICHARD BARKASY  
CHRISTINE V. BATOR

MAUREEN BEHM  
BRIAN BERKLEY  
JONATHAN D. BICK  
PABLO N. BLANCO  
JAY BLUMBERG

PAUL BOND  
ANDREW BONDAROWICZ  
HAL BRAFF  
SUSAN BRICKLIN  
SHELDON BROSS

JOHN M. CANNEL  
CAROLYN CAMPANELLA  
ROBERT D. CHESLER  
HON. JAMES B. CLARK III  
ROGER W. CLARK  
ARNOLD S. COHEN  
ROBERT COOPER  
MARC DAVIES  
MEGAN DAVIES  
DEREK DECOSMO  
RAQUEL DESTEPHANO  
MICHAEL R. DICHARA  
HON. ANN DONIO  
LINDA EFFENBEIN  
BRENDA EUTSLER  
BARRY EVENCHICK  
HON. MARK FALK  
VERONICA FINKELSTEIN  
BRIAN FOLEY  
HON. TRAVIS L. FRANCIS  
DAVID FRIZELL  
ANGIE GAMBONE  
KEVIN GARDNER  
DANIEL GARRIE  
J. PATRICK GERAGHTY  
ROBERT S. GOLDSMITH  
BRUCE I. GOLDSTEIN  
FAITH GREENFIELD  
DEBRA E. GUSTON  
JANET HALLAHAN  
RYAN A. HANCOCK  
HON. DOROTHY HARBECK  
HON. NOEL HILLMAN  
HERB HINKLE  
RAQUIBA HUQ  
NANCY IANNONE  
CYNTHIA JACOB  
MARC JOAQUIN  
JOHN KEARNEY  
ALEX KEMENY  
GEORGE KENNY  
BARRY KITAIN  
TRAVIS LASTER  
RONALD J. LEVINE  
MICHAEL MACKO  
ROBERT J. MACPHERSON  
ANN MALLGRAVE  
IRA B. MARCUS  
ROBERT E. MARGULIES  
BRUCE MATEZ  
JOHN MCMAHON

WILLIAM MCNICHOL  
ANGELLA MIDDLETON  
SHERYL MINTZ GOSKI  
T. GARY MITCHELL  
LOUIS MOFFA  
ERIC MORAN  
ALISON MORRIS  
HON. EDWARD M. NEAFSEY  
BRIAN NEARY  
PHILIP NEUER  
MITCHEL M. NOVITZKY  
LAWRENCE ORLOFF  
GWEN ORLOWSKI  
MICHAEL PARKER  
CYMIE PAYNE  
TARA PELLICORI  
CAROLINE PETRILLA  
TODD POLAND  
ROBERT S. POPESCU J  
ONATHAN I. RABINOWITZ  
HON. DAVID RAGONESE  
HON. EDUARDO ROBRENO  
BRUCE ROSEN  
HERB SABLOVE  
HON. JOEL SCHNEIDER  
MATTHEW SCHORR  
WILLIAM SCHROEDER  
ALEXANDER SHALOM  
GERALD SHANKER  
LINDA SHASHOUA  
VICTORIA SHILTON  
HON. PATTY SHWARTZ  
BILL SLOVER  
HEATHER STAPLETON  
HON. GARY STEIN  
HEIDI A. TALLENTIRE  
DENNIS TALTY  
JANESA URBANO  
MARCUS WASHINGTON  
RICHARD WEST  
TIM WEST  
NEIL WISE  
ELSPETH ABEL  
ELIZABETH ACEVADO  
ANGELICA AGUIRRE  
LISA ALSTON  
REBECCA BAEHR  
JEFFREY BALOG  
JOANN BREA  
PATRICIA BROWN  
LORETTA BURR

ANGELA CAMPIONE  
VIRGINIA CAPUTO  
MAYRA CARABALLO  
DEBORAH CARR  
BERNADETTE CARTER  
ROSELENE CORREIA  
GINA DAVILA  
CLIFFORD DAWKINS  
FRANNIE DESIMONE  
TIMOTHY DIVITO  
CHRISTINE DOUGHERTY  
RHASHEDA DOUGLAS  
GRACE DUFFIN  
SUSAN FEATHERS  
ANDREW FINN  
JILL FRIEDMAN  
SONDRA FURCAJG  
LINDA GARBACCIO  
ROBERTA GEDDIS  
TAI GEDEON  
ELAINE GIORDANO  
ARBANA GJOCA  
KATRINA HALL  
JASON HERNANDEZ  
DENISE HIGGINS  
DAVID HORAN  
CASSANDRA HUNTER  
YVENA HYPOLITE  
WANDA JAMES  
HABIBAH JOHNSON  
DENISE JOHNSON-STEINERT  
MELISSA JORDAN  
DEBORAH LEAK  
ARLENE LENTINI  
CASSANDRA LESTER-KEY  
MARGARET MCCARTHY  
PAM MERTSOCK-WOLFE  
ELIZABETH MOORE  
JOSEPHINE NAGLE  
NATHANIEL NAKAO  
EDGAR OTIENO  
LENORE PEARSON  
MARIE PEEKE  
MILDRED PEREZ  
CHRISTOPHER PHILLIPS  
SARAH K. REGINA  
NANCY RUBERT  
THOMAS RYAN  
DANIEL SANDERS

## STAFF AND ADMINISTRATION

CAROL SHANER  
CHRISTOPHER SLATER  
STAN SNIECIKOWSKI  
DONNA TAGLIAFERRO  
MARTHA TAYLOR  
WENDI L. TAYLOR

AMY TIMKO  
ROBIN TODD  
GWEN TOLBERT  
CHERYL TURK  
MARVIN VELASCO  
REBECCA VERONA

ELIZABETH YEAGER  
ANITA WALTON  
CLAIRE WHITE  
NEIL WISE



# RUTGERS JOURNAL OF LAW & PUBLIC POLICY

---

## EDITORIAL BOARD

---

MORGAN JANINE WALSH  
*Editor-in-Chief*

BAILEY GUNNER  
*Executive Editor*

MICHAEL MARCHESE  
*Executive Editor*

RYAN FADER  
*Managing Senior Editor*

MIKE BAUDER  
GARRETT BOLTON  
*Managing Articles Editors*

ANDREW HALL  
ALEXANDRA RUANE  
*Submissions & Symposium  
Editors*

MISSY REBOVICH  
KASSIDY TIRELLI  
*Managing Notes Editors*

NAYOMI TORRES-VELEZ  
*Managing Research Editor*

JAMES SANTORO  
*Business & Marketing Editor*

MICHAEL HATCH  
*Managing Publications Editor*

### *Senior Staff Editors*

KRISTEN BENTZ  
SAMUEL CRAIG  
SKYLAR DEMARTINIS

JACOB HAULENBEEK  
JUSTIN HUDAK  
JONATHAN NENDZE

JULIA PICKETT  
MIRANDA STAFFORD

### *3L Staff Editors*

JACK ANDREAS  
MARY CASPER  
CHRISTINA CHO  
EDIANYS LIMA ENRIQUEZ

KYLE JACKSON  
KEE MIN  
SAUL MOLINA  
CHRISTIAN RODRIGUEZ

MILTON RODRIGUEZ  
KRISTIN SCHLOTTERBECK  
RYAN SHELTON-BENSON  
KIM TAYLOR

### *2L Staff Editors*

SALLY ABDULRAOUF  
NADIA AL KHUNAIZI  
LESLIE BURNETTE  
ALLIE CAPECCI  
ZACH CARR  
JENNA CENTOFANTI  
SILVIA FONG  
SAVANNAH HAYES  
JACOB HONESTY

KRISTINA INGERSOLL  
PAIGE KAERCHER  
MATT LAMORGESE  
MICHELLE MASON  
BYRON MITCHELL  
FAITH PAUL  
RANDY PETRONKO  
YASLIN REYES  
OLGA ROMADIN

EMMA ROTH  
CLAUDIA SANCHEZ  
SIMON SCHMITT-HALL  
MARISSA TERWILLIGER  
AARON USCINOWICZ  
PRIYA VAISHAMPAYAN  
SHAMNAZ ZAMAN

*Faculty Advisor*  
ALEC WALEN

## About the Rutgers Journal of Law & Public Policy

The *Rutgers Journal of Law and Public Policy* (ISSN 1934-3736) is published two times per year by students of the Rutgers School of Law – Camden, located at 217 North Fifth Street, Camden, NJ 08102.

The views expressed in the *Rutgers Journal of Law & Public Policy* are those of the authors and not necessarily of the *Rutgers Journal of Law & Public Policy* or the Rutgers School of Law – Camden.

**Form:** Citations conform to *The Bluebook: A Uniform System of Citation* (21st ed. 2021).

Please cite the Rutgers Journal of Law & Public Policy as 20 RUTGERS J.L. & PUB. POLY \_\_ (2024).

**Copyright:** All articles copyright © 2024 by *the Rutgers Journal of Law & Public Policy*, except where otherwise expressly indicated. For all articles to which it holds copyright, the *Rutgers Journal of Law & Public Policy* permits copies to be made for classroom use, provided that (1) the author and the *Rutgers Journal of Law & Public Policy* are identified, (2) the proper notice of copyright is affixed to each copy, (3) each copy is distributed at or below cost, and (4) the *Rutgers Journal of Law & Public Policy* is notified of the use.

For reprint permission for purposes other than classroom use, please submit request as specified at <http://www.rutgerspolicyjournal.org/>.

**Manuscripts:** The *Rutgers Journal of Law & Public Policy* seeks to publish articles making original contributions in the field of public policy. The Journal accepts both articles and compelling essays for publication that are related to the expansive topic of public policy. Manuscripts must contain an abstract describing the article or essay which will be edited and used for publication on the website and in CD-ROM format. The Journal welcomes submissions from legal scholars, academics, policy makers, practitioners, lawyers, judges and social scientists.

Electronic submissions are encouraged. Submissions by email and attachment should be directed to [submissions.rjlpp@gmail.com](mailto:submissions.rjlpp@gmail.com).

Paper or disk submissions should be directed to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North Fifth Street, Camden, New Jersey 08102.

**Subscriptions:** Subscription requests should be mailed to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North Fifth Street, Camden, New Jersey 08102, or emailed to [info@rutgerspolicyjournal.org](mailto:info@rutgerspolicyjournal.org).

**Internet Address:** The *Rutgers Journal of Law & Public Policy* website is located at <http://www.rutgerspolicyjournal.org>.

**RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY**  
**RUTGERS LAW SCHOOL**

OFFICERS OF THE UNIVERSITY

JONATHAN HOLLOWAY, A.B., M.A., M.Phil., Ph.D., *President of the University*  
NANCY CANTOR, A.B., Ph.D., *Chancellor of Rutgers University—Newark and Distinguished Professor*  
ANTONIO D. TILLIS, B.A., M.A., Ph.D., *Chancellor of Rutgers University—Camden and Professor of Law*  
DANIEL HART, B.A., Ed.D., *Provost of Rutgers University—Camden and Professor and Executive Vice Chancellor*  
ASHWANI MONGA, B.TECH., M.B.A., Ph.D., *Provost of Rutgers University—Newark and Executive Vice Chancellor*

---

JOHANNA BOND, B.A., J.D., *Dean and Professor of Law*  
SHANI KING, B.A., J.D., *Vice Dean and Professor of Law*  
ARTHUR LABY, B.A., J.D., *Vice Dean and Professor of Law*  
VICTORIA CHASE, B.A., J.D., *Associate Dean for Academic Affairs, Associate Clinical Professor of Law*  
RONALD CHEN, B.A., J.D., *Associate Dean for Academic Affairs, Associate Professor*  
NANCY TALLEY, B.A., M.S., J.D., *Senior Associate Dean for Information Services*  
CAROLINE YOUNG, B.A., J.D., *Senior Associate Dean for Information Services*  
JON C. DUBIN, A.B., J.D., *Associate Dean for Clinical Education and Board of Gov. Dist. Public Service Professor of Law*  
WEI FANG, B.S., M.L.I.S., M.S.C.S., *Associate Dean for Information Technology and Head of Digital Services*  
JILL FRIEDMAN, B.A., J.D., *Associate Dean of Pro Bono & Public Interest and Professor of Law*  
ELLEN P. GOODMAN, A.B., J.D., *Associate Dean of Strategic Initiatives & Special Projects and Professor of Law*  
VANESSA WILLIAMS, B.A., Ph.D., *Assistant Dean of New Programs*  
SUZANNE KIM, B.A., J.D., *Associate Dean of Academic Research Centers and Professor of Law*  
DAVID NOLL, B.A., J.D., *Associate Dean for Faculty Research and Development and Professor of Law*  
SARAH K. REGINA, B.A., J.D., *Associate Dean for Student Affairs*  
ANDREW ROSSNER, B.A., M.A., J.D., *Associate Dean for Professional & Skills Education and Distinguished Professor of Law*  
ROBERT STEINBAUM, B.A., J.D., *Associate Dean for Advancement*  
AMY MILLER, B.A., J.D. Ed.D., M.S.Ed., *Associate Dean of Students Affairs*  
SARAH K. REGINA, B.A., J.D., *Associate Dean of Students Affairs*  
ELIZABETH ACEVEDO, B.S., J.D., *Assistant Dean for Career Development*  
CLIFFORD DAWKINS, B.A., J.D., *Assistant Dean, Minority Student Program*  
RHASHEDA DOUGLAS, B.A., J.D., *Assistant Dean, Minority Student Program*  
SUSAN FEATHER, B.A., M.A., J.D., *Assistant Dean for Public Interest and Pro Bono*  
LINDA GARBACCIO, B.S., *Assistant Dean for Academic Services*  
MATTHEW SALEH, B.A., J.D., Ph.D., *Assistant Dean of Admissions*  
ROBIN L. TODD, B.A., *Assistant Dean for Development*  
REBEKAH VERONA, B.S., J.D., *Assistant Dean for Career Development*  
JEFFREY BALOG, *Director of Finance and Administration*  
JOANNE GOTTESMAN, B.A., J.D., *Director of Clinical Programs and Clinical Associate Professor*  
JOHN C. LORE, III, B.A., J.D., *Director of Trial Advocacy and Distinguished Clinical Professor of Law*  
Margaret McCarthy, *Director of Communications and Marketing*  
PAM MERTSOCK-WOLFE, B.A., M.A., *Director of Pro Bono and Public Interest*  
ELIZABETH MOORE, B.A., *Director of Communications*  
THOMAS RYAN, *Director of Information Technology*  
CAROL WALLINGER, B.S., J.D., *Director of Lawyering and Clinical Professor of Law*

## PROFESSORS OF LAW EMERITI

FRANK ASKIN, B.A., J.D.,  
*Distinguished Professor of Law Emeritus, Robert  
E. Knowlton Scholar, and Director of the  
Constitutional Rights Clinic*  
PAUL AXEL-LUTE, B.A., M.L.S.,  
*Deputy Director of the Law Library Emeritus*  
CYNTHIA A. BLUM, B.A., J.D.,  
*Professor of Law Emerita*  
A HAYS BUTLER, B.A., J.D., M.S. (LIS),  
*Law Librarian Emeritus*  
NORMAN L. CANTOR, A.B., J.D.,  
*Professor of Law Emeritus*  
EDWARD E. CHASE, B.A., J.D.,  
*Professor of Law Emeritus*  
ROGER S. CLARK, B.A., LL.B., LL.M., J.S.D., LL.D.,  
*Board of Governors Professor and Distinguished  
Professor of Law Emeritus*  
RUSSELL M. COOMBS, B.A., J.D.,  
*Professor of Law Emeritus*  
LUCY COX, B.A., M.S., Ph.D., M.L.S., *International  
& Foreign Law Librarian Emerita*  
ANNE V. DALESANDRO, A.B., M.L.S., J.D.,  
*Law Library Director Emerita and Professor of  
Law Emerita*  
JOHN H. DAVIES, B.S., LL.B., LL.M.,  
*Professor of Law Emeritus*  
STUART L. DEUTSCH, B.A., J.D., LL.M., *University  
Professor and Willard Heckel Scholar*  
JACK FEINSTEIN, B.A., J.D.,  
*Clinical Professor of Law Emeritus*  
GEORGE GINSBURGS, B.A., M.A., Ph.D.,  
*Distinguished Professor of Law Emeritus*

ARNO LIIVAK, B.A., M.L.S., J.D.,  
*Professor of Law Emeritus*  
JONATHAN MALLAMUD, A.B., J.D.,  
*Professor of Law Emeritus*  
CRAIG N. OREN, A.B., J.D.,  
*Professor of Law Emeritus*  
JAMES GRAY POPE, A.B., J.D., Ph.D.,  
*Distinguished Professor of Law and Sidney  
Reitman Scholar*  
PATRICK J. RYAN, B.A., M.A., J.D., LL.M., J.S.D.,  
*Associate Professor of Law Emeritus*  
CAROL ROEHRENBECK, B.A., M.L.S., J.D.,  
*Professor of Law and Director of the Law  
Library Emerita*  
RAND E. ROSENBLATT, B.A., M.Sc., J.D.,  
*Professor of Law Emeritus*  
DIANA SCLAR, B.A., J.D.,  
*Professor of Law*  
PETER SIMMONS, A.B., LL.B.,  
*University Professor Emeritus and John M.  
Payne Scholar*  
RICHARD G. SINGER, B.A., J.D., LL.M., J.S.D.,  
*Distinguished Professor of Law Emeritus*  
E. HUNTER TAYLOR, B.A., LL.B., LL.M.,  
*Professor of Law Emeritus*  
PAUL L. TRACTENBERG, B.A., J.D.  
*Board of Governors Distinguished Service  
Professor and Professor of Law*  
ROBERT M. WASHBURN, A.B., J.D., LL.M.,  
*Professor of Law Emeritus*  
ROBERT F. WILLIAMS, B.A., J.D., LL.M.,  
*Distinguished Professor of Law Emeritus*

## FACULTY OF LAW

AARON ARI AFILALO, A.B., J.D., LL.M.,  
*Professor of Law*  
CHARLES AUFFANT, B.A., J.D.,  
*Clinical Professor of Law*  
SAHAR AZIZ, B.SC., M.A., J.D.,  
*Professor of Law*  
CARLOS A. BALL, B.A., J.D., LL.M.,  
*Distinguished Professor of Law*  
BERNARD W. BELL, B.A., J.D.,  
*Professor of Law*  
VERA BERGELSON, J.D., Ph.D.,  
*Distinguished Professor of Law*  
AMY BITTERMAN, B.A., J.D.,  
*Assistant Clinical Professor of Law*  
ELISE BODDIE, B.A., M.P.P., J.D.,  
*Professor of Law*  
LINDA S. BOSNIAK, A.B., M.A., J.D., Ph.D.,  
*Distinguished Professor of Law*  
ESTHER CANTY-BARNES, B.A., J.D.,  
*Clinical Professor of Law*

MICHAEL A. CARRIER, B.A., J.D.,  
*Board of Governors Professor*  
VICTORIA CHASE, B.A., J.D.,  
*Associate Dean for Academic Affairs and  
Associate Clinical Professor of Law*  
RONALD K. CHEN, A.B., J.D.,  
*University Professor and Distinguished  
Professor of Law*  
TODD CLEAR, B.A., M.A., Ph.D.,  
*University Professor*  
LAURA COHEN, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
JEAN-MARC COICAUD, Doctorat D'Etat, Ph.D.,  
*Distinguished Professor of Law*  
JORGE CONTESSE, LL.B., LL.M.,  
*Associate Professor of Law*  
ROSE CUISON-VILLAZOR, B.A., J.D., LL.M.,  
*Professor of Law and Chancellor's Social  
Justice Scholar*

SARAH DADUSH, B.A., J.D., LL.M.,  
*Professor of Law*  
PERRY DANE, B.A., J.D.,  
*Professor of Law*  
KELLY DEERE, J.D.,  
*Assistant Clinical Professor of Law*  
DONNA I. DENNIS, B.A., M.A., J.D., Ph.D.,  
*Professor of Law*  
JON C. DUBIN, A.B., J.D.,  
*Associate Dean for Clinical Education and  
Board of Governors Distinguished Public Service  
Professor of Law*  
DOUGLAS S. EAKELEY, B.A., A.B. (Oxon.), M.A., J.D.,  
*Alan V. Lowenstein Professor of Corporate and  
Business Law and Distinguished Professor of  
Professional Practice*  
KATIE EYER, B.A., J.D.,  
*Professor of Law*  
JAY M. FEINMAN, B.A., J.D.,  
*Distinguished Professor of Law*  
GARY L. FRANCIONE, B.A., M.A., J.D.,  
*Board of Governors Professor and Distinguished  
Professor of Law*  
DAVID M. FRANKFORD, B.A., J.D.,  
*Professor of Law*  
ANN E. FREEDMAN, B.A., J.D.,  
*Associate Professor of Law*  
SANDY FREUND, B.A., J.D., LL.M.,  
*Clinical Professor of Law*  
STEVEN F. FRIEDEL, B.A., J.D.,  
*Professor of Law*  
MATTEO GATTI, J.D., LL.M., S.J.D.,  
*Professor of Law*  
RACHEL GODSIL, B.A., J.D.,  
*Distinguished Professor of Law*  
STEVE C. GOLD, A.B., J.D.,  
*Professor of Law*  
SALLY F. GOLDFARB, B.A., J.D.,  
*Professor of Law*  
CARLOS GONZÁLEZ, B.A., M.A., J.D.,  
*Professor of Law*  
ELLEN P. GOODMAN, A.B., J.D.,  
*Associate Dean of Strategic Initiatives and  
Special Projects, Professor of Law*  
JOANNE GOTTESMAN, B.A., J.D.,  
*Clinical Professor of Law*  
BARBARA GOTTHELF, B.A., J.D.,  
*Professor of Professional Practice of Law*  
STUART P. GREEN, B.A., J.D.,  
*Distinguished Professor of Law*  
ANJUM GUPTA, B.A., J.D.,  
*Professor of Law*  
YULIYA GUSEVA, LL.B., M.A., S.J.D., LL.M., *Professor  
of Law*  
PHOEBE HADDON, B.A., J.D., LL.M.,  
*Professor of Law*  
ADIL A. HAQUE, A.B., J.D.,  
*Professor of Law*

PHILIP L. HARVEY, B.A., J.D., Ph.D.,  
*Professor of Law*  
STACY HAWKINS, B.A., J.D.,  
*Vice Dean and Professor of Law*  
NORRINDA HAYAT, B.A., J.D.,  
*Associate Clinical Professor of Law and Director  
of the Civil Justice Clinic*  
TAJA-NIA Y. HENDERSON, A.B., M.A., J.D., Ph.D.,  
*Professor of Law*  
CHRISTINA S. HO, A.B., M.P.P., J.D.,  
*Professor of Law*  
BARBARA HOFFMAN, A.B., J.D.,  
*Clinical Associate Professor of Law*  
ROBERT HOLMES, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
ALAN S. HYDE, A.B., J.D.,  
*Distinguished Professor of Law*  
RICHARD HYLAND, A.B., M.F.A., J.D., D.E.A.,  
*Distinguished Professor of Law*  
PAM JENOFF, B.A., M.A., J.D.,  
*Clinical Professor of Law*  
JOHN JOERGENSEN, B.A., M.S., M.A.L.S., J.D.,  
*Professor of Law*  
THEA JOHNSON, A.B., J.D.,  
*Associate Professor of Law*  
MARGO KAPLAN, B.S., M.P.A., J.D.,  
*Professor of Law*  
ALEXIS KARTERON, B.A., J.D.,  
*Clinical Professor of Law*  
JOHN R. KETTLE, III, B.A., J.D.,  
*Clinical Professor of Law*  
SUZANNE A. KIM, B.A., J.D.,  
*Associate Dean of Academic Research Centers,  
Professor of Law*  
EMILY KLINE, B.A., J.D.,  
*Assistant Clinical Professor of Law*  
DONALD KOROBKIN, B.A., A.M., J.D.,  
*Professor of Law*  
KATHRYN E. KOVACS, B.A., J.D.,  
*Professor of Law*  
ARTHUR B. LABY, B.A., J.D.,  
*Vice Dean, Professor of Law*  
JOHN LEUBSDORF, B.A., M.A., J.D.,  
*Distinguished Professor of Law*  
MICHAEL A. LIVINGSTON, A.B., J.D.,  
*Professor of Law*  
DAVID LOPEZ, B.A., J.D.,  
*Professor of Law, Prof. Alfred Slocum Scholar*  
JOHN C. LORE, III, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
EARL M. MALTZ, B.A., J.D.,  
*Distinguished Professor of Law*  
RANDI MANDELBAUM, B.S., J.D., LL.M.,  
*Distinguished Clinical Professor of Law*  
KIMBERLY MUTCHERSON, B.A., J.D.,  
*Professor of Law*  
ALISON M. NISSEN, B.A., J.D.,  
*Clinical Associate Professor of Law*

DAVID L. NOLL, B.A., J.D.,  
*Associate Dean for Faculty Research and  
 Development, Professor of Law*  
 JOHN F. K. OBERDIEK, B.A., M.A., J.D., Ph.D.,  
*Distinguished Professor of Law*  
 CHRYSTIN ONDERSMA, B.A., J.D.,  
*Professor of Law*  
 BRANDON PARADISE, B.A., J.D.,  
*Associate Professor of Law*  
 DENNIS M. PATTERSON, B.A., M.A., J.D., Ph.D.,  
*Board of Governors Professor and Distinguished  
 Professor of Law*  
 TWILLA PERRY, B.A., M.S.W., J.D.,  
*Professor of Law*  
 LOUIS S. RAVESON, B.A., J.D.,  
*Professor of Law*  
 HARRY M. RHEA, B.A., M.S., M.A., Ph.D.,  
*Associate Professor of Criminal Justice and Law*  
 SARAH RICKS, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
 RUTH ANNE ROBBINS, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
 ANDREW ROSSNER, B.A., M.A., J.D.,  
*Associate Dean for Professional & Skills  
 Education and Distinguished Professor of Law*  
 ANDREW J. ROTHMAN, B.A., M.F.A., J.D.,  
*Professor of Professional Practice and  
 Managing Attorney of Rutgers Law Associates*  
 JACOB HALE RUSSELL, B.A., M.A., J.D.,  
*Associate Professor of Law*  
 SABRINA SAFRIN, B.A., J.D.,  
*Professor of Law*  
 ADAM SCALES, B.A., J.D.,  
*Professor of Law*  
 MEREDITH SCHALICK, B.A., M.S., J.D.,  
*Clinical Professor of Law*  
 FADI SHAHEEN, LL.B., LL.M., S.J.D.,  
*Professor of Law*

MATTHEW SHAPIRO, A.B., D.PHIL., J.D.,  
*Associate Professor of Law*  
 SANDRA SIMKINS, B.A., J.D.,  
*Distinguished Clinical Professor of Law*  
 AMY SOLED, B.A., J.D.,  
*Clinical Associate Professor of Law*  
 RAYMAN SOLOMON, B.A., M.A., J.D., Ph.D.,  
*University Professor*  
 ALLAN R. STEIN, B.A., J.D.,  
*Professor of Law*  
 BETH STEPHENS, B.A., J.D.,  
*Distinguished Professor of Law*  
 RICK SWEDLOFF, B.A., J.D.,  
*Professor of Law*  
 GEORGE C. THOMAS III, B.S., M.F.A., J.D., LL.M.,  
 S.J.D., *Board of Governors Professor and  
 Distinguished Professor of Law*  
 DAVID DANTE TROUTT, A.B., J.D.,  
*Distinguished Professor of Law*  
 JENNIFER ROSEN VALVERDE, B.A., M.S.W., J.D.,  
*Distinguished Clinical Professor of Law*  
 PENNY VENETIS, B.A., M.A., J.D.,  
*Distinguished Clinical Professor of Law*  
 JACOB VICTOR, A.B., J.D.,  
*Assistant Professor of Law*  
 ALEC WALLEN, B.A. J.D., Ph.D.,  
*Professor of Law*  
 CAROL WALLINGER, B.S., J.D.,  
*Clinical Professor of Law*  
 MARK S. WEINER, A.B., J.D., Ph.D.,  
*Professor of Law*  
 REID K. WEISBORD, B.S., J.D.,  
*Professor of Law*  
 AMY WIDMAN, B.A., J.D.,  
*Clinical Associate Professor of Law*  
 ADNAN ZULFIQAR, B.A., M.A., M.L.S., J.D., *Associate  
 Professor of Law*

## LAW LIBRARY FACULTY

MARJORE E. CRAWFORD, B.A., M.L.I.S.  
 WEI FANG, B.S., M.L.I.S., M.S.C.S.  
 DENNIS KIM-PRIETO,  
 B.A., M.S.L.I.S., M.F.A., J.D.  
 REBECCA KUNKEL, B.A., J.D., M.L.I.S.  
 JOOTAEK LEE, M.A., J.D., M.L.S.  
 HEATHER MITCHELL, B.A., M.A., M.L.I.S.

CHARLOTTE D. SCHNEIDER, B.B.A., J.D.,  
 M.B.A., M.S.L.I.S.  
 JUDITH SIMMS, B.A., J.D.  
 NANCY B. TALLEY, B.A., J.D., M.S.  
 CAROLINE YOUNG, B.A., M.S.L.I.S., J.D.  
 JINGWEI ZHANG, LL.B, LL.M

## ADJUNCT FACULTY

BRUCE AFRAN  
 ABED AWAD  
 MEGAN BANNIGAN  
 RICHARD BARKASY  
 CHRISTINE V. BATOR

MAUREEN BEHM  
 BRIAN BERKLEY  
 JONATHAN D. BICK  
 PABLO N. BLANCO  
 JAY BLUMBERG

PAUL BOND  
 ANDREW BONDAROWICZ  
 HAL BRAFF  
 SUSAN BRICKLIN  
 SHELDON BROSS

JOHN M. CANNEL  
CAROLYN CAMPANELLA  
ROBERT D. CHESLER  
HON. JAMES B. CLARK III  
ROGER W. CLARK  
ARNOLD S. COHEN  
ROBERT COOPER  
MARC DAVIES  
MEGAN DAVIES  
DEREK DECOSMO  
RAQUEL DESTEPHANO  
MICHAEL R. DICHARA  
HON. ANN DONIO  
LINDA EFFENBEIN  
BRENDA EUTSLER  
BARRY EVENCHICK  
HON. MARK FALK  
VERONICA FINKELSTEIN  
BRIAN FOLEY  
HON. TRAVIS L. FRANCIS  
DAVID FRIZELL  
ANGIE GAMBONE  
KEVIN GARDNER  
DANIEL GARRIE  
J. PATRICK GERAGHTY  
ROBERT S. GOLDSMITH  
BRUCE I. GOLDSTEIN  
FAITH GREENFIELD  
DEBRA E. GUSTON  
JANET HALLAHAN  
RYAN A. HANCOCK  
HON. DOROTHY HARBECK  
HON. NOEL HILLMAN  
HERB HINKLE  
RAQUIBA HUQ  
NANCY IANNONE  
CYNTHIA JACOB  
MARC JOAQUIN  
JOHN KEARNEY  
ALEX KEMENY  
GEORGE KENNY  
BARRY KITAIN  
TRAVIS LASTER  
RONALD J. LEVINE  
MICHAEL MACKO  
ROBERT J. MACPHERSON  
ANN MALLGRAVE  
IRA B. MARCUS  
ROBERT E. MARGULIES  
BRUCE MATEZ  
JOHN MCMAHON

WILLIAM MCNICHOL  
ANGELLA MIDDLETON  
SHERYL MINTZ GOSKI  
T. GARY MITCHELL  
LOUIS MOFFA  
ERIC MORAN  
ALISON MORRIS  
HON. EDWARD M. NEAFSEY  
BRIAN NEARY  
PHILIP NEUER  
MITCHEL M. NOVITZKY  
LAWRENCE ORLOFF  
GWEN ORLOWSKI  
MICHAEL PARKER  
CYMIE PAYNE  
TARA PELLICORI  
CAROLINE PETRILLA  
TODD POLAND  
ROBERT S. POPESCU J  
ONATHAN I. RABINOWITZ  
HON. DAVID RAGONESE  
HON. EDUARDO ROBRENO  
BRUCE ROSEN  
HERB SABLOVE  
HON. JOEL SCHNEIDER  
MATTHEW SCHORR  
WILLIAM SCHROEDER  
ALEXANDER SHALOM  
GERALD SHANKER  
LINDA SHASHOUA  
VICTORIA SHILTON  
HON. PATTY SHWARTZ  
BILL SLOVER  
HEATHER STAPLETON  
HON. GARY STEIN  
HEIDI A. TALLENTIRE  
DENNIS TALTY  
JANESA URBANO  
MARCUS WASHINGTON  
RICHARD WEST  
TIM WEST  
NEIL WISE  
ELSPETH ABEL  
ELIZABETH ACEVADO  
ANGELICA AGUIRRE  
LISA ALSTON  
REBECCA BAEHR  
JEFFREY BALOG  
JOANN BREA  
PATRICIA BROWN  
LORETTA BURR

ANGELA CAMPIONE  
VIRGINIA CAPUTO  
MAYRA CARABALLO  
DEBORAH CARR  
BERNADETTE CARTER  
ROSELENE CORREIA  
GINA DAVILA  
CLIFFORD DAWKINS  
FRANNIE DESIMONE  
TIMOTHY DIVITO  
CHRISTINE DOUGHERTY  
RHASHEDA DOUGLAS  
GRACE DUFFIN  
SUSAN FEATHERS  
ANDREW FINN  
JILL FRIEDMAN  
SONDRA FURCAJG  
LINDA GARBACCIO  
ROBERTA GEDDIS  
TAI GEDEON  
ELAINE GIORDANO  
ARBANA GJOCA  
KATRINA HALL  
JASON HERNANDEZ  
DENISE HIGGINS  
DAVID HORAN  
CASSANDRA HUNTER  
YVENA HYPOLITE  
WANDA JAMES  
HABIBAH JOHNSON  
DENISE JOHNSON-STEINERT  
MELISSA JORDAN  
DEBORAH LEAK  
ARLENE LENTINI  
CASSANDRA LESTER-KEY  
MARGARET MCCARTHY  
PAM MERTSOCK-WOLFE  
ELIZABETH MOORE  
JOSEPHINE NAGLE  
NATHANIEL NAKAO  
EDGAR OTIENO  
LENORE PEARSON  
MARIE PEEKE  
MILDRED PEREZ  
CHRISTOPHER PHILLIPS  
SARAH K. REGINA  
NANCY RUBERT  
THOMAS RYAN  
DANIEL SANDERS

## STAFF AND ADMINISTRATION

CAROL SHANER  
CHRISTOPHER SLATER  
STAN SNIECIKOWSKI  
DONNA TAGLIAFERRO  
MARTHA TAYLOR  
WENDI L. TAYLOR

AMY TIMKO  
ROBIN TODD  
GWEN TOLBERT  
CHERYL TURK  
MARVIN VELASCO  
REBECCA VERONA

ELIZABETH YEAGER  
ANITA WALTON  
CLAIRE WHITE  
NEIL WISE



**RUTGERS**  
**JOURNAL OF LAW & PUBLIC POLICY**

---

VOLUME 21

SPRING 2024

ISSUE 2

---

CURRENT ISSUES  
IN PUBLIC POLICY



## **THE MYTH, SPECTER, AND BIAS THAT STILL DRIVE THE COMPENSABILITY OF WORK-RELATED PSYCHOLOGICAL INJURY CLAIMS**

*The Honorable Dr. Melissa Lin Jones\**

---

\* Judge Jones is admitted to practice law in New York, the District of Columbia, Maryland, and Virginia. She is not engaged in the practice of law, and the contents of this article are not intended to provide legal advice. Views expressed in this article represent commentary concerning the law, the legal system, and the administration of justice. These views should not be mistaken for the official views of the United States Government, the United States Department of Labor, the Benefits Review Board, nor for Judge Jones' opinion in the context of any specific case. The views expressed in this article do not necessarily represent the policies of the United States Government, the United States Department of Labor, or the Benefits Review Board, and no official endorsement by the United States Government, the United States Department of Labor, or the Benefits Review Board is intended or should be inferred.

Law students studying torts for the bar exam see negligence in supermarket puddles. Probate attorneys see potential business in the obituaries. Workers' compensation professionals see claims for benefits in the news – a customer disgruntled by cold french fries leaps over a counter and assaults a cashier, a recently-fired employee returns to the office and assassinates a supervisor, a gas leak at a factory causes a conflagration that injures a host of assembly line workers. The media did not report these stories as workers' compensation cases, but workers' compensation professionals see it.

Actually, it is even worse than that. My son drove home that point to me at a tender age; he was watching the Veggie Tale peas work in the Nezzer Chocolate Factory under Mr. Lunt's supervision. One surprisingly unsquished pea with an anvil on his head hopped to Mr. Lunt to report, "Excuse me, Mr. Lunt, but I've got an injury!" Mr. Lunt responded, "Now get back on the line[.] You'll be just fine! With all this work to do we've got no time for sympathy!"<sup>1</sup> It was at that point that my boy looked at me and said, "That's a comp claim!" Because of my perpetual recognition of workers' compensation claims, I had ruined him, probably for life.

It does not stop with 20<sup>th</sup> century cartoons. It stretches back almost 2,500 years to Sophocles' *Philoctetes*.

Philoctetes was forced to live in a cave on the uninhabited island of Lemnos because while working as a soldier at the outset of the Trojan war, he walked upon sacred land and a snake guarding the sanctuary bit him. The venom putrefied his foot, and the rancid wound caused Philoctetes to release cries of acute pain which not only prevented his fellow warriors from offering libations to the gods but also deprived Philoctetes of his connection to his community.<sup>2</sup> Philoctetes' wound will not heal, and his suffering defines every aspect of his life – his loss of employment in the military, his exile on Lemnos, his personal obligation to return to Troy where he will be cured and reintegrated into society, his relationship to Ulysses as his nemesis, his relationship to Neoptolemus as his compassionate caregiver.

To the un-workers'-compensation-trained eye, this story is a typical Greek tragedy built upon a foundation of justice and morality with Philoctetes' punishment (his wound) justified by his defiling of sacred land. On the other hand, to the workers' compensation professional, Philoctetes is a claimant with a psychological injury. His incurable ailment is referred to as a "weight of

---

<sup>1</sup> Veggie Tales, *The Chocolate Factory Lyrics*, ALL THE LYRICS, [https://www.allthelyrics.com/lyrics/veggie\\_tales/the\\_chocolate\\_factory-lyrics-212425.html](https://www.allthelyrics.com/lyrics/veggie_tales/the_chocolate_factory-lyrics-212425.html) (last visited May 20, 2024).

<sup>2</sup> Ten years later, Ulysses returned to Lemnos to retrieve Philoctetes because the prophet Helenus had pronounced that without Philoctetes, his bow, and his arrows, Greece could not defeat Troy in battle.

woe,"<sup>3</sup> "a storm of griefs,"<sup>4</sup> and "a madman's frenzy."<sup>5</sup> At times the torment is so great that Philoctetes begs for death:

Philoctetes O my friends!  
Grant me this last request.

Chorus What is it? Speak.  
Philoctetes A sword, a dart, some instrument of death.  
Chorus What wouldst thou do?  
Philoctetes I'd hack off every limb.  
Death, my soul longs for death.<sup>[6]</sup>

Whether or not his post-traumatic wound actually remains unhealed after ten years, Philoctetes' perceived pain and anguish mimic a psychological injury.

The response to this injury renders Philoctetes an outcast from his community. A similar response resulted in the injustice of the *Dailey* test which was used to determine the compensability of a psychological injury in workers' compensation cases in the District of Columbia.

## I. THE *DAILEY* TEST

In 1983, Ms. Dorothy Dailey, a secretary in the Indianapolis office of 3M Company, had to choose between relocating to 3M Company's Washington, D.C. offices and separating from her employment. After working in the D.C. offices for approximately two years, she began to suffer from depression, again,<sup>7</sup> so she returned to Indiana and filed a claim for workers' compensation benefits.

At a formal hearing, Ms. Dailey argued that her disabling depression was work-related; 3M Company asserted Ms. Dailey's condition did not constitute an accidental injury arising out of her employment. On November

---

<sup>3</sup> Sophocles, *Philoctetes*, <http://classics.mit.edu//Sophocles/philoct.html> (last visited May 20, 2024).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; see also *id.*:

O my son! I can no longer  
Conceal it from thee. Oh! I die, I perish;  
By the great gods let me implore thee, now  
This moment, if thou hast a sword. oh! strike,  
Cut off this painful limb, and end my being!

<sup>7</sup> Ms. Dailey was predisposed to a depressive condition and "had an obsessive-compulsive character pattern" that existed prior to her workers' compensation claim. *Dailey v. 3M Co.*, H&AS No. 85-259, OWC No. 0066512 (May 19, 1988) [hereinafter *Dailey*], *abrogated by* *Ramey v. D.C. Dep't of Emp. Servs.*, 997 A.2d 694 (D.C. 2010) [hereinafter *Ramey II*].

25, 1985, an administrative law judge<sup>8</sup> denied Ms. Dailey's claim for relief because she had failed to prove her psychological injury arose out of her employment.<sup>9</sup>

On appeal to the Director of the District of Columbia Department of Employment Services,<sup>10</sup> Ms. Dailey argued the administrative law judge had erred in denying her benefits because (1) "her predisposition to a depressive condition should not bar her eligibility for benefits when work-related events aggravated her pre-existing condition" and (2) 3M Company had not rebutted the statutory presumption of compensability found at §32-1521 of the Act.<sup>11</sup>

Her arguments did not persuade the Director; she affirmed the denial of temporary total disability benefits:

In order for a claimant to establish that an emotional injury arises out of the mental stress or mental stimulus of employment, the claimant must show that actual conditions of employment, as determined by an objective standard and not merely the claimant's subjective perception of his working conditions, were the cause of his emotional injury. [Footnote omitted.] The objective standard is satisfied where the claimant shows that the actual working conditions could have caused similar emotional injury in a person who was not significantly predisposed to such injury.<sup>12</sup>

For decades thereafter, satisfying the third-person *Dailey* test became a requirement for invoking the presumption of compensability,<sup>13</sup> and consequently for awarding benefits.

Similarly, Philoctetes' entire existence is framed by reference to third parties. He is stranded on Lemnos because Ulysses leaves him there; he

---

<sup>8</sup> In this article, any adjudicator presiding over a workers' compensation hearing in the District of Columbia is referred to as an administrative law judge.

<sup>9</sup> *Dailey*, H&AS No. 85-259.

<sup>10</sup> Until December 2004, the Director of the District of Columbia Department of Employment Services ruled on appeals of Compensation Orders. Thereafter, § 32-1521.01 of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §§ 32-1501 – 1545, [hereinafter Act], delegated administrative appellate review of those orders to the Compensation Order Review Board.

<sup>11</sup> *Dailey*, H&AS No. 85-259.

<sup>12</sup> *Id.*

<sup>13</sup> Section § 32-1521 of the Act states:

In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary:

(1) That the claim comes within the provisions of this chapter[.]

initially desires to return to Greece because Neoptolemus deceives him; he finally leaves for Greece because Heracles promises him a cure. Nonetheless, his anguish is no less real because neither Ulysses nor Neoptolemus nor Heracles suffers anguish.

What justice is there in a workers' compensation test that prevents victims from recovering benefits (the very bow that allows them to acquire sustenance) unless a "normal" third person would have suffered an injury under similar circumstances?<sup>14</sup> Part of the problem centers on the witch hunt for suitable proof of a work-related, psychological injury.

## II. THE PROOF

There can be good reason to doubt evidence that only the victim can see. In Arthur Miller's *The Crucible*, hysteria manifests itself through spectral evidence;<sup>15</sup> "folks are brought before them, and if they scream and howl and fall to the floor – the person's clapped in the jail for bewitchin' them."<sup>16</sup> Nothing short of invisible invention qualified as proof of witchcraft:

- Betty Parris' sudden screams and erratic behavior in response to her hearing the Lord's name are prodigious signs that witchcraft is afoot.<sup>17</sup>
- The link between Martha Corey's reading and Mr. Walcott's inability to keep a pig alive for more than four weeks (four or five years ago) suffices to charge her.<sup>18</sup>

---

<sup>14</sup> A comparable requirement for a physical injury would be unspeakable even in the case of an aggravation of a pre-existing injury.

<sup>15</sup> "Spectral evidence was testimony of a crime committed by the ghost of a person who is not physically present." EVE LAPLANTE, SALEM WITCH JUDGE 153 (HarperOne 2007). Spectral evidence "had no basis in biblical or English common law." *Id.*

<sup>16</sup> ARTHUR MILLER, *THE CRUCIBLE* 50 (Penguin Books 2003). Although Mr. Miller took some liberties with the facts, the reliance on spectral evidence in the actual Salem witchcraft trials is well documented:

The testimony of Abigail Williams Witnesseth & saith that divers times in the monthe of March last past particularly 14.20.21. & 23 dayes of that month, & also in the month of April last past at several times, particularly on the. 12. 13. & 14 dayes of that month she the said Abigail was much disquieted by the apparition of Martha Kory, by which apparition she was sometimes haled to & fro. & somtimes pinched, & somtimes tempted to put her hand to the Devils book, & that she hath several times seen her at the Devils sacrament[.]

Transcript of Record at 38.8, *Abigail Williams v. Martha Corey* (1692) (available at <https://saalem.lib.virginia.edu/n38.html#n38.8>) [hereinafter *The Tryal of Giles & Martha Corey*].

<sup>17</sup> MILLER, *supra* note 16, at 23, 35.

<sup>18</sup> *Id.* at 68. Edward Putnam and Ezekiel Cheever witnessed the real Martha Corey's witchcraft based upon the following:

- Tituba is jailed because she sent her spirit on Abigail Williams in church to make her laugh at prayer and because she came to Abigail in her sleep to make her dream corruptions.<sup>19</sup>
- Rebecca Nurse supernaturally murdered Ann Putnam's babies.<sup>20</sup>
- Sarah Good sent her spirit out to nearly choke the victims (including Mary Warren) to death in open court.<sup>21</sup>

Of course, this was only the first time Mary Warren articulated Sarah Good's attempts on her life; it was not the first time Sarah Good had tried to kill Mary Warren:

I never knew it before. I never knew anything before. When she come into the court I say to myself, I must not accuse this woman, for she sleep in ditches, and so very old and poor. But then – then she sit there, denying and denying, and I feel a misty coldness climbin' up my back, and the skin on my skull begin to creep, and I feel a clamp around my neck and I cannot breathe air; and then. . . I hear a voice, a screamin' voice, and it were my voice – and all at once I remember everything she done to me! . . . So many time, Mr. Proctor, she come to this very door, beggin' bread and a cup of cider – and mark this: whenever I turned her away empty, she mumbled.<sup>22</sup>

Certainly mumbling in and of itself is not sufficient to prove a capital crime, but after Sarah Good mumbled and walked away, Mary Warren "thought [her] guts would burst for two days after."<sup>23</sup>

Poignantly, John Proctor cries out, "But the proof, the proof!"<sup>24</sup> It is not a question but an exclamation of the very absence of actual evidence of anything verifiable. The reliance on unseen evidence eventually raised

---

[S]hee made a most clear discovery witchcraft for biting her lip it was observed that the afflicted children persons were bit when that was discovered then we observed that shee would pinch them by niping her fingers together and when that was discovered and her hands held then shee afflict them by working with her foot and when that was discovered then shee pressed upon the seate with her breast and mistress Pope was greatly afflicted by great pressure upon her stomach[.]

The Tryal of Giles & Martha Corey, *supra* note 16, at 26-27.

<sup>19</sup> MILLER, *supra* note 16, at 41.

<sup>20</sup> *Id.* at 67.

<sup>21</sup> *Id.* at 54.

<sup>22</sup> *Id.* at 54-55.

<sup>23</sup> *Id.* at 55.

<sup>24</sup> *Id.*

legitimate concerns,<sup>25</sup> and “[w]ithout the admission of spectral evidence, the cases of all but three of the thirty-one accused in January [1693] ended in acquittal.”<sup>26</sup>

When trying to find a balance between legitimate claims and fabricated claims, the question is, “How do you overcome bias and prove a work-related psychological injury?”

In 2008, the District of Columbia Court of Appeals changed the standard for proving work-related physical-mental injuries.<sup>27</sup> It replaced the objective *Dailey* test with the subjective *McCamey* test.<sup>28</sup>

Ms. Charlene McCamey had been diagnosed with a psychological condition years before she was injured on the job. Then, on September 29, 2000, she sustained physical injuries when she fell while working for the District of Columbia Department of Public Schools.<sup>29</sup> As a result of the fall, Ms. McCamey also experienced frequent, extensive, and excruciating headaches, “depression, panic attacks, confusion, auditory hallucinations, and memory loss”<sup>30</sup> that exacerbated her pre-existing, psychological disorder. She filed a claim for workers’ compensation benefits.

An administrative law judge applied the *Dailey* test and denied Ms. McCamey’s claim.<sup>31</sup> On appeal, the Director affirmed the administrative law

---

<sup>25</sup> Cotton Mather, a prominent Puritan minister, did not suggest excluding spectral evidence but did express concern about the value of uncorroborated spectral evidence:

I must humbly beg you that in the management of the affair in your most worthy hands, [Judge John Richards,] you do not lay more stress upon pure specter testimony than it will bear.

COTTON MATHER, *SELECTED LETTERS OF COTTON MATHER* 36 (Kenneth Silverman, ed., 1<sup>st</sup> ed. 1971). Still, his reasons were less than informed; he believed in witches, and as such, he believed in the Devil’s power to take on the shape of the innocent and the virtuous.

<sup>26</sup> PETER CHARLES HOFFER, *THE SALEM WITCHCRAFT TRIALS* 135 (1997).

<sup>27</sup> A physical-mental injury is a psychological injury caused by a work-related, physical injury as when a back injury leads to depression. A mental-mental injury is a psychological injury caused by a work-related event or stressor as when job pressures cause anxiety.

<sup>28</sup> *McCamey v. D.C. Dep’t of Emp. Serv.*, 947 A.2d 1191 (D.C. 2008) (“*McCamey II*”).

<sup>29</sup> The District of Columbia has three workers’ compensation acts: The Act governs workers’ compensation claims filed by private sector employees; the District of Columbia Comprehensive Merit Personnel Act of 1979, D.C. Code § 1-623.01 *et seq.*, as amended, governs workers’ compensation claims filed by public sector employees; the District of Columbia Police and Firefighters Retirement and Disability Act of 1916, D.C. Code § 5-701 *et seq.*, as amended, governs claims filed by police officers and firefighters. Although Ms. McCamey was a public sector employee, the *McCamey* test applies to both public sector workers’ compensation claims and private sector workers’ compensation claims. *McCamey*, *supra* note 28.

<sup>30</sup> *McCamey v. D.C. Dep’t of Employment Servs.*, 886 A.2d 543, 544 (D.C. 2005) [hereinafter *McCamey I*], *vacated*, *McCamey v. D.C. Dep’t of Employment Servs.*, 896 A.2d 191 (D.C. 2006).

<sup>31</sup> *McCamey v. D.C. Pub. Sch.*, OHA No. PBL 02-031, DCP No. LT2-DDT002160 (April 22, 2003).



judge's decision.<sup>32</sup> Then, on judicial review, the Court of Appeals rejected Ms. McCamey's argument that the *Dailey* test does not apply if a physical injury aggravates a claimant's pre-existing psychological condition:

Ms. McCamey's position, though ably and conscientiously presented, founders upon our precedents, and it cannot prevail unless those precedents are overruled by the court sitting en banc.<sup>33</sup>

On March 15, 2006, the Court of Appeals granted Ms. McCamey's petition for *en banc* review.<sup>34</sup> It vacated *McCamey I*,<sup>35</sup> and pursuant to *McCamey II*, in private sector cases where the presumption of compensability applies, in order to invoke that presumption, the claimant now must prove "the physical accident had the potential of *resulting in or contributing to* the psychological injury."<sup>36</sup> In private sector cases where the presumption of compensability has been rebutted and in public sector cases where there is no presumption of compensability, the claimant must prove "the physical accident caused or contributed to the psychological injury."<sup>37</sup> The Court of Appeals finally abolished the *Dailey* test.

### III. THE MENTAL-MENTAL TEST – THE *RAMEY* TEST

In *McCamey II*, the District of Columbia Court of Appeals avoided addressing the burden of proof that would apply to work-related mental-mental claims, but it did not take long for that issue to arise. Less than a month after *McCamey II* issued, the Court of Appeals remanded a private-sector, post-traumatic stress disorder case for reconsideration.

On August 29, 2003, Mr. Benjamin Ramey's supervisor accused him of being intoxicated on the job. Mr. Ramey's employer detained him. His requests to use the restroom, to smoke, to eat, and to drink were denied.

Almost twelve hours after he had reported to work, Mr. Ramey performed two successive breathalyzer tests. The first reading was 0.070; the second reading was 0.065. He was sent home.

Mr. Ramey was suspended on September 1, 2003. From September 2, 2003 until September 9, 2003, he worked full duty. On September 10, 2003, Mr. Ramey was placed on decision-making leave which mandated

---

<sup>32</sup> *McCamey v. D.C. Pub. Sch.*, Dir. Dkt. No. 10-03, OHA No. PBL 02-031, OBA No. LT2-DDT002160 (Feb. 10, 2004).

<sup>33</sup> *McCamey*, 886 A.2d at 548, *vacated*, *McCamey*, 896 A.2d 191 (D.C. 2006).

<sup>34</sup> *McCamey*, 896 A.2d 191.

<sup>35</sup> *Id.*

<sup>36</sup> *McCamey v. D.C. Dep't of Emp. Servs.*, 947 A.2d 1191, 1213 (D.C. 2008) (emphasis in original).

<sup>37</sup> *Id.* at 1214.

participation in an alcohol rehabilitation program, probation for three years, and random drug and alcohol testing during the first two years of probation.

Although Mr. Ramey initially participated in the alcohol rehabilitation program, he continued to drink. As a result, he was terminated from the program.

The next day, Mr. Ramey was seen at the Howard University Hospital emergency room for arm numbness and tingling. Shortly thereafter, he sought psychiatric treatment, and he filed a claim for workers' compensation benefits for post-traumatic stress disorder allegedly caused by the way he was treated on and around August 30, 2003.

Applying the *Dailey* test, an administrative law judge denied Mr. Ramey's claim for workers' compensation benefits.<sup>38</sup> The Compensation Review Board affirmed the administrative law judge's ruling,<sup>39</sup> but because *McCamey II* had been decided during the pendency of the judicial review of Mr. Ramey's case, the Court of Appeals vacated the Compensation Review Board's Decision and Order affirming the Compensation Order.<sup>40</sup>

On remand, the Compensation Review Board "essentially adopted the test announced by [the Court of Appeals] in *McCamey* for use in physical-mental cases for application in mental-mental cases."<sup>41</sup> In a workers' compensation claim for a psychological injury<sup>42</sup> there is a presumption of compensability:

---

<sup>38</sup> See *Ramey v. Potomac Elec. Power Co.*, OHA No. 05-318, OWC No. 608087 (Mar. 17, 2006).

<sup>39</sup> *Ramey v. Potomac Elec. Power Co.*, CRB No. 06-38, AHD No. 05-318, OWC No. 608087 (June 14, 2006).

<sup>40</sup> *Ramey v. D.C. Dep't of Emp. Servs.*, 950 A.2d 33 (D.C. 2008). On remand from the Compensation Review Board, an administrative law judge denied Mr. Ramey's claim for benefits a second time. *Ramey v. Potomac Elec. Power Co.*, OHA No. 05-318, OWC No. 608087 (Aug. 25, 2008), *aff'd*, *Ramey v. Potomac Elec. Power Co.*, CRB No. 08-217, AHD No. 05-318, OWC No. 608087 (Oct. 29, 2008), *aff'd*, *Ramey v. D.C. Dep't of Emp. Servs.*, 997 A.2d 694 (D.C. 2010).

<sup>41</sup> *Ramey*, 997 A.2d at 700.

<sup>42</sup> To recover damages for the tort of intentional infliction of emotional distress, "a plaintiff must show (1) extreme and outrageous conduct on the part of the defendant which (2) intentionally or recklessly (3) causes the plaintiff severe emotional distress." *Armstrong v. Thompson*, 80 A.3d 177, 189 (D.C. 2013) (citations omitted); Furthermore, "[t]he conduct must be 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Drejza v. Vaccaro*, 650 A.2d 1308, 1312 n.10 (D.C. 1994) (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. d (AM. L. INST. 1965)).

To recover damages for the tort of negligent infliction of emotional distress, the defendant's conduct must have placed the plaintiff in a "zone of physical danger" or the plaintiff can show that (1) the defendant has a relationship with the plaintiff, or has undertaken an obligation to the plaintiff, of a nature that necessarily

[A]n injured worker alleging a mental-mental claim invokes the statutory presumption of compensability by [offering credible evidence of] a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury [that is] supported by competent medical evidence.<sup>43</sup>

If an employer does not rebut the presumption of compensability, benefits are payable. If the employer rebuts the presumption of compensability, the claimant must “prove by a preponderance of the evidence that the workplace conditions or events caused or aggravated the psychological injury.”<sup>44</sup>

The Court of Appeals endorsed the Compensation Review Board’s requirements.<sup>45</sup> The *Ramey* and *McCamey* tests now apply in all work-related, psychological injury cases; the third-party standard is no more, but problems remain. For example, the Act includes a presumption of compensability that:

[i]n any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary:

(1) That the claim comes within the provisions of this chapter.<sup>[46]</sup>

When a claimant alleges a physical injury, this presumption of compensability is invoked by showing general causation, a work-related event or activity that has the potential to cause or contribute to the alleged disability.<sup>47</sup> The *Ramey* test seems to require general causation to invoke this presumption of compensability; a claimant must show “a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury.”<sup>48</sup> However, the claimant’s evidence is

---

implicates the plaintiff’s emotional well-being, (2) there is an especially likely risk that the defendant’s negligence would cause serious emotional distress to the plaintiff, and (3) negligent actions or omissions of the defendant in breach of that obligation have, in fact, caused serious emotional distress to the plaintiff.

Hedgepeth v. Whitman Walker Clinic, 22 A.3d 789, 810-11 (D.C. 2011).

<sup>43</sup> *Ramey v. Potomac Elec. Power Co.*, CRB No. 06-038(R), AHD No. 05-318, OWC No. 576531 (July 24, 2008).

<sup>44</sup> *Id.*

<sup>45</sup> *Ramey*, 997 A.2d 695.

<sup>46</sup> D.C. CODE § 32-1521 (2024).

<sup>47</sup> *Ferreira v. District of Columbia Dep’t of Emp. Servs.*, 531 A.2d 651 (D.C. 1987).

<sup>48</sup> *Ramey v. Potomac Elec. Power Co.*, CRB No. 06-038(R), AHD No. 05-318, OWC No. 576531 (July 24, 2008).

subject to a credibility evaluation absent in physical injury claims;<sup>49</sup> “in determining whether the injured worker invoked the presumption [the

---

<sup>49</sup> In *Storey v. D.C. Dep't of Emp. Servs.*, 162 A.3d 793 (D.C. 2017), the Court of Appeals reasoned that *Ramey II* did not constrain its decision in a workers' compensation case for a physical injury and held that an administrative law judge is not permitted to make credibility determinations when assessing whether or not a claimant has invoked the presumption of compensability:

This appeal asks us to consider whether an Administrative Law Judge (“ALJ”) is authorized to make credibility determinations and weigh a claimant’s evidence in determining whether the claimant has met his or her “threshold requirement,” to be entitled to the statutory presumption of compensability. For the reasons that follow, we hold that an ALJ may not assess the credibility of a claimant’s evidence at this initial stage. Instead, the claimant is entitled to the statutory presumption that the injury arose during the course of employment and therefore entitled to workers’ compensation benefits, so long as he or she presents “some evidence” to establish a *prima facie* case of a work-related injury. *Wash. Post v. D.C. District of Columbia Dep't of Emp't Servs.*, 852 A.2d 909, 911 (D.C. 2004). The burden is then on the employer to rebut the presumption that an employee’s injury was, in fact, not related to his or her employment. *Id.* The employer can rebut the presumption by proffering substantial evidence of non-causation, i.e., evidence that is “specific and comprehensive enough” that a “reasonable mind might accept it as adequate to contradict the presumed connection between the event at work and the employee’s subsequent disability.” *Id.* (footnote, citation, internal quotation marks and brackets omitted). This, again, is not a matter as to which the ALJ is to make credibility determinations. Only if the employer is able to rebut the presumption and the burden returns to the claimant is the ALJ entitled to make credibility determinations. *Id.* at 797.

Interestingly, the Compensation Review Board seems to have circumvented the *Ramey* test in at least one mental-mental claim:

The court discussed that in *Storey*, the ALJ misplaced the burden of proof inherent in a claim to establish a medical causal relationship, by considering the credibility of claimant Storey’s testimony in determining whether she was entitled to the statutory presumption. As the court opined, “By doing so, the ALJ essentially placed the burden on Ms. Storey to prove through “substantial evidence” that she did, in fact, suffer a work-related injury.” *Storey, supra.*

We find no such similar misstep in this case. In accordance with the presumption-related mental-mental

---

injury rubric established in *Storey*, while the ALJ referenced Claimant's credibility, he did so after concluding that the presumption had not been met and as such, did not distort the burden shifting rubric of the claim.

However, we take issue with the ALJ's conclusion that the presumption had not been met and do find support in the record sufficient for reconsideration as to whether Claimant invoked the presumption with regard to his March 3, 2017 exacerbation claim:

According to Mr. Hill, his acute symptoms of depression and anxiety were "directly attributable" to his loss, but Mr. Lewis also noted "he had been experiencing stress from his job and *also because of conflict with a particular supervisor.*" CE at 1.

CO at 4.

The [Compensation Review Board's] scope of review is limited to making a determination as to whether the actual findings of the appealed [Compensation Order] are based on substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. We determine that the ALJ's findings and the [Compensation Orders's] conclusions on the issue whether Claimant invoked the presumption with regard to his March 3, 2017 injury claim is not supported by substantial evidence in the record.

Hill v. Wash. Metro. Area Transit Auth., CRB No. 18-131, AHD No. 14-180B, OWC Nos. 701234 and 770249 (Dec. 5, 2018).

On remand from the Compensation Review Board, the administrative law judge applied the *Ramey* test including its credibility requirement which he specifically stated is not "not altered by *Storey*." He ruled that although Mr. Hill invoked the presumption of compensability, the Washington Metropolitan Area Transit Authority rebutted that presumption and "Mr. Hill did not prove by a preponderance of the evidence that there is a medical-causal connection between the March 2017 encounter with his supervisor and the allegedly-related mental health complaints." Hill v. Wash. Metro. Area Transit Auth., AHD No. 14-180B, OWC Nos. 701234 and 770249 (Jan. 31, 2019).

The Compensation Review Board affirmed the January 31, 2019 Compensation Order, Hill v. Wash. Metro. Area Transit Auth., CRB No. 19-023, AHD No. 14-180B, OWC Nos. 701234 and 770249 (April 9, 2019), and the Court of Appeals affirmed the Compensation Review Board's order. Hill v. D.C. Dep't of Emp. Servs., 272 A.3d 274 (D.C. 2020). However, the Court specifically noted:

Under *Storey v. District of Columbia Dep't of Emp't Servs.*, 162 A.3d 793, 807 (D.C. 2017), an ALJ is not permitted to consider credibility when determining if the presumption has been invoked in cases of physical injury. However, nothing in *Storey* prohibits an ALJ from considering credibility when — as here — he is weighing the evidence to determine if the claimant has carried his burden by a preponderance. Nor does *Storey* prevent the ALJ from

administrative law judge] must make findings that the workplace conditions or events existed or occurred, and must make findings on credibility.”<sup>50</sup> Furthermore, a claimant alleging a psychological injury also must offer competent medical evidence that the employment could have caused that psychological injury in order to invoke the presumption of compensability.<sup>51</sup>

The Act makes no distinction between physical injuries and psychological injuries. Whether an injury is physical or psychological, work-related conditions or events must actually have existed for any alleged injury to arise out of and in the course of employment and be compensable. Nonetheless, there is an obvious bias that manifests itself as an explicit mistrust of mental-mental claims and that bias results in a heightened burden of production claimants must satisfy to invoke the presumption of compensability.<sup>52</sup>

A psychological injury, like witchcraft, is invisible; “[w]e are here, Your Honor, precisely to discover what no one has ever seen,”<sup>53</sup> and without tangible proof to show the unseen, the workers’ compensation system struggles to strike the balance between compensability and deception. In the meantime, claimants, like Philoctetes, are defined by their affliction; they are held to a different standard of proof; and injustice abounds.

---

considering credibility when determining if the presumption has been invoked in cases of mental-mental injury. *Id.* at 803 (quoting *Ramey*, 997 A.2d at 699-700).  
*Id.* at 281 n.11.

<sup>50</sup> *Ramey v. Potomac Elec. Power Co.*, CRB No. 06-038(R), AHD No. 05-318, OWC No. 576531 (July 24, 2008).

<sup>51</sup> “Physical injury cases differ from ‘mental-mental’ cases because they do not require the claimant ‘to present expert opinion of causation in order to enjoy the benefit of the presumption.’” *Storey*, 162 A.3d at 803. *See also* *McNeal v. D.C. Dep’t of Emp. Servs.*, 917 A.2d 652, 658 (D.C. 2007):

The statutory presumption applies as much to the nexus between an employee’s malady and his employment activities as it does to any other aspect of a claim.” *Swinton v. Kelly*, 180 U.S. App. D.C. at 223, 554 F.2d at 1082 (construing the Longshoremen’s and Harbor Workers’ Compensation Act [the predecessor of the Act]). [The claimant] was not obliged to present expert opinion of causation in order to enjoy the benefit of the presumption. “It was not [his] burden to do that unless and until the employer presented sufficient evidence to rebut the presumed causal connection.” *Id.* at 223 n.35, 554 F.2d at 1082 n.35. Because [the employer] did not present such evidence, the presumption controls.

<sup>52</sup> For a more detailed analysis of the problems with the *McCamey* test, *see generally* Melissa Lin Jones, *Why Proving a Work-Related, Psychological Injury Claim Stresses You Out*, 41 J. NAT’L ASS’N ADMIN. L. JUDICIARY 24 (2021).

<sup>53</sup> MILLER, *supra* note 16, at 96.