

# AVIVA ORENSTEIN

Indiana University Maurer School of Law

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## FACULTY APPOINTMENTS

**Maurer School of Law Indiana University, Bloomington, IN**

*Karen Lake Buttrey and Donald W. Buttrey Chair* (2021- present)

*Associate Dean for Students* (May 2018-May 2021)

*Associate Dean for Academic Affairs* (August 2017-2019)

*Interim Associate Dean of Career Services* (October 2017- July 2018)

*Val Nolan Fellow* (2012-2021)

*Professor* (1999-present)

- Courses include Evidence, Civil Procedure, Family Law, Children and the Law, Legal Profession
- Adjunct Faculty, School of Public and Environmental Affairs, teaching Children and the Law
- Visiting Teacher, London Law Consortium (Fall 2006)
- *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)

*Associate Professor* (1992-1999)

**China University of Politics and Law, Beijing, China**

Visiting Scholar, China University of Politics and Law (June 2015, June 2016, December 2018)

**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)

**Rutgers Law School, Camden, NJ**

*Adjunct Professor and Director of Legal Writing Program* (1988-1992)

## PUBLICATIONS

### BOOKS

PARK, ORENSTEIN, & NANCE, EVIDENCE LAW: A STUDENT'S GUIDE TO THE LAW OF EVIDENCE AS APPLIED IN AMERICAN TRIALS (6th ed. 2023)

PARK, ORENSTEIN & MILLER, TRIAL OBJECTIONS HANDBOOK (Thompson Reuters, 2022 ed.)

ORENSTEIN, ACING EVIDENCE (3d. ed. 2021) (West, Chinese Translation 2018)

### BOOK CHAPTERS

*Supporting the Presumption of Innocence and Addressing Systemic Racism: A Concrete Proposal for Reforming Evidence Law to Prohibit Impeaching Criminal Defendants with their Prior Crimes* in THE MUSIC OF DEMOCRACY (Yvonne Cripps, ed.) (Forthcoming 2023).

*Stewart Huff, P.I., Intellectual at Large* in TAKING A STAND: CONTEMPORARY US STAND-UP COMEDIANS AS PUBLIC INTELLECTUALS (with Susan Seizer) (Jared N. Champion and Peter C. Kunze, eds.) (University Press of Mississippi 2021)

*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)

### ARTICLES

*The Child Vanishes: Justice Scalia's Approach to the Role of Psychology in Determining Children's Rights and Responsibilities* \_\_\_ FLA. INT'L U.L. REV. \_\_\_ (2023).

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

*Ancient Solutions to Interpretive Dilemmas: The Talmudic Example of Navigating Legal Change in the Face of Plain Meaning* (in progress)

*Debunked, Discredited, but Still Defended: Why Prosecutors Resist Challenges to Bad Science and Some Suggestions for Crafting Remedies for Wrongful Conviction Based on Changed Science*, 48 SETON HALL L. REV. 1139 (2018)

*Forfeiture of Confrontation Rights and the Complicated Dynamics of Domestic Violence: Some Thoughts Inspired by Myrna Raeder*, 44 SW. L. REV. 446 (2015)

*The Seductive Power of Patriarchal Stories* 58 HOW. L.J. 411 (2015)

*Once We Were Slaves, Now We Are Free: The Legal, Administrative, and Psychosocial Issues Raised by Passover Seders in Prison*, 41 PEPP. L. REV. 65 (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)

*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](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)

## EDUCATION

**Hebrew College Rabbinical School**, Newton Centre, MA (Sept.-May, 2016-17)

*Non-degree visiting student during my Sabbatical*

**Cornell Law School**, J.D. 1986, magna cum laude

- Articles Editor, Cornell Law Review
- Order of the Coif (GPA 3.8/4.0)
- Moot Court Finalist (1983)
- Am-Jur Torts Prize

**Cornell University College of Arts and Sciences**, A.B. 1981, summa cum laude

- 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

**Board Member, Indiana Legal Services** (2021-present)

**Volunteer Attorney for District 10 Pro Bono** (2005-present)

**Volunteer Attorney for CASA** (2002-present)

**Volunteer Attorney for Protective Order Project** (2000-present)

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

**The Late Hon. Edward R. Becker, United States Court of Appeals for the Third Circuit**

*Law Clerk* (1987-88)

**Various Summer Associateships:**

**Hughes, Hubbard & Reed**, New York, NY (1985)

**Arnold & Porter**, Washington, D.C. (1983)

**Pitney, Hardin, Kipp & Szuch**, Morristown, NJ (1982)

## SELECTED PROFESSIONAL LECTURES

*The Evidence of Religion and the Religion of Evidence*, **Inaugural Karen Lake and Donald W. Buttrey Chair Lecture, Indiana University Maurer School of Law**, Bloomington, IN, February 2023.

*Everything You Always Wanted To Know About Civil Procedure but Were Too Bored to Ask*, **Indiana University Maurer School of Law**, Bloomington, IN, August 2020

*Healthy Skepticism or Revealing Phobia? An Analysis of Justice Scalia's Opinions concerning Children and the Utility of Psychology* **Maurer Summer Faculty Workshop**, June 2020

*Evidence Law, Juror Decision-Making, and the Emotion of Regret* **Maurer Summer Faculty Workshop**, June 2018

*Ancient Solutions to Interpretive Problems: The Transformation of an Eye for an Eye*, **Maurer Summer Faculty Workshop**, June 2017

*Learning from Other Legal Systems: Sino-Jewish Comparisons*, **Indianapolis Law Club**, Jan. 2017

*Evidence and Emotion: Understanding the Character Rules in Light of the Psychology of Anger and Regret*, **Indianapolis Law Club**, September 2015

*American Evidence Law: Some Thoughts on What the American Experience in Evidence Has to Offer China, as China Explores Evidence Reform*, **China University Politics and Law**, Beijing, June 2015

*Cultural Assumptions in American Evidence Law*, **Northwestern Conference on 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, 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

*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

## **BAR ADMISSIONS**

- Admitted to Practice, Indiana (1996)
- Admitted to Practice, New Jersey (1990)

## **PROFESSIONAL ASSOCIATIONS**

- Member NASALP (2018-2020)
- Member, American Law Institute (2005-present)
- Member, American Bar Association (1990-present)
- Member, Executive Committee, AALS Section on Evidence (2007-08)
- Chair, Evidence Section, AALS (2006-2007)

## **SELECTED SERVICE**

- Board Member, Indiana Legal Services (2020-present)
- Organizer, Inaugural Rural Justice Initiative (Summer 2019)
- Coordinator of Litigation Curriculum and Advisor to three mock trial teams (Spring 2016)
- Law School Liaison and Coordinator, SPEA Law and Public Policy Major (2015-16)
- Member, Policy Committee (various years)
- Member, Dean's Search Committee
- Member, Indiana University Promotion and Tenure Committee (2014-2015)
- Chair, IU Press Committee (2013)

## PERSONAL INFORMATION

Partner: Dan Segal

Children: David Greenberg, 40, Michael Greenberg, 38, Benjamin Greenberg, 34

Grandchildren: Jacob Matthew de Keijzer 5, Neel Vaswani Greenberg, 3, Aviva Mony, 3,  
Anya Vaswani Greenberg, 1

Hobbies: Creative writing, Teaching Torah, Reading, Journalism, Singing, Travel,  
Embroidery

Languages: Fluent Hebrew, Reading and Conversational French, Beginning German

Ordination: American Marriage Minister; officiated at five weddings. “Will ordain for  
wedding cake.”

Fiction: Published *Fat Chance*, a novel in 2016.