

## ELAINE W. SHOBN

### Professional History

- Present: Judge Jack and Lulu Lehman Professor, William S. Boyd School of Law, University of Nevada at Las Vegas (2005 - ); Edward W. Cleary Professor of Law Emerita, University of Illinois (2005 - ).
- Previous: Edward W. Cleary Professor of Law, University of Illinois (1993-2005); Visiting Scholar, University of Melbourne (1990); Professor, University of Illinois College of Law (1981-1993), Associate Professor (1978-1981); Assistant Professor (1975-1978). Instructor, Indiana University School of Law, Bloomington, (1974-1975). Clerk, Lovitt & Hannan, One Embarcadero, San Francisco, California (1972-1974). Admitted, California Bar, 1974.

### Education

Barnard College, A.B. 1970. Hastings College of Law, J.D. 1974.  
Editor-in-Chief, *Hastings Law Journal*. Thurston Society. Order of the Coif.

### Books

***Remedies: Cases and Problems***, casebook with William Murray Tabb, Foundation Press, 1989.

Second edition, 1995, with William Murray Tabb.

Third edition, 2002, with William Murray Tabb and Rachael M. Janutis.

Fourth edition, 2007, with William Murray Tabb and Rachael M. Janutis.

*Teacher's Manual* to accompany casebook, Foundation Press, 1989, with William Murray Tabb.

Second edition, 1996, with William Murray Tabb.

Third edition, 2002, with William Murray Tabb and Rachael M. Janutis.

Fourth edition, 2008, with William Murray Tabb and Rachael M. Janutis (in preparation)

***Employment Discrimination***, casebook with Mack Player and Risa Lieberwitz, West Group, 1990.

Second edition, 1995.

*Statutory Supplement*, with Mack Player and Risa Lieberwitz 1995.

*Teacher's Manual* to accompany casebook, with Mack Player and Risa Lieberwitz West Group 1990.

Second edition, 1997.

*Supplement* to accompany casebook, with Mack Player and Risa Lieberwitz West Group, 1992.

***Employment Law***, two volume treatise with Mark Rothstein, Charles Craver, Elinor Schroeder and Lea VanderVelde, West Group (1994).

Second edition, with Mark Rothstein, Charles Craver and Elinor Schroeder 1999.

Third edition, 2004.

Fourth edition for 2009 in preparation.

Annual supplements, with Mark Rothstein, Charles Craver and Elinor Schroeder, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2005, 2006, 2007.

***Employment Law Hornbook***, with Mark Rothstein, Charles Craver, Elinor Schroeder, and LeaVanderVelde, West Group 1994.

Second edition, with Mark Rothstein, Charles Craver and Elinor Schroeder 2000.

Third edition, 2005.

***Human Resources and the Law***, with with Mark Rothstein, Charles Craver, Elinor Schroeder, and LeaVanderVelde, Bureau of National Affairs, 1994.

***Selected Employment and Labor Law Statutes***, with Mack Player and Risa Lieberwitz, West Group (2000).

Second edition, 2001.

Third edition, 2003.

Fourth Edition, 2004.

Fifth Edition, with Mack Player and Elinor Schroeder 2005.

Sixth Edition, 2006.

***Nutshell on Remedies***, with William Murray Tabb, West Group, 2005.

*Concise Hornbook on Remedies*, with Russell Weaver and Michael B. Kelly, West Group, 2007.

### Articles/ Chapters/ Other Publications

"Probing the Discriminatory Effects of Employee Selection Procedures with Disparate Impact Analysis Under Title VII," 56 Texas L. Rev. 1 (1977).

"Differential Pass-Fail Rates in Employment Testing: Statistical Proof Under Title VII," 91 Harvard L. Rev. 793 (1978).

"Book Review: Quantitative Methods in Law: Studies in the Application of Mathematical Probability and Statistics to Legal Problems," 59 Boston Univ. L. Rev. 582 (1979).

"In Defense of Disparate Impact Analysis Under Title VII: A Reply to Dr. Cohn," 55 Indiana L.J. 515 (1980).

"Compound Discrimination: The Interaction of Race and Sex in Employment Discrimination," 55 New York Univ. L. Rev. 793 (1981).

"Intentional Discrimination in Employment: The Proper Role of Statistics," 46 Law and Contemporary Society 301 (1983).

Book Review, *The Burden of Brown* by Raymond Wolters, 2 Constitutional Commentary 494 (1985).

"Recruitment by Design or Default under Employment Discrimination Law," 47 Ohio St. L.J. 891 (1986).

"Defining the Relevant Population: The Legal Issues," book chapter in *Statistical Evidence of Discrimination*, edited by David H. Kaye and Michael Aickin (1987).

"Test Defamation in the Workplace: False Positive Results in Detecting Lies, AIDS, or Drug Use," 4 Chicago L. Forum 181 (1988).

"Uncommon Law: The Woes of Constitutionalizing State Common Law Torts," 1992 Illinois L. Rev. 173 (1992).

Preface, *Drawing the Line: A Sexual Harassment-free Workplace*, by Frances Lynch (1995).

"From Anti-Nepotism to Programs for Partners: Legal Issues," chapter in *Academic Couples* (M. Ferber and J. Loeb, eds.), University of Illinois Press (1996).

Disparate Impact Discrimination: American Oddity or Internationally Accepted Concept?" 19 Berk. J. Lab. & Empl. Law 108 (1998) (with Rosemary C. Hunter).

"Alternative Resolution of Employment Discrimination Claims: American and Australian Experiences: Proceedings of the 2001 Annual Meeting, Association of American Law Schools Section on Employment Discrimination," 5 Employee Rights and Employment Policy Journal 603 (2002) (introductory remarks as organizer and moderator of panel in published proceedings).

"Spinning Restitution: From Cauliflower to Coconut," 36 Loyola L. Rev. 1027 (2003) (Symposium publication of Second Remedies Discussion Forum on Restitution).

"Unclean Hands," Computer Assisted Legal Instruction Lesson prepared as part of CALI Remedies Group Fellowship (2004).

"Contempt Overview" Computer Assisted Legal Instruction Lesson prepared as part of CALI Remedies Group Fellowship (2004).

"Disparate Impact Theory in Employment Discrimination: What's *Griggs* Still Good For? What Not?" 42 Brandeis L. J. 597 (2004).

"Let the Damages Fit the Wrong: An Immodest But Non-Political Proposal to Reform Personal Injury Damages," 39 Akron L. Rev. 1069 (2006) (Symposium publication of Third Remedies Discussion Forum on Damages).

"Evidentiary Wisdom and Blinders in Perspective: Thoughts on *Misjudging*," 7 NEV. L. J. 500 (2007).

"Princess in the Tower," chapter in *Law Touched Our Hearts: A Generation Remembers Brown v. Board of Education*, (R.J. Bonnie and M.W. Wigfall, eds.) (in press with Vanderbilt University Press, 2008).

### **Miscellaneous Publications/ Unpublished Class Materials**

Supplemental text and problems for class on Employment Discrimination: "Handout on Statistical Evidence: Use of Quantitative Evidence in Disparate Impact Cases."

Computer program, manual, and problems entitled, "Employment Discrimination Analysis: A Program that will assess Disparate Impact in Employment Discrimination Cases," (with John H. McCord) for class use.

"Getting the Skin Color 'Right,'" opinion piece published in the *Chicago Tribune* March 28, 1996 (commenting on the skin color of the new Betty Crocker fictional corporate

symbol and distinguishing between multicultural identity and lack of identity).

"Richie Rich," letter to the editor, *Forbes Magazine*, February 1997 (commenting on article about distribution of wealth by gender in the U.S.).

CALI lessons autopublished in 2008 for individual classes: (1) Introduction to CALI, (2) Law in Action, (3) Gifts versus Benefits Exchanged as Part of Contract, (4) Duty to Rescue: Common Law, (5) Duty to Rescue: Statutory Changes to Common Law, (6) Noncompetition Agreements, (7) Fraud, (8) Issues of Mental Capacity in Tort and Contract, and (9) Tort Reform Statutes.

### **Speeches/ Panels/ Lectures**

"Legal Problems with Employee Recruitment Practices," Cornell University, School of Industrial and Labor Relations, November 1981.

"Compound Discrimination by Race and Sex," Cornell University, School of Industrial and Labor Relations, November 1981.

"Statistical Proof of Intentional Discrimination in Employment," at conference on Statistics in Business Litigation, sponsored jointly by Duke University, Fuqua School of Business and the American Corporate Counsel Association, May 1983.

"Defamation Explosion: Reform through Remedy," AALS panel moderator, January 1986.

"Defamation from Purity/Taint Testing," University of Chicago conference on Employment Testing, December 1987.

"Torts in the Next Decade," seminar on Developments in Civil Litigation, National Judicial College, July 1988.

"Remedies for Privacy Invasions in the Workplace: Relatching Pandora's Box," AALS program moderator, January 1989.

"Attacking Employment Qualifications," Department of Political Science, University of Melbourne, May 1990.

"The Elusive Concept of Equality in Employment Opportunity," Law, Ethics, and Public Policy seminar at the University of Melbourne, April 1990.

"Taming the Tort Giant," Law School, University of Melbourne, March 1990.

"First Year Curriculum," panelist at AALS session on Curriculum and Research, January 1991.

"What to Expect in an Interview," AALS panel during orientation at Faculty Recruitment Conference (1991).

" Interview Strategies," AALS panel during orientation at Faculty Recruitment Conference (1993).

"Tort Reform: Letting the Punishment Fit the Crime," Law Day speaker for the Morgan County Bar Association (1994).

Workshop discussion leader for the Illinois Bar Association, Continuing Legal Education, First Annual Short Course on Advising Illinois Businesses (1994).

"Pursuing Industrial Democracy Through Antidiscrimination Law," paper delivered at a conference on *Industrial Democracy Issues for the 21st Century*, sponsored by the Council of Labor Affairs, Executive Yuan Taiwan, Republic of China and the University of Illinois College of Law and Institute of Industrial Relations (1995).

"Has Affirmative Action Outlived Its Usefulness?" Speaker (on the "no" side of that mixed panel) for the Section on Employment Discrimination panel, Association of American Law Schools annual convention (1996).

"Use of Electronic Discussion Groups Employing Lotus Notes." Speaker at West Group gathering at AALS annual convention (1996).

"Employment Discrimination Law," at Orientation Seminar for Newly Appointed District Judges, Federal Judicial Center (1996).

"Employment Discrimination Law Survey," at Orientation Seminar for Magistrate Judges, Federal Judicial Center (1996).

"Computerized Discussion Groups to Enhance Teaching," Central States Law School Association annual meeting (1996).

Moderated panel entitled "The Status of Women in the Profession," at the Retreat for Illinois Women Attorneys, sponsored by the East Central Illinois Women Attorneys Association (1996).

Association of American Law Schools convention: Speaker on "Prediction and Measurement of Job Performance" for the Joint Program of Sections on Education Law and Law and the Community (1998).

Federal Judicial Center, "Developments in Employment Discrimination Law," at the National Workshop for Magistrate Judges (1998)

"Reconceptualizing Affirmative Action in Admissions, Curriculum, and Faculty Employment: Predicting the Impact of *Piscataway Township Board of Education v. Taxman*," Opening Plenary Session, National Conference on Law and Higher Education (1998)

"What Next?" Institutional Cooperation's conference on Leadership and Human Resources (1997) (closing session panel speaker).

"Intersectionality Discrimination," speaker for session of the Workshop on Workplace of the Future, AALS annual meeting (1999).

"Employment Law and the Legal Profession: Gender Differences in the Workplace," speaker at conference for students and attorneys sponsored by the Myra Bradwell Association of Women Law Students (1999).

"Supreme Court's Employment Docket: The Fallout and the Future," Plenary Session speaker for the National Employment Lawyers Association annual meeting (1999).

"Laptops in the Classroom -- Blessing or Curse?," speech at DePaul University Law School (1999).

"Budget Reform at the University of Illinois," Institutional Cooperation's conference on Budgetary Principles and Practice (1998).

Participant at "Colloquium on Legal Discourse," Notre Dame Law School (1998).

Land of Lincoln Legal Assistance Foundation mock trial for children participant (1999).

"Enhancing Class Discussions," Retreat on Active Learning, UIUC Office of Instructional Resources (2000).

"Developments in Remedies," Remedies Forum, University of Louisville (April 2000).

Carnegie Foundation for the Advancement of Teaching, participant in Conference on Legal Education (June 2000).

"Alternative Resolution of Employment Discrimination Claims: Comparative Experiences," designed and moderated panel at annual meeting of Association of American Law Schools (January 2001).

Carnegie Foundation for the Advancement of Teaching, Roundtable speaker on development of seminars on Legal Education (2001).

Symposium Speaker on the Tenth Anniversary of the Civil Rights Act of 1991 at Kansas Law School (2001).

Legislative testimony, California State Senate Committee on Budget Oversight, chaired by Senator Speier, concerning legislative audit of faculty hiring practices at the University of California in recent years and specifically the decline of women faculty (2001).

“Restitution,” Remedies Forum, Washington and Lee (2002).

“Is Disparate Impact Dead?” Twentieth Annual Carl A. Warns Jr., Labor and Employment Law Institute at The Louis D. Brandeis School of Law (2003).

“Punitive Damages,” Remedies Forum, University of Louisville (2003).

“Law and Film: The Use of Films in the Classroom,” Southeastern Association of Law Schools (2004).

“The Future of Effects Discrimination,” Wake Forest University School of Law (2004).

“Cultural Memory and Statutory Interpretation,” Center for Advanced Study, University of Illinois (2004).

“Remedies at the Cutting Edge: Rethinking Compensatory Damages,” Southeastern Association of Law Schools (2006).

“Remedies Across the Curriculum” Professional Development Workshop at AALS annual meeting (2007).

Attended conference sponsored by the Center for Computer-Assisted Legal Instruction on 2007 Law School Computing and made presentation on “CALI for Undergraduates and for Transition to Law School” (with T. Pollman and B. Hays) (2007).

“Scholarship from a Career Perspective,” Southeastern Association of Law Schools (2007).

Association of American Law Schools convention: Speaker on “Title VII Harassment Injunctions: Teeth and Tethers” for the Joint Program of Sections on Remedies and Employment Discrimination (2008).

Building dedication ceremony speaker panel “Building for the Future: Sharing in a Legacy of Justice,” Land of Lincoln Legal Assistance Foundation, Champaign, Illinois office (2008).

## **Grants**

University Research Board grants (1977, 1988, 1995). Recipient of Arnold O. Beckman award for project proposal (top 10 % of university proposals) 1995 for "Indirect Discrimination: A Comparative Study and a Silver Anniversary Check-up."

Award under Provost's Initiative for Teaching Evaluation for project is entitled, "A Three-Tiered Approach to Teaching Assessment and Enhancement" (with Professor Charles Terry) (1998).

Educational Technologies Board grant for equipment and teaching assistants to continue explorations in computerized problem-solving for teaching first year Torts (1999).

"Curiosity Mini-Grant" from the Teaching & Learning Center, Scholarship of Teaching & Learning Initiative, University of Nevada Las Vegas with Professors Terrill Pollman (Law) and Bradley Hays (Political Science).

## **National Committees**

American Association of Law Schools, Committee on Empirical Studies (member 1989-1995, chair 1992-95).

Editorial Board, *Journal of Legal Education* (1991-1994).

Second term (2002- 2005).

American Association of Law Schools, Section on Remedies, (chair 1985; 1988, 2003); member of Executive Committee (1983-86)(1987-1989)(1999-2005).

American Association of Law Schools, Section on Employment Discrimination, (chair 2001); member of Executive Committee (1999-2001).

American Institute for Research, Special Committee for Program Review (1988).

American Bar Association, Young Lawyers Division, Committee on Alternative Dispute Resolutions, (1982-85).

Special Committee on Academic Freedom and Tenure, appointed by the national office of the American Association of University Professors (1978-1979).

American Bar Association, Young Lawyers Division, Committee on Corporations, Banking and Business Law (1978-86).

Program Committee, Southeastern Association of Law Schools (2006-present)

## **Government and Other Professional Service**

Plan Commission member, City of Champaign (1979-1981).

Consultant for the Illinois Office of the Auditor General for the performance audit of the Illinois Fair Employment Practices Commission (1978-1979).

Resource contact for Research & Testing Division of the Illinois Department of Personnel, Springfield; consultant on interpretation of the federal Uniform Guidelines on Employee Selection Procedures (1980-85).

Faculty member for the National Judicial College (1986).

Resource contact for Equal Employment Opportunity Commission (1996).

Faculty member for the Federal Judicial Center (1996-present).

Attended meeting by invitation of the national office of Equal Employment Opportunity Commission, May 1996, to assist with development of policy on double and intersectional discrimination.

Consultant on public employment issues for Decatur city councilman Burton (1999).

Member of the Board, East Central Illinois Women Attorneys Association (1996-2001).

Public Service Committee, East Central Illinois Women Attorneys Association (1997-2002).

## **University and College Service**

### ***University Committees, University of Illinois***

Chair, Provost's Committee on Recruitment Practices, 2002-2003.

Chair, Provost's Task Force on Gender Equity, 2000-2002.

Provost's Teaching Advancement Board (1999-2002).

Chancellor's Committee to Establish Center for Multiracial Democracy (2002).

Provost's Committee on Work/Life Issues (2000-2002).

Campus Budget Oversight Committee (1995-1997), including subcommittee to study Responsibility Centered Management and report to campus (1995) and Chair of subcommittee on Campus Reserves and Allocation. (1996).

Provost's Budget Strategies Committee (1993-1995).

University Scholars Committee (1995-1998).

Campus Awards Selection Committee (1999).

Departmental Affiliate, Medical Humanities and Social Sciences Program (1985-2005).

Medical Scholars Program, Law Advisor (1983-1995).

Bicampus Steering Committee, College of Medicine and the Graduate College. (1983-1995).

Provost's Work Group on Retaining and Renewing Quality Faculty (1993).

University Planning Committee for a Workshop-Symposium on Frontiers in Human Genetics; Convenor of section on Social and Ethical Dimensions of Behavioral Genetics (1977-1978).

Committee on Academic Freedom and Tenure, American Association of University Professors, University of Illinois chapter (1976-1977).

Medical Scholars Program, member of subcommittee on Admissions (interviewing panels for joint JD/MD applicants) (1983-present).

Teaching Advancement Board Committee to select Distinguished Teacher/Scholar recipients (1999-2002).

***College of Law Committees, University of Illinois***

Executive Committee (served ten terms).

Appointments Committee (chair seven terms; member numerous other terms).

Chair, Decanal Evaluation Committee for Provost (1997).

Other committees chaired/served: Curriculum, Discipline, Admissions.

***Boyd School of Law Committees, University of Nevada Las Vegas***

Dean's Advisory Committee (2006-07, 2007-08).

Appointments Committee (chair 2006-07, co-chair spring 2007, member fall 2006).

Dean's Search Committee (2006-07).

Curriculum Committee (2005-06), (spring 2008).

## **Teaching**

### ***Courses taught:***

#### **Torts**

Torts (taught variously as a 3-, 4-, and 5-unit first year class).  
Advanced Topics in Torts (seminar).

#### **Remedies**

Remedies (3-unit upper level class).  
Uses and Abuses of Contempt (seminar).

#### **Employment Discrimination**

Employment Discrimination (taught as 2- and 3-unit class).  
Workplace Law (seminar).

#### **Statutory Interpretation**

Statutory Interpretation (3 unit first year class).

#### **Legal Education**

Legal Education (co-taught with Professor James Pfander, as both a seminar and a class in different years, originally as outgrowth of work with the Carnegie Foundation for the Advancement of Teaching and later repeated because of its success).

#### **Contracts**

Contracts (5 unit first year class)

#### **Law in Action**

Undergraduate course introducing students to civil law (3 units)

#### **Civil Law as Peacekeeper**

Course taught like large seminar on functions of common law (3 units)

**Faculty Advisor**

*Nevada Law Journal*

***Campus Teaching Award:***

Campus Award for Excellence in Graduate and Professional Teaching (1998),  
University of Illinois.