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Introduction: Influential Voices

Annette Clark

One of the most gratifying experiences of my year of serving as Interim Dean of Seattle University School of Law was the opportunity to preside over the installation celebrations for the inaugural faculty holders of our first endowed chair and professorships. The Donald and Lynda Horowitz Chair for the Pursuit of Justice, the John D. Eshelman Professorship, the Frederic C. Tausend Professorship, and the William C. Oltman Professorship of Teaching Excellence were all first announced in 2008, along with the designation of the inaugural faculty holder for each.¹ In honor of the four faculty recipients, we invited Professors Mark Chinen, Janet Ainsworth, Margaret Chon, and David Skover to present their inaugural lectures as part of our 2009–10 Influential Voices Lecture Series. Subsequently, in the fall of 2010, Dean Mark Niles beautifully book-ended those celebrations by accepting the invitation to present his own inaugural lecture as dean for our 2010–11 Influential Lecture Series. In this cluster, we have collected the presented works of four of the five individuals who were honored through those installation celebrations.²

I clearly remember the day as a first-year law student when I laughingly posed the following question to my study group partners as we sat in the library trying to master the intricacies of some arcane legal doctrine: “What in the world do faculty do with all of their spare time, given that they teach only 6 hours each week?” Perhaps it was my cosmic fate to pose that question twenty-four years ago and then to learn the answer as I became a faculty member myself and labored for years to master the art of teaching and writing. The reality is that the faculty dedicates long hours to their craft, but much of that work remains hidden from view, particularly from our

students. One of the most concrete benefits of the installation celebrations we held last year, and the publication of those presentations in this issue, is that we are making more transparent the work of the faculty, whether that be the thought and heart and soul that go into becoming a master teacher as demonstrated so artfully by Mark Chinen's piece, or the years of contemplation and study and research that go into producing sophisticated legal scholarship as demonstrated by the works of Janet Ainsworth, Margaret Chon, and Mark Niles. To celebrate the installation of a chair, a professorship, a dean, is to honor those individuals in our midst who have honed their craft to the highest level, who come to the academy with the innate intelligence required to do their jobs well, but who then bring to the enterprise such dedication, drive, commitment, passion, and self-discipline that they become outstanding teachers, scholars, and administrators. And in naming a colleague to an endowed chair, professorship, or deanship, we proudly and publicly signify to the legal academy and to the practicing legal community that these individuals are our best and our brightest.

The installation celebrations also provide us with the opportunity to publicly acknowledge and thank the individuals for whom the chair and professorships are named, each of whom has played a vital role in the history of the law school over its almost 40 years of existence. The William C. Oltman Professorship of Teaching Excellence was created to honor its namesake, William Oltman, who joined the faculty in 1974 and retired in 2009 after thirty-five years of extraordinarily skilled teaching in the areas of property and trusts and estates. The professorship stands as a testament to Professor Oltman's unwavering commitment to rigorous teaching that expected and demanded the best of himself and his students. Literally thousands of students have been the beneficiaries of Professor Oltman's instruction over the years, and the teaching professorship in his name serves as a reminder to all of us that the very foundation of our law school, its *raison d'être*, is the fulfillment of our mission to educate students to become outstanding lawyers who are leaders for a just and humane world.

The Frederic C. Tausend Professorship is named in honor of Fred Tausend, a beloved former professor and dean of the School of Law and a leader in the Seattle and national legal communities. Having previously served as an adjunct professor at the law school, in 1980 he took a leap of faith and a partial leave of absence from a very busy litigation practice to become dean of the University of Puget Sound School of Law (now Seattle University School of Law). Dean Tausend held the position for six successful and productive years in the law school's history, and he was particularly known for being an early advocate for diversity in the legal profession, including providing critical leadership and support during his tenure for the creation of our nationally renowned Access Admissions Program. Frederic Tausend is now senior counsel at the law firm of K&L Gates and is widely recognized as one of the finest trial attorneys ever to practice in this region.³

The John D. Eshelman Professorship was created to honor John Eshelman, professor of economics and provost emeritus at Seattle University. Although Professor Eshelman was at the center of the university's leadership for thirty years (he served variously as provost, executive vice president, interim vice president for finance and business, acting president, and dean of the Albers School of Business and Economics), it is not for his impressive length of service that the law school honors him. The faculty and staff who were with the law school during the 1980s—a period of profound change as we moved from having been the University of Puget Sound School of Law to becoming the Seattle University School of Law—came to know John Eshelman not just as our new Provost but also as a great friend and supporter of the law school. His wisdom, strong commitment to academic excellence, and reassuring presence during that time of transition helped form a vital bridge from the law school's past to its future, and the law school's successful integration into the Seattle University community is a testament to his leadership.

And finally, the Donald and Lynda Horowitz Chair for the Pursuit of Justice, which is named in recognition of two individuals who have been lifelong champions of justice and who wanted to ensure through the endowment of this chair that social justice would continue to be an enduring value and ongoing priority at the School of Law.⁴ The Horowitzs always lead with their hearts and with their heads, bringing the full force of their intellects and considerable persuasive skills to bear as they advocate for equal justice for the underrepresented in society. They have been actively involved in the law school and with our students for a number of years, reminding us, in both word and deed, of the privileges accorded to members of the legal profession and the corresponding responsibility that lawyers bear to be a force for good in this world. As University Trustee, retired Judge Horowitz stated at the time that he and his wife endowed the chair, “We like to do things that make a ripple in the water that will grow and add more ripples over time. We hope this chair will make that kind of difference for many people for a long time to come.”⁵

The chair and professorships are already making the kind of difference to which Judge Horowitz so eloquently referred. They allow us to honor our past, to acknowledge individuals who were with us at pivotal points in the history of the law school, and to propel ourselves forward as we seek to expand and enhance our regional and national reputation. This same continuum from past to present to future is also represented by the articles that form this cluster; one is the work of a faculty member (Professor Ainsworth) who has been with the law school for more than twenty years, two of the works are by faculty members (Professors Chon and Chinen) who joined the law school after we became a part of Seattle University, and the final is the product of the work of our newest faculty member, our dean. Most strikingly, despite the wide-ranging subject matter and differing focus of each of these essays, when taken together, their scholarship concretely and vividly illustrates the mission of Seattle University School of Law with

its focus on academic excellence and education for justice. With that, let me turn to a brief introduction to each of the articles in this cluster.

The first essay is authored by Mark Chinen, who was installed as the William C. Oltman Professor of Teaching Excellence at a ceremony held at the School of Law on October 29, 2009.⁶ At the installation ceremony, Professor Chinen was introduced by his long-time colleague, John Mitchell,⁷ who spoke eloquently of the gifts that Chinen brings to the classroom and to his students. Those gifts are readily apparent in *Teaching as a Form of Love*.⁸ As Professor Chinen remarked at the beginning of his presentation, one has to be rather courageous to even use the word “love” in the law school setting, let alone to define teaching as a form of love. Yet, through this work, he proceeds to demonstrate that very love for education and for his students which lies at the heart of his thesis. Chinen’s dual training in law and religion (he holds a JD from Harvard and a Master of Divinity from Yale) is evident as he draws on threads from philosophy and theology to explicate teaching as an invitation to both educator and student to be drawn into the human community, an invitation to life and to love. He frames his exposition around a vignette from the novel *As I Stand Ironing* by Tillie Olsen,⁹ and the images he evokes—teacher as student and student as teacher, each in life-changing conversation and dialogue with each other—are simultaneously poignant and profound. Professor Chinen describes a vision of education that is one of service to others, devoted to the sharing of knowledge and to inclusion, and which aspires to empower its participants to transcend the isolation and powerlessness that so often define human existence. It is in that transformational space, he asserts, that each of us can be open to and experience teaching as a form of love. And as is so often true with good writing, we learn as much from this essay about the author as we do about its subject matter. What we learn of Professor Chinen is his humanity, the dignity and respect that he accords to every individual, his love of family, and the deep care and concern he feels for those who might otherwise be invisible, voiceless, or left behind.

The second piece is authored by Janet Ainsworth, who was installed as the John D. Eshelman Professor at a ceremony held at the law school on November 19, 2009. She was introduced by Professor Lawrence Solan, the Director of the Center for the Study of Law, Language, and Cognition at Brooklyn Law School and an expert in law, language, and psychology.¹⁰ Dr. Solan lauded Professor Ainsworth's brilliant interdisciplinary scholarship in law and linguistics, particularly the recent scholarly work that she's done in the context of law enforcement and criminal procedure.¹¹ In *Language, Power, and Identity in the Workplace: The Enforcement of 'English-Only' Rules by Employers*,¹² Professor Ainsworth expands her law and linguistics focus to shine her "justice light" on English-only requirements by employers. In raising the question whether banning the speaking of native languages in the workplace constitutes unlawful employment discrimination under the Civil Rights Act of 1964, she cogently identifies and critiques the ways in which the case law fails to take account of the current cognitive research on multilingualism and ignores how choice of language, in the workplace and elsewhere, encodes both meaning and cultural identity. Most powerfully, Professor Ainsworth unmaskes the unspoken assumptions and linguistic ideology that are implicit in the rulings by federal court judges who view language as a voluntary and conscious choice by the bilingual or multilingual individual rather than as an intrinsic and even immutable characteristic of race or ethnic identity and national origin. Going further, she deconstructs the justifications that employers have traditionally used to support monolingual work environments, positing that those justifications are often pretext for what is in reality an assault on the ethnic identity of the workers. In addition to the clarity and force of Professor Ainsworth's analysis, her interdisciplinary focus on law and linguistics is noteworthy in that, unlike many interdisciplinary scholars, she acquired her deep knowledge of linguistics "on the job" rather than through graduate education (her MA from Yale University is in East Asian Studies). In essence, Professor Ainsworth has acquired the deep knowledge base and

expertise of those who hold a PhD in linguistics while teaching and writing full-time in the disciplines of torts, criminal procedure, and feminist legal theory. As a result of her remarkable commitment and dedication to the life of the mind, Professor Ainsworth has become a legal scholar of the highest order. Her work is recognized nationally and internationally, not only for its great theoretical import but also for its potential to bring justice “on the ground” to individuals for whom issues of linguistics, language, and the law are far more than an academic exercise.

The third article in this cluster is authored by Margaret Chon, Associate Dean for Research, who was installed as the Donald and Lynda Horowitz Professor for the Pursuit of Justice on March 4, 2010. At the installation ceremony, Professor Chon was introduced by Ruth Okediji, who is the William L. Prosser Professor of Law at the University of Minnesota School of Law and one of the country’s leading authorities on international intellectual property law.¹³ Professor Okediji described Professor Chon as a force and an inspiration within the community of intellectual property scholars because she confronts head-on—with characteristic passion, commitment, and integrity—some of the most complex issues of development that we face in our global society.¹⁴ Professor Chon’s scholarship operates at the interface of race, gender, and socioeconomic class, and her work harnesses critical theory to challenge traditional intellectual property regulatory frameworks and to develop reformulated rules regarding production and access to knowledge so that all people—including the impoverished, the excluded, and the underprivileged—have the capacity to develop and flourish. The article that she presented for her installation, *Intellectual Property Equality*,¹⁵ is a continuation of her growing body of work on the intersection of global intellectual property regimes and the principle of equality.¹⁶ In this piece, she explores how intellectual property and equality, traditionally viewed as nonoverlapping legal fields, can be woven together through examining the relationships between regulation of access to knowledge (which intellectual property law

represents) and development conceptualized as freedom (which the principle of equality represents). As Professor Okediji described in her introduction,¹⁷ and as this article reveals, Professor Chon is absolutely uncompromising in her insistence that we acknowledge the relationship between knowledge and power and that we recognize our obligation to reexamine and reformulate the rules that regulate knowledge access so that they are true to the highest ideals of justice. With her searing focus on issues of justice and equality, Professor Chon is the ideal choice to be the Donald and Lynda Horowitz Professor for the Pursuit of Justice, and there is no doubt that her work is creating “ripples in the water,” just as Don and Lynda had hoped.

Last, but certainly not least, the fourth article in this cluster is authored by Dean Mark C. Niles, who gave his inaugural lecture as dean on September 14, 2010.¹⁸ As Associate Dean Chon noted in her introduction of Dean Niles,¹⁹ his is clearly an “influential voice,” reflecting that although he has taken on the mantle of being a dean and full-time administrator, he has not lost his identity as a scholar. Although much of Dean Niles’ scholarship is in the realm of administrative law, governmental liability, and procedure,²⁰ he has maintained a continuing interest in the relationship between law and popular culture.²¹ In this piece, *Preempting Justice: ‘Precrime’ in Fiction and in Fact*,²² Dean Niles provides a thought-provoking look at the post-9/11 law enforcement and national security focus on preventing future crime by using the prism of literature and film, specifically Philip K. Dick’s 1956 science-fiction short story, *The Minority Report*, and Steven Spielberg’s 2002 film, *Minority Report*, in which a future law enforcement agency relies on predictions to incarcerate potential criminals before they are able to carry out their crimes. By describing the current societal response to ongoing pre-emptive incarcerations in Guantánamo Bay and elsewhere, Dean Niles explores whether “preemptive justice” ever has an appropriate protective role to play in society, and he questions why, despite the obvious dangers of such a system—the fallibility of our predictions, the

grave injustice done to the “accused” if the predictions are wrong, our tendency to demonize “the other” out of fear, and the potential abuses by those in power—we have seen no public outcry by the majority within our civil society against a regime of preemptive justice where innocent individuals are being incarcerated indefinitely without evidence or charge. The power of Dean Niles’ use of science fiction as a form of social commentary is that it provides us with a safe, hypothetical place from which to begin the discussion, but as he reveals in this article, the dystopic future portrayed in the short story and the film is much closer to today’s reality than we might care to believe. As Professor Ainsworth so aptly concluded in her commentary following Dean Niles’ presentation, what begins as an interesting morality tale becomes, in Dean Niles’ capable hands, an inconvenient (and very uncomfortable) truth: that we as a society are willing to barter away the rule of law in the vain hope that doing so will keep us safe.²³

Although the nature of this cluster of essays would belie the notion of a unifying theme that ties them together, in actuality, the authors have woven a number of common threads, most prominent of which is the of the justice-oriented mission of Seattle University School of Law. Each of these articles casts a critical eye on issues of justice, whether in the context of the classroom, the workplace, developing countries, or the realm of law enforcement and national security within our own country. Second, throughout these works, we see the enormous value that interdisciplinary perspectives bring to bear on what traditionally would have been viewed as solely legal issues; that close attention to history, literature, linguistics, and popular culture can elucidate and expand our horizons as lawyers and educators. And third, in each of these works, we are reminded of the importance of examining law and society through the lens of gender, race and ethnicity, and socioeconomic status, because it is at the interface and in the interstices of difference that we can learn the most about ourselves.

¹ The creation of the Horowitz chair and the Eshelman and Tausend professorships were announced in the spring of 2008. See *Dean Announces Chair and Professorships*, 2008 NEWS ARCHIVES, <http://www.law.seattleu.edu/x3419.xml>. The creation of the Oltman professorship was announced in the fall of 2008. See *Seattle University Creates William C. Oltman Professorship of Teaching Excellence*, 2008 NEWS ARCHIVES, <http://www.law.seattleu.edu/x3954.xml>.

² The installation presentation on April 22, 2010, by Professor David Skover, the holder of the Frederic C. Tausend Professorship, does not appear in this issue because it is part of a larger work that is to be published as a book. For more information on Professor Skover and his multimedia presentation entitled *Mania: The Story of the Outrageous and Outraged Lives That Launched a Generation*, see *Installation of Prof. David Skover as Frederic C. Tausend Professor*, CALENDAR, <http://www.law.seattleu.edu/x6409.xml>.

³ In 2007, Frederic Tausend received the prestigious Ninth Circuit John P. Frank Award, which recognizes an outstanding lawyer practicing in the federal courts of the western United States. See *Former Dean Tausend Named Ninth Circuit's Outstanding Lawyer*, 2007 NEWS ARCHIVES, <http://www.law.seattleu.edu/x2654.xml>.

⁴ See *Pursuing Justice: Donald and Lynda Horowitz Fund First Law School Chair*, FEATURES, <http://www.law.seattleu.edu/x3803.xml>.

⁵ *Id.*

⁶ See *Mark Chinen Installed as William C. Oltman Professor*, 2009 NEWS ARCHIVES, <http://www.law.seattleu.edu/x6788.xml>.

⁷ This introduction was particularly fitting in that Professor Mitchell was subsequently named the second holder of the William C. Oltman Professorship of Teaching Excellence in the fall of 2010. See *John Mitchell Named Oltman Professor of Teaching Excellence*, 2010 NEWS ARCHIVES, <http://www.law.seattleu.edu/x8040.xml>.

⁸ Mark. A Chinen, *Teaching as a Form of Love*, 9 SEATTLE J. FOR SOC. JUST. 221 (2010).

⁹ See *id.* at 221–22.

¹⁰ See *Ainsworth Installed as John D. Eshelman Professor*, 2009 NEWS ARCHIVES, <http://law.seattleu.edu/x6937.xml>.

¹¹ See, e.g., Janet Ainsworth, *Curtailling Coercion in Police Interrogation: The Failed Promise of Miranda v. Arizona*, in THE ROUTLEDGE HANDBOOK OF FORENSIC LINGUISTICS 111 (Malcolm Coulthard & Alison Johnson, eds., 2010); Janet Ainsworth, *Linguistic Ignorance or Linguistic Ideology?: Sociolinguistic and Pragmatic Issues in Police Interrogation Rules*, 51 TEX. LINGUISTIC F. 1 (2008); Janet Ainsworth, *'You Have the Right to Remain Silent . . . But Only If You Ask for It Just So': The Role of Linguistic Ideology in American Police Interrogation Law*, 15 INT'L J. SPEECH, LANGUAGE & LAW 1 (2008); Janet Ainsworth, *Linguistic Features of Police Culture and the Coercive Impact of Police Officer Swearing in Police-Citizen Street Interactions*, 1 REGISTER & CONTEXT 1 (2008); Janet Ainsworth, *Linguistics as a Knowledge Domain in Law*, 54 DRAKE L. REV. 651 (2006).

¹² Janet Ainsworth, *Language, Power, and Identity in the Workplace: The Enforcement of 'English-Only' Rules by Employers*, 9 SEATTLE J. FOR SOC. JUST. 233 (2010).

¹³ See *Margaret Chon Installed as Horowitz Chair for the Pursuit of Justice*, 2010 NEWS ARCHIVES, <http://law.seattleu.edu/x7499.xml>.

¹⁴ See Video link of *Margaret Chon Installed as Horowitz Chair for the Pursuit of Justice*, Seattle University School of Law News Archives, available at <http://law.seattleu.edu/x7499.xml>.

¹⁵ Margaret Chon, *Intellectual Property Equality*, 9 SEATTLE J. FOR SOC. JUST. 259 (2010).

¹⁶ See, e.g., Margaret Chon, *Intellectual Property "From Below": Copyright and Capability for Education*, 40 U.C. DAVIS L. REV. 803 (2007); Denis Borges Barbosa, Margaret Chon & Andrés Moncayo von Hase, *Slouching Towards Development in International Intellectual Property*, 2007 Mich. St. L. Rev. 71; Margaret Chon, *Substantive Equality in International Intellectual Property Norm-Setting*, in INTELLECTUAL PROPERTY, TRADE AND DEVELOPMENT: STRATEGIES TO OPTIMIZE ECONOMIC DEVELOPMENT IN A TRIPS PLUS ERA 475 (Daniel Gervais, ed., 2007); Margaret Chon, *Intellectual Property and the Development Divide*, 27 CARDOZO L. REV. 2821 (2006).

¹⁷ Video link, *supra* note 14.

¹⁸ See *Dean Mark Niles Kicks Off Influential Voices Series*, 2010 NEWS ARCHIVES, <http://law.seattleu.edu/x8426.xml>.

¹⁹ See DVD: *Preempting Justice: 'Precrime' in Fiction and Fact* (Seattle University School of Law 2010) (on file with the author).

²⁰ See, e.g., Mark C. Niles, *'Nothing But Mischief': The Federal Tort Claims Act and the Scope of Discretionary Immunity*, 54 ADMIN. L. REV. 1276 (2002); Mark C. Niles, *On the Hijacking of Airplanes (And Agencies): The FAA, 'Agency Capture,' and Airline Security*, 10 AM. U. J. GENDER SOC. POL'Y & L. 381 (2002); Mark C. Niles, *Ninth Amendment Adjudication: An Alternative to Substantive Due Process Analysis of Personal Autonomy Rights*, 48 UCLA L. REV. 85 (2000).

²¹ See, e.g., Mark C. Niles & Naomi Mezey, *Screening the Law: Ideology and Law in American Popular Culture*, 28 COLUM. J.L. & ARTS 91 (2005).

²² Mark C. Niles, *Preempting Justice: "Precrime" in Fiction and in Fact*, 9 SEATTLE J. FOR SOC. JUST. 275 (2010).

²³ See DVD: *Preempting Justice: 'Precrime' in Fiction and in Fact* (Seattle University School of Law 2010) (on file with the author).