

THE DEAN'S *Message*



The accomplishments of our talented students, faculty, and graduates no longer surprise me, but they do continue to amaze me, and a look at this issue of *BLS LawNotes* explains why.

Those smiling faces on the cover belong to the members of the Moot Court Honor Society and faculty advisor Professor Robert Pitler. BLS has a long history of fielding winning moot court teams, but this year we took top honors in an unprecedented number of national competitions... so many, in fact, that we had to buy a new trophy case to display them. A story about our moot court powerhouse begins at page 20.

Three recent graduates have been awarded public interest fellowships by the firms of Skadden Arps and Fried Frank to support their work. Their stories, page 14, are testimony not only to their remarkable energy, brilliance, and commitment, but also to the diverse roles that lawyers play in strengthening our communities. You will also read about a contingent of BLS students who spent their spring break on the Gulf Coast. They devoted their vacation time to assisting victims of Hurricane Katrina. They not only provided legal services, but also helped with the gutting and reconstruction of storm-ravaged homes. The stories that they brought back, see page 19, are compelling.

In this issue, you will also read about a group of students and very recent grads whose scholarly articles have been selected for publication in distinguished law reviews and professional journals, as well as about the successes that our students have achieved “on the ground” for their clients in our clinical programs.

Of course, one of the reasons that I am not surprised by their accomplishments is that they have been taught by a splendid faculty and they are upholding the tradition of their alumni predecessors, about whom you will also read in this issue. If you are headed to the beach, take it with you. It makes for nice summer reading. If you are busy in your office, take a break and look it over. Then send us your news. We would love to hear from you.

With all best wishes,

A handwritten signature in black ink that reads "Joan G. Wexler". The signature is fluid and cursive.

Joan G. Wexler

Joseph Crea Dean and Professor of Law

Edward V. Sparer Public Interest Law Forum Examines Global Violence Against Women

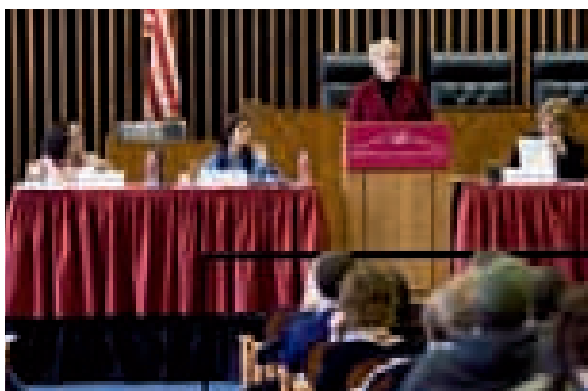
The subject of violence against women as a global phenomenon was formally addressed for the first time by the United Nations General Assembly in October 2006, when the Secretary-General's Study on Violence Against Women was presented. The study documents all forms of violence within the family and the community, as perpetrated or condoned by states, and occurring within armed conflicts, and it sets forth a blueprint to prevent and eliminate this violence.

In February 2007, the Edward V. Sparer Public Interest Law Fellowship Program brought together three leading international human rights scholars and activists, some of whom had worked on the study, to discuss its impact and implications at its annual Forum. A lively audience of more than 200 people—law students, college students, academics, and women's rights and international human rights activists from all around the country—attended this important program.

Elizabeth M. Schneider, Rose L. Hoffer Professor of Law and Director of the Edward V. Sparer Public Interest Law Fellowship Program, organized and moderated the forum. The distinguished panelists were Charlotte Bunch, Founder and Executive Director of the Center for Women's Global Leadership at Rutgers University; Vahida Nainar of International Women's Human Rights Clinic at CUNY School of Law; and Lenora Lapidus, Director of the American Civil Liberties Union Women's Rights Project.

In her remarks, Bunch said the study represents four decades of grassroots efforts to ensure that women's rights are seen as human rights, and that it is the responsibility of states to stop violence against women. She said the study looks "at both the universality and the specifics of violence against women, and its intersection with race, class, culture, age, sexual orientation, and other factors."

(l to r) Lenora M. Lapidus, Women's Rights Project, ACLU; Vahida Nainar, International Women's Human Rights Clinic, CUNY School of Law; Charlotte Bunch, Center for Women's Global Leadership, Rutgers University (at podium); and Professor Elizabeth M. Schneider.



"But in spite of the amount of attention we have been able to bring, there has been no discernible decline in violence against women," she said. "Why? It is the question that haunts those of us who worked on the report." States are "failing miserably to provide adequate resources, services and data on the subject," and "there is little measurement of what really works to combat violence against women," she said.

Vahida Nainar also praised the Secretary General's report as the culmination of years of work by women around world. "It is comprehensive. It has everything there is to know about causes, consequences, strategic efforts, policies, and practices," she said. "And yet—in spite of this tremendous work—the violence persists. There is no indication it has been reduced. One sees, in fact, evidence to the contrary."

Nainar posited several reasons for the increases in violence against women, including the weakening of states in the global marketplace, larger refugee populations, unabated internal strife within post-conflict nations, and the rise of fundamentalism. A key problem, she said, is that violence against women, unlike other human rights violations, is often perpetrated by non-state actors and very little is done to hold them responsible. The question is how to expand both individual and state accountability.

The last speaker was Lenora Lapidus, who spoke about efforts in this country by the ACLU Women's Rights Project and other women's rights organizations to use international human rights frameworks to combat domestic violence, and in particular the issue of police failure to enforce orders of protection in the case of Jessica Gonzales. The ACLU Women's Rights Project coordinated amicus briefs in *Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748 (2005), in support of Gonzales, the mother of three girls killed by her estranged husband after the police failed to arrest him for violating her order of protection. In June 2005, the Supreme Court found that Gonzales had no constitutional right to police enforcement of her restraining order.

In December 2005, the ACLU Women's Rights Project and other international human rights and women's rights organizations filed a petition with the Inter-American Commission on Human Rights saying that the inaction of the police and the Supreme Court's decision violated Gonzales' human rights. It is the first individual complaint against the United States brought before any international human rights body for the violation of the rights of victims of domestic violence, Lapidus said. A hearing was held in March and an opinion is expected in the fall.

A lively question and answer session followed the speakers' presentations. Professor Schneider discussed both the possibilities and the inherent limitations of the Secretary-General's Study, including a lack of resources and methods of enforcement. However, there was some optimism expressed by members of the audience. The fact that violence against women is being addressed in the global arena has empowered people to act more vigorously against it on the local level. In addition, the broader human rights movement has benefited from work on global violence against women.

Embryo Research Regulation Topic of Ira M. Belfer Lecture



Baroness Ruth Deech

Baroness Ruth Deech, an expert on stem cell research and reproductive technology, presented “Playing God: Who Should Regulate Embryo Research?” in October. In her lecture she examined the ethical, political, and regulatory issues involved in embryo research through a comparison of relevant laws in the U.S., U.K., Germany, and Italy. She also proposed a model regulatory framework.

Baroness Deech was Chair from 1994–2002 of the U.K. Human Fertilisation & Embryology Authority, a government agency charged with monitoring IVF facilities and regulating both the use of artificial reproductive technology and research involving genetic materials. Baroness Deech taught jurisprudence, family, property, international, and constitutional law at Oxford from 1970–1991, when she was elected Principal of St. Anne’s College at Oxford, serving until 2004. She was appointed a Dame of the British Empire in 2002 and

created a life peer (Baroness) and a member of the House of Lords as a non-party legislator in 2005. She currently serves as the first Independent Adjudicator for Higher Education for England and Wales.

The Belfer Lecture is made possible by the generosity of Dr. Myron L. Belfer, a Professor of Psychiatry at Harvard Medical School, Department of Social Medicine. The lecture series honors his father, Ira M. Belfer, Class of 1933. A distinguished leader in the field of corporate, real estate, trusts and estates law for over half a century, Ira Belfer served on the Board of Trustees and was a generous benefactor to the Law School.

Baroness Deech’s lecture was published in the *Brooklyn Journal of International Law*, Vol. XXXII, No. 2 (2007) and is available online at www.brooklaw.edu/bjil.

[Read an edited version of the lecture on pages 26–30 in this issue of *LawNotes*.](#)

President of Dramatists Guild of America Presents 7th Annual Media and Society Lecture

In October, the Law School was pleased to welcome John Weidman, President of the Dramatists Guild of America, who presented the 7th Annual Media and Society Lecture. Mr. Weidman, who earned a law degree from Yale Law School, has presided over the Dramatists Guild for the past eight years and has written for the musical theater for almost 30 years. He has been nominated for three Tony Awards for Best Book of a Musical, and three of the shows for which he has written the book have won the Tony Award for either Best Musical or Best Musical Revival.

In his lecture, “Art Isn’t Easy: Protecting the American Playwright,” Mr. Weidman examined recent court cases in which the playwright’s traditional copyright has been challenged by producers and directors. He traced the evolution of Broadway theater over the past two decades that has led to these challenges and warned of the consequences for the American theater should a producer or director eventually succeed in undercutting this traditional copyright.

Mr. Weidman’s lecture was published in the *Brooklyn Law Review*, Vol. 72 (Winter 2007), which is available online at www.brooklaw.edu/blr.

[Read an edited version of the lecture on pages 31–35 of this issue of *LawNotes*.](#)



International Business Law Roundtables Draw Top Speakers

This past academic year, Brooklyn Law School's Center for the Study of International Business Law held three breakfast roundtables that featured two top government officials and an international scholar from Greece. Two of the programs were held at the New York Stock Exchange and one at the firm of Skadden Arps, and all three drew record audiences.

In March, the NYSE partnered with the IBL Center to sponsor **John W. White**, Director of the Division of Corporate Finance of the Securities and Exchange Commission. White's topic, "Seeing Down the Road: IFRS and the U.S. Capital Markets" dealt largely with the SEC roundtable discussion held recently on the International Financial Reporting Standards (IFRS) "Roadmap."

The Roadmap outlines steps to be taken to streamline foreign and domestic reporting of financial data. Non-domestic companies listed on U.S. exchanges will no longer be required to reconcile IFRS to the generally accepted accounting principles of the U.S. in financial statements they file with the SEC. The change is expected to increase cross-border investing and cut the cost of corporate compliance. In his presentation, White referenced the participation in the SEC roundtable of BLS



(l to r) John W. White, Director of the Division of Corporate Finance, SEC; Professor Emilios Avgouleas of the University of Piraeus, and Partner at Tsibanoulis & Partners, Athens, who was a BLS Visiting Scholar in Residence; Sheila C. Bair, Chairman of the Federal Deposit Insurance Corporation.

Centennial Professor Roberta S. Karmel, co-director of the IBL Center and a former SEC Commissioner.

White has been Director of the Division of Corporate Finance of the Securities and Exchange Commission since February 2006. Prior to his joining the SEC, White was a partner at Cravath, Swaine & Moore LLP for 25 years, where he was a world-renowned practitioner representing public companies and their financial advisors in hundreds of public financings, including numerous initial public offerings, as well as corporate governance and public reporting responsibilities.

Earlier in the spring semester, Skadden, Arps, Slate, Meagher & Flom was the venue for a breakfast that featured Visiting Scholar in Residence **Emilios Avgouleas**. He is a professor in the Department of International and European Studies at the University of Piraeus and a partner with Tsibanoulis & Partners in Athens, Greece. Professor Avgouleas' lecture focused on the EU's Market Abuse Directive, which sets a common framework for tackling insider dealing and market manipulation in the EU and the proper disclosure of information to the market. The market abuse directive also creates a EU-wide regime for the disclosure of sensitive information and of conflicts of interest, and it establishes a uniform regime for the conduct of share buybacks and stabilization.

In addition to his talk at Skadden, Avgouleas also spent the week at the law school and gave a talk sponsored by the student-run International Law Society on Securities Regulation in Europe, and spoke to the IBL Center fellows and faculty on The Political Economy of EC Financial Services Law.

Sheila C. Bair, Chairman of the Federal Deposit Insurance Corporation, was the featured speaker to a large crowd at the NYSE in early December. She examined international equity markets from the broad perspectives of the several important positions she has held dealing with the regulation of the capital markets.



A question from an attendee at the March breakfast at the NYSE.

Chairman Bair was appointed to the FDIC in June 2006, after being the Dean's Professor of Financial Regulatory Policy for the Isenberg School of Management at the University of Massachusetts-Amherst. She has also previously served as Assistant Secretary for Financial Institutions at the U.S. Department of the Treasury, Senior Vice President for Government Relations of the New York Stock Exchange, a Commissioner and Acting Chairman of the Commodity Futures Trading Commission, and Research Director, Deputy Counsel and Counsel to Senate Majority Leader Robert Dole.



(l to r) Rachel F. Robbins, General Counsel and Executive Vice President of NYSE Group Inc.; Diana L. Taylor, Former New York State Banking Superintendent; Dean Joan G. Wexler; and Paul Bennett, Senior Vice President and Chief Economist, Research, NYSE.

Seminar Explores Intellectual Property and Vaccine Development

On October 26, 2006, Brooklyn Law School's Center for Health, Science and Public Policy held a theory-practice seminar titled "Advancing Vaccines: Innovations in Intellectual Property Practice" that examined how intellectual property laws both help and hinder the advancement of various life-saving vaccines around the globe. The program addressed the debate over how to ensure the development of effective vaccines against such global diseases as HIV/AIDS, Avian flu and tuberculosis.



(l to r) Usha R. Balakrishnan, founder and president, CARTHA; Josephine Johnston, Associate for Ethics, Law and Society at The Hastings Center; Professor Nan D. Hunter, Brooklyn Law School; and Brian Stanton, Director, Division of Policy, Office of Technology Transfer, NIH.

These global public health concerns have presented unprecedented challenges to our medical and scientific communities and they raise difficult questions that cut across national boundaries, governmental entities, and professional disciplines. In these debates, the relationship between intellectual property law and global public health has taken center stage. As it frequently does, society

turns to the legal profession to provide the frameworks and processes for resolving what can seem like intractable problems. While patent applications particularly in the area of biological sciences have increased dramatically worldwide in the last decade many vaccines that are necessary to save lives are still not being developed.

This was the focus of much of the discussion among the panelists—can creative management of intellectual property result in better health outcomes? What are the "best practices" for fostering research and development? What are the new legal approaches to vaccine development and what are the innovations in intellectual property practice that are developing "on the ground."

The seminar brought together distinguished scholars and practitioners, government officials, and some of the world's leading experts on vaccine access and on innovations in intellectual property practice. The panelists included: Professor Nan D. Hunter, Director of the BLS Center for Health, Science and Public Policy; Richard Wilder, a partner at Sidley Austin; Josephine Johnston, an Associate for Ethics, Law and Society at The Hastings Center; Labeeb Abboud, general counsel of the International AIDS Vaccine Initiative; Usha R. Balakrishnan, founder and president of CARTHA; Brian Stanton, Director of the Division of Policy, Office of Technology Transfer of the National Institutes of Health; Kevin Outterson, Associate Professor of Law at Boston University School of Law. Mitchell Warren, Executive Director of the AIDS Vaccine Advocacy Coalition moderated the discussion.

The Center for Health, Science and Public Policy sponsors the theory-practice seminar series to offer scholars and practitioners an opportunity to exchange ideas on important health policy issues. Read more about the Center and the series at www.brooklaw.edu/centers/health.

The Law School is currently home to nearly 40 student organizations. Each year, they host programs and events that bring distinguished visitors to campus to explore timely legal issues. In addition, the organizations do an outstanding job of raising money for summer fellowships, scholarships and charities, and they provide ample opportunities for students to socialize. The following is just a sampling of some of the many fun events held on and off campus.

BLSPI AUCTION

On March 1, 2007, Brooklyn Law Students for the Public Interest (BLSPI) raised over \$35,000 in their 17th Annual BLSPI Auction. In celebration of this year's auction theme, participants dressed up in their finest pirate gear and competed for prizes. Proceeds from the annual auction help fund summer fellowships for students to work in public interest organizations.



BARRISTER'S BALL

Over 500 students and their guests and faculty members gathered at Brooklyn's Grand Prospect Hall on March 27, 2007 for the Student Bar Association's Third Annual Barrister's Ball, where they enjoyed hors d'oeuvres, cocktails and dancing into the wee hours of the morning.



SPELLING BEE

On February 21, 2007, the Brooklyn Law School Student Bar Association held the 1st Annual Brooklyn Law School Spelling Bee in memory of Professor Sara Robbins. The Bee raised almost \$3,000 toward a scholarship in Professor Robbins' name. Judged by Professors Michael Cahill and Christopher Serkin, 39 students took part in the competition. The winner was Max Seltzer '08.

FOOD AND WINE CLUB

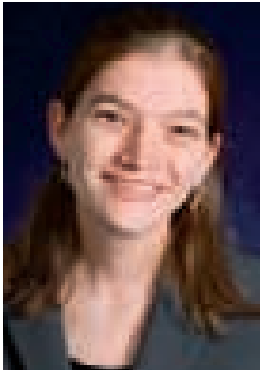
Founded this year, the Brooklyn Law School Food and Wine Club hosted a wine tasting event at Geraldo's in Feil Hall. The club's goal is to offer those students with an interest in fine food and wine opportunities to cultivate their appreciation through education and new experiences.



BLS REVUE

On March 8, 2007, the Student Bar Association and the Office of Residence Life showcased some of Brooklyn Law School's immense talent during the Second Annual Brooklyn Law Revue, a coffeehouse-themed open mike night. A diverse selection of performers took the stage in Feil Hall's *Geraldo's Café* to entertain an audience of over 120 students.

Recent Graduates Awarded Highly Coveted Fellowships



Elissa Berger '06



Camille L. Zentner '06



Barri Kass '06

Three recent graduates have received highly coveted fellowships to work in public interest law. Elissa Berger '06 and Camille L. Zentner '06 were awarded the 2007 Skadden Fellowships, and Barri Kass '06 received the 2008 Fried Frank inMotion Fellowship. All three awardees were active members of the public interest community at Brooklyn Law School as Edward V. Sparer Public Interest Law Fellows and each participated in a clinic.

The Skadden, Arps, Slate, Meagher and Flom, LLP foundation, described as “a legal Peace Corps” by *The Los Angeles Times*, provides fellows with a salary and benefits for one year, renewable for a second year, to implement projects they designed in conjunction with organizations serving poor, elderly, homeless and disabled people and those deprived of civil or human rights. Elizabeth Kane, Director of Brooklyn Law School’s Public Service Programs Office, proudly noted that this was the first time two graduates won the Skadden fellowships in a single year.

The Fried Frank award provides the fellow with a position as a litigation associate for one year of work at Fried, Frank, Harris, Shriver & Jacobson LLP followed by a second year providing direct legal services as a staff attorney at inMotion. InMotion is a non-profit organization that provides free matrimonial, family and immigration legal

services to low-income women in New York City, many of them survivors of domestic violence. After the program, the fellow returns to Fried Frank.

Elissa Berger’s Skadden fellowship project involves legal work for a coalition of organizations in Wisconsin that will develop jobs in a depressed area of Milwaukee. At the same time, it will help increase the energy efficiency of dilapidated housing through energy retrofits. Berger is currently a law clerk for Hon. Michael A. Chagares of the United States Court of Appeals for the Third Circuit. Among her many achievements as a law student, she was the valedictorian of her class, Editor-in-Chief of the *Brooklyn Law Review*, and a member of the Moot Court Honor Society. In addition, she interned with the Prisoners’ Rights Project of the Legal Aid Society, the Brennan Center for Justice, the New York Civic Participation Project, and took part in the Workers’ Rights Clinic. After receiving her B.A. from Macalester College, she was a committee administrator at the Minnesota House of Representatives and worked as a political organizer and director of operations at the Working Families Party for several years.

Camille Zentner will develop her Skadden project in conjunction with The New York Legal Assistance Group (NYLAG) to obtain critical benefits and services for low income New Yorkers with mental illness. She is currently a law clerk for Hon. Michael H. Dolinger, United States

Magistrate Judge of the Southern District of New York. In Law School, she was Executive Articles Editor of the *Brooklyn Law Review*, interned at New York Lawyers for the Public Interest, the Mental Hygiene Legal Service, and Advocates for Children, and participated in the Safe Harbor Clinic. She was also a summer associate at NYLAG. While obtaining her B.A. from the University of North Carolina, she worked as head varsity coach of a high school softball team and later was a member of AmeriCorps, both in North Carolina and in Alaska.

Barri Kass’ background, appropriate to her new fellowship, included an internship at NYLAG representing indigent clients in Family Court. For her Sparer summer placement, she also represented children abused in foster care and parents whose children had been improperly removed from the home. She participated in the Community Development Clinic, the Courtroom Advocates Project, and mentored high school students from the Urban Assembly School for Law and Justice. Most recently, she worked in Philadelphia with the Senior Law Center and Arts & Business Council. Kass graduated with a B.A. from the University of Michigan, and then worked at a New York City foster care agency focusing on children with disabilities. She is fluent in Spanish—an important factor in Fried Frank’s selection of fellows.

One of the pioneers of the inMotion Fellowship is also a Brooklyn Law School graduate, Rachel L. Braunstein '03, who has worked with another alumna, Rhonda J. Panken '93, to provide high quality representation to women. Both were Edward V. Sparer Public Interest Law Fellows.

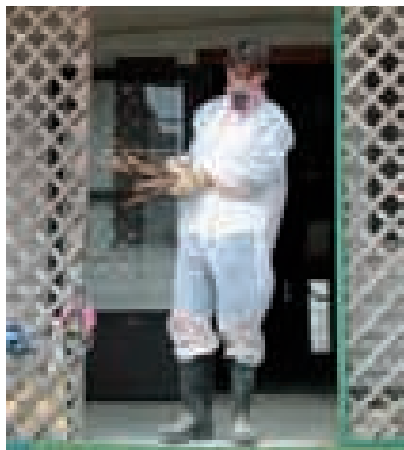
Fried Frank partner Janice Mac Avoy said, “Fellows like Rachel and Barri will leverage the skills and expertise they have developed at inMotion to train other associates to represent victims of domestic violence and other underserved members of the community... a boon to Fried Frank’s expanding pro bono work.”

Student Hurricane Network: Spring Break in New Orleans

During the 2007 Spring break, 41 BLS students traveled to New Orleans to volunteer with an organization known as the Student Hurricane Network (SHN). The coalition of over 1,000 law students from around the country, is devoted to assisting victims of the 2005 hurricanes. This is the second consecutive year that BLS has participated in the rebuilding effort, and the group of volunteers has more than doubled from the original 19 students who devoted their efforts in 2006. This year the students were also joined by a faculty member, Professor Aliza Kaplan.

Josie Beets '07, who served as the SHN leader, was honored this year by the Student Bar Association with the Student Organization Leader Award. She was instrumental in the placement of the students in projects.

The students were eager to share their experiences with the broader Law School community and held a panel discussion in March about their work. Some of the students participated directly in the manual labor side of the reconstruction under the Common Ground Relief Project,



Robert Quackenbush '09 carrying debris from a house damaged in the hurricane.

which supplies volunteers for the reconstruction of homes. Robert Quackenbush '09, commented that he was "happy to do manual labor in gutting and reconstructing the homes, because of the immediate and tangible results." Robert noted that it took some time for him to realize the



Volunteers who participated in the reconstruction of homes through the Common Ground Relief Project.

extent of the devastation that occurred during the storm. "For a while, it seemed that I was doing emotionally sterile work in a physically unsterile environment, and then I came across a family portrait, or a child's toy, and it all hit home after that."

Many of this year's volunteers participated in the FEMA Trailer Survey Project. The project's main objective is to assess the extent of the hardship suffered by the families living in them, and to assist them with extending the mandatory eviction deadline imposed by FEMA. First-year students Andrew Rafter and Neil Bareish commented on the seemingly insurmountable task of collecting the information needed in order to provide adequate assistance for the residents of the trailers. "We simply don't have enough personnel to get to all of the families," said Neil. "At a minimum, our participation provided some catharsis for the families living through these hard times, because they had a chance to share their problems with someone," said Andrew.

Aran McNerney '09, who was responsible for assigning the students to survey specific neighborhoods, recalled the difficulty in deciding the most equitable course of action to take in dispersing the volunteers. "There was a lot of pressure to send all of our volunteers to Jefferson Parish in particular," he said. Ultimately, the group was able to file 19 housing extension

applications in Jefferson Parish, and the families living in the trailers will be given additional time to sort out their housing plans before being forced out by FEMA.

The remainder of the students participated in projects sponsored by the Red Cross, Advocates for Environmental Human Rights, which is currently focused on pre-

"For a while, it seemed that I was doing emotionally sterile work... and then I came across a family portrait, or a child's toy, and it all hit home after that."

venting the destruction of New Orleans Public Housing, Global Green International, an organization dedicated to water purification projects and the slowing of global warming, and the North Gulfport Land Trust, which focuses on reversing the effects of economic distress in disaster areas.

This spring the New York State Bar Association bestowed the president's Pro Bono Service Award to the Student Hurricane Network for the students' extraordinary pro bono service. It is a fitting tribute to their hard work and devotion to the rebuilding effort.

—Article written by Mark Nussbaum '09

Camille Chin-Kee-Fatt, New Director of the Office of Student Affairs

Camille Chin-Kee-Fatt, the new Director of the Office of Student Affairs, is a master at opening dialogs and providing practical and sound advice. Students and colleagues alike say she excels in her multi-faceted role of counseling, assisting student organizations, and developing programs to deepen the sense of community at the law school.

“She’s an excellent mentor, very open to discussing any issues or concerns that a student might have,” Christine Rose ’08 said. “She’s always very frank and honest with her opinions, offers constructive criticism, and is extremely professional yet nurturing towards students.”

“She’s the perfect combination—compassionate but tough,” said Brian Simeone ’08, President of the Student Bar Association, whose members voted Chin-Kee-Fatt Co-Administrator of the Year.

Beryl R. Jones-Woodin, Associate Dean for Student Affairs, said, “Camille is a pleasure to work with. She has experience in a wide range of areas and has taken on many significant projects. And, as evidenced by the SBA award, she has extraordinary rapport with students.”

Before assuming her position last summer, Chin-Kee-Fatt was the head of legal recruitment at the New York State Office of the Attorney General for three years. Prior to that, she held several recruitment and development posts—at the Union Settlement Association, a large non-profit group; at Linklaters & Alliance, an international law firm; and at the New York City Law Department, for the Corporation Counsel. She also served as a program director of the Law School’s Career Center from 1996–1999.

Among many other achievements, in March Chin-Kee-Fatt was appointed by Governor Elliot Spitzer to the Second Judicial Departmental Judicial Screening Committee. The committee reviews and recommends candidates for the Governor’s appointments to Appellate Division or vacant

Supreme Court judgeships. “I look forward to serving and I applaud the diversity of the committee’s members,” she said.

Chin-Kee-Fatt has also served as executive director of the Practicing Attorney for Law Students Program, the renowned mentoring program for law students of color attending law schools in the New York City area.

An unabashed cheerleader for the school, Chin-Kee-Fatt said, “Brooklyn Law School students have unique qualities—creativity, intellect, the ability to multi-task, strong writing and analytical skills, plus a solid, real-world perspective. It’s a rare combination.” She maintains a far-flung network of contacts in government and the private sector to whom she recommends BLS graduates.

Dean Joan G. Wexler commented, “At the Attorney General’s Office, Camille was a fairy godmother for our students, helping many of them obtain internships and summer positions. We are very fortunate that we were able to woo her back.”

In March, Chin-Kee-Fatt was appointed by Governor Spitzer to the Second Judicial Departmental Judicial Screening Committee.

Matthew Chin ’07 is one of many students who speak admiringly of Chin-Kee-Fatt’s wide-ranging legal experience and her ability to translate that experience into helping students make choices in their careers. Matthew was hired as a student intern by Chin-Kee-Fatt when she was at the A.G.’s Office. “She spoke to me in a way that was candid and realistic about how tough the challenges are, but at the same time encouraged me to fight with all that I have,” he said. Recently, “she helped me land my



Camille Chin-Kee-Fatt

‘dream job,’ and when I approached her in the courtyard and told her the news, she let out a scream of excitement that rivaled my mom’s.”

Chin-Kee-Fatt said, “Being a law student is very challenging and, at times, stressful, and the Office of Student Affairs will continue to offer support and assistance to students facing academic and non-academic issues. I am committed to working with all departments to enhance our students’ quality of life and sense of community. To that end, I will continue my work with the Student Bar Association and the 40 plus student organizations to develop substantive and informative student programs during the school year as well as school-wide social events. In addition, for the upcoming academic year, I will be working on putting together community service projects of a non-legal nature for law students.” Chin-Kee-Fatt’s duties also include overseeing the Joint Degree, Summer Abroad and Bucerius Fall Exchange programs, the Journal Writing Competition, division transfers, accommodations for students with disabilities and school safety procedures.

Chin-Kee-Fatt began her legal career as an associate at Shearman & Sterling LLP. She received her J.D. from Howard University School of Law and B.A. from Hofstra University. Born in Trinidad and raised in the South Bronx and Far Rockaway, she has African, Indian, French, Chinese and Spanish roots. Her Chinese grandfather bequeathed her the melodic last name.

Edward W. De Barbieri '08 Awarded Fulbright to Study Irish Co-operative Enterprise

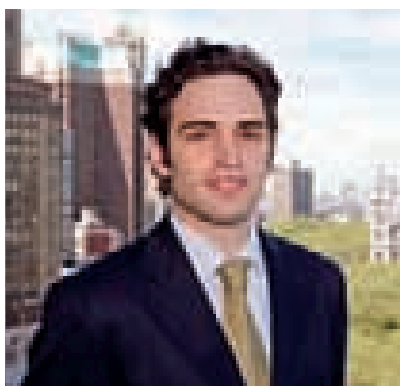
Edward W. De Barbieri '08 has won a Fulbright Scholarship to study the “Irish co-operative movement in an expanding global economy” at the Centre for Co-operative Studies of the University College Cork. His year-long study will include coursework, independent research, and writing a case study of the Barryroe Co-op, a large and successful dairy in West Cork. He plans to enroll as a visiting student at the Faculty of Law in Cork.

The Irish Fulbright Commission is very selective, choosing about five graduate students from the United States each year. Students are responsible for securing their own placements at universities in Ireland. De Barbieri, an Edward V. Sparer Public Interest Law Fellow, had support in preparing his application materials from Professor Maryellen Fullerton, Fulbright advisor at the Law School, and Professor Stacy Caplow, who was a Fulbright scholar herself last fall, teaching at the University College Cork Faculty of Law.

The grandson of a Brooklyn grocery store owner, De Barbieri grew up in New Haven, Connecticut, and earned a B.A. in Philosophy at Boston College and an M.A. in Religion with an Ethics concentration from Yale Divinity School. The germ of the idea for his study took root right after college, when he spent a year at a community development clinic at Yale Law School. In researching innovative banking programs for poor workers, he visited a successful credit union that was more akin to the

Irish model of a workers' co-op than most in the United States. “The Irish model is compelling to me because it has traditionally played a central role in tackling problems associated with disadvantage and exclusion,” De Barbieri said.

The idea developed further during the summer before law school, when De Barbieri visited Ireland. His interest continued to grow with each new law school experience. As a Sparer Fellow he worked on affordable housing at Enterprise Community Partners, Inc.; as a BLSPI Fellow this summer he is working at the Urban Justice Center's Community Development Project, which represents several worker co-ops in New York City; and he interned at the United Nations High Commissioner for Refugees.



Edward W. De Barbieri '08

In his proposal for the scholarship, De Barbieri wrote, “Co-operative movements have proven to be economically more viable in poor and isolated communities than free market enterprises. The question is why?” It has been shown that co-operative models hold certain values in common, he explained, such as “self-help, self-reliance, democracy, equality, equity and solidarity.” He plans to explore these aspects in his research of Barryroe Co-op, which was organized under the leadership of a Catholic

priest. “What people believe and how they make their daily living is very connected. How they relate to one another sets forth an ideal for human interaction.”

Aliza Kaplan: Law Professor and Oscar-Nominated Film Producer



A still from *My Country, My Country*

My Country, My Country, a documentary film by Laura Poitras, co-produced by Professor Aliza Kaplan, was nominated for an Academy Award in the category of Best Documentary Feature.

Scholars and critics have called *My Country, My Country* “the definitive documentary about the war in Iraq.” It focuses on the January 2005 elections in Iraq and through telling the story of an Iraqi medical doctor—a candidate during the election for the Iraqi Islamic Party—sheds light on the broader issue of U.S. foreign policy post-9/11.

Professor Kaplan became involved in the film in its early stages. She met Laura Poitras in a yoga class, and the two became close friends. They talked about Poitras' idea for a film about the war in Iraq and how to raise funds for the project and Poitras asked Kaplan to help produce the film. “You make things happen,” the director said. And along with Poitras and veteran producer Jocelyn Glatzer, she did. Kaplan assisted in all aspects of the film, from grant writing, to negotiating contracts in the United States and abroad, to collaborating on the story.

Kaplan will spend the summer helping plan another film project with Poitras.

Judge Phylis Skloot Bamberger Leads Seminar on Jury Selection

In November Retired New York Supreme Court Judge Phylis Skloot Bamberger led two interactive seminars about the process of jury selection and how attorneys handle various jury issues during trial.

The first session dealt with the procedures used for jury selection, including the stages of voir dire and the proper use of preemptory challenges and challenges for cause. Judge Bamberger used numerous hypothetical situations to help students identify pertinent legal issues and formulate appropriate questions for potential jurors. For instance, a juror says he is uncertain if he can evaluate the testimony in an impartial way. What follow-up questions would you ask? Would you exercise a challenge for cause? What will you do if the judge denies a challenge for cause? Another juror is wearing a "Power to the Unions" t-shirt. Would you be concerned? Do you want to use a preemptory challenge? These hypotheticals helped the students to recognize the range of issues that can arise during jury selection and learn how to approach each issue in a meaningful way.



Phylis Skloot Bamberger, recently retired Court of Claims Judge, served as a Justice of the Supreme Court, Bronx County since 1988. Her extensive professional activities included membership on the Chief Judges' Jury Commission. Earlier in her career, she was a public defender for 24 years and attorney-in-charge for the Federal Defender Services Unit of the Legal Aid Society.

The second session focused on issues that may arise after the jury is selected, including jury misconduct, illness, the use of alternate jurors, and jury deliberations. Judge Bamberger also explained the standard used to determine whether a juror should be discharged, what sort of inquiry is needed to determine jury misconduct. The discussion also covered circumstances under which jury issues may lead the judge to order a mistrial, and what can be done to avoid it.

—Article written by Deanna Pisoni '10.

Clinic Roundup

New Clinic in NYC Law Department

A new clinical program in collaboration with the New York City Law Department (the Corporation Counsel) will begin in the fall 2007 semester. Second-year students will be assigned to the Special Federal Litigation Division where they will represent the city and its employees in connection with federal civil rights lawsuits against the Police Department and the Department of Correction. The students will have primary responsibility for all aspects of the cases, including preparing pleadings, conducting discovery, negotiating settlements, drafting motions, and appearing in federal court at status conferences or trials.

Securities Arbitration Clinic

It took more than a year of hard work by students in the Securities Arbitration Clinic to win an important victory for a Spanish-speaking couple of very modest means. The couple had come into a large sum of money from a settlement of a personal injury case stemming from a terrible event—the brutal beating of the woman in the lobby of her South Bronx building. But the money had been lost through a broker's bad investment.

According to Professor Karen J. van Ingen, director of the clinic, the students showed remarkable resourcefulness in handling the case. The statement of claim they prepared and filed with the National Association of Securities alleged that after the couple deposited the money into a savings account, the broker at the bank began hounding them with phone calls. The couple advised the broker they knew nothing about the stock market and did not want to invest. But the broker persisted, promising them a high rate of return, and they eventually opened an account. The statement of claim further alleged that the broker made unauthorized and inappropriate investments that resulted in devastating losses.

Although the case was set for a four-day arbitration during the students' spring break, the students worked steadfastly preparing direct and cross-examinations of several witnesses, including an expert. Just three days before the arbitration was to begin, the respondents agreed to mediate the claim so the team changed its focus from arbitration to mediation. A successful conclusion was reached after more than 10 hours of mediation and the couple was overjoyed with the results. The student team included Andrew Oldis '07, Brandon Gribben '07, Paul Reyes '07, Amit Alankar '07, Alexandra Pluscarr '07 and Nabeel Haque '08.

45 Federal Judicial Internships this Summer

This summer, more than 45 students—a record number—will be working as interns in the chambers of federal court judges. Many will be interning in the New York area, at the Court of Appeals for the 2nd Circuit, the District Courts of the Southern and Eastern Districts of New York, and the Court of International Trade. Others will intern in such far-flung courts as the Court of Appeals for the 3rd and 9th Circuits, and District Courts in New Jersey, Illinois, Wisconsin, and the Virgin Islands.

Consumer Counseling and Bankruptcy Clinic

Consumer debtors seeking Chapter 7 relief like the clients represented by the Consumer Counseling and Bankruptcy Clinic, have been affected by the rigid new requirements of the amendments to the Bankruptcy Code that took effect in October 2005. Since then, clinic students have filed cases on behalf of more than 25 low-income debtors in bankruptcy proceedings in Brooklyn and Manhattan, all of them leading to successful discharge of the clients' debts.

The excellent work of the Clinic, taught by Professor Mary Jo Eyster, was recognized by the Brooklyn Bar Association Volunteer Lawyers Project, which refers low-income clients to the Clinic. The Bar awarded the Clinic the 2006 Gold Club Certificate of Appreciation. Many of these debtors are on fixed incomes, often due to health problems or the illness of a family member, and are struggling with high interest credit card payments. The combination of threatening calls and letters from collection agencies, lawsuits and freezing of bank accounts pushes these clients to consider seeking relief through bankruptcy. The Clinic has assisted hundreds of low-income debtors in the 12 years of its operation.

Community Development Clinic

Community Development Clinic students, directed by Professor David Reiss, were involved in several complex projects recently: They advised the Brooklyn Center for the Arts about options for structuring a

multi-tenant arts center so that several organizations could secure real estate for their office and performance space; They assisted a church group that had been bilked by another organization out of \$2,000 in its formation under the Religious Corporations Law of the State of New York; and they drafted a governing agreement for a coalition of six churches allying to form a "greenmarket" program.

Corporate and Real Estate Clinic

Students in the Corporate and Real Estate Clinic have been busy helping to preserve low-income housing in the neighborhoods most affected by gentrification and development pressure, reports Professor Debra A. Bechtel, director of the clinic. Much of this work involves obtaining loans or tax forgiveness for low-income co-ops threatened by foreclosure. Students recently helped obtain loans for residences in Manhattan's lower east side, in Harlem, and in Williamsburg in Brooklyn. Some of the work also engages students with boards of directors attempting to develop re-sale and subletting restrictions and with dissident shareholders seeking to oust wasteful or negligent directors.

Prosecutors Clinic

For many years, students in the Prosecutors Clinic, taught by Professor Lisa Smith, have handled domestic violence cases. This year, the clinic teamed up with the innovative Family Justice Center that opened in Brooklyn in 2005 to assist domestic violence victims on a full range of issues including matrimonial, immigration, housing, and custody matters, in addition to possible criminal cases. Students split the year working on the prosecution side and the civil side.

The Safe Harbor Project

Students in The Safe Harbor Project, co-taught by Professors Dan Smulian and Stacy Caplow, secured asylum for many deserving clients from countries as diverse as Bhutan, China, The Gambia, Venezuela, Guinea, Chad and Cote-d'Ivoire who were persecuted for their political opinions, religious beliefs and sexual orientation, among other reasons.

Employment Law Clinic

Students in Professor Minna Kotkin's Employment Law Clinic successfully represented more than a dozen claimants at New York State Unemployment hearings and handled several mediations on employment discrimination matters in the EDNY.



Corporate Journal Symposium Focuses on the Future of Securities Market Structure and Regulation

The securities markets are in the midst of unparalleled structural changes: electronic trading of securities is largely replacing the traditional floor-based trading system; the exchanges have been transformed from membership associations into publicly owned business corporations; and international mergers of stock exchanges are underway.

A well-attended symposium in November 2006, "Securities Market Structure and Regulation: What Does the Future Hold?," focused on these events and how they are likely to affect the protection of investors and the system of regulation and self-regulation that is designed to achieve that protection. The day-long symposium was co-hosted by the law school's newest law journal, the *Brooklyn Journal of Corporate, Financial and Commercial Law* and the Center for the Study of International Business Law, in partnership with the Securities and Exchange Commission Historical Society.

A highlight of the program was the luncheon keynote address by Annette L. Nazareth, a Commissioner of the U.S. Securities and Exchange Commission (SEC). As a response to the pervasive "discussion these days about the negative effects of regulation," Nazareth addressed the ways that, in her view, "regulation has . . . enhanced the competitive marketplace." She also discussed the development of the options markets, and the way the SEC has "used its legislative authority" to "mandate intermarket linkages," allowing people trading in options to choose the best price available. She also noted the ways SEC intervention has "mitigate[d] principal-agent conflicts," in the areas of order and order flow handling, leading to significant curbs on market intermediaries' opportunities to act on the "significant conflicts of interest" they face "when acting on behalf of customers." After addressing these and other of the "many instances where market forces, acting alone, may fail to achieve an efficient outcome," Commissioner Nazareth concluded by noting, "Regulators must ensure that the means used to address potential instances of market failure are well-tailored to achieve the regulatory objectives. The results of instances in which these principles have been followed have benefited our markets and investors handsomely."

The three panels presented at the symposium also offered a wealth of information—as well as differing viewpoints—on varying subjects. The development of electronic-based trading systems was a focus of the first panel, "The Future Shape of the Markets." Junius Peake, a professor of finance at the University of Northern

Colorado, said that automation of the markets is a "no brainer," but the transition to it has been a gradual process globally, due in large part to continued resistance in the United States to changing from the floor-based models. As Brooklyn Law School Professor Norman Poser, who served as moderator, noted, "When we consider the future structure of the markets, we are not writing on a clean slate." This is especially true in the United States, where the New York Stock Exchange has flirted with changing to electronic trading for nearly 30 years, but has yet to implement it. This contrasts with European and Japanese markets which, according to panelist Roger Blanc, a partner at Willkie Farr & Gallagher LLP, have no floor-based trading systems any longer, illustrating the apparent overwhelming success of electronic over floor-based trading systems, at least in non-U.S.-based markets.

The importance of the international effects of securities-market regulation was discussed. Paul Bennett, Chief Economist for the New York Stock Exchange, noted, it is important to observe what

other exchanges in the world are doing to "keep it in a global context" when discussing market structure. One reason is that, as a number of panelists pointed out, stock exchanges are merging with each other across borders: The NYSE has been toying with a merger with Euronext, itself a combination of four national exchanges (Amsterdam, Brussels, Lisbon and Paris); Nasdaq has expressed interest in merging with the London Stock Exchange; and Euronext acquired LIFFE (the London International Financial

Futures and Options Exchange) in 2002, transactions explored in depth by Roberta S. Karmel, Brooklyn Law School Centennial Professor of Law.

The second panel, "The Impact of Market Structure on Regulation and the Self-Regulatory System," moderated by Professor James Fanto of Brooklyn Law, examined what panelist Onnig H. Dombalagian, a professor at Tulane Law School, called "A crisis of faith in self regulation." As exchanges have shifted from members-only organizations to public business corporations, there is now a conflict of interest between the exchanges' duty on the one hand to investors at large, and on the other hand, to their individual shareholders.

The final panel, "The Respective Roles of Government and Competition in Shaping and Developing the Markets," moderated by Professor Karmel, focused on how government and competition work with and against each other in shaping market structures.

—Article written by Margaret L. Hanson '08



(l to r) Professors James A. Fanto and Roberta S. Karmel with Annette L. Nazareth, SEC Commissioner.

Two-Day Symposium Explores Bankruptcy in the Global Village: The Second Decade

Over the last several decades, the increased globalization of business enterprises has led in turn to the globalization of business failure. In 1996, anticipating this transformation, Brooklyn Law School in conjunction with the *Brooklyn Journal of International Law* hosted an influential symposium entitled “Bankruptcy in the Global Village.” That symposium, organized by the late Professor Barry Zaretsky, coincided with early efforts by UNCITRAL, the American Law Institute, the International Bar Association and the World Bank to create a legal architecture for handling global insolvencies. To a great extent, the papers presented at that symposium, and published in the *Brooklyn Journal of International Law* formed the template for the legal developments that followed.

This past fall, the Center for the Study of International Business Law and the *Journal* reprised the original symposium and sponsored a two-day program entitled, “Bankruptcy in the Global Village: The Second Decade.” This symposium looked back at developments in international insolvency law over the last decade, and looked forward to the next round of reform efforts.

“Ten years was a fitting interval to commemorate Barry’s work. It was also a fitting amount of time to take stock of the developments in the international insolvency field and to consider the influence of the earlier conference,” said BLS Professor Edward J. Janger, who co-organized the Symposium, which honored Professor Zaretsky.



Professor Edward J. Janger, co-organizer of the Symposium.



The Zaretsky Bankruptcy and Commercial Law Roundtable is held regularly in honor of the late Professor Barry Zaretsky, a member of the faculty for 19 years and a luminary in the field of commercial and bankruptcy law. The roundtable programs focus on current topics of interest in bankruptcy and commercial law.

Virtually all of the participants of the 1996 conference were able to return and many new participants were added. “This allowed the participants to consider not just the developments in cross-border insolvency but also efforts to harmonize substantive bankruptcy law, and the law of secured credit,” said Professor Janger.

With Professor Janger, Associate Dean Michael A. Gerber and Professor Neil B. Cohen, Jeffrey D. Forchelli Professor of Law, were instrumental in organizing a symposium that was informative, influential and innovative. They brought together a group of distinguished participants from this country and abroad. Some of the participants included, Ian F. Fletcher, Faculty of Laws at the University College in London, England, Jay L. Westbrook, Professor of Law at the University of Texas School of Law, and Robert K. Rasmussen, Director of the Law and Human Behavior Program at Vanderbilt University Law School. In addition to leading scholars, highly respected and skilled practitioners in the international bankruptcy field took part in the program, including Nick Segal, a partner at Freshfields Bruckhaus Deringer and Gabriel Moss, Q.C., Barrister, 3/4 South Square, Gray’s Inn. BLS Professor Claire R. Kelly also participated along with the co-organizers Professors Cohen, Gerber and Janger.

The night before the symposium, Christoph G. Paulus, Professor of Law at Humboldt Universität zu Berlin, was the featured speaker at the Barry L. Zaretsky Roundtable Dinner. Professor Paulus, served as an advisor to the International Monetary Fund and the World Bank. He addressed the critical topic of “Global Insolvency Law

Brooklyn Law School Welcomes Russian Delegation



Nick Segal, Partner, Freshfields Bruckhaus Deringer.

and the Role of Multinational Institutions.” He also participated in the Symposium as a commentator on the panel “Choice of Law.”

With such an influential group of bankruptcy scholars and practitioners, the “Bankruptcy in the Global Village” symposium once again proved to be a great success. The symposium volume to be published in the *Brooklyn Journal of International Law* promises to be an important contribution to the field.



Professor Christoph G. Paulus, Humboldt University, Berlin, who was the Barry L. Zaretsky Dinner keynote speaker.

Continuing its long history of collaboration with law schools from abroad, Brooklyn Law School hosted a delegation of 16 law faculty, jurists and administrators from Russia on October 6, 2006, holding an all-day seminar focused on international cooperation in legal education.

The seminar was an outgrowth of dialogue that was established between the Russian Law Academy with the support of the Ministry of Justice of the Russian Federation and Associate Dean of Academic Affairs Lawrence Solan. The Academy reached out to Brooklyn Law School in hopes of organizing a visit of a delegation of rectors of law universities and deans of law faculties from different regions of Russia to the USA. Their goal was to establish professional contacts with American universities. The Academy was very interested in learning about the American education system, and the 16-member delegation chose Brooklyn Law School as a model school from which to learn and share ideas.

Associate Dean Solan organized the day’s events, which included three roundtable discussions on opportunities for international collaboration in legal research and legislative issues, legal education and the public sector, and international cooperation in legal education. In addition to Dean Joan Wexler, several faculty and administrators participated in the discussions, including Professors Neil Cohen, Minna Kotkin, Roberta Karmel, Bailey Kuklin, Arthur Pinto, and Steven Gordon, Associate Director of Career Services. Over lunch the discourse continued in small groupings, and later in the day the delegation toured the campus.

“The lasting relationship that was forged this fall is instrumental in building a better understanding and a sharing of ideas between the law schools as well as the legal systems,” said Associate Dean Solan. “It is also critical for potential future collaboration between Brooklyn Law School and its Russian counterparts. With the contact established, the Law School hopes to send its own delegation to Russia in the future.”



Professor Fedor Philippov, Head of International Office, Pro-rector, Russian Law Academy in Moscow, makes a toast over lunch to the start of a productive relationship between the two institutions.

David G. Trager Public Policy Symposium End-of-Life Care: Bioethical Perspectives and Conflict Resolution

End-of-life care is vitally important to patients, their families, medical providers and the public, yet no consensus has emerged on the type and duration of medical treatments that are appropriate at the end of life. How do we decide to say enough is enough? How do we resolve difficult conflicts that arise in patient care?

At the David G. Trager Public Policy Symposium, “End-of-Life Care: Bioethical Perspectives and Conflict Resolution,” in February 2007, an internationally recognized group of medical and legal experts debated these questions in the context of selected cases, provided cross-national perspectives, and evaluated a range of conflict resolution models. The event was sponsored by The Center for Health, Science and Public Policy, and organized largely by Professors Marsha Garrison, a renowned expert on bioethics and co-author of a textbook on the subject, and Karen Porter, Executive Director of the Center.

The first panel focused on divergent interests at the end of life. Adrienne Asch, a professor of bioethics at the Wurzweiler School of Social Work, Yeshiva University, said years ago “there was consensus—if a family said treatment should be provided to a patient, it would be provided. I think we don’t have that anymore.” Asch expressed concern that we have concentrated on questions like: “Would the patient want that treatment—surgery, medication, dialysis, feeding tubes, ventilators?” Yet we have not concentrated enough on questions like: “After the patient has had the treatment, what would life be like?” Those with all their capacities “have a lot of trouble thinking about what being without them is like.” We must find out what kind of support exists outside the hospital for the incapacitated person, she said.

Models of conflict resolution in end-of-life-care was the theme of the second panel. Nancy Dubler, Director of the Division of Bioethics at Montefiore Medical Center, said, “Health care is a conflict-ridden enterprise in the U.S.” and “a great deal of conflict comes from the medical team,” especially when “different physicians tell the family different things.” Independent mediation and conflict resolution services should be readily available in health care institutions.

Dubler related a story of a young woman she found sobbing in a hospital corridor, alone and overwhelmed by the end-of-life decisions she faced concerning



Judge David G. Trager

her grandmother. She advised the young woman to bring her extended family into the process. Speaking to them, Dubler said, “I want you to understand that we [hospital personnel] are the strangers. When your loved one dies, our lives will not be changed. But your lives will be. If we can do what you want and what you think she would want, we will.” Dubler said she is always explicit in this way, because “hospitals are distant, and their incentives don’t always coincide with those of patients and families.” She described aspects of bioethics mediation

and consultation techniques she uses to raise “all voices to equality.”

The final panel, on cross-national perspectives, featured a panelist from Canada, Professor Bernard Dickens of the Law Faculty of the University of Toronto; from Israel, Amos Shapira, Professor of Law and Biomedical Ethics at the Tel Aviv University and a frequent visiting professor at Brooklyn Law School; and from The Netherlands, Dr. Evert van Leeuwen, Chair of the Center for Ethics and Philosophy at the Free University Medical Center, Amsterdam. Also participating was Professor Carl H. Coleman, Director of the Health Law and Policy Program at Seton Hall Law School.

Professor Shapira served on the public commission whose work led to Israel’s Dying Patient Act of 2005. It permits the withholding of treatment if a competent patient with less than six months to live so desires. The act is a hybrid of Western liberal values and traditional Jewish paternalistic tenets, Shapira said. Although some in the West believe that “personal autonomy and individual choice are supreme values that override collective norms,” many others believe that “collective interests, including religious beliefs and practices, may provide a legitimate ground for State interference with personal autonomy.” One day, he said, Western society may consider physician-assisted death not only a matter of free choice, but one of professional responsibility for the doctor, and a choice that has community support.

The Trager Symposium series, which began in 1997, was named for David G. Trager, a United States District Court Judge for the Eastern District of New York, who served as Dean of Brooklyn Law School from 1983 to 1993. In his concluding remarks, Judge Trager gave examples of evolving attitudes toward end-of-life issues that he had observed over the course of his illustrious career.

—*Written with the assistance of
Tamar N. Anolic '08*

Law School Explores Crawford Decision for a Second Time

In 2004, the United States Supreme Court, in a landmark decision *Crawford v. Washington*, abandoned the “indicia of reliability” framework that for nearly twenty-five years had governed Confrontation Clause challenges to the admissibility of hearsay statements against a criminal defendant. Justice Scalia’s opinion for the seven-justice majority held that regardless of their reliability, out-of-court “testimonial” hearsay statements made by a witness who does not appear at trial were inadmissible, unless he or she was unavailable to testify and the defendant had a prior opportunity for cross-examination.

Many of the unanswered questions raised by *Crawford* were explored at a February 2005 symposium at the Law School entitled “Crawford and Beyond: Exploring the Future of the Confrontation Clause in Light of its Past.” Subsequently, the symposium speakers delved into these issues in even greater depth in the *Brooklyn Law Review* (Volume 71, Number 1).

In June 2006, the Supreme Court handed down a second Confrontation/hearsay opinion, *Davis v. Washington*, under which *Hammon v. Indiana* was also decided. Again Justice Scalia authored



(l to r) Anthony J. Franze, Arnold & Porter LLP; Jeffrey Fisher, Stanford Law School; Margaret A. Berger, Brooklyn Law School; Robert P. Mosteller, Duke Law School; and Thomas Y. Davies, University of Tennessee College of Law

the opinion for the Court, this time for an eight-justice majority. Unsurprisingly, although the Court clarified some of the *Crawford* principles, in the contexts of a 911 call and police questioning of a domestic violence complainant in her home; the meaning of “testimonial” remained imprecise and murky.

The nature and meaning of testimonial and other open issues were the focus of a second *Crawford* symposium “Crawford and Beyond: Revisited in Dialogue,” which was held this past fall just three months after the Court’s opinions in *Davis*. Brooklyn Law School Professor Robert Pitler, who was the chief architect of the first symposium, brought the School another outstanding program. Both symposia drew large nationwide audiences eager to have light shed on the uncertainties left by *Crawford* and then by *Davis*.

Many of the distinguished national scholars and practitioners who participated in the first *Crawford* symposium returned to the Law School for *Crawford II*. They were joined by several other notable scholars and practitioners as well as our outstanding Evidence faculty, including Professors Margaret Berger, Edward Cheng, Richard Farrell, and Professor Pitler.

The scholarship from the second program will be published in the *Journal of Law and Policy* (Volume XV, No. 2).

To read more about the conferences and to view video from them please visit: www.brooklaw.edu/crawford



Clockwise from top left: Edward K. Cheng, Brooklyn Law School; Robert M. Pitler, Brooklyn Law School; The Symposium drew a large audience from across the country.

GO TEAM!

A RALLYING CRY FOR THIS YEAR'S RECORD-SETTING MOOT COURT HONOR SOCIETY

Sabrina Thanse, a 3L and president of the student-run Brooklyn Law School Moot Court Honor Society was delivering her first speech of the year to the Society's members in the fall of 2006. In need of a suitable ending to her speech—one that would rally her troops—Sabrina blurted out, “Go Team!”

The room erupted in applause. Not intended for any particular Moot Court team but for the Society as a whole, this simple phrase became a rallying cry of the Society in the 2006–2007 record-setting academic year.

“We were one Society, one team,” said Sabrina, who was instrumental in putting the focus on unity. “The success of one team is really a reflection of the success of the Society as a whole,” she said.

The Society had an unprecedented winning streak in both appellate and trial competitions across the country, bringing home four national titles and top regional titles in the nation’s most prestigious matches.

The Bankruptcy Appellate Advocacy Team placed first in a field of 42 teams in the Duberstein National Bankruptcy Memorial Moot Court Competition, judged by the nation’s leading federal bankruptcy jurists. The Immigration Team defeated Georgetown University Law School in the semi-finals and Harvard Law School in the finals to take first place in the 2nd Annual Immigration Law Competition. The Ethics Trial Advocacy Team won first place against a strong national field at the University of the Pacific McGeorge School of Law’s Trial Advocacy Competition, defeating Southwestern Law School in the finals. And the Civil Rights Trial Advocacy Team II took top honors at the St. John’s National Civil Rights Trial Competition, judged by leading national trial experts.

The exceptional crop of student advocates was unstoppable. From Washington, D.C. to Louisiana, Tennessee and California, Brooklyn Law School ousted juggernaut schools, earning a reputation as a fierce contender with one of the finest Moot Court programs in the country.

Brooklyn Law School was also the regional powerhouse at the City Bar’s Annual National Moot Court Competition, defeating Benjamin N. Cardozo School of Law in the semi-finals and New York University School of Law in the finals. In the national rounds, we placed among the top eight teams out of 100 schools in this competition.

The trophies kept pouring in. Brooklyn Law teams took the top regional prizes at the two oldest and most prestigious trial advocacy competitions in the country—the Texas Young Lawyers Association National Trial Competition and the American Association for Justice Student Trial Advocacy Competition—as well as numerous individual honors.

“Competition after competition, we were told by sitting judges that we perform better than the people who come in front of them in real court,” said Caren Rotblatt ’08, who is the incoming president of the Moot Court Honor Society. “We have a lot of pride in ourselves and it makes us really want to win,” she said.

“We are very proud of these students, who are true intellectual athletes,” said Dean Joan G. Wexler. “While Brooklyn Law School has had a long history of successful moot court teams, this year was historic. We applaud our creative and committed Moot Court Honor Society and the strong support from our faculty and alumni.”



Moot Court Honor Society leaders Caren Rotblatt '08, Meghan Towers '07, Timothy Parlatore '08, and Sabrina Thanse '07.

BROOKLYN LAW SCHOOL
ESTABLISHED 1901
Moot Court Honor Society

2006–2007 Brooklyn Law School Moot Court Victories

National Titles

BANKRUPTCY APPELLATE ADVOCACY TEAM

1st Place: 15th Annual Duberstein National Bankruptcy Memorial Competition

Anna Burns, Robert Sitman

Coaches: Robert English, John Mattoon

IMMIGRATION LAW TEAM

1st Place: 2nd Annual Immigration Law Competition

Ashley Caudill, Jessica Maroz.

Coach: Christopher Prior

ETHICS TRIAL ADVOCACY TEAM

1st Place: National Ethics Trial Competition

Allison McKenzie, Lynnette Lockhart, Mark Antar, Janine Rowser

Coach: Ami Sheth

Best Preliminary & Advanced Round Advocate:

Janine Rowser

CIVIL RIGHTS TRIAL ADVOCACY TEAM II

1st Place: St. John's National Civil Rights Competition

Seth Feldman, Lee Jacobs, Rachel Pearlman

Coach: Meghan Towers

Best Advocate: Rachel Pearlman



Members of the National Ethics Trial Team were Mark Antar '07, Lynnette Lockhart '07, Ami Sheth '07, Allison McKenzie '07 and Jannine Rowser '07.

FLORIDA TAX TEAM

2nd Place & Best Brief: Florida Tax Bar National Moot Court Competition

April Charleston, Jessica Gary, Laura Reiter

Coach: Ariel Weinstock

WHITE COLLAR CRIME TEAM

2nd Place: Georgetown University White Collar Criminal Mock Trial Competition

Megan Mann, Dori Milner, Tim Parlatore,

William Yoon

Coach: Carla Cheung

LAW AND ECONOMICS TEAM

2nd Place: Henry G. Manne Moot Court Competition for Law and Economics

Jane Andersen, Talia Koss, Alexa Loo

Coach: Caren Rotblatt

SPORTS LAW TEAM

2nd Place & 2nd Best Brief: Tulane Mardi Gras Invitational, National Sports Law Competition

Jay Braiman, Ryan Lewendon

Coach: Philip Frank

Best Oral Advocate: Jay Braiman

Regional Titles

NYC BAR NATIONAL TEAM

Reg. 1st Place & Nat'l. 1/4-Finalists:
57th Annual National Moot Court Competition,
Association of the Bar of the City of New York

Michael D. Bell, Mark Legaspi, Caren Rotblatt

Coaches: Sabrina Thanse, Melissa Erwin,
John O'Callaghan

Regional 2nd Best Oralist: Caren Rotblatt

NEW YORK REGION: TYLA NATIONAL TEAM I

Reg. 1st Place: Texas Young Lawyers Association
National Trial Competition

Seth Feldman, Lee Jacobs, Rachel Pearlman

Coach: Maria Fedor

Top-Ten Advocate: Seth Feldman

AAJ NATIONAL TEAM II

Reg. 1st Place: 2007 National Trial Advocacy
Competition, American Association for Justice

Jennifer Fisher, Susanne Flanders,

Megan Mann, Nick Reiter

Coaches: Meghan Towers, Amit Soni

ABA NATIONAL TEAM

Reg. Finalists: American Bar Association National
Appellate Advocacy Competition

Matthew Accardo, Benjamin Moore, Sarah Siegel

Coaches: Sabrina Thanse, John Mattoon, Melissa Erwin

Top-Ten Oralist: Matthew Accardo

TYLA NATIONAL TEAM II

Reg. Finalists: Texas Young Lawyers Association
National Trial Competition

Katherine Borowiecki, Matthew McGrath,

Timothy Parlatore

Coach: Meghan Towers

Top-Ten Advocate: Timothy Parlatore



Megan Mann '08 and Susanne Flanders '08, members of the AAJ American Association of Justice regional winning team.



The Florida Tax Team: April Charleston '08, Laura Reiter '08, Ariel Weinstock '07 and Jessica Gary '07.

For a complete list of team and individual titles, visit www.brooklaw.edu/students/moot/winners.php

Go TEAM MOOT COURT HONOR SOCIETY



Texas Young Lawyers Association Regional Winners: (l to r) Maria Y. Fedor '07, Lee N. Jacobs '07, Rachel L. Pearlman '07, and Seth I. Feldman '07.

Beyond the record-breaking victories, it was the unity among Society members that made the year unique. “This year’s Moot Court leadership really made us feel as one team,” said Timothy Parlatore '08, a second-year student who competed in two trial advocacy competitions.

A one-team mentality is not easy to foster in a Society with over 140 members comprised of second-, third- and fourth-year, part-time and evening students, all with separate lives and many commitments. Moreover, the students are more accustomed to operating in a competitive environment of a law school. Yet, the Society’s eight-member Executive Board made unity an explicit goal. They realized that only a united as well as an enthusiastic front could bring the Society the kind of accolades the members hoped for.

In the beginning of the year, the Board focused its attention on bringing returning members back into the fold through social events, in-school competitions, and academic credit for coaches. To set an example, Board members set out to coach teams and to attend and judge at least one practice of every team.

Although many law schools have faculty or alumni coaches, Brooklyn Law School coaches are students who have competed in the past. In addition to enhancing advocacy abilities, the members note that coaching also provides them with essential leadership skills. “...It gives you the experience of being a leader and prepares you for the real world,” said Timothy.

Philip Frank '07 agreed. This spring, Philip coached the Sports Law Appellate Advocacy Team that was a finalist and received awards for second best brief and best oralist at Tulane University School of Law. “I enjoyed coaching because I could help my teammates through the experience I had gained competing twice and because I really liked

the atmosphere of camaraderie from being on a team,” said Philip, who competed in both trial and appellate competitions during his two years on Moot Court.

The Board fostered more involvement from its members by creating fall competitions for those who competed in the previous year, billed as the “Best of the Best” competitions. And to keep spirits high there were cocktail receptions, happy hours and coffee and donut breaks. As an additional incentive, the Law School awarded student coaches one academic credit, with the added requirement that they write substantive bench briefs to summarize the competition problem, the relevant issues and the case law.

Particularly noteworthy this year was the Society’s record-breaking trial advocacy teams. Meghan Towers '07, the Executive Board’s Trial Division Vice President, is credited with their success. “When I took over the role of Vice President of Trial Advocacy it was my goal to bring home trophies,” said Meghan.

“We had a huge pool of naturally talented advocates and the institutional commitment to back them up, including a great first-year program to introduce new students to Moot Court.”

—Sabrina Thanse, Moot Court Honor Society President

So, with tireless gusto, she attended at least one practice of each of the seven competing trial teams in the fall, encouraged returning members to judge the practice competitions, and coached two teams herself in the spring. One of them made it to the regional round of



Immigration Team: Ashley Caudill '08 and Jessica Maroz '08, first place winners at the Immigration Law Competition at NYU.

finals of the Texas Young Lawyers Association competition and the other team won the regional American Association for Justice competition and advanced to the finals.

“Meghan was integral to the great year that the trial advocacy division had. She poured her heart and soul into it and coached as much as she could,” said Sabrina.

In addition to student experience and knowledge, the Society also capitalized on the knowledge of the faculty, the administration and the alumni of the law school. Throughout the academic year, the faculty advised the teams and the alumni judged many of the practice competitions and received CLE credit for their work. Sabrina was aggressive in her outreach to the entire community, trumpeting the Society’s victories and accomplishments, which kept the participation going strong.

Many faculty members were instrumental in ensuring this year’s success. Professor Robert M. Pitler, the advisor to the Moot Court Honor Society, was a great mentor, Sabrina said. Professor Christopher Serkin was an enthusiastic teacher and participant, helping the Privacy Team and the City Bar’s National Team. Noted bankruptcy experts, Associate Dean Michael A. Gerber and Professor Edward A. Janger, judged several of the Bankruptcy Team’s practice rounds, and Professor Stacy Caplow who heads up the School’s Safe Harbor Clinic judged the Immigration Team and the Jessup International Moot Court Team. She also worked with the Texas Young Lawyers Association National Team. Adjunct Professor James Murphy, the moot court library liaison, conducted a brief-writing research workshop for the appellate teams and judged practices of several teams.

“The number of awards and plaques garnered is one measure of a successful moot court year, but it is far from the best benchmark,” said Professor Pitler. “To paraphrase and extrapolate from the wisdom of a great teacher and coach, success is best gauged by the number of moot court students who experienced the peace of mind and self-satisfaction that comes from knowing that you made the effort required to perform at the highest level of which you are capable. This year, more students than ever before had this experience. The Brooklyn Law School community is so very proud of our moot court achievements, and I am personally thankful to have had the opportunity to bask with the students in the glow of their success.”

Student advocates and their coaches can spend on average 25 hours a week for six weeks practicing for their arguments as well as writing their briefs. Appellate competitions require a written brief and significant preparation for an oral argument. Trial competitions require exceptional knowledge of evidentiary rules and also numerous hours of trial practice. Both demand the ability to answer challenging legal questions from panels of jurists and lawyers.

The triumphs were great, but they were not the only benefits of Moot Court. In addition to building lifelong relationships, gaining valuable advocacy and leadership skills and applying academic concepts learned in class, Moot Court also helps its members get hired and practice law in the real world, members said. “I have written a few motions at my job based on some of the same arguments that I learned and practiced here,” said Timothy, who works as a law clerk part-time for criminal defense attorney Edward W. Hayes, P.C., in addition to his studies.

For Philip, being on Moot Court was instrumental in getting his job as a litigator for the New York City Law Department, he said. “It’s a jump start in terms of a learning curve. I already know how to admit evidence into trial and know how to write effective briefs,” he added.

Sabrina agreed. She is headed to the Brooklyn District Attorney’s Office and as an ADA will have plenty of opportunities to practice and improve

her advocacy skills. Her unity measures have paid off with numerous plaques, trophies and even one traveling statute that are now on display at the Law School.

“Moot court is by far the best thing I’ve done in law school,” said Meghan Towers, who will be working as a litigator at Chadbourne & Parke LLP. “Never have I learned more. My grasp of evidence and my confidence in public speaking are all attributed to my great experiences with Moot Court.”

—Article by Victoria Rivkin, Esq., a freelance writer



Bankruptcy Law Team members Robert Sitman '08 and Anna Burns '08, first place winners of the Duberstein Bankruptcy Competition.

Playing GOD

Who Should Regulate Embryo Research?

by **Baroness Ruth Deech**

FORMER CHAIRMAN OF THE UK HUMAN FERTILISATION & EMBRYOLOGY AUTHORITY (HFEA)

The title of my lecture was inspired by a comment made to me in 2002 by a Member of Parliament when I gave evidence to the House of Commons Select Committee on Science and Technology, which was examining embryo research. The member questioned the decision of the Human Fertilisation & Embryology Authority (HFEA), of which I was then the chairman, to permit a couple to benefit from the new technique of embryo selection. The couple have a son who has a family-inherited condition. They sought to have preimplantation genetic diagnosis (PGD) carried out on embryos that they would produce in order to be able to select one that would be free of the inherited genetic condition, and which would also, if it developed into a baby, provide tissue that was compatible with their son, who needed bone marrow from a compatible donor to save his life. When I explained that the HFEA undertook these decisions according to law designed in order to protect legislators from having to make them, the response of the member was: “Who do you think you are, playing God?”

But “playing God” was precisely, in my view, the role assigned to the HFEA by Parliament itself. Moreover, “playing God” may mean either assuming to oneself the power to make decisions that no one on earth should be making; or doing one’s human best to act as a partner with God in improving the lot of mankind.

It was on that occasion that I realized that even though issues of PGD and stem cell research are discussed as if they were ones purely of ethics, law, and science, the realm of assisted reproductive technology is a battleground fought over by legislators jealous of their power, desperate patients, clinicians and companies with considerable earnings, and religious pressure groups. I concluded that the only way to keep the peace is by comprehensive regulation by as neutral and expert a body of people as can be assembled.

THE HEART OF THE DEBATE

At the heart of the new ethical debate lie attitudes towards embryos and in particular their use for research. As is commonly known, some regard embryo research as morally wrong because they view the embryo as human from the moment of fertilization, and therefore one should not take its life or bring it into existence simply to be destroyed. One may take the argument a step further, because if one should not destroy something with the potential to become a human, this could apply equally to eggs, for eggs alone can be converted into embryos through the cloning technique.

The HFEA is asking whether women should be permitted to donate eggs purely for use in medical research. It is already legal in Britain to donate eggs for the purpose of pregnancy on an altruistic basis. Indeed, it is not uncommon for people willingly to give up organs and bone marrow to help others; voluntary kidney donation is quite widespread. This seems to point to the ethical or pragmatic acceptability of donating eggs for medical research, even though there is risk to the donor and no direct benefit to herself.

Stem cells present the most exciting possibilities for the future, although as yet undeveloped. They are the basic components of the rest of the body and capable of providing new cells. They are found in embryos, in the fetus, the placenta and umbilical cord, and in parts of the body. When the embryo has grown to the eight-cell stage soon after fertilization, each of the eight has the potential to develop into any and every type of cell needed for the body. Some days later when stem cells are present in the inner cell mass, they are still pluripotent, that is, they have the capacity to develop into most types of cell. Because of their ability to reproduce themselves and develop into other types of cells, stem cells offer the prospect of growing new tissue to repair parts of the body damaged by accident or ill health and to treat a wide range of diseases that have developed because the cells have degenerated. If those treatments can be found, there would be a lifelong cure and new regenerative tissue when needed. Stem cell research has been widely publicized and is seen as promising for financial and medical investment and research.

Despite these advantages there has been a diversity of response to this research in Europe and the United States. This is because of cultural, religious, and economic reasons specific to each country. In some, feelings run so high that they cannot reach a compromise position.

THE IDEAL REGULATORY FRAMEWORK

After examining the inconsistencies and the weaknesses of various national situations, what may be concluded about the ideal regulatory framework? There may be comprehensive regulation or private rights and prohibitions, as in Italy. There may be regulation or a free market as in the United States. There may be regulation by independent committee or by legislators, which is the question in the United Kingdom.

The most interesting analysis of national structures of regulation has been made by D.G. Jones and C.R. Towns.¹ The authors describe four types of regulation of stem cell research.

The first is the prohibition of all human embryo research: Ireland, Austria, Norway, and Poland. The second is permission to use stem cell lines already in existence before a certain date: the United States and Germany. The third is to use stem cells only from embryo surplus from IVF: Canada, Greece, Finland, Hungary, the Netherlands, Taiwan, and Australia. The fourth is to allow also the creation of embryos specifically for research: the United Kingdom, Belgium, Israel, Singapore, Japan, South Korea and Sweden.²

Another way of categorizing the different national attitudes towards embryo research are by the contenders, the winners and losers. When no research is allowed at all, or only on old stem cell lines, this is an advantage for the religious/political factions. If prohibition can be evaded by import or export of gametes then commerce benefits, but not patients and domestic researchers.

Stem cell research alone cannot be usefully singled out for regulation...

If research is allowed only on surplus embryos, this inhibits scientists. If the most liberal attitude is taken, all interested parties benefit except that legislators are denied the control that they seek.

I conclude that there is no substantive ethical or qualitative difference between research directed to stem cell derivation and the use of embryos for In Vitro Fertilization (IVF) and general research. If one activity deserves attention and regulation, so do the others. Stem cell research alone cannot be usefully singled out for regulation, and indeed the regulation of stem cell research on its own is inefficient.

Regulation has disadvantages, too, but in general the history of regulation shows that work on embryos has progressed with reliability and in tandem with public and peer acceptability. Judged by those criteria, regulation in principle has been a successful move. In addressing issues relating to public fear of new technologies, family issues, safety, and extent, regulation has been more of a success than a failure.

REGULATION FOR ALL?

Is regulation a good thing for the whole world? It has certainly achieved a great deal in Britain without too much dissent. However, some deeper issues need consideration. How does regulation square with human rights and autonomy? What issues should be settled in the legislation and what left to the discretion of the regulating committee or the patients? There are no general criteria for resolving this, but different answers are given in different systems. They are linked to the competition for power to which I alluded, between market forces, religious forces, politicians, drug companies, doctors, and patients. These competing forces are rarely recognized and addressed. They tend to be disguised by ethical and legal discussions.

There are many ways to justify legislative regulation. One could start with the simple issue of safety. Safety bears on issues such as the insemination of women over sixty, cloning, posthumous births, and donor gametes. I regard it as legitimate to curb reproductive autonomy when its exercise unreasonably impacts on the independence of others or threatens harm. Multiple births with their attendant private and public costs, sex selection with its effects on existing children and PGD all have an enduring impact on society and may burden others. It follows that society may have a legiti-

Regulation is needed to control the market forces in this field, in the way that any big business is legitimately a target of regulatory control.

mate reason to control through the democratic process the choices that may be made by individuals with their doctors.³ It is right to grasp the nettle and accept that reproductive autonomy can co-exist with regulation rather than leaving many profound issues to be decided, slowly, by individual court cases.

Regulation is also called for to control the market forces in this field, in the way that any big business is legitimately a target of regulatory control. Because IVF and embryo research are big business, it is not wise to leave regulation to the professional bodies in the field because they will have conflicts of interest. Where there is a nationalized health system, decisions must be made about resource allocation because resources spent on IVF and embryology will affect other areas of medicine and their effectiveness has to be assessed. Britain accepts that it is dangerous to leave personal choice in IVF and the new genetics to market forces. In the United States it is accepted that IVF is a billion dollar business, and even gametes



and surrogacy are for sale.⁴ There is an urgent need to control sale of gametes and embryos, like the sale of other organs, bearing in mind the dignity and vulnerability of individuals and the health and welfare of the potential baby.

Identity and recordkeeping are especially important in regulation, in case IVF children as adults are entitled to seek information about the identity of the donors. A register of data is also important as an epidemiological tool, searching for factors affecting the success of IVF, and presenting data on multiple births, birth defects, and success rates. Confidentiality of data should not be so strict that follow-up studies are ruled out.

Of course a regulatory authority needs sufficient resources, without which the purpose is defeated and dangerous mistakes may be made. It needs to be answerable to the legislature and to give a full account of its workings in a way that the public can access and understand. Its members need to be appointed in a way that gives people without a professional interest a chance to be represented. My own experience was that a majority of lay members over professionals on the authority was a good thing. Expert evidence can always be acquired from outside the membership. In particular, it needs to take evidence on the developments that lie ahead so that it is not caught unawares when a sudden application for new treatment is made or a new technique is problematic. It will be expensive and litigation can never be entirely avoided because there will be statutory interpretation issues arising from new developments and the regulator is bound to upset both clinicians and patients at some stage by its decisions.

The country that is in most urgent need of regulation is the United States,⁵ because it is the most advanced scientific nation with an impact on all world science. Such federal law as there is appears to be concerned more with funding than with substance. There is no supervision of activities in IVF and involving embryos and disasters are bound to happen. The private companies that do research may succeed, but this activity is not necessarily undertaken with concern for public health and for the inequities between the medically insured and the uninsured Americans. There is a lack of

clarity about standards and achievements because the private work is undertaken in conditions of commercial confidentiality and competitiveness. It must surely be possible for the United States to establish a public oversight body and comprehensive legislation. The Council on Bioethics is no substitute; in fact it may provide false assurance because its powers are non-existent.

But what is the reality of experiencing and administering regulation? Are there disadvantages?

Regulation has to be financed, and it is the patients who bear the expense, which is passed on to them by the clinics. Relatively little free IVF treatment is undertaken by the U.K. National Health Service (NHS) and, even in those cases, the NHS has to absorb the extra cost represented by regulation, and therefore ultimately it reduces the resources available elsewhere in the hospital system. Regulation also engenders avoidance, not in the sense of law breaking, but in the practice of reproductive tourism, going abroad to obtain a treatment banned at home. It stimulates constant discussion, criticism, and demands for reform.

DETERMINING FACTORS FOR REGULATION

In approaching a new decision in the regulation of embryology, the following are the factors that in practice determine the outcome in a regulated environment.

First, the legal framework. Every regulatory decision has to be taken in the knowledge that it is likely to be challenged in the courts, either by a disappointed individual or by a pressure group, and that it is important to the regulator to succeed in the litigation.

Second, money, to fight and to enforce. The regulatory authority needs to be sufficiently well-financed. Litigation cannot be brought to enforce the measures of a regulatory authority unless the authority has the funds available to fight a case all the way to the House of Lords (our Supreme Court). Often a popular litigant will be better funded by a newspaper which has paid for their story, than the government authority in opposition.

Third, the power of the media in a small country where everyone reads the same newspapers and in general watches the same TV news. Newspaper and television coverage is often wholly inaccurate, but if there is a good human story, the more attractive of the two litigants will carry greater weight. When a young woman is featured in the media making an appeal for a baby (by some risky method) clearly the public will side with her and deeper issues in the decision will not be considered.

Fourth, politics. There is no doubt that government departments and ministers are apt to take a certain view in relation to questions that are widely debated, whether it is genetically modified food, fluoridation, or reproductive technology. While the pressures they exert may be indirect, they are nonetheless forceful.

Finally, and only if there is any room at all left for debate and choice, ethics. The HFEA developed five ethical principles derived from the legislation and from our deliberations over real cases

There is no genuine moral distinction between the use of embryos for procreation, research, and stem cell growth.

day-by-day. The ethical considerations were bolstered by widespread public consultation. First was the assurance of human dignity, worth, and autonomy. In line with international conventions, nobody should be used as a convenience or as a bank of spare parts: consent and counseling are vital. Second, the welfare of the potential child. Consideration of its need for a father is enshrined in the legislation, although this is now open to debate. Hence, the concern about cloning and the difficult family relationships that might ensue. Third, safety was given the greatest weight. Despite public pressure and compassion for those seeking treatment, the safety of the child and mother must be considered. Fourth, respect for the status of the embryo. Legislation lays down the parameters of permitted research and prohibits the mixing of humans and animals, cloning, and research on embryos over fourteen days old.

A fifth principle has now emerged, which is that the saving of life is a good use to which new advances in embryology may be put; hence the decision to extend PGD and HLA-typing to attempt to create a sibling whose umbilical cord blood might save an older child; and stem cell research.

COMPREHENSIVE REGULATION NEEDED

Despite these complications, there is no doubt in my mind that comprehensive regulation is urgently needed in every state of the United States. The visiting English regulator, listening to the debate in the United States about federal funding of stem cell research, finds herself on another planet.

It seems obvious from history that one cannot commence the process of regulation with stem cell regulation, as if building an inverted pyramid. One has to build up to it from a broad and tested base. One cannot regulate stem cell work more or less in a vacuum without a foundation of data, sanctions, inspection, monitoring, and uniformity. This is all the more so since there is to my mind no genuine difference between stem cell research and other types of embryo research, with shared safety and ethical issues. There is no genuine moral distinction between the use of embryos for procreation, research, and stem cell growth.

In the United States there appear to be too many cross-sector rules that are unenforceable and overlap: the NIH on research, the FTC on advertising, the FDA on drugs, the ASRM on laboratory accreditation, and state licensing. Even within one state there is a proliferation of guidelines with no enforcement.

Overall in the United States there seems to be no uniformity, or only fragmented rules, and reliance on professional self-regulation which is inherently weak. Casting a British eye over U.S. practice, there is a need for uniform substantive legislative prohibitions in relation to cloning, controls on experiments in the womb and genetic manipulation; there is a need for surveillance of laboratories and clinics, and enforcement of the fourteen-day rule for keeping embryos in the laboratory. There should be regulation of the buying and selling of gametes, and consideration should be given to legislation banning the patenting of embryological research.

There is a need for U.S.-wide legislatively guaranteed procedures and openness. There should be studies of the health of IVF children and there should be publicity for the adverse consequences, if any, of certain treatments. Acknowledging the dangers of competition between clinics, there should be standards to ensure the integrity of statistics and to enable comparison between clinics. There should be good patient information, a limit on the number of embryos to be used in any one treatment, uniform safety standards, and penalties for their breach. The United States needs laws about the destination of embryos after the expiration of the permitted storage period and in situations where previously given consents are unilaterally withdrawn, typically on divorce. Patients' and donors' rights, information, and consent in relation to distant research will become increasingly important and must be addressed. There needs to be supervision by an independent, central, and transparent body of people empowered to grant licenses, monitor and permit research, and impose sanctions backed by criminal penalties. Britain is not alone in having confidence in this method. It has been adopted in Canada, Australia, France, and Japan to some degree.

Whatever the political disadvantages of, and the political jealousies engendered by British-style regulation of embryo research and use, these are minimum standards that are necessary.

In conclusion, the benefits of regulation are overwhelming. Scientists are sometimes mistrusted; there is unacknowledged competition between the politicians who would like to control every move in this momentous area, and the clinicians who have, as one would expect, personalities to match the tremendous strides forward into the unknown they have made. There is also the rich commercial market to be considered and the desires of patients who may be under pressure and uninformed. Only comprehensive regulation can hold the ring and bring order and consensus to this topic.

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1 D.G. Jones & C.R. Towns, *Navigating the Quagmire: The Regulation of Human Embryonic Stem Cell Research*, 21 HUMAN REPRODUCTION 1113 (2006).

2 *Id.* At 113-14.

3 Rosamund Scott, *Choosing Between Possible Lives: Legal and Ethical Issues in Preimplantation Genetic Diagnosis*, 26 OXFORD J. OF LEGAL STUDIES 153, 175 (2006). The state interest was spelled out in the case of *Dickson v. United Kingdom*, App. No. 44362/04, Eur. Ct. H.R. (2006). O. O'Neill, *Autonomy and Trust in Bioethics* (2002), 58. See also John Harris, *Rights and Reproductive Choice*, in THE FUTURE OF HUMAN REPRODUCTION 5, 34 (John Harris & Søren Holm eds., 1998); RONALD DWORIN, FREEDOM'S LAW: THE MORAL READING OF THE AMERICAN CONSTITUTION 104 (1996); JOHN A. ROBERTSON, CHILDREN OF CHOICE (1994).

4 The characteristics of potential gamete donors are available on the Internet, although whether their descriptions match the reality is another issue. It has even been pointed out that in an unregulated market, an embryo could be split, and once one of the twins has been born and the other embryo frozen, the frozen one could be offered for sale knowing what its twin looked like. GEORGE J. ANNAS, SOME CHOICE: LAW, MEDICINE, AND THE MARKET 11 (1998).

5 See George J. Annas, *The Shadowlands: The Regulation of Human Reproduction in the United States*, in CROSS CURRENTS 143 (Sanford N. Katz, John Eekelaar & Mavis Maclean eds., 2000).



BARONESS RUTH DEECH

is a Principal at St. Anne's College, Oxford University. She is a renowned legal scholar and spokesperson on human reproductive technologies. From 1994 to 2002, Baroness Deech was Chairman of the UK Human Fertilisation & Embryology Authority (HFEA), which considers ethical questions arising from advances in reproductive medicine

and regulates research and treatment of infertility. She is also a member of the Board of Governors of the British Broadcasting Company, a member of the Rhodes Trust and of the Editorial Board of *Child and Family Quarterly*, and an Honorary Fellow of the Society for Advanced Legal Studies. She recently became the first Independent Adjudicator for Higher Education.

Protecting the American Playwright

The Seventh Annual Media
and Society Lecture

by John Weidman

President, Dramatists Guild of America



I have never practiced law. However, as President of the Dramatists Guild of America for the last eight years I have found myself in the middle of a number of legal collisions, the most important of which I want to talk about, not from a lawyer's perspective, but from the perspective of the playwrights, composers, and lyricists whose interests the Guild represents.

Since its inception, the mission of the Guild has been to assist playwrights in protecting the artistic and economic integrity of the work they create. These efforts have taken a variety of forms, most significantly the development of a series of standard

contracts which have guaranteed playwrights the ability to control the content and disposition of their work, as well as to earn a living from their plays and musicals if and when they are produced.

These efforts have been largely successful because of the stable framework—both creative and economic—within which dramatists and their partners have been able to do their work.

Where did that stability come from? For as long as anyone can remember, the community of artists and businessmen who make theater have shared a common set of assumptions about how a play or a musical makes its way from the page to the stage. Everyone has known who did what, who owned what, who was in

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charge, and who had the last word.

Beginning perhaps ten to fifteen years ago, these assumptions began to be challenged, deliberately and aggressively, with uncertain consequences for the future of the American playwright and, by extension, the American Theater.

The challenges have come primarily from two sources: First, from a group of producers new to the business and to New York, and second from directors, acting in concert through their union, the Society of Stage Directors and Choreographers, or SSD&C.

At their core, both challenges are about the same thing: copyright. The playwright's copyright. The playwright's undisputed ownership of his play, legally and artistically, which, heretofore, has been the bedrock constant around which all theater-making has been organized.

That the playwright owns his copyright is both a reflection of the fact that the theater is a writer's medium, and a legal firewall guaranteeing that it will remain that way. Assaults on that copyright would have been unheard of thirty years ago. Not any more.

First the producers.

The Producers

In 1982 the musical *Cats* opened on Broadway, and in certain fundamental ways the commercial theater was changed forever. Prior to *Cats*, a hit show was a show which ran for two, perhaps three years. A smash hit, like *My Fair Lady*, might run for five or six. *Cats* ran for eighteen years. And even more significantly, the London production, which had been replicated on Broadway, was then replicated in dozens of other Broadway-like productions around the world.

The producers and authors of pre-*Cats* Broadway hits enjoyed income from these productions which was certainly substantial, but not so substantial as to call attention to itself outside the relatively insulated economic world of the theater.

Cats, along with sister shows like *Les Miserables* and *Phantom of the Opera*, changed all that. The money to be made from two dozen identical versions of a hit show, playing to sold out houses in two dozen cities around the world, was clearly enormous. Indeed, in January of this year, *Variety* reported that *Phantom of the Opera* had become the most successful entertainment venture of all time—more successful than *Star Wars*, more successful than *Harry Potter*—grossing 1.9 billion dollars in the United States, 3.2 billion dollars worldwide, from ticket sales alone.¹

"For as long as anyone can remember, the community of artists and businessmen who make theater have shared a common set of assumptions about how a play or a musical makes its way from the page to the stage... These assumptions were givens that were taken for granted, but not any longer."

Clearly these were sums of money not to be left in the hands or the pockets of what had heretofore been thought of as a mere Broadway producer. It was only a matter of time before a new breed of producer appeared on the scene. And when that new breed arrived, predictably, it came from Hollywood.

First came Disney, mounting enormously successful stage versions of its animated features like *Beauty and the Beast* and *The Lion King*. Then came a number of other studios, often on their own, sometimes partnering with experienced Broadway presenters.

What the most aggressive of the movie studios brought with them was a desire to do business, not ac-

ording to the theater model which put the playwright in first position, but according to the Hollywood model in which the producing studio owned the author's copyright and writers could be hired and fired at will.

Individual writers, supported by organizations like the Dramatists Guild, have for the most part been able to resist the pressure to work under these conditions. But the pressures are intense, and with the appearance of more and more studio-produced musicals like *Tarzan* and *Aida*, those pressures are only increasing.

Case in point: Dreamworks Animation is gearing up to produce a stage version of its wildly successful animated feature film, *Shrek*. *Shrek* grossed 455 million dollars. Add to this the vast revenues from toys, t-shirts, and who knows what else, and one would have to agree with the executives at Dreamworks Animation that the *Shrek* imprint represents a franchise of goldmine-like proportions.

As such, the studio would argue, it has a duty to its shareholders to control anything and everything which appears under the *Shrek* banner, including every line of dialogue uttered in a dramatic adaptation. Who could disagree?

The studio's interest in maintaining control of the content of the stage version of *Shrek* seems irreconcilable with the theatrical mandate which gives the playwright ultimate control of the work which he creates. So what is to be done?

You could make the case that a great big Broadway musical version of an animated film like *Shrek* is *sui generis*, that it's actually O.K. if it makes its own rules. You could make that case but you'd regret it. Because if the author's copyright in a *Shrek*-type musical migrates from the bookwriter, composer, and lyricist to the producer, it will only be a matter of time before the producer of a straight play demands the same arrangement.

Why? Because as a general rule, what one producer gets, all producers want. And the lowest common denominator deal tends to become *the* deal.

In addition, the producer will argue that to raise money from his investors, he must demonstrate that he has a deal protecting their money at least as well as the *next* producer's deal. And if the next producer owns the author's copyright and he doesn't, he may have a hard time capitalizing his show.

So—what we are looking at is indeed a slippery slope, down which the playwright's copyright runs the risk of sliding into oblivion.

And now, on to the directors.

The Directors

Beginning perhaps fifteen years ago, theater directors launched an aggressive campaign to establish a new, independent property right—a director's copyright—in the work they create. Speaking through their union, directors have insisted that, unlike some producers, they are not attempting to wrest copyright away from the playwright. They emphasize that the creation of a director's copyright will have no impact on playwrights or on the way in which theater is and has been made for decades.

However, if a director's copyright is ever established, it will drastically limit a playwright's ability to control the work he creates, inevitably undermining the spirit of trust and openness essential to the collaborative process that makes theater happen.

Unlike playwrights, directors are employees. When a producer acquires the live performance rights in a play, he hires the people who will make those performances possible: A set designer, a lighting designer, a costume designer, actors of course, and most importantly, a director. It is the director's employee status which has allowed directors to organize and to be certified as a labor union. And it is the directors' union, the SSD&C, which has led the fight to create an intellectual property right where none has previously existed.

The former president of the SSD&C, writing in the February 1999 issue of *American Theater Magazine*, attempted to take this non-existent right for granted. "Property rights," wrote Ted Pappas, "give a director or a choreographer ownership of the staging they create for a production of a play or a musical."²

This is certainly true of choreographers, who are specifically identified in the Copyright Act of 1976. But it is not true of directors.

In fact, there is no recognized property right that gives a director ownership of any aspect of a theatrical production. Traditionally, directors have not attempted to copyright their work, and no court has ever recognized the validity of a director's copyright claim.

The attorney for the SSD&C has referred to the law in this area as "murky." To support this characterization, he and his union rely heavily on two cases, and perhaps one other, recently decided.

The Cases

The first, *Mantello v. Hall*,³ is frequently cited as having supported the notion that directors can copyright their stage directions. The case arose out of a production of Terrence McNally's play *Love! Valor! Compassion!* mounted at the Caldwell Theater in Boca Raton, Florida in 1996.⁴ In 1994, Joe Mantello staged the original production of *Love! Valor! Compassion!* in New York, where it won the Tony Award for Best Play.⁵ Two years later, Mantello's attention was directed to the Caldwell production, which was reportedly a virtual replica of his New York production. He sued alleging among other things, infringement of a copyright he acquired upon filing a copy of McNally's script with his stage directions written in the margins with the U.S. Copyright Office.⁶

Mantello v. Hall was settled before trial.⁷ Mantello's copyright filing was processed by the Copyright Office without any opinion offered as to whether his stage directions were in fact copyrightable. The court reached no decision on the matter.

Denying defendant theater's motion for summary judgment, the court did find that Mantello had in fact received a copyright certificate from the Copyright Office. But the filing of the claim and the issuance of the certificate were purely mechanical. Nevertheless, "Possession of this certificate," the judge said "creates the presumption that the work in question is copyrightable."⁸

Another, more recent case, *Einhorn v. Mergatroyd Productions*,⁹ raised a director's copyright claim in a similar, but slightly different context. Plaintiff Einhorn was hired by defendant Mergatroyd to direct playwright Nancy McLernan's play, *Tam Lin*.¹⁰ Einhorn was fired before the play opened.¹¹ Subsequent to his firing, he filed a copy of McLernan's script containing his stage directions written in the margins with the Copyright Office, a filing which eventually "matured into a certificate of registration."¹²

"Even plays freely available to producers and directors and most importantly to the public for hundreds of years—'Hamlet,' 'King Lear'—would acquire de facto copyrights as more and more directors asserted ownership of their versions of these classics."

THE SEVENTH ANNUAL MEDIA AND SOCIETY LECTURE

Whether that certificate had any legal force—indeed, whether, as a matter of law, stage directions are copyrightable at all, was an issue the court never reached—because prior to the judge delivering his opinion, Einhorn had agreed to withdraw the registration.

Finally, *Gutierrez v. DeSantis*¹³ demonstrates most clearly the potentially devastating effect of a director's copyright on the way playwrights do their work, and on the vitality of theatrical production generally.

The case involved a production of Frank Loesser's *The Most Happy Fella*, directed at the Goodspeed Opera House and subsequently on Broadway, by Gerry Gutierrez in 1991.¹⁴ As in *Einhorn* and *Mantello*, Gutierrez attempted to copyright his work by filing a copy of his stage directions, written in the margins of Frank Loesser's script, with the U.S. Copyright Office.

The Most Happy Fella opened on Broadway in 1956. In the thirty-five years between that opening and Mr. Gutierrez's revival, there must have been thousands of productions of this brilliant musical play. If Mr. Gutierrez could acquire copyright ownership of his staging, then directors of each and every one of these productions could have acquired copyright ownership of theirs as well. Had this actually happened, over the course of the last four decades *The Most Happy Fella* would have gradually ceased to exist as an independent piece of dramatic literature, giving way instead to a multitude of "Most Happy Fellas," each one a legal partnership between Frank Loesser and a director whose production he and his heirs had, in all likelihood, never even seen.

Should such copyright partnerships ever come into existence, they would clearly operate as liens on a playwright's play, restricting—often in unpredictable ways—the playwright's fundamental right to control what he has created. But beyond that, they would have a potentially devastating effect on the facility and vitality of theatrical production.

For example, if at some point in the future, a theater wished to produce *The Most Happy Fella*, they would be faced with a choice. They could examine existing copyrighted productions and select the one they wished to reproduce. Or they could proceed with their own original production, running the risk that it would be attacked by a director alleging infringement of his previous work.

Even plays freely available to producers and directors and most importantly to the public for hundreds of years—*Hamlet*, *King Lear*—would acquire de facto copyrights as more and more directors asserted ownership of their versions of these classics. Producing them would become increasingly problematic.

Theaters do not want to be sued. Most cannot afford to defend a lawsuit. And if directors are able to copyright their work, the day will inevitably come when a theater cancels a production simply because of threats by a director who perceives that the theater's production will infringe on a version which belongs to him.

The directors' union emphasizes that it has acted with restraint, pursuing only cases where a director's work has been copied intentionally, in a substantial and pervasive manner.

These limits are meant to be reassuring, but obviously they are self-imposed. And if a director's copyright is ever established, it will belong, not to the union, but to directors individually.

Consider Mr. Mantello and Mr. Gutierrez again. Both have said that their directing work has not always risen to a level deserving of copyright protection. If that's the case, then who decides when a director's work *has* risen to such a level? Are objective standards even possible? And doesn't any line in the sand making

"If the union's push to establish a director's copyright is even mostly about money, specifically money generated from a first New York production, then the director should look, not to the playwright, but to the New York producer for his payday."

some direction copyrightable and some not invite an avalanche of litigation encumbering some theatrical productions and paralyzing others?

Something fundamentally unfair happens when a "less resourceful" director presents a production which clearly duplicates one mounted by someone else. Any proud artist wants credit for his work and certainly does not want someone *else* taking the credit. And without question, when this happens it feels instinctively like stealing.

However, it's only stealing if the thing taken belonged to somebody. And not everything which feels unfair, or is unfair, can or should be corrected by the courts.

At first glance, it would appear that the SSD&C's campaign to create a director's copyright attempts to correct the fundamental unfairness described above. But let's take a second glance.

In a *New York Times* article about director's copyright and the *Einhorn* case, the SSD&C attorney said the following:

*If it's truly a collaborative art form, then why is it only the author who participates in the subsidiary rights that flow from a successful New York production? The appropriate resolution is to give fair credit to all the artists' contributions. One day, it may end up that the author gets eighty percent, the director ten percent, the original cast X and the designers Z. Because, at bottom, this is all about money.*¹⁵

If the union's push to establish a director's copyright is even *mostly* about money, specifically money generated from a first New York production, then the director should look, not to the playwright, but to the New York producer for his payday.

When a producer risks mounting a new play or musical on Broadway, he gives the authors something of enormous value beyond the production itself. He gives them the visibility and status which attaches to having written a "Broadway show."

This visibility immediately increases the value of all the subsidiary rights that authors retain. These include the right to license stock and amateur productions of the show, sell it to the movies, authorize a future Broadway revival, and so on.

In recognition of this value added, the authors grant the producer a substantial participation in all revenues realized from the exploitation of these rights for a defined period of time.

The revenues flow to the authors because, as authors, sub rights belong to them. But they share them with the producer in recognition of the production he mounted, and by extension, the contributions from all of the artists the producer hired to make that first production possible.

Foremost among those artists is, of course, the director, who has negotiated an employment contract with the producer specifying his compensation in exchange for his labors. If, as part of his compensation, the director and his union feel he should be entitled to a participation in the author's sub rights, then he should look not to the author, but to the producer's pre-negotiated share of those sub rights when negotiating his contract.

Copyright, as wielded by the SSD&C, has begun to feel like a sledgehammer. If directors think they can use it to surgically remove a small stream of income from the playwright's subsidiary rights, then not only are their hands on the wrong weapon, but if they continue swinging aggressively and irresponsibly, the law of unintended consequences says the landscape of theatrical production in this country may be altered in unpredictable ways which we may all, directors included, come to regret.

Copyright law, as I understand it, exists to maximize the creative output of artists, allowing their work to enrich the marketplace of ideas necessary to inform and challenge the citizens of a vital, vibrant democracy.

What is and isn't entitled to copyright protection should be determined by this largest goal.

David Mamet once said that people come to the theater to be told the truth. From Sophocles to Shakespeare to O'Neill, the voice that has spoken that truth has been the voice of the playwright. Anything we do, whether intentionally or inadvertently, which hobbles that voice or hampers access to it, we do as a society at our peril.

- 1 Zachary Pincus-Roth, *Movies Aren't the Only B.O. Monsters*, *Variety*, Jan. 9, 2006.
- 2 Ted Pappas, *Protecting the Director*, *AM THEATER MAG.*, Feb. 1999, at 6.
- 3 *Mantello v. Hall*, No. 97cv8196 (S.D. Fla. filed Mar. 21, 1997).
- 4 *Id.*
- 5 *Id.*
- 6 *Id.*
- 7 See Jesse Green, *Exit, Pursued by a Lawyer*, *N.Y. TIMES*, Jan. 29, 2006, § 2, at 1.
- 8 Order Granting in Part and Den. in Part Mot. to Dismiss and/or for Summ. J. at 14, *Mantello v. Hall*, No. 97cv8196 (S.D. Fla. July 22, 1997).
- 9 426 F.Supp. 2d 189 (S.D.N.Y. 2006).
- 10 *Id.* at 191.
- 11 *Id.* at 192.
- 12 Transcript of Record at 12, *Einhorn v. Mergatroyd Prods.*, 426 F.Supp. 2d 189 (S.D.N.Y. Apr. 25, 2006) (No. 05 Civ. 8600).
- 13 *Gutierrez v. DeSantis*, No. 95-1949 (S.D.N.Y. filed Mar. 22, 1995).
- 14 Green, *supra* note 6.
- 15 Green, *supra* note 6.



JOHN WEIDMAN, ESQ., is president of the Dramatists Guild of America. Mr. Weidman has written for the musical theater for almost 30 years. He has written the book for a wide variety of musicals, including *Contact*, *Pacific Overtures*, and *Assassins*, and has been nominated for three Tony Awards for Best Book of a Musical. A long-time contributor

to *Sesame Street*, he has received eleven Emmy Awards for Outstanding Writing for a Children's Program. He has served as the President of the Dramatists Guild of America for eight years. Mr. Weidman received his law degree from Yale Law School.

BLS ONLINE This article is an abridged version of the article Mr. Weidman wrote based on his Media & Society Lecture. Read the full version, which was published in the *Brooklyn Law Review*, Volume 72, Number 2, online at www.brooklaw.edu/blr

Legal Lights

Article by Jill Maxwell '07 Published in *Wisconsin Women's Law Journal*
Leads to a Speaking Engagement and ABC Online Interview



An article by Jill Maxwell '07, published in the fall 2006 issue of the *Wisconsin Women's Law Journal*, has led to a speaking engagement at a colloquium in Madison, Wisconsin and an interview on ABC News Online for the student author.

The article, "Sexual Harassment at Home: Altering the Terms, Conditions, and Privileges of Rental Housing for Section 8 Recipients," offers unique policy initiatives and litigation strategies to remedy the problem of sexual harassment and coercion perpetrated by landlords against female tenants. The article was developed under the supervision of Professor Elizabeth M. Schneider to fulfill a requirement for her course, *Women and the Law*.

Maxwell was invited to speak at a Wisconsin Women's Law Journal colloquium in February entitled, "Our Workplace, Our Home: Protecting Our Families and Preserving Our Dignity." She addressed an audience of law and women's studies students, and women's rights groups. She

was also quoted in March in an ABCNews.com article, "Harassed at Home—by Your Landlord: Landlords Prey on Poor Women by Extorting Sexual Favors in Lieu of Rent." The article describes the case of a Brooklyn woman who, with the assistance of the Fair Housing Justice Center, filed a civil rights complaint against her landlord for sexual harassment.

While sexual harassment in housing has only recently begun to draw attention, "each year thousands of women are subjected to inappropriate sexual advances by their landlords—comments, touching, quid pro quo requests for sexual favors," Maxwell said. "The lower a woman's income, the more vulnerable she is, as she has fewer housing options. She may be forced to tolerate the situation or risk homelessness."

The ideas for her article began germinating while Maxwell was working, from 2002–2004, as a paralegal at the Housing and Civil Enforcement Section of the Civil Rights Division of the Department of Justice in Washington, D.C. Many of the cases she worked on concerned the sexual harassment of female tenants in housing, which is recognized as a violation of the Fair Housing Act's prohibition on sex discrimination. All of the victims in these cases were poor and many of them received Section 8 housing choice vouchers, which are government subsidies for use in the private housing market.

Maxwell's article provides a starting point for reconceptualizing the role the Department of Housing and Urban Development (HUD), which administers the Federal Fair Housing Act and the Section 8 program, and Public Housing Authorities (PHAs), can have in decreasing the vulnerability of low-income women to sexual harassment. She also proposes ways to hold PHAs legally accountable when they are on notice of sexually harassing landlords and fail to take remedial measures.

A graduate of Vassar College, Maxwell was an Edward V. Sparer Public Interest Law Fellow and a staff member of the *Journal of Law and Policy*. She was also a CALI Award winner, a Prince Merit Scholar, and a 2006 Brooklyn Law Students for the Public Interest Fellow. Her wide range of experience in public interest law includes work as an intern at the U.S. Attorney's Office, Civil Division, EDNY; Legal Momentum; South Brooklyn Legal Services; and participation in the Safe Harbor Clinic.

Maxwell's current mission is to find funding for a year-long project at the Fair Housing Justice Center. "The project would increase the organization's capacity to provide resources to victims of sexual harassment in housing in New York City—victims whose needs are otherwise largely unmet," she said. She will begin a clerkship for U.S. Magistrate Judge Kiyo A. Matsumoto for the EDNY in 2008.

STUDENTS AND RECENT GRADUATES RECEIVE PRESTIGIOUS AWARDS AND RECOGNITION FOR LEGAL SCHOLARSHIP

Our students and recent graduates continue to garner accolades for their legal scholarship and public service activities. In our last issue we featured some of these remarkable legal lights. We are proud to continue this tradition by highlighting four recent graduates and a second-year student whose legal scholarship have earned them distinction. Michael Weitman '07 was the winner of the 2007 Burton Award for Legal Writing for his article on trademark law. Adam Lubow '07 was selected by the ABA for an award for his writing on zoning law. Jill Maxwell '07 wrote an article on landlords who prey on poor women that led to a speaking engagement and a news interview. Two other graduates, Daniel Wiig '06 and Blake Denton '08, wrote articles on areas of the law that are changing rapidly—commercial laws and the Internet, and biotechnology and executive agency oversight.

Michael B. Weitman '07 Wins Burton Award for Legal Writing



Michael B. Weitman '07 is one of only 15 law students in the country to win the 2007 Burton Award for Legal Writing, presented in association with The Library of Congress and its Law Library. His winning note, "Fair Use in the Post-KP Permanent World: How Importing Principles from Copyright Law Will Lead to Less Confusion in Trademark Law," was first published in the summer 2006 issue of the *Brooklyn Law Review*.

Law students from Columbia, Yale, and the University of Pennsylvania were among the other winners this year, as were 30 law firm partners, including Brooklyn Law alumnus Marc J. Pensabene '94, a partner in the intellectual property law firm Fitzpatrick, Cella, Harper & Scinto. [A previous Burton Award winner was Rachel Braunstein '03, now with Fried, Frank, Harris, Shriver & Jacobson LLP.]

"We are pleased that Brooklyn Law has been recognized again by the Burton Foundation and congratulate Michael on his outstanding article," said Dean Joan G. Wexler. "It is a real tribute to the high quality of scholarship of our student law reviews." Faculty advisors and student editors reviewed several law review articles before recommending Weitman's note to the Dean for nomination for the Burton Award. The award ceremony on June 4 at the Library of Congress featured CBS News' chief Washington correspondent Bob Schieffer as the guest speaker.

Weitman was taking a class in trademark law when he began formulating his ideas for the note about "KP Permanent," the 2004 Supreme Court decision stating that a party claiming fair use in a trademark case does not have to prove the use will not confuse consumers. To explain the concept, Weitman used the example of an Internet shopper who bought what he thought was American Idol

merchandise. He had actually purchased goods made by a losing contestant on the TV show, a man whose Web site touted him as "A Real American Idol." In such a case, the show's producers would have a potential claim for trademark infringement, but the contestant could assert statutory fair use of the descriptive phrase, even though it was confusing to the consumer. Weitman wrote that in the KP Permanent decision, "the Supreme Court failed to give any indication as to just how much confusion could defeat the fair use defense."

Where trademark law is fuzzy, copyright law is not, Weitman points out. "Copyright's fair use test has given lower courts the clear guidance lacking in trademark law." In copyright cases, certain factors are used by the courts to determine if an alleged infringing use is fair, including the purpose and character of the use; the nature of the copyrighted work; the size and substance of the portion used; and the effect on the market for or value of the copyrighted material. Weitman's note demonstrates why judges who look to parallels in copyright law for decisions in trademark cases are moving in the right direction and suggests other ways to implement this approach. He credits Professors Samuel Murumba and Christopher Serkin for their guidance of his research and analysis.

Weitman served as Managing Editor of the *Brooklyn Law Review*, was a member of the Moot Court Honor Society, a Lisle Merit Scholar and a CALI Award winner. He received a B.A. from Boston University. Born in Brooklyn Heights, he grew up in New Jersey and spent several years working at home and abroad as a keyboardist for Atlantic Records, and as a composer and music publisher among other jobs before returning to the area for law school. He was a judicial intern for U.S. District Court Judge David G. Trager of the Eastern District of New York; participated in the Workers' Rights Clinic, and interned at the Kings County District Attorney's Office. He was a summer associate in 2006 at Seward & Kissel, LLP, and he will join the firm this fall.

Daniel Wiig '06 Publishes Article on Protecting Internet Purchases in Fordham Journal



If you purchase a rare coin on Ebay from someone who knows as little about numismatics as you do, what protections do you have? An article by a recent graduate, Daniel K. Wiig '06, addressing the problems of our dated commercial laws and their application in cyber-transactions was accepted for publication by the *Fordham Journal of Corporate & Financial Law* in its spring 2007 issue.

"Do the Article 2 Warranties Sufficiently Protect Internet-Based Transactions with Unprofessional Internet Merchants?" was written when Wiig was an International Business Law Fellow for an independent study assignment supervised by Professor Edward Janger. Wiig is currently a judicial law clerk for State Supreme Court Justice Richard B. Lowe III in the Commercial Division, a court devoted to complex business litigation.

The idea for the article occurred to him while he was online, visiting such person-to-person sales sites as Ebay. He questioned whether Article 2, first drafted in the 1950s, affords protections when dealing at a distance with "unprofessional merchants," as he dubbed them. For example, does the law take into account an internet transaction with a layperson who offers a rare coin for sale that is in "mint condition," although it

is not what a professional would consider "mint," a term with a specific meaning in the rare coin lexicon? In his article, Wiig reviews the law and asserts that "knowledge and expertise, the foundational elements for Article 2's warranties, are not necessarily present in internet-based transactions." He goes on to discuss why Article 2 must evolve and adapt, and offers suggestions for amendments and additions to the code.

Wiig was an evening division law student who worked for the first two years of law school at Thomson Financial as a strategic relationship manager. He then joined Ernst and Young LLP as a law clerk in the General Counsel's office for two years, with a hiatus for the summer of 2005, when he joined the New York Stock Exchange's Division of Market Surveillance. He received his B.S. degree from St. John's University and an M.B.A. from Fordham University.

As an IBL Fellow, he said, "I was given the invaluable opportunity to attend symposia, lectures, special breakfasts, and to meet a broad spectrum of very interesting people in law and in the business world."

His clerkship at the Commercial Division has been "a wonderful experience in legal writing," he said. "In addition, I get to see the practice of law up close, which doesn't often happen when you're first starting out. I see both good and bad lawyering, and learn what to emulate when the day comes that I am before the bench."

Adam Lubow '07 Wins ABA Writing Award



The ABA Forum on Affordable Housing and Community Development Law awarded Adam Lubow '07 the 2007 writing award for his article, "...Not Related by Blood, Marriage, or Adoption: A History of the Definition of 'Family' in Zoning Law." In May, he was recognized at the organization's annual conference in Washington D.C. and received a prize of \$1,000. The article will be published in a forthcoming issue of the *ABA Journal of Affordable Housing and Community Development Law*. Professor David Reiss was his advisor throughout the writing process.

The article analyzes suburban zoning ordinances and their use of a traditional family definition—people related by blood, marriage or adoption—to delimit home occupancy. These laws usually allow only a small number of unrelated people to live together. In the 1974 case of *Village of Belle Terre v. Boraas*, the Supreme Court found they do not violate due process and equal protection constitutional guarantees.

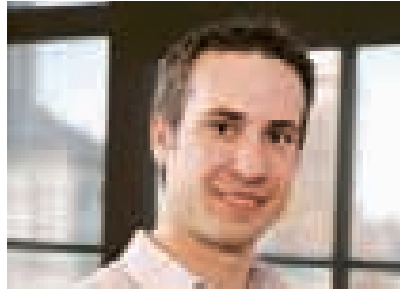
The ordinances exist "to preserve the tranquil nature of the community and to prevent overcrowding," Lubow said, but they can affect many people adversely, notably immigrants. His article presents the legal definitions of "family" before and after the *Belle Terre* decision, reviews federal and state zoning laws and the challenges to them, and recommends changes to the laws. "Several states, including New Jersey,

UCLA Journal to Publish Article by Blake Denton '08 on Genetically Modified Crops

California, Michigan and New York, have declared that the right to live with whomever you choose is fundamental," he said, and have changed their laws accordingly. His article presents two alternative ways for municipalities to adjust their zoning laws: using a "functional family" definition, that is, people who live, cook, clean, and share finances together; or not defining family at all, but, instead, using a "maximum occupancy" code to limit the number of people who can live within a certain amount of property or floor space."

Lubow grew up in the small, close-knit upstate town of Tannersville, New York. Public service and commitment to the community run deep in the family. His father, Greg D. Lubow '76, was the public defender in Greene County for almost three decades; his mother is a special education administrator. Many Mexican families live in the town, and Adam's friendships with them made him aware of the problems immigrants face in housing and other aspects of life. He wrote a thesis on Mexican immigration to New York as an undergraduate at the University of Pennsylvania, where he earned his undergraduate degree.

An Edward Sparer Public Interest Law Fellow and Prince Merit Scholar, during law school he was an intern at the Immigrant Defense Project of the New York State Defenders Association, where he used his fluency in Spanish to assist many Spanish-speaking clients. He was also a summer law clerk for Texas Rio Grande Legal Aid. His Sparer summer internship was at the Neighborhood Defender Service of Harlem, and he also interned with Ronald L. Ellis, U.S. Magistrate Judge for the Southern District of New York. Lubow was co-chair of Brooklyn Law Students for the Public Interest and he served on the Dean's committee to improve the LRAP program.



Genetic modification of crops used for foods and medicines can produce such desirable traits as enhanced quality, faster growth, increased yields, and resistance to disease and pests. But the long term effects on humans and the environment are still unknown. Although scientists and the general public have expressed their strong concerns, lawmakers, the federal courts, and the executive agencies charged with oversight of genetically modified (GM) crops have yet to respond.

In fact, "the United States has written off concerns about biotechnology and continued to promote its application to crops," according to Blake Denton '08. He is the author of an article on the first federal decision ever to address the practice of producing GM crops for pharmaceutical use, or "biopharming," and its implications for environmental advocacy. The article, "Regulating the Regulators: The Increased Role for the Federal Judiciary in Monitoring the Debate over Genetically Modified Crops," will be published in a forthcoming issue of the *UCLA Journal of Environmental Law & Policy*.

Denton, who has distinguished himself academically, holds both a Prince and Rosenthal Scholarship, is a member of the Moot Court Honor Society, and has served as the Articles Editor of the *Brooklyn Law Review*. He has interned with Cheryl I. Pollak, U.S. Magistrate Judge for the Eastern District of New York, and he is working this summer as an associate at the firm of Latham & Watkins LLP. Raised in Marlboro, NJ, Denton is a graduate of Rutgers University.

He credits the *Review's* Notes and Comments Editor, Meaghan Atkinson, as well as his faculty advisor, Professor Christopher Serkin, with helping him shape the article. In *Center for Food Safety v. Johanns*, the recent decision reviewed by Denton, the U.S. District Court in Hawaii decided that the United States Department of Agriculture (USDA) illegally approved field trials of drug-producing GM crops throughout Hawaii without considering the effects to endangered species and without conducting any environmental review. The court said this was a violation of the nation's environmental protection laws.

Denton's article contends that "legal limitations" imposed on those who create GM crops "have been extremely lax, and often go unenforced by the executive agencies entrusted with regulating" them—the USDA, the Environmental Protection Agency (EPA) and the Federal Drug and Food Administration (FDA). In *Center for Food Safety*, the court "premised liability against those responsible for regulating biopharming under an alternative rationale...namely, that a congressional act can limit an agency's discretion even if the statute does not address the agency by name." So while the USDA, FDA and EPA "are granted great deference in interpreting their responsibilities under the statutes dealing with GM crops, they do not have the same leeway in interpreting their duties under other acts," such as the Endangered Species Act and the National Environmental Policy Act.

Denton points out that violations by executive agencies of these two acts are prevalent in the realm of biotechnology. Therefore, he notes, more suits are likely to be brought in the coming years against the agencies for neglect of statutory duties by opponents of GM crops.

A Tribute to

PROFESSOR SARA ROBBINS 1952–2006



THE HEART OF ANY INSTITUTION OF LEARNING IS ITS LIBRARY. For over two decades, Brooklyn Law School had the great fortune to have had its heart in the extremely capable hands of Professor Sara Robbins, Director of the Brooklyn Law School Library. Sara shepherded the library from old technology to new, from card catalogs to state-of-the-art digital resources, making it one of the nation's most technologically advanced law libraries.

Sara grew up in Columbus, Ohio. She attended the University of Cincinnati, where, pursuing her love of the arts, she

earned a B.A. in Art History. She then received a M.L.S. from Pratt Institute and began her professional career at Brooklyn Law School, where she worked as a cataloger for two years before leaving to become the head of Technical Services at Cardozo Law School. After two years at Cardozo, in anticipation of going to law school, she became a research assistant to Professor Morris L. Cohen at Yale Law School, helping him compile his *Bibliography of Early American Law*. Sara returned to Ohio to attend Ohio State University's College of Law. In 1984, while she was still at Ohio State, Brooklyn Law School recruited her to become its Associate Librarian for Administration & Planning. After Sara completed her LL.D., she was named Acting Director of the library, and in 1986, she was named Director.

In addition to her duties as head of the library and as a professor teaching advanced research, Sara was active as a scholar and in professional organizations. She was the author of *Law: A Treasury of Art and Literature* (1990) and the compiler and editor of *The Baby M Case: The Complete Trial Transcript* (1988), as well as several bibliographies and book reviews. She was active in the American Association of Law Libraries, and was a member of the American Bar Association's Committee on Libraries. She had been a member of several ABA Site Inspection teams. Sara was also part of a creative community of needlepoint artists with whom she loved working.

Sara is survived by her father, Dr. Malcolm (Jo) Robbins; sisters, Anne, Marlene and Kay; and her cherished nephews Ben Lichtman, and Joseph and Eliav Ehrenkrantz.

A scholarship has been established in her honor. The first Sara Robbins scholarship will be awarded this fall.

ON MARCH 6, 2007, THE LAW SCHOOL HELD A MEMORIAL to celebrate the life of Professor Sara Robbins, the Director of the Law School's library, who died in December as the result of a tragic accident. In her opening remarks, Dean Joan G. Wexler said, "Thousands of students, staff and faculty members have benefited from her thoughtful guidance, generosity of spirit, and kindness. Her mark on the Law School is indelible." The Prince Moot Court Room was filled to capacity with friends, family, colleagues and students who attended.

The following are excerpts from the remarks made by the many friends and colleagues who spoke at the memorial:

"Does this help the students and the faculty? In the 20 years that Sara led the library, that was her bottom line, pure and simple. She worked with the architect of the new wing to more than double the available space for students to study, to be able to have enough room for a collection that now approaches half a million volumes. Sara led the effort to get our catalog online, and to make Brooklyn Law School the proud owner of a cutting-edge digital library."

— **James Murphy**, *Reference Librarian*

"I think of Sara every morning when I walk past the library. I think of her genteel manner, her gentle soul, her grace, her dignity, the dignity by which she ran her library. And it was—don't make any mistake about it—her library. There are times when I want to ask her a question, share an idea, or just gripe again about Wikipedia, but I know I just can't. And that is when I miss her most of all."

— **Professor Carrie W. Teitcher**

"Sara Robbins was my professor last semester for Advanced Legal Research. Up until that time, I hadn't given much thought to what it takes to run a library. I've since learned that it's a multi-million dollar facility with thousands upon thousands of volumes. I took it for granted—keep the place quiet, clean, make sure the Internet works. But by taking Professor Robbins' class and getting to know her and the rest of her dedicated staff, I quickly realized that it takes so much more. A devotion to excellence. Higher knowledge. Cutting-edge technology. Friendliness. And a commitment to justice. Just like what Brooklyn Law School's all about. Like Professor Robbins."

— **Kardon Stolzman '07**

"In life, one meets many people. Some are highly competent in their professions. Others are persons of high integrity and intelligence. Others are decent and caring people who extend themselves to others. Others are persons of warm humor, and grace, and dignity. The numbers thin out when one searches for a person who has all of these virtues. Sara was one of those rare individuals who leave a mark on memory that cannot be erased."

— **Professor William E. Hellerstein**

"I wouldn't be a dual-degree J.D./M.L.S. student if I hadn't met Sara. Law is a difficult profession and it can be hard to find your niche, especially when you like legal research and would rather help other people do their research than be an advocate or make policy."

I met Sara early on, when I was an admitted student and I told her I was interested in pursuing the dual degree, and from then on, we developed a special relationship. She became my advisor and mentor. After a difficult first year, she gave me a lot of encouragement and was one of the main reasons why I decided not to leave law school and to continue to pursue both the J.D. and the M.L.S. degree.

I know that as I move forward in my career, when I have trouble making a decision about what to do, I will think back to what Sara told me, because she always gave me such good advice. Meeting her was a gift, and she will be a source of inspiration for me for the rest of my life."

— **Emily E. Roberts '08**

"Sara and I often sat together at faculty meetings, in the second row, on the left side, near the front. We would chat, and I would get a chance to see the beautiful needlepoint she was working on that day. I was recently reminded of a conversation Sara and I had last spring. I told her that I had been working on a needlepoint for a long time—actually, it was since 1984—and that it seemed hopeless. Sara suggested that I bring it in to the next faculty meeting so she could look at it, and I did. She looked at it and did not comment on the gnarled stitching, but she made some suggestions about wool and then drew a diagram for me showing me the pattern that I should be using. Two weeks ago, I found that needlepoint, and there in the bag was the diagram Sara drew for me. It made me smile thinking about her. I can't imagine when I'll go to a faculty meeting and not think about Sara's not being there. But like everyone here, I'm grateful for the time that I knew her."

— **Professor Marilyn R. Walter**

"The novelist Jorge Luis Borges wrote, 'I have always imagined that Paradise will be a kind of library.' I believe that if it isn't, Sara will make it so."

— **Dean Joan G. Wexler**

I want to take this opportunity to introduce myself as the new President of the Brooklyn Law School Alumni Association. I am one of almost 18,000 alumni of our law school. Over the past 106 years graduates of the law school have gone on to distinguished careers in the judiciary, private practice, government service and private industry. Today our school is rated as one of the nation's top law schools and our graduates are routinely offered the most prestigious employment opportunities across the country.

The growth of the school over the past decades has been truly amazing. We now occupy a magnificent campus in downtown Brooklyn that includes housing for almost 550 students. Our physical plant is among the most modern of any law school. Our ratings in a variety of rankings place us at the top. However, what makes a school truly great is its people. Under the leadership of Dean Wexler the school's faculty has grown and continues to draw promising scholars and leading experts in their field. Our students comprise graduates of the finest universities and are subject to a highly competitive admissions process.

For those of you who have not visited the school in some time, I urge you to see for yourself in person what Brooklyn Law has become. Speak to the students and the faculty, it is an experience you will not soon forget. If you cannot make a personal visit, then acquaint yourself with the school online at www.brooklaw.edu.

Over the coming months I hope to meet and speak with as many alumni as possible. We all should be proud of our school and we all have a responsibility to continue the legacy of a truly great institution. I urge you to become active in our association. It will be most beneficial to the Law School and I can promise you it will be one of the most rewarding experiences you may have.



Robert E. Grossman '73

President of the Brooklyn Law School Alumni Association



Robert E. Grossman '73

Stay Connected with Friends and Classmates!

The Brooklyn Law School Alumni Directory has moved Online. It is available exclusively to all alumni, faculty and staff and is provided to you at no cost.

To start searching for friends and making new contacts; please visit the password-protected Directory at the following Web site: www.brooklaw.edu/alumnidirectory

If you have any questions or need assistance registering, please contact the Office of Alumni Relations at 718-780-7966.

Jodi Levine Avergun '87 and Irwin B. Cohen '58 Honored at Annual Alumni Cocktail Reception

Dean Joan G. Wexler and the Brooklyn Law School Alumni Association honored two Alumni of the Year on November 29, 2006 at a gala cocktail reception at Feil Hall. They were Jodi Levine Avergun '87, Special Counsel at Cadwalader, Wickersham & Taft LLP and former Chief of Staff of the Drug Enforcement Administration, and Irwin B. Cohen '58, Manager of ATC Management, an independent real estate developer.

During her 17 years of service in the federal government, **Jodi Levine Avergun '87** held two of the highest career positions in the Department of Justice in the drug enforcement area. As Chief of Staff of the Drug Enforcement Administration from February 2005 to November 2006, and as Chief of the Criminal Division's Narcotic and Dangerous Drug Section between 2002 and 2005, she served as a leading voice in the federal government on matters concerning drug enforcement, counter-drug policy, regulation of controlled substances and demand reduction. At DEA, she advised and counseled the DEA Administrator, and oversaw all aspects of the domestic and international operations of this 11,000-member agency with a \$2.1 billion budget.

Prior to joining the DEA, she served as the Chief of the Narcotic and Dangerous Drug Section in the Justice Department's Criminal Division. Earlier Avergun served as an Assistant United States Attorney for the Eastern District of New York from 1990 to 2002. During that time, she was a Deputy Chief and then Chief of the Narcotics and Money Laundering Section, the Chief of the Long Island Branch Office, and Senior Litigation Counsel.

Among her awards and commendations, Avergun has received the Director's Award for Superior Performance as Assistant United States Attorney and she has been the recipient of dozens of awards and citations for excellence in law enforcement.

Upon graduating *magna cum laude* from Brooklyn Law School, Avergun was an associate at Shereff, Friedman, Hoffman &



Dean Joan G. Wexler with honorees Irwin B. Cohen '58 and Jodi Levine Avergun '87, and Alumni Association Presidents Linda Lamel '76 (outgoing) and Robert E. Grossman '73 (incoming).

Goodman, where she specialized in merger and acquisition litigation. In law school, she was Articles Editor of the *Brooklyn Law Review*. She received her B.A. from Brown University.

Irwin B. Cohen '58 is an independent real estate developer who has dedicated his career to creating practical, symbiotic environments of public and private utility. His visionary projects have been credited with the revitalization of several urban areas, most notably in New York City and Philadelphia. They often involve the redevelopment of historically significant buildings, primarily warehouses and old manufacturing facilities, into non-residential uses.

Cohen's projects in Manhattan's Chelsea neighborhood have helped to revive a long-declining area of several city blocks from Ninth Avenue to the Hudson River. In 1996, he converted the run-down former Nabisco factory complex into the Chelsea Market, now a popular destination for shoppers from across the metropolitan area. A hands-on manager who oversees all aspects of his projects, Cohen recently converted another former Nabisco building in the area into a state-of-the-art office facility and restaurants.

In the 1970s and 1980s, Cohen helped jumpstart the revitalization of the area north of Philadelphia's City Hall. In the 1960s, he

developed manufacturing and retail centers in Long Island City from large underutilized warehouses.

He began his career as house counsel to a New York commercial real estate firm and then went out on his own. In 1957, while still in law school, he competed for the school in the Eastern Intercollegiate Weight Lifting Championships, winning the middle heavy-weight division.

In addition to the many accolades and recognition for his real estate projects, Cohen has also been honored by the United States Marshal's Service. He was deemed an Honorary Deputy United States Marshal for his work after 9/11 in helping to build facilities in New York City for the Service.

Dean Wexler said, "Jodi and Irwin were the perfect graduates to honor this year. Not only have they had distinguished careers, but they have been great friends to the Law School. Jodi has been a speaker at our Dean's Roundtable events, a dedicated mentor, and she has helped launch many careers by hiring our graduates. Irwin has been an extraordinary supporter and benefactor. Both of these remarkable people are the epitome of the "Best of Brooklyn Law School."

For complete bios of the honorees, visit www.brooklaw.edu/news/alumnireception2006.

Sparer Program Alumni and Friends Celebrate 20 Years of Achievement

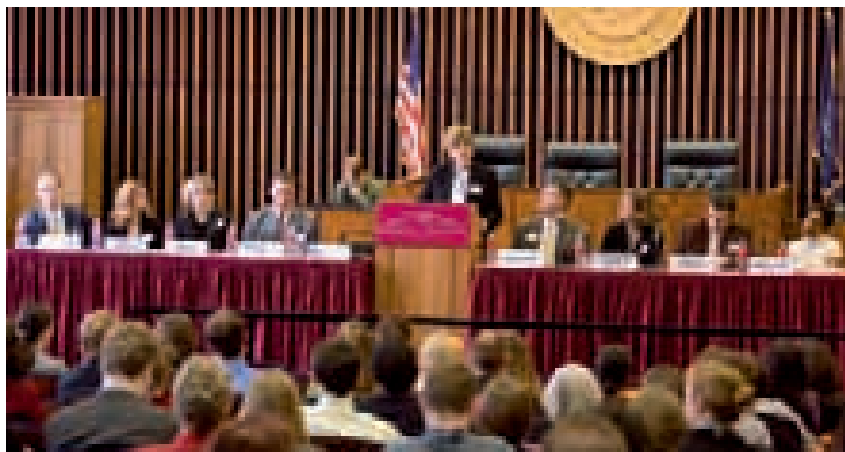
Nearly 250 alumni and friends of the Edward V. Sparer Public Interest Fellowship Program from across the country and abroad celebrated its twentieth anniversary in March 2006. An afternoon panel discussion was followed by a reception and dinner at the Forchelli Conference Center.

Elizabeth M. Schneider, Rose L. Hoffer Professor of Law and Director of the Sparer Program, opened the event with reminiscences of Edward Sparer, Brooklyn Law School Class of 1959, a pioneer in the fields of poverty and health law, and a nationally recognized teacher, scholar and activist. The program “carries on Ed’s legacy by encouraging students to do legal work in the service of social change,” she said. It provides grants for summer internships in public interest law and has helped to build a public interest community through informational programs, fora and symposia. To date over 300 Sparer Fellows have worked in legal services, legal aid offices, and other organizations on such issues as civil rights, women’s rights, gay and lesbian rights, Native American rights, and international human rights. “We are particularly proud that many of these students have continued in public interest work after their fellowship experience,” Schneider said.

She noted that Bertram Bronzaft ’61 was instrumental in launching the program and former Dean, now U.S. District Court Judge David G. Trager and Dean Joan G. Wexler have given their unwavering support. The Sparer family’s support was also vital, she said, including that of “Ed’s wife Tanya and his son Michael, who has carried on Ed’s legacy as a lawyer and public health expert.”

Clockwise from upper left: ▶

Elizabeth Kane, Director of Public Service Programs, panelist Paul Zimmerman ’93 and Janet Ginzberg ’93; Donna Rachel Euben ’93, Counsel, AFL-CIO Lawyers Coordinating Committee, Washington D.C., toasted the occasion; Professor Elizabeth M. Schneider and panelist Ross D. Levi ’97; and, a scene from the reception.



At the panel discussion, *The Many Roads to Change: Reaffirming Ed Sparer’s Vision*: (c) Professor Elizabeth M. Schneider; (l to r) Kevin J. Hellmann ’95, Assistant Public Defender, Juvenile Division, Miami-Dade Public Defender’s Office, Miami, FL; Tracy Peterson ’00, Assistant Attorney General, New York State Office of the Attorney General, New York, NY; Christa Stewart ’94, Director of Legal Services, The Door, New York; and, Robert Acton ’97, Executive Director, Cabrini Green Legal Aid, Chicago, IL; Ross Levi ’97, Director of Policy and Government Affairs, Empire State Pride Agenda, Albany, NY; Claudia Werman Connor ’88, Consultant, UNICEF, Yangon, Myanmar; Paul Zimmerman ’93, Counsel, Investigative Office of Inspector General, United States Department of Justice, Washington, D.C.; and, Sabena T. Leake ’94, Program Officer, The Andrus Family Fund, New York, NY.



ALUMNI Update

ALUMNI EVENTS GALLERY

Graduates of all vintages, newly-minted and long-established, enjoyed meeting or reconnecting at alumni events across the country last year. Dean Joan G. Wexler “rode the circuit” of luncheons and receptions, bringing news about the progress of the Law School. Faculty, administrators and, at one event, current students also attended the festivities. A full schedule of events nationwide is in the planning stages for the coming year.

LONG ISLAND

With over 3,000 alumni living and/or working on Long Island, the Law School held a reception in September at the Long Island firm of Forchelli, Curto, Schwartz, Mineo, Carlino & Cohn, LLP. Jeffrey D. Forchelli, Class of 1969 (top, right), and a member of the Board of Trustees, graciously hosted the event at the firm’s Mineola office.



WASHINGTON, D.C.

The January reception at the Willard InterContinental Washington included current students who made the trip from Brooklyn by a bus provided by the Law School. D.C. area alumni spent time talking to the students about career opportunities in the area and they were also delighted to reconnect with the large contingent of faculty that attended.

NEW YORK METROPOLITAN AREA

In January, record numbers of graduates, including many recent alumni, attended a luncheon at The Princeton Club of New York in midtown Manhattan.



BOSTON

In November, an alumni reception was held at the Ritz-Carlton Hotel in Boston. Attendees ranging from the Classes of 1982 to 2006 were excited to meet each other and to learn about the growing numbers of BLS alumni in the area. They were also thrilled that Brooklyn traveled to Boston and wanted to know when we would be back!

In Memoriam

1931

Gerald J. Ellman
December 19, 2006

1934

Julius S. Chase
October 29, 2006

1936

Philip Frieder
August 12, 2006

1937

Harold J. Cohen
November 17, 2006

Arnold L. Rosenberg
November 6, 2006

Morris Weinstein
November 12, 2006

1938

Irwin E. Kalter
August 26, 2006

1940

Milton Berger
August 1, 2006

Harry Ellman
August 1, 2006

1941

Dean Maxwell S. Boas
September 8, 2006

1942

Robert C. Norton, Jr.
December 9, 2006

1943

Hon. Ralph W. Bohannon, Jr.
September 19, 2006

Eva E. Newman
January 21, 2007

1947

Harry A. Fisher
March 13, 2007

1948

Edward Cobert
February 12, 2007

Ralph C. Goldman
March 14, 2007

Bernard M. Jaffe
November 29, 2006

Robert B. Loew
March 7, 2007

Arthur E. Mayer
November 5, 2006

Ira Sacks
August 8, 2006

Thomas M. Stapleton
August 8, 2006

John G. Trapani
April 21, 2007

1949

Joshua M. Fiero, III
April 8, 2007

1950

Robert F. Helmer
September 9, 2006

Robert L. Rosenthal
April 20, 2007

Henry B. Simon
December 15, 2006

Edward H. Swoyer
September 7, 2006

1951

Hon. Stuart L. Ain
October 28, 2006

Frank P. Barone
December 9, 2006

Robert Bauer
October 11, 2006

Calvin C. Cobb
May 26, 2006

Donald C. Farson
November 27, 2006

Zigmond G. Reho
December 29, 2006

Allan Schiff
May 29, 2006

1953

Esther M. Kaufman
March 10, 2007

Jerome Rashkis
December 1, 2006

1954

Hon. Paul T. D'Amaro
August 10, 2006

Joseph Imperial
November 1, 2006

Hon. Milton Morvitz
December 18, 2006

1955

Harvey L. Jacobs
August 1, 2006

Alvin Mass
December 10, 2006

George W. Michel
August 30, 2006

Saul I. Serota
January 13, 2007

1956

Eric F. Jensen
January 3, 2007

Hyman Weber
September 23, 2006

1957

James C. Paranicas
January 28, 2007

Ronald E. Stringer
April 20, 2007

1958

Leonard Weiss
January 17, 2007

1960

Anthony D. Delukey
November 8, 2006

1961

Prof. Gerald D. Zuckerman
August 8, 2006

1964

Richard S. Pergolizzi
August 4, 2006

David G. Zuckerman
April 17, 2006

1966

Michael E. Colleton
December 29, 2006

1967

Alan A. Lascher
August 6, 2006

Ronald M. Pflug
November 7, 2006

1970

Barry J. Levine
March 21, 2007

Stanley Rothenberg
November 3, 2006

1971

Mel A. Sachs
August 30, 2006

1972

Gerald M. Labush
October 20, 2006

1973

Robert C. Nolan
February 24, 2007

1974

Gerald Dunbar
April 12, 2007

1975

Ronald F. Poepplein
March 23, 2007

1978

Dr. Charles Guttman
February 26, 2007

1982

John K. Daly
January 31, 2007

Hon. Milagros A. Matos
December 26, 2006

In Memoriam

Doris A. Thompson '38, '43

Judge Doris Adele Thompson '38, '43 JSD, who died last December at the age of 91, chose a career in the law at a time when very few women entered the field. In that era, Brooklyn Law School was unique in extending a welcome to women, and she would later recall the faculty as being very “accessible, practical and devoted.” Judge Thompson returned that devotion in kind. Her dedication to her alma mater was long-lasting and profound.

While a law student she met her husband, the late Edward Thompson '36, who was then a part-time student and full-time fire fighter. He would become a State Supreme Court Justice; she an administrative law judge. Together they built a life of accomplishment, grace, and generosity.

For many years, she served as an administrative law judge with the New York City Parking Violations Bureau. Her private practice was focused on trusts, estates and adoptions. According to her daughter, she derived most satisfaction from working with adoptive families, work that was often pro bono.

Building strong families and extended “sisterhoods” was an enduring passion for Judge Thompson. She and her husband raised four children, including three sons who became New York City firefighters, one of whom also attended Brooklyn Law School, Edward Thompson, Jr. '64. Judge Thompson was a lifelong—and for many years, the eldest—active member of the of the national Delta Gamma sorority, which she joined while earning her bachelor's degree at Adelphi University. She was also an avid supporter of the Girl Scouts of America.

Her husband's career was one of extraordinary public service. Upon graduation from Law School, he was appointed by Mayor LaGuardia as a prosecutor of fire code violations, and then as an Assistant Corporation Counsel. He later became a New York City Magistrate, sworn in during wartime while he was stationed in the Philippines with the Seventh Fleet. He served as a magistrate from 1946 to 1952, then as a Judge of the Court of Special Sessions, and later as a Queens County Court Judge. From 1962 to 1964, he was the New York City Fire Commissioner. Later he was elected to the State Supreme Court and appointed an administrative judge of the New York City Civil Court.

Over the years, the couple remained supportive and involved with Brooklyn Law School. Edward served as president of the Alumni Association in the 1970s, reenergizing the organization, increasing membership and boosting the capital campaign. The Thompsons were major donors, generously supporting the development of the 1994 addition to the main building and endowing a scholarship and two graduation awards in their names: the Judge Doris A. Thompson and Judge Edward Thompson Award for Excellence in Trial Advocacy, and the Award for Excellence in Professional Skills.

Kyu Hyuk Chay '07

Kyu Hyuk Chay, a Staff Sergeant and Arabic linguist with the 1st Battalion, 3rd Special Forces Group (Airborne) of the United States Army, was killed in Afghanistan in October 2006. At the time of his death, Sergeant Chay, 34, had only three credits remaining to complete his Brooklyn Law School degree. He received his juris doctor degree posthumously at this year's commencement. It was presented to his father, Sam Chay, and his brother, Kyu T. Chay. As Dean Joan Wexler said at the ceremony “we are awarding Sergeant Chay a degree today because we believe he encompassed all the characteristics of a Brooklyn Law School graduate: hard work, determination, and dedication to excellence.”

A first generation immigrant, Sergeant Chay was born in South Korea and came to the United States at the age of seven with his brother and parents. He graduated from the Bronx High School of Science and from the State University of New York at Albany. The Chay family opened a family operated dry cleaning store in Chappaqua, New York. Motivated by gratitude to America for the opportunities he and his parents found here, Sergeant Chay joined the army in 2001.

While a student at Brooklyn, he served a tour of duty in Iraq. Upon his return, he sought to complete his law degree by undertaking an independent research project. His goal was to become a Judge Advocate General in the Army. But, he was killed in action before he could finish. Sergeant Chay is survived by his wife Cathy, their two young children, Jason and Kelly, his parents and his brother.

Jerry Cooke '95

Jerry “Nikko” Cooke, died last December at the age of 36 while on a climbing expedition of Oregon's Mount Hood. He died along with two other climbers.

Cooke was an experienced climber, who had climbed several mountains prior to attempting to ascend Mount Hood. A fierce winter storm trapped the climbers on December 10th and a huge rescue operation was launched, which received intense national media attention. While the rescuers found one of the climbers 12 days later, they were unable to find Cooke and the other climber.

David Valdez, a mountaineering colleague, credited Cooke with keeping him from plunging to the bottom of a crevasse on Washington's Mt. Rainer on an expedition they did together. He said that his friend “was an extremely kind person and very fearless. Being a climber there is always a risk. I thought he would walk his way out of it.” At the time of his death, Cooke was affiliated with the firm of Cheven, Keely & Hatzis in Manhattan, where he had been since 2002. He was also a leader in the Asian Bar Association. He is survived by his wife, Michaela.

CALENDAR OF EVENTS | FALL 2007

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- SEPTEMBER 13** **NEW YORK STOCK EXCHANGE
BREAKFAST ROUNDTABLE**
SPEAKER: ERIK SIRRI
Director of the Division of Market
Regulation, United States Securities
and Exchange Commission
-
- SEPTEMBER 19** **INTERNATIONAL ECONOMIC LAW FORUM**
SPEAKER: TARIK TRIDIMAS
Professor of Law, Penn State Dickinson School of Law
and Sir John Lubbock Professor of Banking Law at
Queen Mary College, University of London
-
- SEPTEMBER 20** **THEORY PRACTICE SEMINAR**
"Balancing Competition and Government Allocation of
Health Care Resources: The Berger Commission Report"
SPONSORED BY THE CENTER FOR HEALTH, FORCE AND
PUBLIC POLICY AND THE ABA AMTRUST SECTION
COMMITTEE ON HEALTH CARE AND PHARMACEUTICALS
-
- SEPTEMBER 26** **MEDIA AND SOCIETY LECTURE**
"Off the Record: The Press, The Government,
and The War Over Anonymous Sources"
SPEAKER: NORMAN PEARLSTINE
Senior Advisor to the Global Telecommunications
& Media Team, The Carlyle Group
-
- OCTOBER 16-20** **ALUMNI REUNIONS**
Los Angeles and San Francisco, CA
-
- OCTOBER 24** **BABY L. ZARETSKY ROUNDTABLE PROGRAM**
"Hedge Funds, Claims Trailing, Credit Derivatives,
and the Changing Dynamics of Chapter 11"
-
- NOVEMBER 3-4** **INTENSIVE NEGOTIATIONS WORKSHOP (CLE)**
PRESENTER: JOHN M. DARLEY
Walter Professor of Psychology, Princeton University
PRESENTER: THANE S. PITTMAN
Chair, Department of Psychology, Colby College
-
- NOVEMBER 14** **INTERNATIONAL ECONOMIC LAW FORUM**
SPEAKER: DR. JONATHAN CLOUD
Senior Lecturer in the Faculty of Law,
Monash University, Melbourne, Australia
-
- NOVEMBER 14** **SYMPOSIUM (CLE)**
"Corporate Liability for Grave Breaches of
International Law"
SPONSORED BY THE CENTER FOR THE STUDY OF
INTERNATIONAL BUSINESS LAW AND THE *Brooklyn
Journal of International Law*
-
- NOVEMBER 23** **ANNUAL ALUMNI COCKTAIL RECEPTION**
New York City
-
- DECEMBER 1** **CLE PROGRAM**
"Criminal Law, Procedures and Evidence—
The New York Court of Appeals et al"
-

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