

Notes & Renderings



Carnegie Gives NYU Law an “A”

A TWO-YEAR WATERSHED REPORT ON LEGAL EDUCATION BY the Carnegie Foundation for the Advancement of Teaching held up NYU’s clinical legal education as a model approach.

A research team from the Carnegie Foundation visited NYU and 15 other law schools in the United States and Canada in the 1999-2000 academic year to produce its report, “Educating Lawyers: Preparation for the Profession of Law.” In it, NYU’s clinical pedagogy is examined in great detail and praised for how it combines analytical skills with practical training, client relations skills and real-life ethical considerations.

The report includes a profile of NYU’s mandatory first-year Lawyering Program and its focus on simulated tasks such as gathering facts or negotiating a transaction. Peggy Cooper Davis, John S. R. Shad Professor of Lawyering and Ethics and director of the Lawyering Program, said in the report: “It is important that students see expertise in a sense broader than the constant manipulation of a body of rules.”

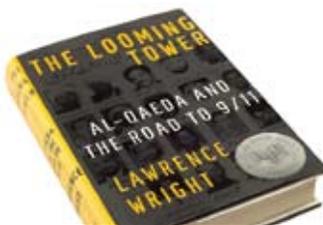
Clinical legal education has not been the subject of an equally compelling national discussion since the MacCrate Report in 1992, says Randy Hertz, professor of clinical law and director of Clinical and Advocacy Programs for NYU. That study of lawyers’ educational and professional development needs advocated for practical legal-skills training as part of legal education. “The Carnegie Report will lead us to a greater consolidation of clinical methodology into traditional, nonclinical courses and a more conscious focus on helping students gain the skills and values needed for legal practice,” Hertz says. “I think NYU inevitably will play an important role in these developments.”

Distinctively Prizeworthy

Lawrence Wright’s bestseller *The Looming Tower* won the 2007 Pulitzer Prize for general nonfiction. The book, which took five years to research and write, scrupulously chronicles the origins of al Qaeda and intelligence failures that led to the attacks on 9/11.

Wright is a staff writer at the *New Yorker* and a fellow at NYU Law’s Center on Law and Security. He also performed a one-man show based on *Tower*, *My Trip to al-Qaeda*, for six sold-out weeks at the Culture Project in Lower Manhattan.

“Larry Wright’s ability to tell a story,” says Karen Greenberg, the center’s executive director, “is in his talent for finding the ways in which intimate personal agendas intersect with larger political factors to create history.”



It’s “Officier”

On June 20, Theodor Meron, Charles S. Denison Professor of Law Emeritus, was made an officer in the Legion of Honor, earning him France’s highest distinction. French Ambassador to the Netherlands Jean-Michel Gausso presented the medal recognizing Meron’s role as the president of and a judge on the International Criminal Tribunals for the former Yugoslavia and Rwanda.

In his acceptance speech, Meron heralded France’s contributions to international law and justice—from the Declaration of the Rights of Man and Citizen to creating the modern system of civil law—but noted the nation’s greatest achievement is far more personal. “It is a country which has a special place in my heart,” he added, “because, as you know, my wife is French.”

Editor’s note: In July, Professor of Law on Leave Ronald Noble was also named to be admitted into the Legion. The magazine will report on his upcoming induction in the next issue.

What do Roger Angell, Michael Bloomberg, Al Gore, Rem Koolhaas, Spike Lee, Sandra Day O’Connor, Alice Waters and Richard Revesz have in common?

All were elected to the American Academy of Arts and Sciences in 2007.

Taxes, Teamsters & Territory

Last spring, three NYU School of Law professors testified on vital current issues before congressional committees.

Who: Lily Batchelder, Associate Professor of Law and Public Policy

Where: Congressional Joint Economic Committee

When: February 28, 2007



What: Batchelder described policy changes that would ease income instability. Middle- and low-income American families, said Batchelder, are hardest hit by drops in income. The tax system both helps and hurts those with relatively volatile incomes, she said, by reducing their tax rates when yearly earnings fall but levying higher taxes over time. Batchelder proposed targeted income averaging in order to level out fluctuations and increase the after-tax income of those most affected. "The time is ripe," Batchelder said, "to make the tax system more of a cushion and less of a disproportionate burden on these families that are already vulnerable."

Update: This fall, Senator Charles Schumer (D-NY) will include some of Batchelder's income-averaging proposals related to earned income tax credits and personal exemptions in his bill addressing African-American unemployment.

Who: Cynthia Estlund, Catherine A. Rein Professor of Law

Where: Senate Committee on Health, Education, Labor, and Pensions

When: March 27, 2007

What: Estlund supported the Employee Free Choice Act (H.R. 800) that would amend the National Labor Relations Act, which has been virtually unchanged for the last 60 years. The act would allow employers or unions to refer deadlocked first-contract bargaining agreements to federal mediators; let employees select a union through majority sign-up instead of by secret ballot; and penalize employers for anti-organizing tactics. Estlund testified that increasing fines against aggressive employers, tripling back pay to illegally discharged workers and mandating federal court injunctions when there is reason to believe an employer has discriminated against organizing employees "give[s] some teeth to a law whose toothlessness has become an international embarrassment."

Update: H.R. 800 had already passed in the House on March 1, 2007 by a recorded vote of 241-185. On June 26, however, the Senate did not pass a motion for cloture, making it unlikely the bill would be enacted by January 2009, the end of the current congressional term.

Who: Richard Pildes, Sudler Family Professor of Constitutional Law

Where: House Committee on Natural Resources, Subcommittee on Insular Affairs

When: March 20, 2007

What: Pildes urged the rejection of one of two bills currently before Congress that would let Puerto Rico vote for its future political status and relationship with the United States. H.R. 900 allows only two choices: statehood or independence, omitting a third option for a mutually binding agreement with the United States. The omission is "fundamentally flawed and misleading," said Pildes, and based on a mistaken constitutional premise: "Congress does have the power...to enter into a mutual-consent agreement that would create and respect a more autonomous form of Commonwealth status for Puerto Rico."

Update: Subcommittee hearings on the matter have concluded and bills are pending in both the House and the Senate.



New Jersey's Top Legal Eagle

In June, the New Jersey Senate confirmed Anne Milgram '96 as attorney general.

Just 36 years old, Milgram has impressive credentials. As special litigation counsel in the Criminal Section of the U.S. Department of Justice's Civil Rights Division, she successfully prosecuted *U.S. v. Jimenez-Calderon*, winning convictions against multiple defendants who forced young Mexican immigrants into prostitution. Milgram was also an assistant district attorney in the New York County District Attorney's Office of Robert Morgenthau. "It was clear from our very first interview with her that she was smart, that she was a hard worker and that she had good judgment," said Morgenthau to New Jersey's *Star-Ledger*. "It was also clear that she was interested in public service."

Larry Kramer, former Russell D. Niles Professor of Law at NYU, now the dean of Stanford Law School, is well acquainted with Milgram. "Anne was one of my all-time favorite students," says Kramer. "She served as a research assistant—something I do rarely and only with students I really trust. Her work was great. Better still was her attitude: She projects a huge amount of positive energy. Combined with smarts, passion, commitment and a lot of sense, it's no wonder she's done so well at such a young age."

A Building for Bruner

Teaching at Oxford during the 1970s, University Professor Jerome Bruner laid the foundation for the study of children's cognitive development. In March, Oxford recognized Bruner's lasting contribution by naming for him the new \$4 million building housing its education department.

Bruner's revolutionary scholarship drew attention to the negative impact of educational deprivation and the class inequality that it breeds. "Professor Bruner's work made a significant contribution to our understanding of child development," said Parliamentary Under-Secretary of State for Schools Lord Andrew Adonis (below, left). "I am delighted that his name is associated with this new chapter in the history of Oxford University's education department."



Caste & Killings

Two professors reported shocking human rights violations to the United Nations.

Last spring, Assistant Professor of Clinical Law **Smita Narula** presented the report *Hidden Apartheid: Caste Discrimination against India's 'Untouchables'* to the U.N. Committee on the Elimination of Racial Discrimination in Geneva, and to the Congressional Human Rights Caucus Briefing in Washington, D.C. Dalits, India's 165 million "untouchables," endure systemic segregation, violence and exploitation despite the official abolition of caste discrimination by Indian law. Narula urged the U.N. committee to scrutinize the lack of enforcement of constitutional and legislative protections, and called upon the organization to add its voice to "growing international concern over India's failure to protect Dalits' rights."

As a special rapporteur for the U.N., **Philip Alston**, John Norton Pomeroy Professor of Law, reported to the General Assembly last October on the body's responses to extrajudicial executions (the illegal killing of individuals by a government). He called for stricter compliance with the U.N.'s Human Rights Council and recommended instituting "an early warning alarm" for violations in Sri Lanka. In September 2006, the clash between the separatist Tamil Tigers and government forces drove thousands into areas that lacked electricity, food and clean water. Alston urged the General Assembly "to call upon the United Nations Secretariat to establish a full-fledged international human rights monitoring mission in Sri Lanka."



The Hart Specialist

Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law, will deliver the H.L.A. Hart Memorial



Lecture in Jurisprudence and Moral Philosophy at the University of Oxford in 2008.

Established in 1985 to honor H.L.A. Hart, one of the most celebrated legal philosophers of the 20th century, the lecture is among the most prestigious in the legal academy.

The purpose of the series, says Oxford Professor of Civil Procedure Adrian Zuckerman, the secretary to the Hart Lecture Committee, is to continue to contribute to the academic disciplines in which Hart played a crucial role, and to encourage the interest of Oxford's jurisprudence and philosophy students in those areas. "Almost all the prominent legal and moral philosophers of this generation have delivered this seminal lecture," says Zuckerman.

Continued at right



New York City Gives Parents a Break

IN MAY, NEW YORK CITY announced a dramatic reform to its Family Court legal representation system to provide multifaceted assistance to parents. The *New York Law Journal* credited Martin Guggenheim '71, Fiorello LaGuardia Professor of Clinical Law, as the "theorist" who developed the interdisciplinary model the city is now employing, which relies on nonprofit groups to provide social-work services in addition to legal representation for parents and guardians.

The city signed \$9.4 million in contracts with Manhattan's Center for Family Representation (CFR), the Bronx Defenders and Brooklyn's Legal Services for New York City to collectively handle an estimated 2,595 cases over 26 months. This move will shift representation of about 40 percent of indigent parents in the three boroughs from \$75-an-hour city-certified attorneys who have been their sole source of parent representation until now, to the three nonprofit organizations.

"Before this change, the city was shortchanging the parents' representatives," says Guggenheim, a long-time proponent of advocating to rehabilitate entire families, instead of focusing exclusively on children's legal rights during court proceedings (see "Caught by Good Intentions" on page 42). "It's the first time that the city has seen fit to try to level the playing field by providing equal resources to all parties in child-welfare cases."

Students in Guggenheim's Family Defense Clinic will

work on cases with Legal Services for New York City. The clinic partners students from NYU's School of Social Work with law students to handle cases that usually concern parental abuse and neglect. Both CFR and the Bronx Defenders also employ parent advocates—usually social workers—a multidisciplinary approach developed by Guggenheim to address circumstances in which parents require guidance and assistance, but not necessarily legal advocacy, such as reporting on

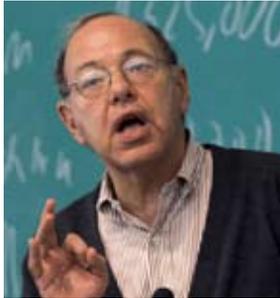
University Professor Jeremy Waldron, a foremost philosopher in his own right, described the Hart as “the leading public lecture on jurisprudence and legal theory at Oxford. It celebrates the founder of modern analytic jurisprudence; it is given at Oxford, the home of legal philosophy, and it has been delivered by some of the most distinguished theorists in the field.” Ronald Dworkin, Frank Henry Sommer Professor of Law; Thomas Nagel, University Professor; and Richard Epstein, James Parker Hall Distinguished Service Professor of Law at the University of Chicago and an annual visiting law professor at NYU, have also given the lecture. Justices William Brennan Jr. and Stephen Breyer are other past Hart Lecturers.

“Sam Issacharoff is one of the leading scholars of democracy in the modern legal academy,” says Waldron, “and his work on what law can do to strengthen fragile democracy in developing societies is immensely important. I think his Hart lecture will help to open up Oxford-style legal philosophy to richer and more robust engagement with political issues about governance, democracy and rule of law.”

their progress in drug-rehabilitation or parenting programs. “The city’s decision to create organizations to represent parents is nothing short of revolutionary. The support of interdisciplinary representation is a tribute to its recognition that families need strong legal representation and a wide array of services and support to strengthen them and make reunification possible,” says the Bronx Defenders’ Executive Director Robin Steinberg ’82. Her organization provides holistic, community-based legal and social services for defendants in the criminal-justice system.

Yoo v. Neuborne

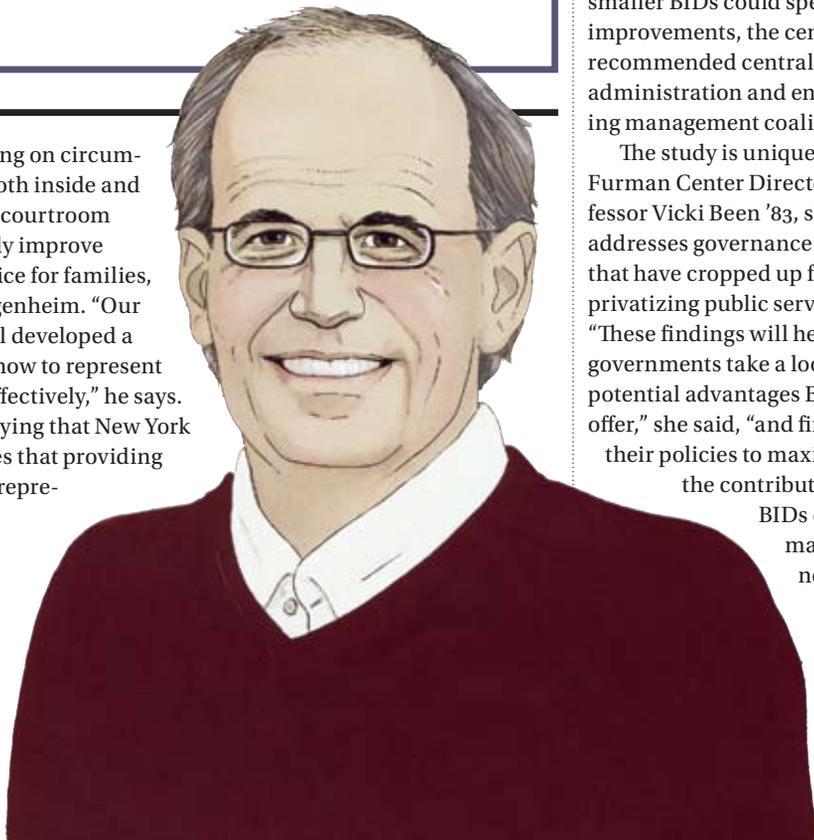
It wasn’t quite as combustible as World Wrestling Entertainment’s *Friday Night Smackdown*, but last October, when the Law School’s Federalist Society invited Professor John Yoo of the University of California, Berkeley, School of Law to debate our own Inez Milholland Professor of Civil Liberties Burt Neuborne, some sparks did fly.

“Why should we be so reliant on the courts to make these kinds of [habeas corpus] decisions? What is wrong with having a system where it’s the president and the Congress? This does not have to do with political parties... I will write many op-eds saying that when President Hillary Clinton gets all this power, and makes all these decisions, I will fully support her in making them.” —John Yoo

“Do you really want the president and the Congress to sit as the final determinant of whether people are legally confined? What kind of rule of law would we have if we ousted the courts from the process? I think in years to come, people are going to look back on this and they are going to say that this was the Alien and Sedition Act. This was the terrible mistake we made when we were frightened.” —Burt Neuborne

Focusing on circumstances both inside and out of the courtroom will greatly improve legal service for families, says Guggenheim. “Our law school developed a model of how to represent parents effectively,” he says. “It is gratifying that New York City agrees that providing excellent representation requires working closely with parents outside of court.”



Big BIDs Win

The Furman Center for Real Estate & Urban Policy released a first-ever study of the impact of Business Improvement Districts (BIDs) on property values. It found that, on average, BIDs increase commercial real estate values within their bounds by roughly 15 percentage points.

Financed by fees assessed on local property owners, BIDs provide services like sanitation and security, and amenities like signage and plantings. While BIDs increase the attractiveness of an area, their financial impact varies based on their size. Those with budgets over \$1.2 million saw an increase in commercial property values while smaller BIDs had no effect.

Concluding that overhead costs eat up monies that smaller BIDs could spend on improvements, the center recommended centralizing administration and encouraging management coalitions.

The study is unique, says Furman Center Director Professor Vicki Been ’83, since it addresses governance issues that have cropped up from privatizing public services. “These findings will help local governments take a look at the potential advantages BIDs may offer,” she said, “and fine-tune their policies to maximize the contributions

BIDs can make to a neighborhood.”





Home Field Advantage

Mark Boyko (LL.M. '05) coauthored a study in the September 2007 *Journal of Sports and Sciences* that examined 5,000 English Premier League soccer matches. The results:

Home teams scored **1.5 GOALS** per game on average, while away teams scored **1.1 GOALS**.

The researchers “theorized that a home-field advantage may be attributable, at least in part, to a subconscious bias in referees,” said Boyko, “probably due to the influence of the crowd.” The evidence:

1.2 : 1.6
The ratio of yellow cards given to home teams vs. away teams. Home teams also had fewer red cards and more goals resulting from penalty kicks.

Referees who have officiated around **200 GAMES** showed less home-team bias than those with just **50 GAMES** under their belts.

Why Judges Cite Shakespeare

In a January 29, 2007 article in the *New York Times*, Stephen Gillers is quoted extensively, below, about the court’s increasing use of Wikipedia, the online user-contributed encyclopedia, as a source for facts referred to in rulings:

“

The most critical fact is public acceptance, including the litigants,” he said. “A judge should not use Wikipedia when the public is not prepared to accept it as authority.

”

For now, Professor Gillers said, Wikipedia is best used for “soft facts” that are not central to the reasoning of a decision. All of which leads to the question, if a fact isn’t central to a judge’s ruling, why include it?

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Because you want your opinion to be readable,” said Professor Gillers.

“You want to apply context. Judges will try to set the stage. There are background facts. You don’t have to include them. They are not determinative. But they help the reader appreciate the context.” He added, “The higher the court the more you want to do it. Why do judges cite Shakespeare or Kafka?”

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The Lives of the Party

A case that the Brennan Center brought against New York State in 2004 will be heard by the U.S. Supreme Court in October.

In *New York State Board of Elections v. López Torres*, Brennan Center Senior Counsel Frederick A.O. Schwarz Jr. argues that the state’s nomination model is unconstitutional because it allows only political leaders and not rank-and-file party members to nominate state Supreme Court justices. In January 2006, Judge John Gleeson of the U.S. Court of Appeals for the Eastern District of New York held that the state’s convention process violates the First Amendment and ordered primaries be held until legislators can create a new system. The Second Circuit affirmed his decision.

“This case is crucial to preserve the freedom of ordinary party members,” says Professor Burt Neuborne, Brennan Center legal director. “New York will never achieve a judiciary of excellence as long as it treats Supreme Court judgeships as a crude form of party patronage.”



A Fourth Defense

IN THE SUMMER OF 2005, two St. Paul, Minnesota police officers searched an empty house after a 911 hang-up call. No evidence of a crime was apparent, but the graffiti on a teenager’s bedroom wall gave the officers pause. One of them went to the car for his camera, returned to the house to photograph the graf-

fitti and filed the prints with the city’s anti-vandalism division. Months later, the police matched the photos to graffiti on a dumpster and arrested the teen for vandalism—a criminal offense. He was convicted and sentenced to pay restitution.

Interning with the Minnesota State Appellate Public Defender’s Office between his first and second years, Greg Scanlan ’08 was assigned to this “really juicy Fourth Amendment case.”

Political Power of Attorneys

When Eliot Spitzer and Andrew Cuomo were elected last year as New York State's governor and attorney general, respectively, each swiftly formed transition teams composed of the best and brightest experts in a wide range of fields. Members of the NYU School of Law community constituted a significant presence on both teams, and continue to exert their influence on a more lasting basis with positions in Spitzer's administration and Cuomo's office.



Team Cuomo

SENIOR STAFF

ROBIN BAKER

(Former adjunct professor)
Executive Deputy Attorney General for Criminal Justice

MYLAN DENERSTEIN

(Former adjunct professor)
Executive Deputy Attorney General for Social Justice

JENNY RIVERA '85
Special Deputy Attorney General for Civil Rights



LAW SCHOOL-AFFILIATED TRANSITION TEAM MEMBERS

ROBERT ABRAMS '63

Executive Chair
New York State Attorney General (1978-1994)

ZACHARY CARTER '75

Special Advisor
U.S. Attorney, Eastern District of New York (1993-1999); Trustee, NYU School of Law

JOHN COFFEE (LL.M. '76)

Professor, Columbia Law School

ERIC DINALLO '90

Superintendent, New York State Insurance Department

LOUIS FREEH (LL.M. '84)

Director, Federal Bureau of Investigation (1993-2001)

RAYMOND KELLY (LL.M. '74)

New York City Police Commissioner

CHARLIE KING '87

Chief Executive Officer, Praxis Housing Initiatives

RICHARD REVESZ

Dean, and Lawrence King Professor of Law, NYU School of Law

CAROL ROBLES-ROMAN '89

New York City Deputy Mayor for Legal Affairs and Counsel to the Mayor

FREDERICK A. O. SCHWARZ JR.

Chairman, New York City Campaign Finance Board; Senior Counsel, Brennan Center for Justice



Team Spitzer

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ANDREW CELLI JR. '90

Partner, Emery, Celli, Brinckerhoff & Abady

HENRY ELGHANAYAN '66

Chairman and CEO, Rockrose Development Corp.

KAREN GREENBERG

Director of the Center on Law and Security, NYU School of Law

STAN LUNDINE '64

Executive Director, Chautauqua County Health Network

JOSE MALDONADO '80

Vice President of Operations for the New York Health Plan, United Health Group; Trustee, NYU School of Law

RON MOELIS '82

Principal, L&M Equity Participants; Trustee, NYU School of Law

MAYRA PETERS-QUINTERO '99

Supervising Attorney, NYU School of Law Immigrant Rights Clinic

ELLEN SCHALL '72

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MICHAEL SHEEHAN

Distinguished Fellow, Center on Law and Security, NYU School of Law

JEREMY TRAVIS '82

President, John Jay College

MICHAEL WALDMAN '87

Executive Director, Brennan Center for Justice

He was thrilled. Did the two officers have probable cause? If there was no evidence of a crime, could they leave and return? Is it considered seizure to take photos of property? "You'd be lucky to get a case that has one point of law to be settled," Scanlan said. "This one had three."

Scanlan raised these questions in his brief and requested oral argument before the Minnesota Court of Appeals. He specifically wanted to address something avoided in a prior Minnesota Supreme Court

case, *State v. Fulford*, that police must have probable cause to photograph property during a search. "Just because officers are in your house, albeit for a legitimate reason, doesn't mean they get to take pictures of the opened mail that's on your desk or the artwork on your walls," Scanlan said.

To prepare himself, Scanlan consulted with Professor of Law Amy Adler, an expert in art law, and Professor of Clinical Law Randy Hertz, who demystified the courtroom procedures he would soon face.

Scanlan also drew upon his first-year course work. "I did oral arguments for my Lawyering class, and a year later I'm doing it for real," he said. "Only now it has consequences for someone's life, and for the law."

This June, the court unanimously ruled in favor of Scanlan's client, declaring that the photographs taken during the warrantless search of the

house were unjustified and inadmissible at trial since the officers lacked probable cause.

"Greg successfully anticipated the mindset of the appellate judges, particularly the concerns they were likely to have about the precedential effects of a ruling in his client's favor," Hertz said. "He crafted a narrative that caused the judges to conclude that not

