Legal Briefs

Professor Richard Epstein will be joining the Law School’s faculty full-time in the fall of 2010. Technically, Epstein will be retiring from his current position at the University of Chicago Law School, though he will continue teaching there during semesters that he is not teaching at NYU.

Lori Drew, the MySpace “cyber-bully,” was convicted of three misdemeanor counts of accessing a computer without authorization—but acquitted of the felony charge that adds “to inflict emotional distress” to the minor offenses—for her role in the 2006 suicide of 13-year-old Megan Meier. Drew, 49, had pretended to be a 16-year-old boy and formed a relationship with Meier via MySpace; their breakup led to Meier’s suicide.

of NYU’s three-person Nationals team, Lisa Debin ’09 and Kim Renk ’09, gave oral arguments defending the constitutionality of the Religious Land Use and Institutionalized Persons Act (RLUIPA) against 14th Amendment and 1st Amendment challenger. Sydney Nash ’09, the third member, argued that the Individuals with Disabilities Education Act (IDEA) did not restrict tuition reimbursement when a child had not previously received special education services in the public school system.

The regional rounds started on Wednesday, November 19th and spanned two nights (and one afternoon tie-breaker round) of competitions. The remaining teams were then paired off on Thursday, November 20th, in a final four-match elimination round. The afternoon of the 20th marked the team’s final victory before their ultimate loss that evening. "Even though we didn’t end up prevailing in the competition, one thing we will all leave with is said she simply… sparkled.”

From left, Lisa Debin ’09, Sydney Nash ’09, and Kim Renk ’09 sit at their counsel table in a “courtroom” in the New York City Bar Association building. The three students represented NYU Law at the regional round of the Annual National Moot Court Competition.

Your Love Children’s Academy v. Town of San Teresa and Cormac T. v. Town of San Teresa, a complex fact pattern involved both issues. Cormac T. sought to enroll his son with a learning disability in Your Love Children’s Academy (YLCA) without having him first attend a San Teresa public school. Simultaneously, YLCA was facing local criticism for its affiliation with the controversial Your Love Church and charges of sexual misconduct brought against the school’s principal. The San Teresa Zoning Board had just denied the school permission to construct a new annex as part of an expansion project, and the San Teresa Board of Education had meanwhile refused to modify its standard Individualized Education Program (IEP) accommodating requests made by Cormac T. The posture of the case as presented to competitors was an appeal from a district court decision upholding the RLUIPA and declaring the Zoning Board’s denial of YLCA’s application unlawful, and holding that the IDEA did not require a student to use the public school system to trigger the state’s reimbursement remedy.

Two students argued each round: one covered the RLUIPA issue while the other handled IDEA. The team switched between petitioner and respondent each round, so team members had to know both sets of arguments—even though they wrote their appellate brief for only one of the parties.

A large part of preparing to compete occurs in the months leading up to the oral advocacy. NYU’s Nationals team submitted their appellate brief—worth 40% of their final score—for the Petitioners YLCA and Cormac T. in mid-October before oral arguments began in November. Researching and writing are as important to excelling at a competition as top-notch oral advocacy skills.

"To really be a good advocate, you need to know your stuff," Renk advised. "The best advocates are not just good speakers; they know the law inside and out.” NYU’s Nationals team demonstrated these qualities throughout the competition, including during their unfortunate loss to Brooklyn Law School. “The judges couldn’t get over a member of their team with a British-Indian accent named Sparkle,” Nash explained. "What could we do? They said she simply… sparkled.”

From being defeated by a Brooklynite with an unusual moniker to deciding how to pronounce the acronym “RLUIPA” (the team chose “ra-loop-a,” casting aside both the “ra-loop-a” and the “ar-loo-ah” pronunciations), several aspects of this year’s competition posed problems for NYU’s team. The problem to be argued was not released until several weeks after the planned release date, and the rules advanced teams by point differential and not raw score, impeding the NYU team’s progress despite their garnering one of the highest brief scores.

NYU’s Moot Court Board internally selects three third-year students for the Nationals team and also chooses a 3L team for the annual Philip C. Jessup International Law Moot Court Competition. Students join Moot Court through the brief-writing competition held after finals, alongside the regular law write-on. The Board also invites the student who scores the highest in NYU’s intra-school fall Marden Competition to join either the Nationals or the Jessup Team. As 2Ls, Debin and Renk had served in NYU’s Moot Court competitions. Renk was a semi-finalist at the Vanderbilt First Amendment Competition. Nash accepted an invitation to join the Nationals team after winning Best Oralist in the 2007 fall Marden Competition, which she competed in while serving as a Problem Author on the Moot Court Casebook Staff.

The American College of Trial Lawyers and the NYC Bar Association’s “Unestoppelable Unestopped, Suck My Dicra Crushed by No Man in SLAP Finals”

The Student Lawyer Athletic Program (SLAP) ended its flag-football season the weekend before Thanksgiving. The light contact finals saw Unestoppelable triumph over Ben Schaefer’s Team, 13-7. suck My Dicra kick out a victory over Max Crush in double overtime, 6-5, to claim the full contact title.

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Wunderkind Barak Obama can’t always please everyone—especially as he sets dangerous precedents.

Misery loves company, which is why we have two whole columns dissecting the law school finals process.

Need to verify your completed Schudoku (from page 3) before it goes on your fridge? page 4
Too Soon to Lift Coke Ban: Truly Independent Investigation Needed First

BY LAW STUDENTS FOR ECONOMIC JUSTICE

The NYU Senate banned the sale of Coca-Cola products on campus in 2005 after Coke prevented an independent investigation into its role in the assassinations of union leaders and members in its plants in Colombia. Last semester, Coca-Cola asked NYU to lift the ban, claiming that it had agreed to an investigation. Now Coke’s investigation has been conducted, but it does not even purport to investigate the assassinations.

In the final presidential debate, President-Elect Barack Obama noted that Colombian labor leaders have been targeted for their rights. Eight leaders of the union SINALTRAINAL who worked at Coke’s bottling plants have been assassinated, tortured, kidnapped, and/or illegally detained. This year, more union leaders at Coke’s bottling plants have received death threats.

A New York City fact-finding mission, which included City Council Member Hiram Monserrate, concluded, “The physical access that paramilitaries have to Coca-Cola bottling plants is impossible without knowledge and/or tacit approval…. The conclusion that Coca-Cola bears responsibility for the campaign of terror leveled at its workers is unavoidable.” Yet Coke refuses to admit wrongdoing or change its policies.

Coke’s abuses are not limited to Colombia, and its environmental practices are also under scrutiny. In the Diocese of Medellin, for example, one community shut down a Coke plant that had polluted neighborhoods and removed water, rendering farmers’ fields uncultivable.

The NYU Senate resolution adopted in December 2005 demanded an “independent investigation into allegations of the Coca-Cola Company’s complicity in human rights violations” in Colombia. A letter that NYU sent to Coke specifically demanded that the company submit to an investigation by the Workers Rights Consortium, a global non-profit organization created by labor rights experts, workers, and students, of which NYU is a member. Coke refused, citing a prior investigation that it claimed was independent, but which the Senate did not find credible.

Coca-Cola is again requesting that NYU lift its ban, claiming that a report released by the International Labor Organization (ILO) meets the requirements of NYU’s resolution. However, Coke’s reliance on ILO’s report is faulty in three important ways.

First and foremost, the ILO only looked at certain specific current working conditions. ILO never intended to investigate past human rights abuses. In fact, in its ILO's own words, it “examines Coke’s complicity in the assassinations and torture of bottling plant workers.” NYU should uphold its commitment to the ban.

Second, the ILO’s methodology does not reflect an independent investigation. The ILO, in its pre-announced visits to factories, lacked the power to conduct a meaningful investigation and interviewed workers inside the plants and in mandated “groups of interested parties.” This may be because Ed Potter, Coke’s Director of Global Labor Relations, has held the powerful post of U.S. business representative to the ILO for over 15 years and was instrumental in Coke’s selection of the ILO as its monitor of choice.

Finally, the ILO supports allegations of ongoing abuses. These problems include threats, assaults, harassment at work and at home, directions not to join unions, termination, withholding of pay, and outsourcing of jobs to subcontractors that do not permit unionization.

None of this is impugning the ILO. It simply did not set out to conduct the type of investigation necessary to answer the primary question asked by NYU: to determine whether NYU has banned Coke's products: Was Coke complicit in the assassinations, torture, and threats against workers in its Colombian bottling plants? That these human rights abuses occurred is not disputed; at issue is Coke’s level of responsibility.

Coke’s decision not to try and never stated that it would. Coke is merely arguing post facto that an independent investigation into allegations of complicity in human rights violations does not require that this question be addressed.

Coke’s requests to lift the ban show that the company feels its impact. As the largest private company and the world’s most profitable, Coke is in a unique position to use its influence to help bring an end to the business of human rights abuses.

The NYU Senate should take advantage of this opportunity to continue to make a difference in the world through its policies. NYU students have a unique opportunity to continue to make a difference on this issue, and they should not stop now.

If Coke wants NYU’s business, ILO’s report should be sent to the following address, either on paper or via e-mail:

240 Mercer Street
New York, NY 10012
212.998.6080 (phone)
law.commentator@nyu.edu

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Commentator Op/Eds

December 3, 2008

Too Much Change for Change?

BY JOSEPH JEROME ’11

My team won! Hope and change is on the way! Should I be happy, ready to head to Washington with Barry, Nancy, and Harry to change the world and bring about world peace, but in the weeks since the election, I continue to have grave concerns about the state of our politics. Surveying the post-election landscape, covered with discarded “Country First” placards and an abundance of Obama ‘08 t-shirts, I am mortified by the amount of resources wasted in this election and scared of the precedent the Obama campaign has set for political campaigns.

Despite a looming recession, our national politicians managed to amass over $2 billion in campaign contributions this past cycle. And that number doesn’t include the resources spent by local politicians, outside organizations, or Mormons. Even accounting for inflation, we’re spending more than elections ever before. Presumably because I support Obama and Senator McCain raised roughly twice as much money as Morsos. Bush and Kerry did in 2004, although I did all their extra money get them?

Aside from allowing the Obama campaign to put on a half-hour primetime infomercial, the two candidates managed to increase voter turnout by a whole 7 percent. Some might argue that getting over 60 percent of eligible voters to cast their votes is a triumph of our democracy, but what happens when the next go-around comes around and even more and even that many people show up? What will that say about the state of our democracy?

History suggests that our current electoral system, skewed as it is against the lower classes, pretty much peaks at a 60 percent turnout. It’s highly unlikely that doubling down will get voter turnout to 70 percent, so our money isn’t subsidizing participation in our democracy. That said, I’d put good money on the total price tag of our next electoral cycle costing even more than this one.

There’s no question that Obama successfully leveraged the power of the internet to fuel his presidential run, but I wonder if he hasn’t ripped open a proverbial Pandora’s box? Future campaigns will emulate his approach—Rudy Giuliani is already accepting contributions for 2012—but the internet strikes me less as a tool to organize the grassroots and more of a mechanism to keep the money flowing in. BarackObama.com opens with a splash page requesting yet more money, and that’s after his campaign sent out emails asking for contributions to help the DNC “recover.” Where does this stop? If I shell out a couple hundred, I think I might demand a vote on the Obama puppy.

Money always has been the political lifeblood, so maybe I should bury my anxiety and be content with my $100 claim to Obama’s soul. I don’t feel that way though, and I don’t think any of my fellow rookie political candidates should either. Part of my reason for donating the $2 billion money pile was the hope of overthrowing the current system and getting something new in.

Both political parties have become behemoths to the same small economic elite, and those elite have reciprocated by feeding our politicians more and more money. The result: substantive policies that could help real Americans have been swept under the rug by finance. Unfortunately Number 44 has been about his rejection of lobbyists, he woes his political ascendency to no one in the Beltway establishment.

Obama can’t bring about world peace, maybe he can bring a modicum of transparancy into the political process as a whole. He received his campaign money from newbies like me, and I hope he remembers that. We gave what small sum we could in the hope that this change could bring about some real change, but I know I did it on the condition I wouldn’t have to plunk down even more money next time.

Contact law.commentator@nyu.edu. Make your voice heard, through print media.
Quantum of Solace: A Very Humanizing Look at the Quintessential Super-Human Spy

BY JENNIFER RODRIGUEZ '11

Jet-setting and womanizing amount to pyrotechnics in Quantum of Solace, a sequel that illuminates the darkest elements of the human condition: vengeance, betrayal, and lost love. The film finds James Bond (Daniel Craig) traversing the world in pursuit of the villains who blackmailed and killed Vesper Lynd, the woman he loved, in Casino Royale. His search leads him to look for his beloved, in Camille (Olga Kurylenko) stands by him.

It's most certainly not the most wonderful time of the year. For law students everywhere, the next two weeks will comprise the hellacious period known as “finals.” And 1Ls have the worst of it. Until finals are over, 1Ls live basically revolve around outlining and studying. But while most of us have been taking some variation of finals since middle school, law school exams are just a different experience.

In college, with a couple of exceptions, I could get away with pulling all-nighters studying for finals until a few days before the exam. Finals were important, but they were never really only about a quarter of the final grade in the class, so every student had a pretty good idea of where they stood going into the test. And many finals were based on a few questions; if they only encompassed may be about a month and a half of material. Therefore, a few days of studying— at most— would certainly suffice.

Law school is clearly different. It doesn’t matter how much you paid attention in class, how much supplementals you did, or how many times you raised your hand to ask the professor about a random hypothetical situation. Every student is starting from scratch with no previous grades under his or her belt. And on the final, we must know an entire semester’s worth of material.

The exam is daunting, but they have a useful character that makes them a little easier to swallow: they’re open-note! I’m not used to this feature; college was about rote memorization and then applying your knowledge on the test. The pro of that system are that I still remember random facts to this day. (Did you know, for instance, that the treaty of Guadalupe-Hidalgo was signed in 1848, ending the Mexican War?) However, those random facts are the exception, not the rule. Usually, I forgot everything the minute I walked out of the exam room.

With most law school exams open-book (including two of my three tests), students turn to a time-honored paradigm of the secret agent story on its head. Everything that was great about previous Bond Incarnations—the intrigue, the fantasy, the freedom—has the opposite value in this incarnation; everything that is human attains the value of rubies, by virtue of its scarcity. This inversion comes to light as Bond finds an unlively ally in Camille, Greene’s erotic love. At first, she seems a creature of the other-world. But things are not as they appear. She, too, has a personal vendetta to go with a political cause against Greene and his ilk.

The conclusion to “Growing Up Law School,” a Commentator series on the life of a 1L.

Sudoku

Solution on page 4.

Student Organizations/ The Commentator

http://www.law.nyu.edu/studentorganizations/thecommentator

Not spending enough time staring blankly at your computer screen? Read The Commentator online.

By Michael Mux '11

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The tenderness between them becomes a driving force behind the film and contrasts with the frivolous conflicts that have marked Bond’s previous encounters with the fairer sex. Despite the seductiveness of the landscape, the most sexually charged moment of the film consists only of a kiss. Before they part for the final time, a disheveled Bond pulls Camille toward him. It is a moment driven by conflicting feelings of gratitude and passion, and want and need. There is a hint of holiness in his eyes as he lets go of his confident, and she leaves him for the last time.

In other words, go see this movie. The cinematography is characteristic that makes them mundane. But they have a useful character that makes them a little easier to swallow: they’re open-note! I’m not used to this feature; college was about rote memorization and then applying your knowledge on the test. The pro of that system are that I still remember random facts to this day. (Did you know, for instance, that the treaty of Guadalupe-Hidalgo was signed in 1848, ending the Mexican War?) However, those random facts are the exception, not the rule. Usually, I forgot everything the minute I walked out of the exam room.

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In other words, go see this movie. The cinematography is beautiful, the luxury is palbable, and the characters are as intense as the chase scenes. This is an excellent follow-up to Casino Royale and solidifies Craig’s position as the new James Bond.
Thunder Jackson’s: Decent Burgers Spoiled by Popped Collars and B&T Folk

By BEN PEACOCK ’09

Thunder Jackson’s Urban Roadhouse (at Bleeker at Sullivan) just opened in the neighborhood last spring. Now that it’s had time to get the kinks worked out of its system, is it worth your while?

No. Skip it. There are simply too many other—more authentic—burger and beer joints in the Village to justify spending time or money at TJ’s. TJ’s, admittedly, is not half bad. The beer is mixed with honey and a few other things before grilling, which gives the burger a fairly interesting sweet flavor, and that sweetness is counterbalanced by TJ’s slightly spicy “special sauce.” While fairly tasty, the burger is definitely on the small side, despite checking in at twice the price of the larger, juicier, tastier Crow Burger at The Fat Black Pussycat (on West Third, east of Sixth Avenue).

So what kind of folks would go to a so-called “roadhouse” that plays Britney Spears, puts fake newspaper, since the ink would rub off of real newspaper and that would be, you know, unhealthy. “I’m pretty sure even bouncer”coolie” James Dalton, Patrick Swayze’s character in the movie Roadhouse, would concede that one…

To make matters worse, TJ’s has so much goofy crap on their walls that it would turn the stomachs of even such restaurateurs as Col. Theodore Gandeloff Ignatius Friday and Viscount Theophilus Justinian Applebee. Say what you want about the “Thair” that’s sprinkled liberally throughout their franchises, but at least acknowledge that those men understand how to straddle the line between camp and kitsch. The same cannot be said of Thunder Jackson, who has tucked so many incongruous elements to every flat surface that we must question his sanity and quietly hope that he isn’t let anywhere near the food.

Whereas a real roadhouse would be afraid to play anything other than blues early in the evening, for fear that up-tempo music might incite the surly clientele into brawling before the liquor had gripped them tightly enough for the bouncers to break it up, TJ’s plays Britney Spears. And they aren’t doing it ironically. But at least TJ’s remains true to roadhouse form in serving its french fries with truffled mayonnaise. And the french fries come wrapped in newspaper! Well fake newspaper, since the ink might rub off of real newspaper and that would be, you know, unhealthy. “I’m pretty sure even bouncer”coolie” James Dalton, Patrick Swayze’s character in the movie Roadhouse, would concede that one…

Bar Review: Happy Hour Round-Up

By ROBERT GERRETTY ’09

Fat Black Pussycat: Third St. between MacDougal and Sixth Ave.

Happy Hour: Monday–Thursday 4:00 pm–8:00 pm $3 Well drinks $4 Drafts $5 Bottled beer $4 Drafts $4 Well Drinks Lunch Special: 12:00 pm–3:00 pm $10 crepe or sandwich with salad

The Pinch: Sullivan St. between Bleeker St. and Third St.

Happy Hour: Monday–Friday until 7:00 pm $3 Well drinks $4 Drafts $5 Bottled beer $3 Well drinks

Thunder Jackson’s Urban Roadhouse: Corner of Bleeker St. and Sullivan

Happy Hour: Monday–Friday until 7:00 pm $3 Well drinks $4 Drafts $5 Bottled beer

MacDougal Street Ale House: MacDougal between Third St. and Bleeker St.

Happy Hour: Everyday 12:00 pm–7:00 pm $3 Domestic drafts and bottles $3 Sangria $3 Well drinks

Nightly Specials: Wednesday 6:00 pm–10:00 pm: $20 cover for unlimited Coors Light, Sam Adams, and well drinks. Friday 5:00 pm–8:00 pm: Half-priced drinks for NYU Law and Graduate Students. Saturday 5:00 pm–9:00 pm: $5 pitchers of Coors Light

SCHUDOKU!

See puzzle page 3.