The Commentator

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NYU Holds First Immigration Law Competition

Julia Fuma '07

On the weekend of February 24-26, the New York University School of Law Moot Court Board successfully hosted its first ever inter-school immigration law moot court competition.

ILC's Best Oralist Winner in Action

"We have accomplished something [hosting a moot court competition] that is brand new to the law school and unique among top five law schools" said Andy Peterson, the Immigration Law Competition Editor on the Moot Court Board. "We chose an immigration competition because it was an area that is particularly relevant now and, being in New York, we had access to a pool of wonderful immigration lawyers."

The Moot Court Board recruited over 70 local lawyers, judges and professors to judge the competition. Among the judges were 5 immigration judges and representatives from more than 4 immigrant service organizations. The final argument was heard by Judge Stephen Reinhart of the 9th Circuit Court of Appeals, Judge Sonia Sotomayor of the 2nd Circuit, and Judge Fortunato P. Benavides of the 5th Circuit.

Among the NYU law professors who judged the competition were Cristina Rodriguez, Michael Wishnie, Paula Galowitz and Nancy Morawetz.

"I wanted to support a new student endeavor—one I believe to be extremely important. Immigration law is both technically complicated and of great policy significance. I hope the competition will prosper. It certainly got off to a good start." Said Rodriguez.

"I thought that it was well-organized and that the students did a remarkably good job with difficult material," said Morawitz

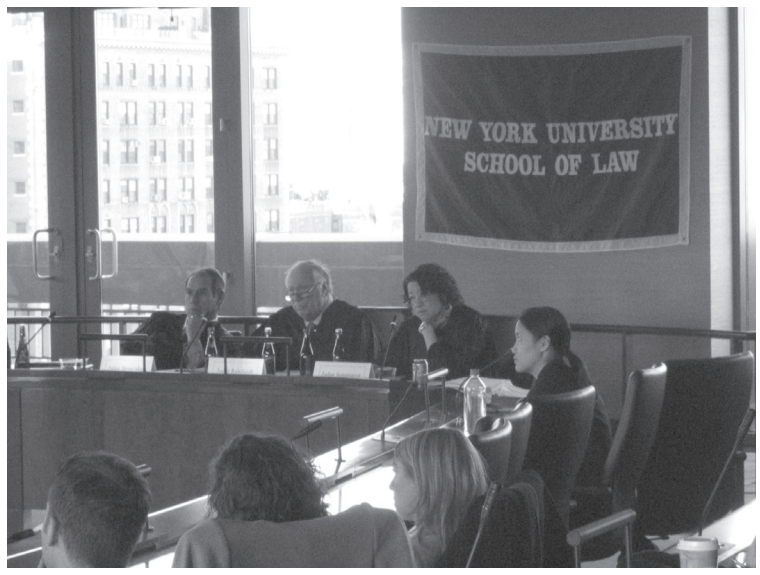
The Competition took place over 3 days, with 9 schools competing: Georgetown, Harvard, Michigan State, Boston College, University of California – Hastings, Rutgers-Newark, NYU, North Carolina Central, and the University of Oregon.

"We are happy with the geographic diversity and the quality of the schools that competed in the Immigration Law Competition" said Peterson.

The competitors were excited for the chance to tackle an immigration problem. "Both me and my partner have worked with immigration and so this competition appealed to us," said EunYung Choi, Harvard, half the winning team. She was also impressed with the relevance of the problem. "It is an actual, current circuit split."

Magdelena Barbosa of Rutgers-Newark said she is trying to use this competition to get people in her law school rallied around the issue of immigration.

The idea for the competition started 2 years ago with the 2003-2004 moot court board. Last year's board drafted an original proposal and created the position of development editor who would write a proposal and go the administration for funding. The funding was approved and last year the board elected an immigration law competition editor, Andrew Peterson, to run the tournament.



The Panel of three Circuit Court judges questioning competitors

"I am so impressed with how quickly they managed to turn our very preliminary proposal into a full-blown nationally attended top notch competition within less than 2 years," said Amanda Nadel, competitions editor 03-04 and judge in this year's immigration law competition.

Once the funding was in place, it was time to start writing the problem. The problem was written by two members of the moot court board, Lila Acharya and Robert Turner. They looked for two active circuit splits in immigration law and then created a fact pattern that would provide balanced arguments for both sides. While both were experienced problem writers from their 2L year on moot court, the task proved stressful.

"First, knowing that the problem would be central to the immigration competition added a lot of stress. If the problem didn't work, the competition would have been a disaster. Second, neither Lila nor I had any experience in immigration law, so we were pretty much learning on the fly. It was only with a lot of help from other students and professors that we managed to make the problem reasonably accurate," said Turner.

The resulting problem focused on two undetermined issues in immigration law. The substantive question asked whether a crime classified as a felony under state law, but as a misdemeanor under federal law, can be considered an aggravated felony for the purposes of the Immigration and Nationality Act. The second, procedural issue dealt with whether courts of appeals can review a decision by the Board of Immigration Appeals to "streamline," or summarily affirm, an opinion by an immigration judge.

"The authors of the problem did a tremendous job in identifying two difficult issues, the materials were extremely well written and compiled," said Rodriguez.

The competition itself went off without a hitch thanks to the hard work of the moot court board, who in total gave more than 250 man hours in the course of the weekend, the support of the faculty who served as judges and helped with the problem, and the support from the administration in funding the competition and reaching out to judges in the immigration community.

Next year, Andy Peterson hopes that the new Immigration Law Competition editor will be able to work with the administration to expand the size of competition.

Is There A Takings Clause After Kelo?

Chris Moon '06

On Monday, March 6, the Federalist Society hosted a lively debate on the recent and controversial Supreme Court decision of *Kelo v. City of New London*. The event welcomed two leading scholars on the issue, attorney Scott Bullock, who argued the case for Kelo before the Supreme Court, and Columbia Law Professor Thomas Merrill, who filed an amicus brief on behalf of the City of New London. The debate was moderated by Professor Katrina Wyman.

Scott Bullock, an attorney for the Institute of Justice, began his allotted time by calling the recent decision "one of the most universally despised" Supreme Court decisions of the last few decades. Opinion polls support his contention, showing that a large majority of citizens disagree with the decision.

Bullock used his remarks to explain why, after the *Kelo* decision, there is very little left of the public use requirement of the Fifth Amendment's takings clause. He indicated that one of the rationales of the Court's decision, that the City had a plan, is not much of a limitation at all, as even obviously private development has public planning.

One of the major problems with the *Kelo* takings were that they were for speculative projects, such as future office buildings for which the developer had no firm future plans. A problem with allowing speculative projects is the fact that it is difficult to know what are the motivations of public officials, whether their interests were to help the public or to help private developers Government officials don't need to answer why they acted how they did. A second problem is that once you say that all private development projects are public uses, how do you separate private and public uses? As Justice Thomas pointed out, much of even the "public" use seemed to correlate with what Pfizer Corp. wanted to happen.

Bullock did feel that state courts and state constitutional provisions could still be used to grant greater protection than that given by the Supreme Court. Another thing that might provide protection is the reaction of state legislators, who want to do something about it. 46 states have already acted, are in the process of acting, or will act on legislation restricting eminent domain use.

However, the battle in state legislatures has not been as easy as the polling would suggest. Those who support eminent domain for private development are frequently cities that would benefit, and those cities are powerful lobbyists.

Professor Merrill began his remarks by explaining that it is possible that the decision was correct.

The first reason he gave was one of judicial restraint. Under any possible definition, it is a very restrained decision, as Stevens defers to the judgment of the state legislature.

Another way in which *Kelo* is restrained is that it did not drastically change the law. Instead, it is in accord with a long line of eminent domain cases, and does not drastically diverge from the original intent of the Fifth Amendment.

The final definition of restraint is a decision that allows experimentation of states. Here, Stevens' opinion is even more restrained, as he practically asks states to experiment with eminent domain and to enact stricter laws if they desire.

The second reason this may be a correct decision, according to Merrill, is that given the realities of decaying inner cities, it may be necessary to reconsider property rights to allow redevelopment. These redevelopment plans take up lots of land, in large part because of parking lots. And, eminent domain must be used because there are so many landowners.

At this point there are two ways to proceed. The dissent argued that government can condemn the land only if the government keeps the title to the land. The majority said you can assemble the land and then re-sell it to private actors. Under this solution, business complexes are owned privately. Ironically, the dissent would lead to more state-owned complexes. Thus, Merrill says that "conservatives should give pause" before entering the fray.

Responding, Mr. Bullock indicated that the holdout problem is drastically overstated. For instance, New London has over 26 acres for redevelopment, plenty of room for new growth. The citizens in this area aren't against redevelopment, they just want to keep their houses as part of this growth. Bullock also said that the market should decide whether the redevelopment occurs, not the government.

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Infra

Craig's Weekly Shout-Outs

Craig Winters, '07

Democracy works because the responsible, busy voters of each state delegate through elections the task of monitoring and administering the government to other responsible people. Those responsible, duly elected representatives are duty-bound to use their enormous influence to help their constituents, and, occasion, to safeguard the greater good. This is true, in general, for all levels of government, but goes doubly for the U.S. Senate, which prides itself on being the last great "debating chamber," and is often said to look askance at its more parochial brethren in the U.S. House.

So we are very impressed with Republican Senator Jim Bunning's remarks this past week regarding the re-authorization of the Patriot Act. The great Senator told the press: "Civil liberties do not mean much when you are dead."

Congratulations, Senator, on your mindless and head-slapping moment of stupidity! Gee, if we follow your logic, let's get rid of all those pesky civil liberties! Why not bug every American and create a police state? Only un-patriotic Americans would need fear the might of the government's inquisitors, right? After all – what good are *any* rights at *any* time if we're all dead?

We award the Senator a gold star, and look forward to more truisms and utter claptrap from his distinguished, thought-provoking mouth. It's hard to justify the erection of a Soviet-style police state, but you've done it! I may completely misunderstand American history over the last fifty years, but I thought that's what the Cold War was about! Guess I was wrong!

And extra kudos for adding a healthy dose of fear-mongering to the public chorus. Heck of a job!

To Consumption Tax Proponents:

Every now and again, some rich (almost always Republican) firebrand rolls out the tired idea of scrapping the income tax and replacing it with a "consumption tax." One of the highly-touted benefits of this new tax is that you can allegedly file your taxes on a postcard-sized piece of paper. What a dream! A postcard! And maybe that postcard will be emblazoned with a tropical scene or some other appealing picture! Imagine the possibilities! People would rejoice when filing their taxes!

The various efforts to con the American people into accepting this tax usually take the form of two or three Republicans in an infomercial or on late-night television patiently explaining the system with a couple of handy easels and charts. Hey, voters, a postcard! Imagine! These efforts look eerily similar to infomercial hosts who hawk home-gym systems (folds under the bed! Imagine!) or religious broadcasters who sell trinkets from the Holy Land (original text of the Dead Sea Scrolls! Imagine!).

I've read a bunch on the consumption tax as previously proposed to the public, and had consigned its benefactors to the same mental space where I classify Area 51 historians and deposed "administrators" of African states who want my bank account information so they can wire me $51 million dollars. $51 million!

But it has come to my attention that some public finance economists actually view the consumption tax as a *preferred* method of taxation. These economists are bright, dedicated people, and despite the crushing failure of all previous consumption tax proposals to grab the attention of the general public, they continue to dutifully plod on, writing, refining and, in general, keeping the hope alive.

I'll admit at the outset that some of the econ-jargon they use is beyond me, so maybe I'm a walrus-sized ignoramus who hates postcards. But what really grabs me is that all of the work and thinking and writing that the pro-consumption tax people do is in spite of the real political barrier facing this proposal: that a consumption tax will necessarily free trust-fund babies and the new landed elite from almost any taxation, at all. Consumption taxers dance around this hard truth by employing the argument that money is only worth something when it is spent – and under a consumption tax all spending is taxed – so that, really, all of Paris Hilton's trips to Tiffany's make her just like the rest of us. Or so it goes.

This column is usually reserved for poking fun at our political establishment, so I feel a little bad for picking on academics. But everything about the consumption tax flies in the face of the real problems facing our country. Only a privileged few are reaping the economic rewards of society, and they're doing so at an ever-greater rate. Those monstrous transfers of capital (one hedge fund manager cleared $1.2 *billion* last year) will insulate their families *from ever having to work again*. Do we want to magnify that effect? Isn't that exactly what England looked like, oh, right around the time colonists showed up in North America? Do we want Robber Baron redux?

I, for one, don't. No gold stars here. Just a statement: exacerbating the mechanisms which are distorting our society ever more towards winner-take-all is deleterious to the common good. Economists, generally, don't like messy discussions of "equity" and "fairness" and "principles," but that's exactly the conversation this tax deserves. Postcards be damned.

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Letter to The Editor. And A Correction.

To the Editor:

In your February 8th opinion piece, "Chief Executives Gone Wild: NYU Texas Club Wants Texas Justice," Ian Samuel argues that the SBA should support both the newly proposed Texas Club and the existing Southern Exposure Club because "the SBA sponsors plenty of groups with parallel, even nearly identical, goals."

Mr. Samuel points to the Asia Law Society (ALS) and the Asian Pacific American Law Students Association (APALSA) as two groups with almost identical goals. Our goals are actually very distinct. ALS, for example, focuses mainly on legal and political issues pertaining to the continent of Asia, and serves as a resource for those wishing to find work there. APALSA, on the other hand, generally addresses the experiences of and issues concerning Asian Americans and immigrants in North America.

In case there is still confusion, I encourage all students to visit our webpages or join our e-mail lists. The differences between the groups should be very apparent after doing so.

Jesse Hwang, NYU Asia Law Society, President

Correction from the same editorial

Ian Samuel, in his February 8 editorial, wrote that Oliver Carter, SBA President, was a founder of Southern Exposure. In fact, Oliver was not a founding member of the organization. He did serve one year as Vice-President of the organization, which was founded before Mr. Carter began law school, during the 2002-2003 academic year.

Kelo

Continued from page1

Professor Merrill also received five minutes to respond. He took this time to make the point that it is exceedingly difficult for a private developer to acquire such a large amount of land, because hold-outs would occur. Once the government begins such a project though, hold-outs are less likely because the threat of eminent domain is held over the head of the negotiating landowners.

The debate ended with a discussion of quasi-public companies.

The Takings discussion was one of many debates on major constitutional issues sponsored by the Federalist Society of NYU.

Belle and Sebastian and the Cult of Twee

Brigham Barnes, '06

Glaswegian "rock" band Belle and Sebastian played two sold out shows at the Nokia Theater in Times Square last week. This may have come as a surprise to the band's ardent fans, as each

true lover of Belle and Sebastian lives in an imaginary land where they're the only person in the world who has ever heard of this rather popular octet and where each song sung by the group is sung directly to them.

That may seem like a demeaning thing to say about the band and its followers, but I think it's actually a spot on assessment of the world that Belle and Sebastian has created for themselves and followers.

The Belle and Sebastian world is a world where people dream of visiting Scotland, a world of "hard to find" EPs and 7" singles that somehow every fan manages to find (but don't worry if you can't, because eventually everything is collected and compiled in special edition CD sets). It's a world of quaint and clever odes to reading books, taking walks, worrying about getting enough sleep, and, of course, love gone bad (and, occasionally, love gone good.)

It's a world where the band's records (such as "Dear Catastrophe Waitress," and "Fold Your Hands Child, You Walk Like A Peasant," "If You're Feeling Sinister") and songs (such as "Nice Day for a Sulk," "You Know My Wandering Days are Over," and "If You're Feeling Sinister") all have titles like books you're tempted to pick up at book store (a quaint little used bookstore, that is).

You can't blame their fans, the world of Belle and Sebastian (a world that also includes a dutifully maintained website where the band members will personally respond to your emails) isn't such a bad place to want to be, the problem is that when the band performs at a sold out and oversized venue like the Nokia Theater you can feel each member of the joyful audience longing for a bit more space to do the little dance they've invented for each song or a bit more of the intimacy found in listening to the band's music while flipping through old photo albums.

That said, a Belle and Sebastian concert will soften the heart of even the most skeptical of attendees. Take me, for instance. I've been fairly indifferent about the band for years now and only really started to listen to them during this last year. However, a year's worth of listening had me curious enough to want to poke my head in and check out the show, just to see what it was all about.

It turns out that it was about eight people having a very fine time playing their songs for slightly over two hours straight. Although the band has a brand new record ("The Life Pursuit") to promote, they are a band for their fans, and the night's ample set spanned the history of their career.

The band's infectiously pleasant music translates perfectly on stage into something absolutely irresistible that will get you to sing along, even if you have no idea what the lyrics are.

It's the sort of night where the serious and obsessive fans of the band can say "See, I told you so" to those that don't share their faith, and the unfaithful can only reply with a "Yeah, you might have a point . . ."

Oscars with John Stewart

Brigham Barnes, 06

The Oscars used to be exciting, but over the last few years they've struck me as increasingly superficial and increasingly self-congratulatory, featuring the same cast of pretty faces over and over again. Although I've gotten over almost all the other awards shows, something keeps me watching the Oscars every year. It's like the Super Bowl, it doesn't matter who's playing or whether or not I'm really that interested, I'm going to wind up watching it, that's all there is to it.

Sunday's show wasn't any less superficial or any less self-congratulatory than normal. In fact, this may have been one of Hollywood's smuggest years as the studios are all so pleased with themselves for having produced such a wide variety of socially conscious films in 2005. At least it was funny though, and a little funny goes a long way in a four hour awards ceremony.

Unless you are sensible and have better things to do than to concern yourself with who was hosting the Oscars this year, then you already know that the Academy was short a host this year until the Daily Show's Jon Stewart was tapped to run the show.

It's a pretty big step from hosting cable television's most popular fake news program to the world's most popular awards show and obviously a make or break night for Stewart (tabloids speculated that a successful night for Stewart at the Oscars would put him on the fast track to someday replace David Letterman on Late Night).

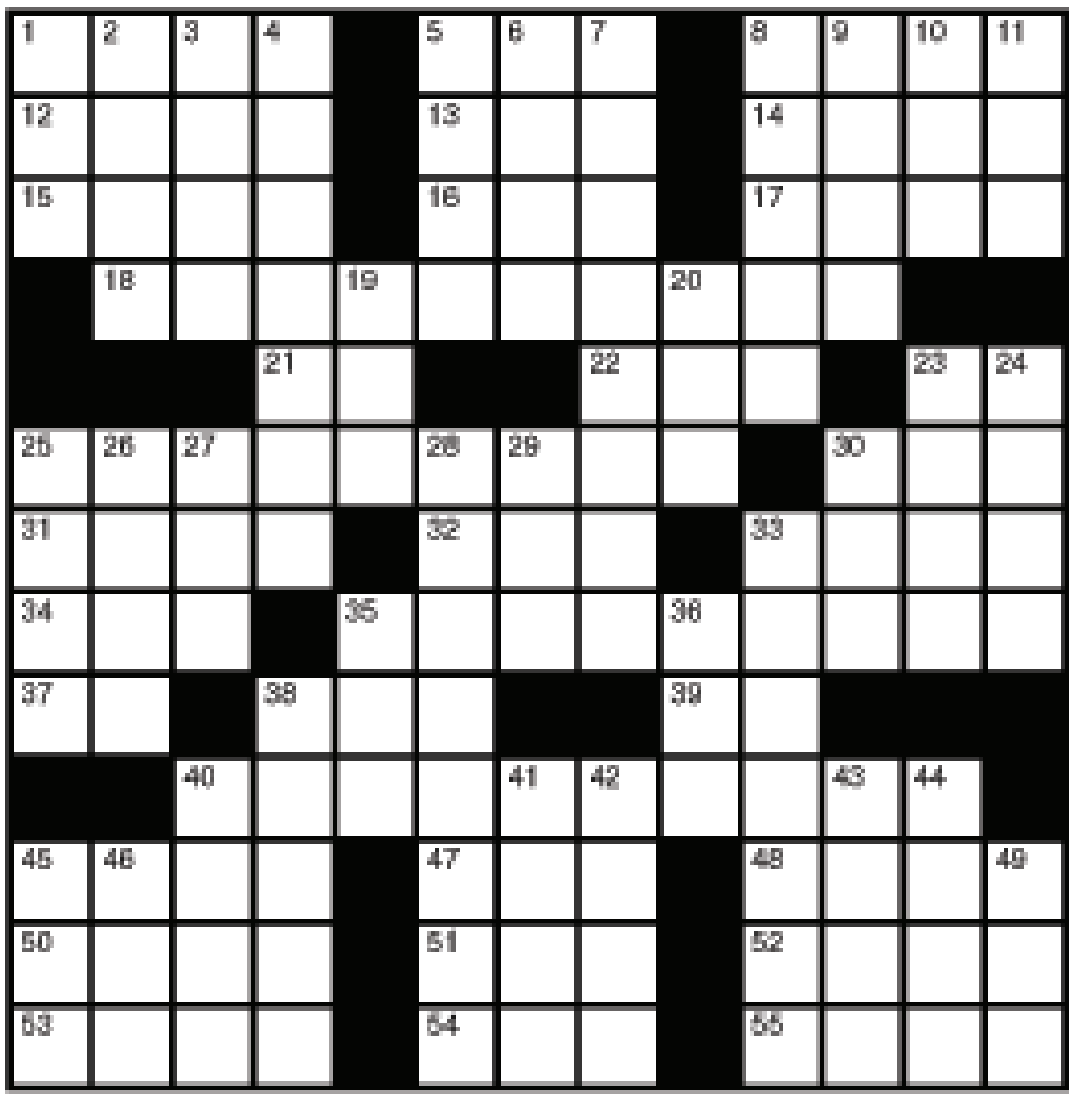
The opening video sequence spoofed the Academy's difficulty in finding a host. Previous host Billy Crystal couldn't make it as he was too busy sharing a tent at a campsite alongside a river with ex-host Chris Rock, Steve Martin refused so he could spend more time with his silver-haired kids, and even Mr. Movie Phone declines before Stewart finally accepts, at the urging of bed-mate George Clooney.

Stewart's Oscar style didn't differ much from his Daily Show style; he began by conceding that a man who's last film role was playing the fourth male lead in Death to Smoochie has no place hosting an event honoring excellence in film, and then proceeded to take good-natured jabs at the film industry and Oscar guests for the rest of the night, offsetting these jabs with the occasional return to self-deprecating humor.

What really kept the Oscars enjoyable were occasional Daily Show-like touches, such as a lengthy montage of homoerotic scenes from classic Western films and a series of smear-campaign ads between Best Actress nominees, a gag that later spoofed itself with a smear-campaign ad for Best Sound Editing.

When all was said and done, no award at the Oscars was too surprising and no acceptance speech particularly moving, but Stewart's turn as host made the show pleasant enough and enough to make me want to watch the Oscars again next year . . . but I probably would even if Billy Crystal hosted.

Crossword by Jessica Gonzales '06



Across

1. O'Henry title characters
5. buddy
8. dire
12. Ms. Brokovich
13. chant when Shani Davis won?
14. scintilla
15. wax partner
16. med. research agency
17. Ming ones are quite valuable
18. a Vice Deans
21. when doubled, dance clothing
22. it can be positive or negative
23. you and me
25. edible flowers
30. Mean Girls' Tina
31. height x width
32. by way of
33. Ctrl + S
34. little devil
35. like Debra Messing & Eric Stoltz
37. Phrase of surprise, when repeated
38. your and my
39. "the author is"
40. railroad magnate
45. regular membership requirement
47. regret
48. "Peachy!"
50. prefix to viral or body
51. were, presently
52. stiff wind
53. bad acting response
54. Chinese food equipment
55. drove too fast

Down

1. kitten noise
2. Middle Eastern ethnic identity
3. Gershon & Lollobrigida
4. tendency to maintain position
5. runt-like
6. where Vizzini would avoid a land war
7. snooty (old fashioned term)
8. name-type (first)
9. engines and lions do it
10. NYU tech support
11. West of I'm No Angel
19. toupee
20. ___ Alamos
23. ____ Only Just Begun
24. checked out
25. injure badly
26. "This We Will Defend" is its motto
27. one bicep curl (abbv.)
28. spend more than you have
29. eye covering
30. trend
33. adages
35. operate
36. in decline
38. "Supersonic" band
40. a presidential power
41. replacement for Finland's markka
42. smell like a rotten egg
43. Neil took one for mankind
44. it may be tall
45. it'll do ya
46. alternative card game
49. United's cheaper alter-ego