



# THE COMMENTATOR

Vol. XLI, No. 8

The Student Newspaper of the New York University School of Law

February 14, 2008

## NYU Moot Court Nationals Team Wins in Spirit, Loses in Reality

BY MELISA GERECCI '09

High drama filled the second floor of the New York City Bar Association on January 29th as NYU achieved victory over the University of Montana to advance to the octofinals round of the 58th Annual National Moot Court Competition. The final rounds of the competition started on Monday, January 28th and spanned three nights of competition. Tuesday night marked the team's final victory before Wednesday's ultimate loss to the University of Georgia. The remaining teams were then paired off in a final eight-match elimination round, with Chicago-Kent College of Law eventually taking first place.

Two members of NYU's three-person Nationals Team, Anthony Decinque '08 and Kyle Hallstrom '08, gave oral arguments defending a state law banning handguns against Second Amendment and federal preemption challenges. Supporting their arguments with everything from ablativ absolutes to zebra mussels,\* the team delivered complex arguments with gusto.

"We finished in the top 16 teams of over 180 competing nationwide," remarked Hallstrom. "We started this thing in October, and we ended it at the octofinals – there's a nice symmetry to it all."

This year's competition centered on two issues currently before the U.S. Supreme Court: the meaning of the Second Amendment (from *Parker v. District of Columbia*) and federal preemption (at issue in



Alison Epting '08, Kyle Hallstrom '08, and Anthony Decinque '08 represented NYU at the New York City Bar Association's 58th Annual National Moot Court Competition.

*Rowe v. New Hampshire Motor Transport Association*). In the consolidated cases developed for the competition, *Longone v. Old York* and *York Loading Company v. Old York*, the state of Old York passed a law banning handguns, banning the shipment of live ammunition in the state, and banning the delivery of ammunition to anyone under 18 years of age. Mr. Longone challenged the law because he wanted to own a gun. York Loading Company challenged the law because the shipment and delivery regulations hurt its business; the company

argued that Old York regulated interstate shipping in violation of the Federal Aviation Administration Authorization Act (or "F quad-A," as the team says) that pre-empts the field.

Decinque, Hallstrom, and Alison Epting '08 made up this year's Nationals Team. NYU's Moot Court Board internally selects three third-year students for the team. 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 for the Respondent Old

York – worth 40% of their final score – in mid-October of 2007 and then competed in three rounds of regional oral arguments in November. The final regional round took place before a nine-justice panel with Epting taking second place for Best Oralist. Fourteen regional tournaments take place across the country, and the NYC Bar Association invites both the first- and second-place teams from each region to the final rounds in New York.

"Each team is a little different," Decinque explained. "NYU runs its Moot Court as an extra-

curricular activity. Some schools offer a moot court class, with its team meeting several hours a week with a professor as part of a graded class." In the first two rounds of the final competition, 28 teams argued before three-judge panels; the octofinal round pitted pairs of the last 16 teams against each other before four-justice panels.

Two students/attorneys argue each round: one covers the Second Amendment issue and the other one handles preemption. Each round switches between petitioner and respondent, so the team has to know both sets of arguments – even though they wrote their appellate brief for only one of the parties.

Participating in Nationals gives students excellent practice in appellant writing and public speaking, but it's also a lot of fun – clerks yell out "oyez, oyez, oyez" before the final rounds, and judging lawyers often get feisty as they get into character. A hot bench with plenty of questions for Decinque and Hallstrom regularly interrupted them. Yet everyone on the team agreed that getting back on track after getting interrupted beats a quiet, attentive bench – "usually a sign that they haven't read the briefs," said Epting.

\*An ablativ absolute is a grammar rule in which a preamble preceding a general statement limits that general statement and thus could be used to construe the Second Amendment text as limiting the people's right to keep and bear arms. It is illegal to transport zebra mussels in the state of New York and reading the FAAAA to preempt Old York's handgun shipment law could have the unwanted consequence of striking down such laws.

### 135 MacDougal to Be Converted for Academic Use



135 MacDougal, the unwanted stepchild of law school housing, is being considered for conversion to use as a law school academic building, according to Lillian Zalta in *Administrative Operations*. Plans will be finalized in the coming months, and work is anticipated to begin within a year.

### PILC Fair Boasts 200+ Employers

The 31st Annual Public Interest Career Fair swarmed the law school on February 7th and 8th. The fair is the largest of its kind in the country, bringing over 600 attorneys from 202 organizations to offer jobs to aspiring students. During the two days of the fair, 1912 students participated in 3,415 one-on-one interviews. 275 NYU students attended the fair, getting an average of 2.7 interviews, compared to 1.6 for non-NYU students.

Infra

NYU's reputation for public-interested do-goodery gets called into question, and a writer struggles with his sister's abortion. page 2

Romanian women. Totalitarian regimes. Handheld cameras. Covert abortions. page 3

Trusts and Estates gets the book treatment, and though you might not guess it from the course title, it's pretty interesting. page 4

## Sisters Like White Elephants

AUTHOR'S NAME WITHHELD

Two of my sisters are pregnant. One is due in a few months. The other is having an abortion in a few days. Of my family, I'm the only not-pregnant person who knows about the other two. I'm the big brother.

For months I've been looking forward to being an uncle. For longer than that, actually, but for months it's been a real something to look forward to. Cousins and friends have had children, and I've been able to dote on them, but I haven't been able to take them under my wing in the way you can with nieces and nephews. I don't think anything compares with the Aunt/Uncle Privilege, except maybe the Grandparent Privilege.

For days something's been gnawing at me, like a rodent stuck in my gut. Giving me the shakes, exhausting me, eating away at me. Sure, lots of people have abortions, but my sister? It's not the abortion itself that bothers me, it's that she's having it. She should know better. He should know better. Condoms. Pills. We were brought up knowing about these things. We're smart enough to know to use them (or not dumb enough not to). But maybe we weren't brought up right. Maybe we're not that smart (or are that dumb). Or maybe our upbringing just failed my sister. Or maybe, in some way, I failed my sister.

I love how one sister is preparing for her child. Taking care of herself. Visiting pediatricians in anticipation of the birth. Lining up the finances. Ignoring all

the baby manuals that people give her and trusting only the ones she wants to trust, taking only the advice she wants to take. I joke with her about this baby being practice, something for her and her husband to experiment on. Maybe, she says, she should tell the baby that the pediatrician's a witch doctor – how long would it take for the kid to learn otherwise? And if she screws up with this one, I respond, she can always leave it on the stoop of a church or at a fire station.

I love how my other sister is preparing for her abortion. Taking care of herself. Visiting clinics. Lining up the finances. Researching options. I don't joke with her. I send her notes about pharmaceutical options and surgical options. She asks if I can help with the money. I don't ask why she wasn't on the pill, or if her boyfriend knew she wasn't on the pill and didn't use a condom anyway. I don't talk to her, in these conversations, about our other sister. I ask her why she won't tell our folks. She doesn't want the lecture from them. She knows she won't get the lecture from me. Does that make me a good big brother or a bad one?

We actually do make one joke: it's about time someone in our family exercised this right we've all fought so adamantly to protect. But that's it. As I said, there's nothing about what she's doing that I'm ashamed of, and certainly nothing that she's ashamed of. She has all sorts of reasons, her reasons, for not wanting to carry a pregnancy to term

See PREGNANCY page 4

## Is NYU Really “A Private Institution in the Public Service”?

By ANDREW GEHRING '09

The annual Public Interest Law Center (PILC) Career Fair took place last week, and I'm sure that—as always—it was well attended (see relevant facts and figures about the fair on page 1). But at least one notable person wasn't in attendance: me. And not because I was incredibly on the ball this year and already lined up my public interest job last semester. Although I went to the fair last year and got an excellent job for the summer (shout out to all my peeps at Lawyers Alliance!), this coming summer I will find myself in the employ of one of the large, white-shoe New York firms. And I'll be making gobs of money while I'm there.

If you'd asked me the summer before I first came to law school where I thought I'd be working a few years down the road, I would have told you that—if I was actually practicing law in a few years—I'd be fighting for justice in a public defender's office. My desire to work for the public good was one of the reasons I came to NYU: I was under the impression that public interest was important to both the school and the students here.

But the evidence—both anecdotal and statistical—seems to contradict that belief, particularly in regards to the students. I am not nearly alone in choosing to defect to a big city firm in the summer after my 2L year. Many of my classmates even chose to work for firms during their first summer in law school—as I'm sure many of the 1Ls this year will opt to do.

The best proxy I could find for any sort of measure of long-term devotion to the public interest was participation in the law school's loan repayment assistance program (LRAP). LRAP will ostensibly provide—as the name suggests—assistance in repaying loans incurred during law school, for qualifying students.

The qualifications can superficially (and, admittedly, inadequately) be summed up in the following way: if you work in the public interest sector, you're okayed for the program. The law school reports that, as of 2006, there were 400 active participants in LRAP. Because I've mastered simple arithmetic, my knowledge that students are eligible to be in LRAP for ten years after graduation and there are just over 400 students per class tells me that, roughly, a bit less than 10% of any given class will go into public service. (I realize that some people may pay off their loans before the end of the ten-year period or make more money than is allowed, so my estimation might be on the low end, but we're going for approximations here, people. Stop picking on me.)

Is 10% high or low compared to other law schools? I don't know. Peer law schools don't seem keen on publishing those numbers, probably because they're pretty depressing. Regardless of how we fare relative to other schools, I personally find 10% to be distressingly low, especially given the fact that we bill ourselves as being a “private university in the public service.”

I think the problem takes root in two distinct areas. First, there are the incentives provided by the school. My understanding of LRAP is that a student is eligible only if she makes less than about \$80,000 per year, and base salary must start at less than \$50,000. Apparently making more than those amounts suddenly means that the crushing debt incurred while obtaining a premier law school education is no longer so onerous as to deserve assistance. And given that the average first-year associate at a New York firm is making (pre-bonus) more than double what is allowed by the LRAP cap, only the truly dedicated have any reason at all to stay in the public interest.

Admittedly, the school does try to incentivize public interest work while we're still students. PILC does a great job every year providing much of the 1L class with money

so they can pursue not-for-profit work over the summer. But the \$4,500 1Ls get (a bump from last year's \$4,000; 2Ls now receive \$6,500) can scarcely stack up to the approximately \$30,000 that can be earned by spending a summer at a firm. And while some (or perhaps all; it's tough to get data on this point) scholarships are tied to doing public interest work over the summer, anything less than a full-ride looks almost paltry next to what firms provide.

The second area contributing to the dearth of people seeking employment in the public interest is the general attitude of the student body. I'm pretty sure no one would say anything negative about those choosing to pursue publicly minded careers, but it's also the case that very few people expect anyone else to choose that route. I don't know how many times I've been asked this year what firm I'll be working for next summer, but it's more than I can count on my fingers and toes. I rarely notice the presupposition that I will, in fact, be working for a firm, but it's there. And that attitude, I believe, drives many people that otherwise might have taken a different path toward Big Law.

I don't want to imply that I think there's anything wrong with deciding to work for a firm. I myself have made that choice and am perfectly happy with it. But if NYU is going to bill itself as being “in the public service,” it ought to be willing to dedicate more resources to actually ensuring that its graduates end up in the public service. And if it turns out that the problem is so ingrained in the culture here and the individuals that choose to come to law school that no amount of effort on the school's part can change anything, then maybe it's time we pick a new tagline: “A private university creating private attorneys.” Though that doesn't have quite the same ring.

## THE COMMENTATOR

*The Student Newspaper of  
New York University School of Law*

**Editor-in-Chief**  
Andrew Gehring

**Managing Editor**  
Robert Gerrity

**Staff Editors**

Julian Dayal  
Stephen Ilg  
Ben Kleinman  
Jaimee Lederman  
Roberto Reyes-Gaskin

Ian Samuel  
Rahul Sharma  
Derek Tokaz  
Madeline Zamoyski

*The Commentator* serves as a forum for news, opinions and ideas of members of the Law School community. The Editorial Board consists of the Editors-in-Chief and the Managing Editors. Only editorials and policies developed by the Editorial Board reflect the opinion of the Editorial Board. All other opinions expressed are those of the author and not necessarily those of *The Commentator*. *The Commentator* is issued on alternate Thursdays during the academic year except during vacations and examination periods. Advertising rates are available on request. Subscriptions are also available at a rate of \$15 per year. Letters to the Editor should be sent to the following address, either on paper or via e-mail.

135 MacDougal Street #4G  
New York, NY 10012  
212.998.6518 (phone) | 212.995.4032 (fax)  
asgehring@nyu.edu

Copyright 2008 New York University

## Be Our Valentine.

Write for *The Commentator*.

Contact [asgehring@nyu.edu](mailto:asgehring@nyu.edu).  
Make your voice heard, through print media.

## A Masterpiece from Socialist-Era Romania: *4 Months, 3 Weeks & 2 Days* Tells a Captivating Tale of Life Inside a Totalitarian Regime



economy highlights the limitations of such rapid social change. Misogyny lurks behind every turn, and Otilia must navigate many as she gathers the money necessary for Gabita's frightening and unsafe procedure.

It is never quite clear what drives Otilia in the face of an indifferent – even openly contemptuous – society, Kafkaesque hotel clerks and a sinister underground abortionist who might have been trained as a veterinarian or a butcher. What is clear is how the portrait of this young woman

where IDs are checked at every door and the legal system simultaneously empowers women and denies them the freedom to make basic reproductive decisions. A harsh and unrelenting climate of suspense flourishes through the film which makes scenes such as finding cigarettes to bribe the hotel clerk, eating dinner with the boyfriend's parents and finding a place to dispose of the bloody sheets much more uneasy.

BY ROBERTO REYES-GASKIN '09

The brilliant, haunting masterpiece *4 Months, 3 Weeks & 2 Days* (*4 luni, 3 saptamini si 2 zile* in Romanian) tells the story of two university roommates in a medium-sized city in 1987 socialist-era Romania. The stronger of the two, Otilia, hails from a rural community which invites ridicule from the parents of her intelligentsia boyfriend. Her roommate Gabita, in contrast, is helpless and quite pregnant. As abortion was a crime under socialism, Otilia helps her roommate procure an underground

abortionist who is willing to take the risk of performing the procedure at such a late stage (carrying higher penalties if caught).

The film's suspenseful drama focuses on the roommates' quiet and mundane errands and in so doing reveals the extraordinary, particularly with Otilia. The handheld camera follows her movements throughout town in cinematography reminiscent of documentaries.

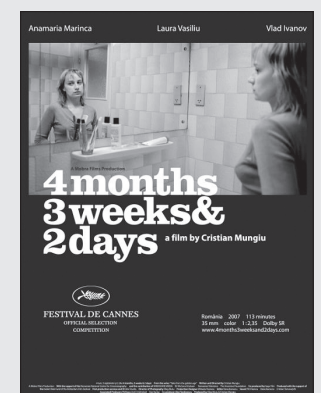
Particularly compelling is the manner in which this layered film approaches the subject of gender, women and motherhood. On

one hand history teaches us that socialism liberated, educated and employed women with transformative speed that no other form of government has been able to replicate. Otilia lives a relatively unfettered life in the anonymity of the drab Soviet-bloc-style city studying "tech," which is universally accepted as a profession that will ensure a posting at an urban state enterprise. Yet the lack of access to birth control and the need for women (including the protagonists) to leverage sex as a means of obtaining favors, goods and services in Romania's planning

that slowly emerges transcends the grittiness of her surroundings. Gabita as a character never answers all our questions, and I think that is precisely the point. Whereas the audience joins Otilia at the dining table at her naïve boyfriend's apartment, we never meet Gabita's family or any of her liaisons. Was her pregnancy the result of a college tryst or was it an occupational hazard of being a pretty young woman? When I think about it that way, I feel more sympathetic.

*4 Months* is a riveting slice of life inside a totalitarian regime

**Now Showing:**  
*4 Months, 3 Weeks & 2 Days*



113 Minutes  
Showing at the IFC



The NYU Journal of Law & Business cordially invites you to its Second Annual Symposium

### Contemporary Issues in Private Equity after the Credit Crunch

Tuesday, February 26, 2008, 9am - 1pm  
New York University School of Law- Vanderbilt Hall  
40 Washington Square South, Greenberg Lounge  
CLE credit will be available for all-day attendance

**SCHEDULE:**

- 9:00 – 9:30 am: Welcome Reception (Continental Breakfast) and CLE Registration
- 9:30 – 9:45 am: Opening Remarks
- 9:45 – 11:15 am: **Panel 1: Private Equity's Challenges after the Credit Crunch**
- 11:15 – 11:30 am: Coffee Break

11:30 – 1:00 pm: **Panel 2: Private Equity's Current Challenges and their Impact on Future Transactions**

**SPEAKERS:**

- Audra Cohen, Sullivan & Cromwell LLP
- Gregory Gooding, Debevoise & Plimpton LLP
- Larry Graev, The GlenRock Group
- Mark Lebovich, Bernstein Litowitz Berger & Grossman LLP
- Geoffrey W. Levin, Kirkland & Ellis LLP

- Andy Nussbaum, Wachtell, Lipton, Rosen, & Katz
- Rick Press, Apollo Management, L.P.
- Mitchell Presser, Fox Paine & Company LLC
- Penny Rosenberg, Financial Industry Regulatory Authority
- David Yermack, New York University Stern School

## Broken Trust: Reading About Fiduciary Duty Has Never Been More Entertaining



BY DEREK TOKAZ '08

I can write without a doubt that Samuel King and Randall Roth's *Broken Trust* (2006 University of Hawai'i), recipient of the Hawai'i Book Publisher's Association's 2007 Hawai'i Book of the Year, is the best book on the "greed, mismanagement and political manipulation" of a multi-billion dollar charitable trust I've ever read. *Broken Trust* tells the story of the rise, fall and redemption of the Bishop Estate, America's largest charitable trust, and thankfully does so in a way that is both entertaining and very reader-friendly.

The Bishop Estate was established in 1884 at the death of Bernice Pauahi Bishop, the last member of King Kamehameha I's royal line,

with 375,000 acres of land and the sole purpose of creating schools for the boys and girls of Hawai'i. The Bishop Estate was originally worth \$474,000 in 1884, but swelled to \$7.7 billion by the end of 2006. With that much money, and a corrupt political system controlling the appointment of the highly compensated trustees, there was naturally going to be a bit of hanky-panky going on at trustee meetings and the Kamehameha Schools.

And by "hanky-panky" I mean corrupt contracts, investments and land deals pouring piles of money into the pockets of the trustees and their friends.

And by "hanky-panky" I mean tension between the trust's directive to serve the interests of the schools and the local Hawaiians' interests in not paying inflated real estate prices (sometimes increased 1000%) to stay on the land where they've built their homes.

And by "hanky-panky" I also mean a despotic mad woman who – without any apparent reason – was obsessed with destroying the morale of the students and faculty, along with the curriculum. I'm not going to suggest that the reason for her outrageous actions might be that she was deep down inside quite miserable from being repulsive at every level and severely under-sexed, because nothing in the book suggests this interpretation, but I'm also not going to say you

shouldn't draw your own baseless conclusions about this evil, evil woman (Lokelani Lindsey).

*Broken Trust*, despite being a rather straight-forward telling of the story, is incredibly dramatic. Remember that the book is at its core about fiduciary duty, and the intensity becomes uncanny. If you're scared of reading 300 pages of trust law, don't worry, a lot of it is pictures and cartoons. And how funny can charitable trust cartoons get? I'd say mildly funny, and if you expect better, you're wildly out of touch with how funny law-related cartoons are.

The telling is, however, rather one-sided, and at times it made me suspicious that some of what the authors wrote might be a bit biased. But it's equally plausible that most of the trustees (and the judges charged with appointing, firing and overseeing them) are just really quite horrible and that any account of the facts is going to paint them in a bad light.

I don't know if there are any better books on the misdeeds that can go on in large charitable trusts, but I'd definitely say that *Broken Trust* is good enough that I wouldn't bother spending more than fifteen minutes looking for something else.

I would also like to add a special thanks to the authors for supplying Professor Sitkoff's Trusts and Estates class with free copies.

## PREGNANCY: Older Brother Deals with Two Very Different Sisters

*Continued from page 2*

and she made a decision, her decision. That, for me, is enough.

It's not that what she's doing bothers me. On the contrary, I'm quite proud of her. But one can be proud of someone who manages to swim to shore from a sinking ship and still be ashamed of them for going to sea in a leaky vessel. But maybe even that's misguided and unfair. Everyone makes mistakes. And we don't condemn them for normal mistakes. Even our president, god take him: if going to war in Iraq had been a genuine mistake, if he had just goofed and admitted it, he might not be in the predicament he's in now. I know it wasn't an accident because my sister's said that she and her boyfriend knew what they were doing. It was, quite simply, a mistake. She thought that one of them was sterile. Apparently they had unprotected sex a few times, she didn't become pregnant, and they assumed that meant she never would.

Honestly, I'm not ashamed of my sister. As I write this, as I think about it, it's just a mistake.

A dumb one. A big one. But that's what she and her boyfriend made, a mistake. They assumed too much, and we all know that when we assume we make an ass of you and a pregnant woman of me. I think the source of my frustration is the association with pregnancy, with children, with a possible niece or nephew. The magnitude of the mistake seems so much larger, the nature so different. But should I be any more or less frustrated with my sister because of this than I was when I found out she hadn't started an IRA? Or when I found her maxing out her credit card to buy furniture? Because she's the same sister that turned around and took the next three years to build up her savings. And who, on her own, called the credit card company and worked out a payment plan.

Sure, she makes mistakes. But she takes responsibility for them. Screw it – we all make mistakes, and I'm not responsible for the ones she happens to make. But we don't all confront reality and try to change it, so – as a big brother – I'm going to take credit for teaching her how to be responsible.

Two of my sisters are pregnant. I'm proud of both of them.

 **14th Annual  
NYU School of Law  
Public Service Auction  
Thursday, February 28, 2008**

**Your presence is requested at  
Six o'clock in the evening Thursday,  
the Twenty-Eighth of February  
Vanderbilt Hall  
NYU School of Law**

**Silent Auction ends at 10 p.m. or thirty minutes after the live auction (whichever is later)**

### Public Service Auction Ticket Sales

**Ticket Sales in Wachtell and Golding Lounges:**

**Tuesday, Feb. 19<sup>th</sup>, 11:30 am - 2:00 pm**  
**Wednesday, Feb. 20<sup>th</sup>, 11:00 am - 4:00 pm**  
**Thursday, Feb. 21<sup>st</sup>, 11:30 am - 2:00 pm**  
**Friday, Feb. 22<sup>nd</sup>, 11:00 am - 4:00 pm**  
**Monday, Feb. 25<sup>th</sup>, 11:30 am - 2:00 pm**  
**Tuesday, Feb. 26<sup>th</sup>, 11:30 - 2:00 pm**  
**Wednesday, Feb. 27<sup>th</sup>, 11:00 am - 4:00 pm**

Student tickets are \$5 in advance and at the door day of the auction

Save money on your bar review! When you buy your ticket you can also bid in a special Bar/Bri silent auction for Bar/Bri Coupons. Special Bar/Bri pre-auction bidding ends February 27<sup>th</sup>, but Bar/Bri coupons will be available during the silent auction on February 28<sup>th</sup>.

Guest tickets are \$15

**A Weekend in the Country, FDNY Fire Helmet, Walking Tours, Sporting Event and Concert Tickets, and more are all waiting for the highest bidder!**

Visit our website at [www.law.nyu.edu/studentorgs/psa](http://www.law.nyu.edu/studentorgs/psa) for an exciting list of items to bid on!