

# FOR THE RECORD

## Rutgers School of Law - Camden

No. 2

Spring 2007

**DENNIS BRAITHWAITE** was elected to the American Law Institute in February.

**MICHAEL CARRIER** published a book chapter, "The Propertization of Copyright," in *Intellectual Property and Information Wealth* (PRAEGER, 2006).

Michael also accepted two offers to publish law review articles. The first, "Two Puzzles Resolved: Of the Schumpeter-Arrow Stalemate and Pharmaceutical Innovation Markets," will appear in the *IOWA LAW REVIEW*. The second, "Against Cyberproperty" (with Greg Lastowka), will appear in the *BERKELEY TECHNOLOGY LAW JOURNAL*. A third article, "Pictures at the New Economy Exhibition: Why the Antitrust Modernization Commission Got it (Mostly) Right," is forthcoming in a symposium issue of the *RUTGERS LAW JOURNAL*.

Michael presented "Two Puzzles Resolved: Of the Schumpeter-Arrow Stalemate and Pharmaceutical Innovation Markets" at the AALS 2007 Annual Meeting joint session on Antitrust and Intellectual Property and at the Iowa Innovation, Business, and Law Colloquium.

**ROGER CLARK** has been trying to get the American Law Institute to take a stand against capital punishment as part of its project to revise the sentencing provisions of the Model Penal Code. In a memo prepared for the Annual Meeting of the Institute in May, Roger notes that, although the Institute took the position in 1962 that it was neither for nor against capital punishment, the MPC's provisions on aggravating and mitigating circumstances had, in fact, become "a lifeline for the retention of capital punishment against constitutional attack." His most recent article, "Western Sahara and the United Nations Norms on Self-Determination and Aggression" is coming out shortly in *The Hague*. It is a chapter in a book dealing with the efforts by Morocco to conquer the neighboring territory, and former Spanish colony, of Western Sahara. Western Sahara is rich in fertilizer mines and has a significant 200 mile fishing zone. Roger seems to have started a second career as a Ph.D. external examiner, having recently assessed dissertations for the Universities of Tasmania and Queensland, in Australia, and Galway in Ireland.

**KIMBERLY FERZAN's** paper entitled "Beyond Intention" has been accepted by the *CARDOZO LAW REVIEW*.

At the AALS annual meeting in Washington, DC, Kim chaired and moderated "Crafting a Scholarly Persona" for the Scholarship

Section. The panel explored the careers of three established scholars (Ian Ayres, Paul Robinson, and Carol Sanger).

With co-author Larry Alexander, Kim presented two chapters of their book (also with Stephen Morse), *A Culpability-Based Theory of Criminal Law*, at the 12<sup>th</sup> Annual Conference on Analytical Legal Philosophy, held at Boalt Hall.

As Chair of the AALS Section on Jurisprudence, Kim is planning next year's panel, "The Margins of Legal Personhood," during which theorists will debate four margin cases (artificial intelligence, animal rights, abortion, and psychopaths) and discuss the implications of theories within one field, for entities in another.

Kim and Doug Husak (New Brunswick, Philosophy), two of the directors of the Institute for Law and Philosophy, are currently planning a May 2008 conference, "The Evolution of Criminal Law Theory."

**SALLY GOLDFARB** presented a talk on "Same-Sex Marriage and Civil Unions in New Jersey" as part of the American Constitution Society's Brown Bag Series in February.

In April, Sally took part in a panel discussion on Gender Issues in International Law, sponsored by the International Law Society. Sally discussed her participation in the Expert Group Meeting on Violence Against

Women, which was convened by the United Nations Division for the Advancement of Women in Vienna in 2005.

**BETH HILLMAN** finally finished a casebook she's been working on for years – *Military Justice: Cases and Materials* (LEXIS NEXIS) which will be out this fall, thanks to a Herculean effort by her co-authors Gene Fidell and Dwight Sullivan, both practicing attorneys who juggled heavy caseloads with trips to Guantanamo Bay and Korea to get the manuscript done this spring.

Beth's essay on "Military Needs and Military Lawyers" appeared in the *DUKE JOURNAL OF GENDER, LAW AND POLICY* this spring, and an article on "conduct unbecoming an officer and a gentleman" prosecutions will be published in *LAW & INEQUALITY* later this year.

At Harvard Law School in March, Beth spoke on two "don't ask/don't tell" panels, one the usual academic type, the other more unusual, composed of military veterans who served under the current military anti-gay policy. She's hoping that the 1<sup>st</sup> Circuit reverses the don't ask/don't tell policy. She's also concerned about the fate of both the detainees at Guantanamo Bay and the servicemembers being involuntarily recalled to active duty and subjected to extended deployments. Her amicus briefs on these issues, however, are not doing the trick.

In February, Beth attended a Wingspread conference on the creation of a new U.S. Public Service Academy and a roundtable on militarization at the Open Society Institute in February. She will present a conference

paper, “Franklin D. Roosevelt, Commander in Chief,” at Cardozo Law School in April. She’s working now on an essay that ponders the legacy of U.S. bombing of civilians and a study of sexual violence in the U.S. armed forces since the Vietnam War.

Beth enjoyed teaching a new class, Law & Biography, this semester – and she commends Pauli Murray’s memoirs to everyone as well worth reading (again). She admired the depth and breadth of articles published about military law last year as she chaired the prize committee of the National Institute of Military Justice for the second year. And Beth regrets having to step down from the board of trustees of the ACLU of NJ – which she recently joined and whose work impresses her greatly – because of her visit next year at UC Hastings. She’ll miss you!

**A**RTHUR LABY was invited during the Spring 2007 semester to plan and participate on a panel on legal ethics at the 23<sup>rd</sup> World Congress of Philosophy of Law and Social Philosophy in Cracow, Poland to be held in August. Arthur’s paper will focus on the fiduciary duty of lawyers. Arthur was also invited to discuss his empirical research on delistings and deregistration by non-U.S. companies at a conference in Düsseldorf, Germany, entitled Economic Law as an Economic Good: The Rule and the Tool Function in the Competition of Systems, to be held in November.

**G**REG LASTOWKA’s article entitled “Decoding Cyberproperty” has been published in the INDIANA LAW REVIEW. His article “Digital Attribution: Copyright and the Right to Credit” is forthcoming in the BOSTON UNIVERSITY LAW REVIEW.

In the first half of 2007, Greg made presentations at the annual AALS conference in Washington, D.C., at New York Law School, and at Michigan State University School of Law.

#### **L**EGAL WRITING DEPARTMENT

**L** was recently ranked 22<sup>nd</sup> overall by U.S. News and World Report’s specialty rankings. This is the third year that US News has included Legal Writing Programs as a separate specialty category within law school rankings. Legal writing professors vote on the programs by looking at, amongst other things, innovations, program design, scholarship and service to the legal writing community. One of the unique services that Rutgers Camden provides to the national legal writing community is housing and maintenance of the widely-used LWI “Idea Bank,” which can be found at <http://www.ideabank.rutgers.edu/>. Tim DiVito helped the national committee (chaired by Carol Wallinger) to re-invent the idea bank as a searchable database of teaching materials and simulation problems.

**M**ICHAEL LIVINGSTON visited China where, between banquets, he met with officials of the State Tax Administration as well as professors and students at Peking University and Tianjin Normal University, with whom the Law School is considering

establishing some form of exchange agreement. He was especially pleased to note that Rutgers-Camden has alumni in Shanghai; a former professor in Qingdao; and an extensive presence throughout the Far East.

Mike also published articles in the AMERICAN JOURNAL OF COMPARATIVE LAW, on progressive taxation in Israel, Italy, and India, and the JOURNAL OF CATHOLIC SOCIAL THOUGHT (Villanova), on Catholic attitudes toward progressive taxation, and presented a paper on Chinese and Indian taxation at Tel Aviv University as well as to our own Rutgers faculty.

Closer to home, Mike has embarked on a new project as a candidate for school board in Cheltenham Township, Pennsylvania, provoking at least one question as to the value of academic experience in solving real world problems (readers are invited to provide whatever answer they prefer).

**J**USTIN LOUGHRY, Adjunct Professor, who teaches Professional Responsibility, is being installed as President of the Association of Criminal Defense Lawyers of New Jersey on May 10, 2007.

**D**ENNIS PATTERSON gave a lecture at Columbia Law School on his forthcoming book with Ari Afilalo, *Statecraft, Trade and the Order of States*. ASHGATE PUBLISHING will shortly publish a collection of Dennis' essays in

legal philosophy, under the title *Mind, Meaning and Law*.

Together with John Oberdiek, Dennis organized a conference for the Rutgers Camden Law and Philosophy Institute on the theme of *Global Justice*. The conference featured a lineup of speakers from the United States and the UK.

**S**ARAH RICKS signed a book contract with CAROLINA ACADEMIC PRESS to write *Current Issues in Constitutional Litigation: Roles of the Courts, Attorneys, and Administrators* (forthcoming 2009). The civil rights textbook will cover the constitutional and statutory doctrines necessary to litigate the most common current constitutional cases, those arising under the 4<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments.

The Women's Law Caucus gave Sarah one of its two 2007 Faculty Appreciation Awards for supporting women law students and women in the legal profession. In April, in cooperation with APALSA and the Women's Law Caucus, Sarah organized a Sushi Social and Mentoring Evening to foster mentoring relationships between current students and law school alumni working in Philadelphia. Sarah participated in the February Professional Development Symposium at Rutgers as a panelist on "How to Network."

In April, the federal district court judge Sarah clerked for, the Honorable Thomas N. O'Neill, Jr., judged a Prize Round between two of the best One L Moot Court oralists in Sarah's class. In January, as he does every year, Judge O'Neill invited Sarah's entire

Moot Court class to his courtroom to spend an hour answering their questions.

**RUTH ANNE ROBBINS** is one of the five professors organizing the upcoming international conference, “Once Upon a Legal Time,” developing the legal skills of storytelling in law. This is the first such conference but is designed to recur every few years. The conference, taking place in July at Gray’s Inn in London, is sponsored by both the City University in London and by the Legal Writing Institute. The 2008 Applied Legal Storytelling conference will include presentations by almost fifty legal professionals from diverse areas of legal study and practice. Ruth Anne will be one of the opening speakers at the conference. [Http://www.city.ac.uk/ems/Once Upon a Legal Time.html](http://www.city.ac.uk/ems/OnceUponaLegalTime.html)

**STEVEN ROBBINS**, Adjunct Professor, was elected as a new member of the Cherry Hill, NJ, Board of Education.

**SHEILA RODRIGUEZ** was awarded a \$5,000 grant to support her writing project this summer by the Association of Legal Writing Directors and the Legal Writing Institute. The project funded is: “Taming Hubris: Using Conferences and Guided Reflection to Ease the Triumphant Undergraduate Writer’s Transition to Novice Legal Writer.” This year, the organizations jointly reviewed twenty-one scholarly proposals from legal writing professors from across the

country. Of these proposals, ALWD-LWI funded seven. Grants range from \$2,500 to \$5,000.

**JAMES SHEEHAN**, Adjunct Professor, was nominated by Governor Eliot Spitzer to serve as New York State Medicaid Inspector General. Mr. Sheehan will oversee the fraud and abuse enforcement activities of New York’s \$50 billion Medicaid Program.

**SANDRA SIMKINS’** article entitled “Out of Sight, Out of Mind: Lack of Post Dispositional Advocacy in Juvenile Court Increases Risk of Recidivism and Institutional Abuse,” was presented at the Rutgers Newark Law School Gault Symposium on April 20, and will be published in their law review in the fall of 2007.

**RICK SINGER’s** *Criminal Law: Examples and Explanations*, fourth edition, has just been published, with much added material on terrorism and the Patriot Act. Rick is working on the second edition of *E & E’s Criminal Procedure II, Bail to Jail*. The entire chapter on sentencing has to be revised (again) due to recent progeny of Apprendi proving once again that no good deed goes unpunished.

**RAY SOLOMON** participated in the Journal of Contemporary Legal Issues Symposium on the Economics and Ethics of Legal Education in San Diego in February 2007. The symposium was sponsored by the University of San Diego Law School and

the JOURNAL OF CONTEMPORARY LEGAL ISSUES, which will publish the conference papers.

Also in February, Ray attended the American Bar Association's 36<sup>th</sup> Annual Deans' Workshop which was held in Miami, Florida.

**BETH STEPHENS** participated in a lively debate about the role of customary international law in federal courts, in March, at the annual conference of the American Society of International Law (ASIL).

In June, Beth will travel to the Hague, to speak on a panel entitled "Effective Remedies for All?: Universalizing the Battle Against Impunity," at the Joint Conference on Contemporary Issues of International Law, co-sponsored by the ASIL and several European international law organizations.

**CAROL WALLINGER** was awarded a \$5,000 scholarship from the Association of Legal Writing Directors and the Legal Writing Institute. This year, the organizations jointly reviewed twenty-one scholarly proposals from legal writing professors from across the country. Of these proposals, ALWD-LWI funded seven. Grants range from \$2,500 to \$5,000. The scholarship will facilitate competition of Carol's pilot project which is investigating how LRW program design affects student motivation. The working title is *Moving From First to Final Draft: An Empirical*

*Study on Motivating LRW Students to Flow Through the Writing Process.*

**ROBERT WASHBURN** was a moderator on Legal Trends in Land Use Law and a moderator of Legal Trends in Environmental Law at the Atlantic Builders Convention in Atlantic City in April.

**ROBERT WILLIAMS** testified in April before the Pennsylvania Senate State Government Committee public hearing on convening a Constitutional Convention. His cautionary conclusion, "Be careful what you wish for" was quoted in the PHILADELPHIA INQUIRER editorial opposing a Pennsylvania state constitutional convention.

Bob spoke at the University of Mississippi School of Law Conference on State Constitutions and Search and Seizure in March, on the topic of judicial methodology in such cases. His article will be published in the MISSISSIPPI LAW REVIEW in the fall.

Bob also spoke at a League of Women Voters program at the University of Pennsylvania Law School in March on the controversial Pennsylvania Supreme Court decision upholding judicial pay raises and striking down legislative pay raises based on the Pennsylvania Constitution. He spoke on the same topic at a Pennsylvania Bar Institute program in Philadelphia in February.

Bob, working with two other lawyers, won a 3-0 decision in the New Jersey Appellate Division reinstating their complaint challenging a multi-million dollar, virtually

interest-free loan to a private entity operating a Bergen County hospital. They contend that the loan constitutes a gift or donation of money to a private entity in violation of the New Jersey Constitution.