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Introduction

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**THE DAVID G. TRAGER
PUBLIC POLICY SYMPOSIUM
BEHIND CLOSED DOORS:
SECRET JUSTICE IN AMERICA
APRIL 7, 2000**

*Dean Joan G. Wexler**

INTRODUCTION

Good morning. It is my great pleasure to welcome you to the David G. Trager Public Policy Symposium, "Behind Closed Doors: Secret Justice in America."

This symposium marks two important occasions in the history of the law school. First, it helps us to inaugurate our year-long celebration of Brooklyn Law School's centennial. Founded in 1901, the school will mark one hundred years of excellence in legal education this year with a series of exceptional programs and events that will conclude in 2001 and help launch us into our second century. Second, it affords us an opportunity to honor United States District Court Judge David G. Trager, who from 1983 to 1993 gave us ten years of extraordinary leadership as dean of the law school.

As dean, Judge Trager presided over a decade of unparalleled growth and progress at the law school, increasing programs, enlarging its faculty, and launching the most ambitious expansion of the school's physical plant in its history. The latter achievement included the acquisition of One Boerum Place, now home to the Law School's Administrative and Clinical Law offices, and the purchase of six residential buildings in Brooklyn Heights to provide

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student housing. Finally, the centerpiece of this expansion program was the construction of an eleven-story addition to the Law School's main building, which houses a magnificent library, full dining facility, new high-tech classrooms, the deans' offices, and the fabulous two-story Subotnick Conference Center.

When Judge Trager resigned as dean, the faculty decided to honor his contributions by inaugurating a series of programs focusing on important issues of public policy. The initial Trager Symposium, held in 1997, explored campaign finance reform, an issue which has remained of critical significance to the nation.¹

Today's issue is of equal importance. It deals with the proper functioning of our judicial system and the public's confidence in it, surely the core of our constitutional system. Having neither the power of the sword nor the power of the purse, the judiciary depends for its authority on the continuing faith, respect and trust of the people. Central to that confidence and trust is the openness of our judicial proceedings and the historic obligation of the courts to justify their exercise of power by publicly giving reasons and justifications for what they do.

While there are, of course, aspects even of our judicial process that historically and properly require secrecy, too much "justice behind closed doors" can erode and ultimately destroy the public's faith in the judiciary. The more we as a society bring to our courts the fundamental issues of the day for resolution, the more critical it is that the public maintain its faith in the integrity of the judicial process. Thus, whether the topic is terrorism, tobacco litigation, toxic torts or terminating parental rights, the courts must strike that delicate balance between the need for secrecy and the demands of accountability.

Today, we are extremely fortunate to have four stellar panels of judges, practitioners, scholars, government officials and media representatives to discuss that ultimate question of just where to draw the line. Our first panel this morning consists of United States District Court Judge Michael B. Mukasey, United States Attorney Mary Jo White, nationally prominent defense counsel and Brooklyn

¹ Symposium, *Campaign Finance Reform: Will Anything Work?*, 6 J.L. & POL'Y 1 (1997).

Law School alumnus Gerald Shargel, and *New York Times* counsel Adam Liptak, all of whom are experienced at handling the kind of high profile criminal cases where sensitive issues of access versus secrecy are critical. It will be moderated by Professor William Hellerstein of our faculty, a recognized expert in the field of criminal justice and former head of the Criminal Appeals Bureau of The Legal Aid Society.

The second panel of the morning, dealing with secrecy in the civil justice setting, is comprised of United States District Court Judge Jack B. Weinstein, for whom I had the honor of serving as a law clerk; Harvey Weitz, another distinguished graduate of the Law School and leader of the plaintiffs' bar; Sheila Birnbaum of Skadden, Arps, Slate, Meagher & Flom, who is a nationally renowned member of the defense bar, as well as a dear friend of this Law School; and Dean Jack H. Friedenthal, one of the nation's leading civil procedure experts. The moderator of that panel, also a person of recognized national stature in the torts and products liability field, is our own Professor Aaron Twerski.

Following lunch, the third panel of the day, which will address secrecy in the juvenile system, also features a distinguished group of individuals who have dealt with problems of judicial secrecy in a first-hand fashion. The panelists are Commissioner Nicholas Scoppetta, a distinguished graduate of the Law School, who heads New York City's Administration for Children's Services; Judge Michael Gage, who served as the Chief Administrative Judge of the City's Family Court system; Bonnie Rabin, a prominent children's rights advocate; and Eve Burton, counsel to the *Daily News*. Professor Jennifer Rosato of our faculty, who has written extensively on juvenile and family rights matters, will be the moderator.

The final panel of the day, which I will have the privilege of moderating, will consist of a roundtable discussion by six distinguished federal judges, including Judge Trager, that will explore a series of hypothetical situations where judges must resolve the clash between secrecy and openness. I will introduce those judges more fully this afternoon.

We hope that each of the panels will have time to entertain questions from members of the audience. The printed program contains an index card on which you can write down your

questions, which will be picked up by our students from the *Journal of Law and Policy*.

I would also remind all of our panelists and our questioners from the audience that the entire program is being taped for publication in the *Journal*, so please try to speak up and into the microphone. And of course I want to thank our panelists in advance for what I am confident will be an extremely interesting and illuminating symposium.

Finally, I want to mention some people whose work was particularly helpful in organizing today's symposium. The first is Professor Joel Gora, who did such a fine job organizing the first Trager Symposium on campaign finance that we asked him to help organize this one as well. I also want to thank Professor David Yassky, one of the rising young stars on our faculty, who was helpful in working with Professor Gora. Lastly, Diane Nardone, our new Director of Institutional Advancement, and her assistant, Violet Lachowolski, deserve our thanks for all of their hard work.

I would like now to turn the program over to Professor William Hellerstein. Thank you very much for joining us.