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2d Look Victory

By Ross Bogatch, '06

Students in the Second Look Clinic live for moments like these. It's the payoff after months of combing through trial transcripts and appellate briefs; of interviewing witnesses and uncovering new evidence; of building a case that reveals, beyond doubt, that the justice system gave rise to a grave mistake. It's the moment the conviction of an innocent man is overturned.

On October 21, the Second Look Program celebrated its second successful appeal when the 17-year-old murder conviction of David Wong was overturned on the basis of new evidence by a unanimous decision of the New York State Appellate Division, Third Department.

The Second Look Clinic, supervised by Professors William E. Hellerstein and Marjorie M. Smith, reviews actual claims of innocence from prisoners in the New York State penal system. The clinic affords students the opportunity of real-world investigation, as they try to uncover and validate new evidence for potential clients. Students are responsible for screening at least eight case-files each semester. Receiving hundreds of files each year, the clinic also explores various facets of the criminal justice process, as well as the difficulties innocent convicts face in remedying their situation.

For David Wong, the court's decision ended a long and frustrating chapter that began in March of 1986. On a cold, winter afternoon in the prison yard of the Clinton Correctional Facility in Dannemora, New York, Tyron Julius was murdered when an individual jammed a five-inch shank into his neck, piercing his brain. Julius died 11 days later.

Richard LaPierre, the only correction officer to witness the incident, first identified Wong as the attacker. LaPierre, who was stationed in a tower 80 feet high and 130 yards from the stabbing site, testified that he saw Wong leave a group of six or seven inmates gathered in the prison yard, come up behind Julius, and strike him in the lower neck.

Bolstering the People's case was Peter Dellfava, an inmate who also identified Wong as the attacker. Dellfava testified that he was only 15 feet away from where Julius was stabbed.

On the strength of the testimony of these two witnesses, Wong was convicted of murder in the second degree, and sentenced to 25 years to life imprisonment.

Two separate investigations into David Wong's innocence, however, uncovered evidence that thrust the case against him into a fog of doubt. The Center for Constitutional Rights, working with the David Wong support

A First Look Inside the New Residence Hall

By Greg Brown, '05

For several years the possibility of a residence hall at Brooklyn Law School has colored discussions among students, and, at times, influenced how the surrounding community feels about the school. As the new building on the corner of State Street and Boerum Place nears completion, the administration has decided to give students a series of tours to answer questions and get the law community acquainted with how the 21-story, brick-clad building will change things at BLS.

On October 21st, Dean Joan Wexler and Associate Dean Michael Gerber gave one such tour to a group of nine BLS students. Much of what is to be called Feil Hall, including the main lobby, is not yet complete so we entered through a temporary opening in the front of the building.

Stepping over metal cables and around stacks of cinder blocks, we came first to a nascent cyber cafe to be called Geraldo's.

Like Feil Hall itself, signature spaces of the building are to be named after BLS alumni. Feil Hall is named after alumnus Jeff Feil, BLS '73. He and five other members of his family have attended BLS, and the Feil Family Foundation contributed generously to the construction of the building. Out of approximately \$60 million in construction costs, Dean Wexler estimates that \$9 to 10 million dollars have been donated by various alumni and benefactors.

Needless to say, Geraldo cafe's namesake is another BLS alum, Geraldo



A view of Geraldo's Cafe present (photo) and future (inset)
Photo by Greg Brown '05

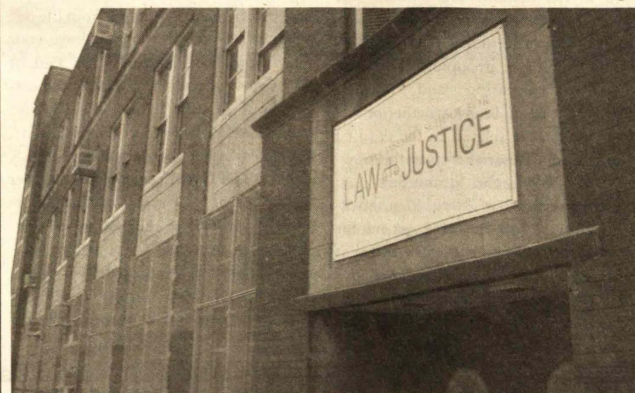
Rivera, BLS '69. The cyber cafe, a nicely appointed open space, is situated at the rear of the first floor. Students will be able to access the internet from this space via a handful of desktop computers, or via the wireless connections on their laptops. But the real draw is likely to be the coffee and baked goods that will be sold there. Students will also be

able watch TV on two large flat screen televisions that are planned for the space, or sit outside on a small patio when weather permits.

The administration sees the cafe more as a hub of student life than as a

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BLS Partners with New Brooklyn Charter School



The Urban Assembly School for Law and Justice
Photo by Stephen Harris, '07

By David Ries, '06

Some Brooklyn Law School students are finding that they have already learned enough about the law to start passing that knowledge on to others. The Urban Assembly School for Law and Justice (SLJ) opened in DUMBO this September to prepare high school students for college and beyond through a rigorous academic program with an emphasis on law and debate.

And according to the school's principal, Elana Karopkin, "Because of [BLS's] support, SLJ stands to make huge strides for secondary education, and perhaps produce a few future Brooklyn Law School students."

As part of SLJ's innovative four-year sequence, students learn about and experiment with law in their own school, law in their city, state and country, and law around the world and throughout history. The school provides students with an opportunity to

participate in the democratic process through involvement in Student Council, Town Hall meetings and Youth Court.

There are two different ways that Brooklyn Law students are involving themselves in the lives of SLJ's first entering class of ninth graders. Students from Brooklyn Law go to the school every week to teach a social studies class. Also bi-weekly, SLJ's students are coming to Brooklyn Law School to meet individually with law students as part of the high school's Mentoring Program.

Students who are participating in the SLJ Mentoring Program share information and life experiences with the school's ninth graders to help them appreciate the value of education. Though they are only just beginning high school, the SLJ students are learning from their BLS mentors all that it takes to pursue a career in law. For most, the mentoring program is these teenagers' only opportunity to have questions about law school answered. By having the ninth graders come to Brooklyn Law School, our students can expose them to the law school environment.

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| Professor Profile |

By Mojdeh Malekan, '06

Jennifer Rosato's new office as Dean of Students lies somewhere amid the labyrinth of the 7th floor of the school – a place where few students venture after handing in their last memo for legal writing. It has few personal touches beyond books and paperwork. At first glance the distressed student seeking much needed counseling probably won't feel at home. But a sign on the otherwise almost bare walls may provide some comfort. "All I really need to know I learned in Kindergarten," it proclaims. The common place placard tells more about the new occupant than one first suspects.

Rosato, who has been part of the faculty for over a decade, began working as an ESL teacher to kindergartners through teenagers after she graduated from Cornell University with a degree in social work. Her decision to attend law school was influenced by spending much of her senior year in college at a social work agency where she discovered the apparent power of the law in limiting the ability of social workers in helping children.

"To come to the bottom line I wanted to help change children's lives through the law because I really saw some of the weaknesses of the legal system," she said.

After graduating from University of Pennsylvania Law School, Rosato entered private practice and eventually became a legal writing professor at Villanova University School of Law. She became a member of the BLS faculty in 1992 and replaced Zeigler as Dean of Students this past summer where one of her biggest projects was the implementation of the ID policy.

Rosato believes that the duties of the Dean of Students at BLS are different from those at other school because it is a "free-standing law school." Her duties go beyond what would be normally that of the dean of students to being part of a grouping of all the deans collaborating and working together pressing issues whether or not they are directly related to the dean of students job. Rosato refers to this powerhouse group as the "dean team."

It is clear that Rosato's qualifications for the job as Dean extend far beyond being a law professor and that her prior educational experience has been instrumental in shaping her career.

When Rosato first began teaching, she surprisingly saw similarities between her former ESL students and first year students in law school.

"I learned not to presume that the students really know anything just like new English speakers don't know anything about the language when they come here," she said.

Rosato soon also learned that it's not only the new students that are lacking in law school basics.

"The first thing I found is that most law teachers have no training or no guidance in teaching methodology." A large part of Rosato's work over the years has been to educate professors on teaching effectively.

She has done workshops across the



Dean Rosato hard at work in her office.
Photo by Greg Brown, '05

country to encourage professors to go beyond the Socratic Method in the classroom.

"I always try to think as I am teaching, what I have done already, how is the best way to teach this particular material." Rosato urges law professors to use the entire "toolbox" of different kinds of methods they can employ in their classes.

Rosato herself employs this methodology each semester when she teaches civil procedure for first year students, in addition to an upper level class in either bioethics or family law. Understanding that each person learns differently, Rosato uses methods such as role playing, problems, visuals, overheads, films, and student presentations.

Because of her time commitment as Dean, she is only teaching family law—the area on which she focuses her scholarship—this semester but misses teaching first year students.

"I love teaching first year students because of their energy, because you really see so much dramatic change in the capabilities of students from the day they walk in to the day they leave your classroom," she said. "By the end of the year you're having sophisticated discussions about Justice Scalia's and Justice Brennan's views of jurisdiction."

Beyond her responsibilities at BLS, Rosato has also written about a number of controversial issues including abortion rights, cloning, and same-sex marriage. She is currently working on projects considering the regulation of assisted reproductive technology and whether embryo donations should be

treated as strictly as adoptions or more like a sperm or egg donation. Despite the controversial nature of her work, Rosato has never received much backlash.

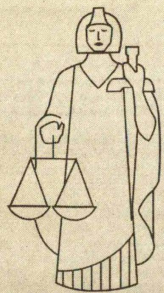
"Everyone once in a while I will get a letter or an email but usually it's respectful. It has never been threatening," she said. "I did an op-ed on same sex marriage a while ago and I got a thank you letter."

Rosato feels that through her writing and committee work on family and children's issues she has achieved part her goal from when she entered law school. She will soon take over as the chairperson of the Family and Juvenile Law Section of the Association of American Law Schools. She recently gave a speech educating lawyers about same-sex marriage and its implications in the state of NY.

"I feel that even when I do a speech like that I am still furthering my agenda, so to speak, of educating people about families and thinking about what is good for families.

With all of her responsibilities and commitments, Rosato has an extra challenge in her routine, one not dealt with by most. She has had her home and her family in Pennsylvania for the past twelve years while she has stayed in the city during the week. She goes home every weekend to her husband of almost 20 years and seven year-old daughter.

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NEWS**

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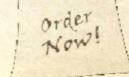
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MyBarPrep, the online bar review

Brooklyn's Second Look Clinic Gets Murder Conviction Vacated

SECOND LOOK
Continued from p. 1

committee, hired private investigator Joseph Barry in 1999. In December 2002, the Center's President, Michael Ratner, asked Professor Hellerstein and Second Look to enter the case as co-counsel, and the Clinic's students agreed that the case should be accepted. Professors Hellerstein and Daniel S. Medwed, together with the clinic students assigned to the case, began an extensive investigation of their own.

Two of the most crucial pieces of new evidence came from Dellfava and Sharon Julius, the victim's widow. Dellfava recanted his testimony, claiming he had falsely identified Wong as the killer in exchange for a parole recommendation and a transfer to a different prison. Mrs. Julius, in an affidavit, revealed a dispute between her husband and Dominican inmates he knew from an earlier stint at Riker's Island. A dozen more inmates at Dannemora corroborated their stories, identifying Nelson Gutierrez as the real killer. Gutierrez died at his home in the Dominican Republic of an apparent drug overdose in 2000.

Nevertheless, the effort to overturn Wong's conviction was hampered by Judge Timothy J. Lawliss, acting judge of Clinton County Court. In his opinion dated October 1, 2003 Judge Lawliss wrote "Mr. Dellfava's testimony wreaked of insincerity," while finding it "particularly incredible."

He found the identification of Gutierrez by the inmate witnesses who testified in Wong's support equally incredible: "If true, an enormous conspiracy among hundreds of individuals involving different groups all managed to keep this secret away from the District Attorney and defense counsel from the time of the incident until the time of the trial. Such an enormous and successful conspiracy is impossible to believe."

Relying heavily on LaPierre's testimony, Judge Lawliss denied Wong's \$440.10 motion to vacate his conviction.

"I was surprised and devastated by Judge Lawliss's opinion. The evidence we put in was straight-forward, credible, unimpeached, and offered by witnesses who had no motive to lie," said Professor Hellerstein. He added that this was bolstered by the fact that many of the witnesses did not even know Wong, including "Mrs. Julius, the victim's widow, who gave crucial testimony that provided Nelson Gutierrez's motive for killing her husband and cemented the entire theory of our case."

On September 8, Professor Hellerstein argued before the Appellate Division that Judge Lawliss had erred in denying Wong's \$440.10 motion.

"I anticipated the appellate judges would focus on the evidence we presented and would concentrate on our argument that Judge Lawliss's factual findings were not entitled to deference because they were unwarranted by the record evidence."

The professor's comment proved prophetic.

In a memorandum and order issued by Judge Carl J. Mugglin, the court found that sufficient newly discovered evidence existed to support Wong's motion.

Noting that "that County Court's credibility determinations are generally afforded great deference," Judge Mugglin added that "while County Court found Dellfava's recantation incredible, we do not." The observation was based heavily on Dellfava's motivation "to lie by a promise to be transferred to a prison facility closer to his family," and a letter of recommendation to the parole board.

Addressing LaPierre's testimony, Judge Mugglin astutely commented, "it is not LaPierre's credibility that [Wong] questions, but the accuracy of his



Professors Hellerstein and Smith and the students in the Second Look Clinic. Photo by Stephen Harris, '07

observations, given the distance that he was from the crime scene, as well as certain other inconsistencies" in his testimony.

Judge Mugglin was also concerned with the medical evidence. According to documents submitted by the state, Julius' wound "would have created a sufficient amount of blood to have splattered over the perpetrator." Yet there was never any blood found on David Wong's clothing.

The Court vacated the second degree murder conviction, and remanded the case to the County Court of Clinton County for a new trial.

Professor Hellerstein told BLS News that he was "elated get the call from the Appellate Division that the conviction had been set aside and to read Judge Mugglin's well-reasoned opinion." He added, "The hardest task for an appellate lawyer is to secure a reversal of a trial level judge's factual rulings. In fact, there has not been such a case previously in New York where after an evidentiary hearing such as we had, the Appellate Division has reversed the hearing court."

Nonetheless, this seemingly endless nightmare is not yet over for David Wong. Though the evidence on record

would certainly seem to create reasonable doubt in the mind of a jury, the Clinton County District Attorney has not determined whether to drop the charges. If the case is retried, Wong could be convicted again. And even if there is no retrial, Wong faces a deportation order and could be sent back to China.

Unfortunately, Wong's story is of the all-too-common variety to students in the Second Look Clinic. In the next few months, Professor Hellerstein will be arguing the case of Stephen G. Schulz before the New York Court of Appeals. Schulz was convicted of robbery in the first degree and sentenced to 11 years in prison. It is the clinic's belief that Schulz is the victim of mistaken identity, and that another individual, Anthony Guilfoyle, who had been arrested for a spate of similar robberies, was the actual perpetrator.

At trial, the court prohibited Schulz's attorney from introducing evidence of an alternate perpetrator; that decision was affirmed on appeal. Professor Hellerstein will argue that the trial and appellate court erred as a matter of law in denying Schulz's attorney the opportunity to present this evidence to a jury.

School for Law and Justice

MENTORING
Continued from p. 1

But the Mentoring Program is also planning field trips and other special events to enlarge the teenagers' sense of the world.

Those BLS students who go to the School for Law and Justice to teach students have a different, though equally rewarding, experience. Working with SLJ's social studies teacher, they fit lessons about the law into the school's ninth grade curriculum. The classes include lessons on: the Bill of Rights, the duties of a Good Samaritan, and what it would be like to be a Teen President. Participating BLS students were trained at the start of the semester in how to develop lesson plans by Professor Linda Feldman, who taught public school herself while she earned her J.D. from Brooklyn Law.

Planning for these collaborations occurred during the summer while most law school students were trying not to think about school at all, much less thinking about how to volunteer their time.

Elizabeth Kane attended SLJ's Accepted Students Night. The new high school's students, and their families, went to learn more about their new school and to meet their new classmates and teachers. About the summer planning with Brooklyn Law School, Ms. Karopkin said "Elizabeth Kane and Linda Feldman from your staff, and members of your student body, have already made indelible marks on our curriculum and school structure. We can not help routing their efforts among our other partners and acknowledging when and where we can, our debt to Brooklyn Law School."

Brooklyn Law School and the Urban Assembly School for Law and Justice have begun a collaboration that will continue to benefit the students of both schools for years to come. It won't be long until the School for Law Justice does produce a few Brooklyn Law School students, as their principal predicts. If so, it means that BLS students are already producing the next generation of lawyers who will benefit their Brooklyn community.

SBA State of the (Student) Union

By Yael Utt, '05

For the hundreds of students who have not yet logged on to the new BLS Student Bar Association website, you'll hear it here first: there's a new SBA in town and Brooklyn Law School just got a little bit cooler. Less than two months into the school year, the student government has already planned and executed more progress with the administration and more social events than possibly the two prior years combined.

ILs were treated to a more welcoming Orientation. Besides the standard fare such as computer passwords, ID pictures, and don't let me forget, the cheese cubes in the courtyard following Convocation...the bright-eyed bushy-tailed future of BLS also had the chance to see a Cyclones baseball game and go on a Bar Crawl - and actually branch out beyond their section-mates. Even something as forgettable as the Blue Book Quiz (because really, what is 10% of a 2-credit class when Torts looms?) was treated as a monumental achievement with post-test festivities carrying on at Centro on Montague Street into

the wee hours.

The attention to students did not wane however after those crucial weeks. The SBA Treasurer Adam Courtney, along with President Timothy Oberweger, have ensured generously sufficient access to Student Activity funds for the always-proliferating student organizations at school. The methodology to the allocation rewards groups that are the most active, an incentive that has culminated in a multitude of speakers, panels, petitions, fundraisers, mentoring, career advice, and more.

And the energy of the SBA simply grows. Currently, committees are working directly with the administration on a handful of very important issues to the student body, not the least of which is the healthfulness and pricing in the school cafeteria. It is hardly a coincidence that posters went up recently to advertise the lowering of the price of a bottle of water. And do not even get me started on the selection of nuts, dried fruit, granola bars, breads...

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Legal Association of Activist Women at Brooklyn Law School

By Stephanie Morin, '06

Domestic Violence (DV) is the leading cause of injury to women. Perpetrators of domestic violence, sexual assault and stalking discriminate against no one. Women of all ages, races, cultural and social backgrounds are victims of these violent crimes. The impact of these crimes extends to families, the workplace, and all of our communities. The saying goes, "American women have more to fear from the men they know and once loved than from any stranger."

October was Domestic Violence Awareness Month. The Legal Association of Activist Women (LAAW) did a tremendous amount of work to bring this issue to the attention of the BLS community. LAAW collected about 100 used cell phones and accessories to donate to Verizon to be refurbished, recycled or taken apart and sold for parts. The proceeds, of course, will benefit victims of DV. LAAW also had a bake sale, raising \$400 to be donated to an international DV organization.

BLS Panel: "Religion and Culture: Barriers to Domestic Violence Advocacy?"

LAAW co-sponsored its first annual DV Awareness Month panel, entitled "Religion and Culture: Barriers to Domestic Violence Advocacy?" Representatives from various advocacy organizations spoke on topics of religion and culture, and how these issues work to affect the intricacies of helping DV victims. The speakers came from a wide range of the various populations of women living in and around New York City.

The mere existence of this panel indicates the dramatic changes that have occurred in the public response to violence against women in only the past two decades. Prior to the mid-1980's, the failure of the justice system to take these crimes seriously reinforced the escalating, recurring and often lethal nature of domestic violence and stalking. In this regard, the law - and those responsible for upholding the law - reflected society's tolerance of intimate violence, its prejudices against victims of violence against women, and its ignorance of the complexities of the issues implicit in these crimes.

In the mid-1970's, survivors and advocates gave voice to women who had previously been silent. The battered women's and anti-rape movements demanded additional legal protections and a full range of services for victims. By the late 1970's, a limited number of jurisdictions had initiated legal reforms. Some states passed new civil and criminal laws giving greater protection to victims and enforcing penalties on perpetrators. Criminal justice agencies trained personnel, developed innovative policies, and modified jobs to comply with the new laws.

It is astounding to consider that, in the past twenty or thirty years, DV advocates have managed to pull this intricate and intimate issue from the privacy of the bedroom and have thrust it into the public realm. This has been accomplished through the efforts of many individuals and organizations, including the

now considered one of the most pressing issues of our day. The DV panel featured representatives from different religious and cultural backgrounds, evincing how much research and understanding of the issue has emerged in the past three decades. This issue that was once largely ignored and misunderstood has become a focus for many legal (and other) scholars. While DV was once considered a "woman's" problem, it is now well-known that women from different backgrounds and cultures who have faced different forms of abuse require different treatment. Responding to battered, sexually assaulted and stalked women from traditionally underserved populations requires multi-cultural services and multi-lingual capacity.

Brooklyn's Family Justice Center

The city of Brooklyn recently won a federal grant of \$1.2 million to open a Family Justice Center, for the purposes of fighting DV. This Center will allow victims to access comprehensive services more easily by putting dedicated domestic violence prosecutors and all essential service-providers under one roof. Various entities such as advocates from non-profit, non-governmental DV service agencies, law enforcement officers, prosecutors, probation officers, medical professionals, legal advocates, chaplains and representatives from other community based organizations will all be working in close proximity to ensure that the needs of these victims are fully met. "With only one appointment, victims will be able to meet with a prosecutor, petition for an order of protection, receive legal advice on housing and custody issues, talk to a counselor, and apply for housing and financial assistance - all while their children play safely in the next room." Having this one centralized and accessible location might be critical in providing the necessary help and support to certain women. Brooklyn has become one of the only cities in the nation that will provide this sort of center for victims of DV.

Societal Ramifications

DV doesn't only affect the individual being targeted; it affects everyone within our society in various ways. Let's focus on medical costs and crime rates. According to the Center for Disease Control, in 2003 the health care costs of intimate partner rape, physical assault, and stalking exceeded \$5.8 billion dollars (almost \$4.1 billion went to direct medical and mental health care services). Furthermore, witnessing or experiencing violence in the home severely increases one's risk of both perpetrating violence and/or becoming a victim as one grows older. (Straus and Gelles 1990). Living in a culture of violence leads to confusion, hostility and violence. (Roger Toogood, ASW/ACSW Executive Director, Children's Home Society of Minnesota)

A Few Statistics

Approximately one third of the men counseled for battering are professional men who are well respected in their jobs and in their communities. These have included doctors, physiologists, lawyers, ministers and business



The turnout at a recent LAAW meeting filled the room.

Photo by Nicole Dryden, '05

executives." David Adams, "Identifying the Assaultive Husband in Court: You Be the Judge." Boston Bar Journal, July/August, 1989. These have included men that you have known or will know.

Thirty-four percent of the women homicide victims over age 15 are killed by their husbands, ex-husbands or boyfriends. (National Women Abuse Prevention Project)

Fifteen hundred American women are murdered by husbands or boyfriends each year. (FBI Uniform

Crime Statistics-1996)

BLS Students Can Help

What can interested BLS students do to help out? The afore-mentioned Family Justice Center will be up and running and needing BLS students in 2005. Also, if you want more information on DV, email yaellutt@brooklaw.edu, jennifer.kob@brooklaw.edu, nicole.dryden@brooklaw.edu, or come to the next LAAW meeting!

Profile of Dean Jennifer Rosato

ROSATO

Continued from p. 2

biggest accomplishment to date.

"It all adds up. It's sitting here today," she glows. "I never would have dreamed that I would be a professor of law, dean at a law school. I just constantly say is this for real."

Despite her satisfaction, Rosato is yet to realize her crowning achievement. Her biggest aspiration? "I'd like to get on the today show," she jokes.

Meanwhile, her main priority as Dean this year will be to improve communication between students and the administration and the faculty. During a rare break, you may also catch her at New York Sports Club trying to relieve some stress or grabbing a late night bite at McDonald's on Court Street.

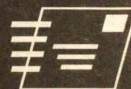
He knew he was going to be doing a good amount of the parenting once our daughter was born," says Rosato. "On the weekends he gets a bit of a break."

Regardless of her many commitments and her success, Rosato has clearly just begun.

"I would like to someday be a leader, like to be a dean or a judge, something where I am leading an institution or leading in the sense of making law," she says. "I am not quite there yet. I'm kind of on the first floor and I'm walking to the second floor."

Rosato cannot single out her

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Redefining Public Purpose to Protect Personal Liberties



The Atlantic Yards is subject to its own Takings controversy.
Photo by Stephen Harris, '07

By Lawrence Hansen, '06

"Nor shall private property be taken for public use without just compensation." The Takings Clause appears deceptively simple. However, the coming weeks will show how far the courts must go in order to clarify its meaning. The Supreme Court recently granted certiorari to hear *Kelo v. City of New London* in order to better define the term "public use" for the purposes of eminent domain.

The case comes from the Connecticut Supreme Court, which held in a 4-3 decision that "public use" means only that there exist some economic benefit to the government, be it the state or municipality. Indeed, there is an economic benefit to allowing New London Development Corp. to take 29 acres of land from its rightful owners in order to build a \$270 million laboratory facility for Pfizer. The City of New London intends to transfer the property to private developer Corcoran Jennison on a 99-year ground lease at \$1 per year. The new plans for the site also include an office building, hotel, and condominium. The public purpose? To raise more tax revenue than the current owners could possibly pay.

The Supreme Court's decision will affect homeowners throughout the country. According to a report issued last year by the Institute for Justice, in the past five years, more than 10,000 properties have either been taken or threatened with condemnation for the purpose of transfer and development by private parties. There has been discord in the state courts, with some states finding that "economic development" (tax revenue and jobs) justifies eminent domain and others finding it does not.

The Supreme Court should rely principally on its *Poletown* decision. In the 1981 *Poletown* case, the Michigan Supreme Court held that more than 1,000 residences, 600 busi-

nesses and churches could be taken in order to build a new General Motors plant. The GM plant would be a better source of revenue than the residences. However, the U.S. Supreme Court protected the property interests of the *Poletown* property owners, reversing the Michigan decision finding it was "a radical departure from fundamental constitutional principles." The court has also noted in its 1798 decision *Calder v. Bull*, that it is "against all reason and justice," for a people to entrust a Legislature with "the power to enact a law that takes property from A and gives it to B," and found that the legislature cannot be presumed to have such a power.

Ms. Dana Berliner of the Institute for Justice and an avid participant in Federalist Society events across the nation, will represent the *Kelo* family and the other New London residents in the case. She stated, "If jobs and taxes can be a justification for taking someone's home or business, then no property in America is safe because anyone's home can create more jobs if it is replaced by a business and any small business can generate greater taxes if replaced by a bigger one. We have to restore the meaning of public use to what everyone once understood the term to mean—something the public would own and use, such as a road. Economic development is not a public use."

The "Public Use" issue has relevancy here in New York. Recently, New York City condemned property directly across from the Port Authority at 42nd and 8th Ave in midtown Manhattan. The "public purpose" was a new headquarters for the New York Times, a publicly traded company on the New York Stock Exchange. The rub of this public taking is that the Times didn't even attempt to negotiate with current property owners like Stratford Wallace. The New York State courts validated the taking of Mr. Wallace's property. The Supreme Court held in *Olsen v.*

United States that, "the object of compensation is to put the owner of the publicly acquired property in as good a position pecuniarily as if his property had not been taken. Even if property values could be easily established, one would assume the dignitary value of negotiating the sale of one's property would dictate some form of negotiation."

This deal between the Empire State Development Company and the New York Times is valued as a \$29 million subsidy to a publicly traded company, which is questionable considering the leverage exercised by the New York Times. It would be tough for the newspaper to leave New York. The New Jersey Times would simply not have the same appeal. What benefit does the city have to offer the New York Times a subsidy to remain in New York? An interesting side note is the New York Times' joint venture partner; Forest City Ratner Companies.

Bruce Ratner, President and CEO of Forest City Ratner Companies, is a familiar figure these days. Mr. Ratner is the new owner of the New Jersey Nets, soon to be relocated to the intersection of Flatbush and Atlantic Avenues. That is, if a regulatory taking is able to dispossess current residents and businesses of their property too. While "stadiums are there own little world" as Ms. Berliner commented, the "public purpose" of a new sports stadium is more recognizable than that of a new corporate headquarters for the New York Times. One such plan to give the new stadium a "public purpose" is to include low income housing as part of the development. Another obvious differ-

ence is the ability of the Nets to relocate, as has become a habit among teams in the NBA. They have far more negotiating power to command the takings of properties in Brooklyn. That doesn't make it right though.

James Madison wrote in an essay entitled *Property*: "Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties or his possessions." Madison was building on the theories presented in John Locke's *Second Treatise of Government*, which states "The great and chief end therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of property." These statements taken together mean that property ownership is tied to personal freedom, and that the purpose of government is to protect personal freedom. While neither source is primary, both are the foundations upon which our Constitution and our nation were built.

That the value of property was rightly understood by the Founders does not mean that all such Takings are unjustified. The Takings Clause is a constitutional power of the government with a specific purpose. However, that power is intended as one of last resort. The Supreme Court should take this opportunity to limit the application of the "public purpose" doctrine so that the Takings Clause does not take on the same amorphous nature as did the Commerce Clause. As the court limited the scope of the commerce clause in *U.S. v. Lopez*, so it should now with the Takings Clause. Let a man's home be his castle.

Car Rams BLS Gates & Pedestrian



Crowds of on-lookers gathered at the scene of the accident.
Photo by Stephen Harris, '07

On Monday, November 8, during the 1-2:00 PM lunch break, a car drove into the front gate of Brooklyn Law School.

Despite several attempts before going to print, the BLS News staff was unable to get in touch with the Highway Safety Office of the Eighty-Fourth Precinct.

Students who were at the scene after the accident said they witnessed one individual being taken away by an ambulance after being placed from the street surface onto a stretcher.

Despite circulating rumors, the status of the driver and the injured person are unclear.

An Introduction to Brooklyn Law School's New Residence Hall



Dean Wexler shows some students the Forchelli Conference Center.

Photo by Greg Brown, '05

RESIDENCE HALL

Continued from p. 1

means of generating revenue, and its operation will be outsourced to a company that specializes in such things. The contract for operating this space, the only retail eating establishment planned for the building, is currently out for bids.

Leaving Geraldo's, the tour passed through a short hallway and entered into the vaulted ceilings of the main lobby and elevator bank. Taking a tour with two Deans can generally get you inside anywhere at BLS, but when Feil Hall is open to the public, no one will be able to enter this lobby without presenting a BLS ID card to one of the 24-hour lobby attendants. Residents of Feil Hall should get used to carrying cards with them, since all apartments will be protected by hotel-style key-card locks. And, just like a hotel, weekend guests of residents will be issued temporary key-cards that will automatically expire at the end of their visit.

Below the lobby, underground, is a parking garage which will likely open for business at the same time as the building. The garage will not be operated by BLS, but by a company that specializes in running garages.

From the lobby, the tour entered a chain-link sided construction elevator on the exterior of the building and headed up to the 22nd floor. We exited the elevator on what in actuality is the 21st floor – the building has no named thirteenth floor.

Superstition aside, we were now in the Forchelli Conference Center, named after class of 1969 alumnus, Jeffrey Forchelli. The conference center is equipped with a commercial kitchen for catering school events and will fill a role similar to that of the Subotnick Conference Center. The Forchelli Conference Center, however, surpasses the Subotnick Conference Center when it comes to both size and views. This large room has spectacular, panoramic views spanning from the Verrazano Narrows Bridge to lower Manhattan.

The tour left the conference center and headed down to the tenth floor to see what this building is really about – apartments. Neither Dean refers to Feil Hall as a dormitory. Privacy for the occupant, Dean Wexler indicated, is an

important goal. "Law students are adults," said Dean Gerber, and this building conveys that belief. The common hallways certainly are not dorm like – with high, tray ceilings, students might feel more like they live in luxury rentals.

Rents in the new building will be slightly higher than in existing BLS residences, which will remain part of the school's housing options. Actual prices for rent are still tentative, but Dean Wexler estimates that rent for a three bedroom apartment would be about \$950 per student, per month, rent for a two bedroom about \$1,000 and rent for a studio being incrementally higher. Prices would vary depending on a number of factors like number of bathrooms and square footage, though apartments with better views will not pay a premium. Given the fact that there are as many as 17 different layouts, prices are expected to vary.

The tour entered several different apartments ranging from studio to four bedroom units. All were thoughtfully laid out. Where one bathroom will be shared, for example, two sinks have been provided. Closets were made to fill all available space.

Dean Wexler estimated that 40% of the apartments are studios, many of which have sleeping alcoves – some more spacious than others. Each apartment has a kitchen proportional in size to the rest of the apartment. One line of three bedroom apartments has a kitchen with a pass-through that could easily fit three bar stools for an informal eating area.

All of the apartments will come furnished with kitchen appliances, and furniture including a bed, desk and chest of drawers. All living rooms and bedrooms are wired for cable and internet access and will be equipped with internet-based telephone service. The technical details are still sketchy since the school is working on a deal with a cable company for preferred rates and plans. There's no question, though, that students will be responsible for these costs. Students will also bear the burden of paying their electric bills to run things like the air conditioners installed in each apartment, but heat and water will be included in the rent. Laundry facilities will be located in the building cellar.

Though there was no electricity in the building yet, the apartments appeared to be well lit with plenty of windows to allow in natural light. Some apartments had nice bay windows. Views varied – those looking west have views of lower Manhattan, while those looking east have views of the now vacant Brooklyn House of Detention. When asked if the possibility of the House of Detention reopening concerned him, Dean Gerber said it didn't. "We hope that it will be re-developed, but we do not consider it to be a problem," he said. Apparently other developers do not consider the House of Detention a problem since two new large residential buildings have recently been constructed in locations directly adjacent to the residence hall.

One adjacent building, to be called the "Court House," is currently undergoing construction on the corner of Atlantic and Court Streets. The building will house a YMCA which Dean Wexler said will offer steeply discounted student membership fees, and what she said are rumored to be desirable retail establishments, like Williams-Sonoma.

Both of these buildings represent a marked change from the kinds of structures that previously characterized downtown Brooklyn. The zoning in the neighborhood does not generally support 21-story buildings, and BLS had to apply to the city for an area variance to permit such a large structure. It was during that process that the Board of

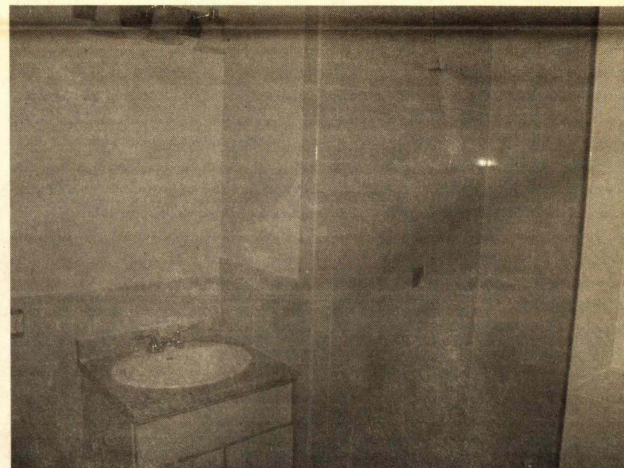
Standards and Appeals forced the school to trim a couple of floors from their plans.

When asked about the school's failure to get an area variance to allow for the full planned height, both Deans Wexler and Gerber seemed slightly disappointed. What it boils down to, they explained, was that two whole floors of apartments were lost. That means less housing for students, which they both obviously regret.

The overall change to the neighborhood seems to have ultimately helped in restoring the school's rocky relationship with the surrounding community that became stressed when construction on the building first began. Original excavation for the residence hall caused the collapse of a portion of an adjacent parking garage and some construction equipment cracked a window in a neighboring building. But since then there have been no incidents.

Dean Gerber said that he couldn't say whether everyone in the neighborhood had "made peace" with the new building, but confided that a city official had mentioned to him that one opponent to the construction recently told him that he thought it was a beautiful building, suggesting that tensions have indeed thawed.

In the next couple of months students will be asked to indicate their interest in living in the new residence hall, and an effort will begin to get students to start thinking about possible



A view of a sink and shower (without fixtures) in one of the bathrooms.

Photo by Greg Brown, '05

roommates. For reasons of logistics and fairness, the administration plans to have occupancy divided equally among incoming, current, and graduating students. Depending on the level of interest among current 1L and 2Ls, there may be a lottery to determine who will be allowed to live in Feil Hall.

No decision has been made yet whether housing in the new hall will be made available to students who currently live in BLS-owned housing.

Those students who have been awarded residence in the building will receive notice sometime in the spring – Dean Wexler suggested the possibility of notification by April 15th. Though Feil Hall is scheduled to be completed sometime during the Spring 2005 semester, students won't likely be able to start moving in until later that July.

Financing and constructing the new

residence hall has in many ways defined Dean Wexler's term at the helm of BLS. When asked how she thinks the new residence hall will affect the Brooklyn Law School in the *US News and World Reports* rankings, she said that she believes the building will attract students who might otherwise go elsewhere.

She indicated that she wants to leave what had been BLS's reputation as a commuter school in the past, and emphasized that the residence hall will significantly move things in that direction. She is looking for the residence hall to alleviate the pressure on students to find quality, affordable housing. Time will reveal whether these stated goals will be achieved, but from what can be seen of Feil Hall currently, it looks like the school is well on its way.

Opinions & Editorials

The RIGHT Side of Things: A Look at Supreme Court Justices

By David Schlachter, '07

The news came like a lightning bolt from up on high. The highest court in the land announced that Chief Justice Rehnquist has thyroid cancer. Of course in doing so, the Court did what it has much practice in: avoiding the issues. Instead of giving details about the cancer, its progression, or the treatment, the Court stated only that C. J. Rehnquist will be back. For many involved in the political arena, however, his falling ill is a concrete sign that this presidential election will likely determine a partisan shift in the Supreme Court.

With or without the details of the cancer, it is almost certain that a couple justices will retire from the Court within the next four years. Though the makeup of the Court has not changed in the past ten years, with C. J. Rehnquist and J. O'Connor getting on in years, there will likely need to be appointments made in the coming few years. With both of the senior justices on different sides of the aisle, whoever is president next will have considerable power to alter the partisanship of the Court. That is unless the senate once again refuses to affirm any well qualified nominees, or it does what Dems do best, and filibuster.

This leads to the question of what type of justice is better suited to sit on the high Court. The binding authority on the standard a Court justice should use is stated clearly in *Marbury v. Madison*: "It is emphatically the province and duty of the judicial department to say what the law is." Everyone agrees that this is good law. It is clear that the justice must say what the law is. However, there is disagreement regarding the question of emphasis in the

Marbury mandate. The difference between conservative and liberal judges is the way each interprets the law, and this law is likewise bipartisan in interpretation. Conservative justices read, "...say what the law is." Liberal justices, on the other hand, "...say what the law is." This is a very crucial distinction.

President Bush stated it clearly when he said he would "appoint judges who know the difference between personal opinion, and interpretation of the law." This is the conservative point of view stated very succinctly. Conservative judges try to read the law and then interpret its meaning. In order to do so the judge looks at legislative intent, precedent, history, and the values and thoughts of the Founding Fathers of our nation. When an issue of law comes before a judge, that judge will interpret the law to the best of his or her ability.

This is prudent because the justice keeps the meaning of the law, as the legislative body intended it, intact. There is a very simple chain of events that the judge upholds: Citizens vote for representatives; representatives draft the laws; the judge applies and upholds the laws as intended. The legislative body has the job and duty to make the laws, and conservative judge keeps it this way. Therefore, the citizen retains control over the laws, for they remain the product of the elected officials and not appointed judges.

This clearly contrasts with the view of liberal judges. Liberal judges set forth their agenda to say what the law is. To them the legislative draft of a law is just a *draft*. That is, when the law comes before the judge, the judge will interpret what he or she thinks the law ought to be. To do this, the judge looks at his or her own view of the current trends in

society. Forsaking the fact that the legislative body is elected by the will of the people, the liberal judge will interpret the law that best fits with his or her own ideas of what the law should be saying. It is no wonder, then, that many scholars have taken the point of view that the judge takes a result oriented approach to legal interpretation. Simply put, the judge first decides what the law should be, then writes the opinion defending that point of view.

John F. "who is no JFK" Kerry has stated on numerous occasions that he will elect federal judges who will not overturn a women's right to have an abortion. When analyzing the relevant cases on the issue, namely *Roe v. Wade* and *Planned Parenthood v. Casey*, the reader will not find the court stating that there is an absolute right for a woman to have an abortion. The only right accorded by the court is for a pregnant women to be able to choose to abort before viability.

It seems, therefore, that this scarce tactic – trying to play on the heartstrings of those who are pro abortion – is off base. The fundamental right has been established. Conservative judges, or any judges for that matter, are not out to restrict that right. There is no need for people to fear that a conservative judge, one that upholds precedent, will undo that right. In other words, every judge will uphold a woman's right to have an abortion. As was characteristic of his campaign, Kerry's words lacked substance.

The people's fear should be that whatever law the citizens have voted on will no longer be law once it reaches a liberal Supreme Court. With a liberal Supreme Court residing from the 1940s until the 1970s, ruling after ruling came down constantly increasing regulation

on private business by expanding the commerce clause power, and empowering affirmative action almost to the point where state employers and universities had to cater nearly exclusively to minorities. It was a conservative Court that regained a hold of the proper balance on both of those issues.

If a voter fears that his or her vote will not count because a court made up of non-elected judges will instill its own ideas of what the law should be, then that voter ought to fear liberal judges. The balancing power of the judiciary is its ability to be counter-majoritarian. This serves to protect minorities' rights, not impede on the majority of voters. If a judge has no regard for legislative intent, precedent, or the values our Founding Fathers instilled in the Constitution, that judge will very likely push forward views that are out of touch with the heavy majority of Americans.

Currently the Supreme Court has a very delicate balance. There are three consistent conservatives and three consistent liberals. J. O'Connor and J. Kennedy are swing voters. With two vacancies to open up this term the president can greatly sway the leaning of the Court. Two justices of either partisanship will alter the Court's majority in that direction. The wise choice would be to nominate justices that have a clear vision of what it means to interpret the law. That is, justices that rule on the law in a way that preserves the intent of the legislature, the will of the people, and stays within the value system embedded in the United States Constitution. That choice should be conservative justices. Retain your political voting power, nominate conservative judges. It is that clear.

A Brief Look at What the Student Bar Association Has on the Horizon

SBA

Continued from p. 3

Even Corey from CulinArt seems friendlier lately. In a time of international uncertainty and high unemployment – our cafeteria is *lowering* prices. Re-elect this SBA already!

Our elected officials also recently organized Halloween and Election Night events. In the continuing effort to reach out to our neighbors across the East River, the school co-sponsored a Halloween Party in the city with other area law schools. This party was the culmination of meetings with social coordinators from the other schools, beginning in August. Nov. 2nd found students in the student lounge with the election returns coming in on a large screen via projector, electoral maps, BarBri certificates, and food and drink to celebrate/mourn the outcome.

The SBA has not stopped at these small achievements. A post-Thanksgiving 'Beer & Pizza' is planned to ease us, especially 1Ls, into the shock of fall finals. Perhaps it will be called "Stop Outlining for One Second and Have a Drink". Speaking of drinks, the SBA promises not to discriminate against anyone who drinks.

offer in December "Sugar and Caffeine" breaks in the student lounge, branching beyond doughnuts and coffee. And don't get too excited 3Ls...there may actually be a Barrister's Ball in the spring. Just in case, dust off those prom dresses.

Something on your mind? Tell your friendly SBA delegate or a member of the E-Board. In perfect mind/body harmony, even the SBA Office in Room 509 is more welcoming, more comfortable...a new-ish couch has been spotted, the walls are clean. Want a tour of the fabulous-looking dorm on Boerum? SBA will be there. Think some course offerings are missing from the curriculum? SBA will be there. Losing your mind in the proliferation of bulletin board flyers? SBA will be there. Want to play soccer or basketball? Well, you get my drift. And any homage paid to the latest student government would not be complete without the reliable Tom Parker and the refreshing addition of Dean Rosato as a mouthpiece and an ear for the student community.

But like your LSAT score, nothing's perfect. Tim has expressed that general apathy on campus remains the biggest obstacle the SBA has in advocating for the students. So like the perfect journal-



Timothy Oberweger, SBA President, has fun while getting the job done.
Photo by Stephen Harris, '07

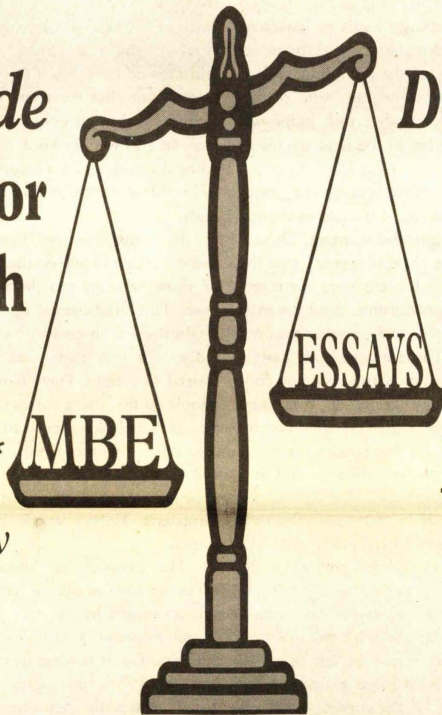
ist I never was – this article will end where it began. The website (thanks in large part to Technology maestro Jessica Segall). Instead of playing internet Backgammon in class today (did I say that out loud?), check out: <http://www.brooklynlaw.org/>. Or:

<http://www.brooklynbsba.com/>. This SBA's so smart, they reserved more than one domain name. The possibilities for our future are endless. Next stop, a higher ranking...

OBVIOUSLY, THE MBE IS MORE IMPORTANT THAN THE ESSAYS...

Some States Do Not Grade The Essays For Students With Very High MBE Scores!*

(Who Are Presumably Assured Of Passing.)



Some States Do Not Grade The Essays For Students With Low MBE Scores!*

(Who Are Presumably Assured Of Failing.)

Some States Only Grade The Essays For Students With Moderate MBE Scores!*

*Information provided by Susan M. Case, Director of Testing for the National Conference of Bar Examiners, in an article published in *The Bar Examiner*, November 2003 edition.



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