

The Justinian

Volume 2006
Issue 1 *October*

Article 1

2006

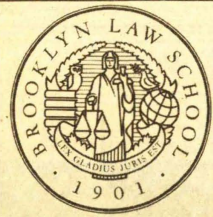
The Justinian

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(2006) "The Justinian," *The Justinian*: Vol. 2006 : Iss. 1 , Article 1.
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BROOKLYN LAW SCHOOL NEWS

et al.: The Justinian

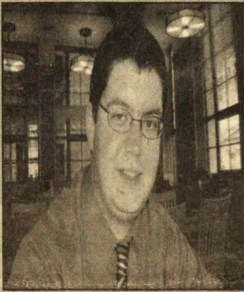
Bringing You BLS in Print

October 2006

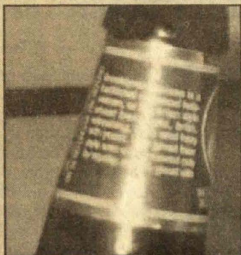
Vol. 2006 No. 001



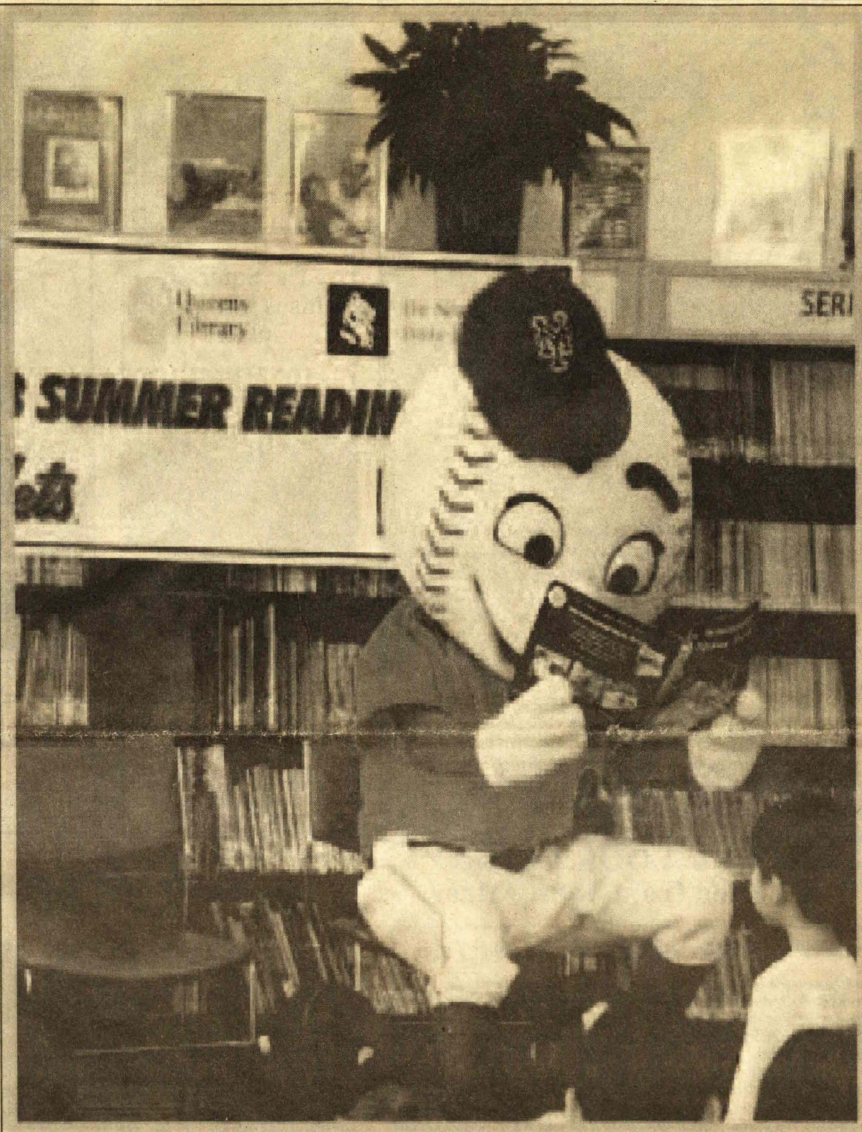
The Crawford Decision and Implications for Prosecuting Domestic Violence - page 4.



Ethan Weber thinks the BLS mascot would be the Buffalo Billable Hours. Read other student recommendations on page 3.



Ethics of Naming: "Beer Pong" versus "Beirut" page 8



Heartbreaking: Not so amazing Met teaches local youth the need to plan for post post-season.

The Brooklyn Law School News is a medium for the student body, faculty, and administration to express viewpoints, advertise events, and engage in intellectual discourse. The Brooklyn Law School News aims to promote a strong sense of school community, student leadership and a responsive administration.

Check out www.blsnews.com for more

Published by BrooklynWorks, 2006

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BROOKLYN LAW SCHOOL NEWS

Staff

Editors - in - Chief
Viviana Beltrametti
Walker

Executive Editors
JP DeVerna
Nicole Zerillo
Yael Friedman
Stephen Harris
Heather Kalachman

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Brooklyn Law School News

250 Joralemon Street
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The Brooklyn Law School News is a monthly publication written and produced by the students of Brooklyn Law School. The opinions herein represent the opinions of the individual article authors and do not represent the views of the student body as a whole or the administration. All students and faculty are encouraged to write. To submit articles, bring them to the SBA Office in room 509 or email them to blsnews@hotmail.com. All articles are subject to editing and approval by the editorial board.

SECOND LOOK CLINIC: A Letter from John Miras

Dear Friends at Brooklyn Law School,

Today was a day where it felt good to be a lawyer. Last year, while working with the Second Look Clinic, I was given the case of Jeffrey Deskovic. For those of you who don't know, the Second Look clinic investigates claims of innocence among prisoners whose appeals have been exhausted.

Jeffrey was 16 years old in 1989 when he was convicted of the rape and murder of 15 year old Angela Correa in Peekskill, NY. The police told Jeffrey they were suspicious of him because he expressed interest in solving the crime. They told Jeffrey to take a DNA test, which would either exonerate or inculpate him. Jeffrey voluntarily took the test.

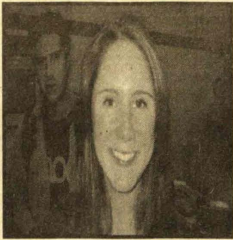
A few weeks later, Jeffrey "confessed" to the crime after a 7 1/2 hour interrogation without food or water, no access to his mother or an attorney, after being told he failed a lie detector test, and after being told the police believed he was the murderer. Jeffrey told the police, as he says, "what they wanted to hear" so that he could leave. He believed that since he knew he was innocent the DNA test would prove this and everything would be sorted out. When the DNA test came back it exonerated him. But the prosecutor continued to press charges. They argued to the jury that the DNA belonged to a boyfriend of Angela. However, they never tested the DNA against this alleged boyfriend. Once Jeffrey confessed the police closed their eyes to all other possible leads or suspects. The prosecutors argued that Jeffrey, upon seeing Angela have sex with her boyfriend, was so jealous that he raped and murdered Angela without leaving one bit of forensic evidence. Three hairs were also found on Angela, none of them belonging to Jeffrey. The jury, hearing Jeffrey's so-called confession, convicted him, despite the forensic evidence exculpating him. Judge Colabella sentenced Jeffrey to 15 years to life in prison. As one's chances of being paroled in New York State is about .001%, this meant Jeffrey was going to spend the rest of his life in prison, for a crime he did not commit.

Jeffrey's appeals were all denied. He even made it to the Second Circuit where once again he ran into a stonewall. Jeffrey spent the next 16 years in prison. Jeffrey wrote to the Second Look Clinic and I was given his case in 2005. His confession always seemed suspicious to me, and the lack of forensic evidence was compelling. In exchanged numerous letters with Jeffrey and talked to his mother many times on the telephone. I tried to track down possible leads pointing to other people who may have been the murderer. Other leads opened themselves up, such as the discovery of another

murderer who happened to be in the Peekskill area a year before Angela's that was unsolved. If there was DNA evidence from this Next

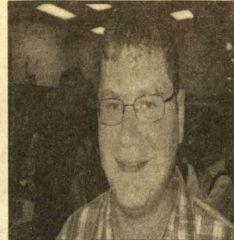
If BLS had a mascot, what would it be?

Roving Photographer Stephen Harris Asked BLS Answered



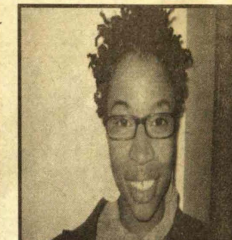
Krista Shoquist, 2L

The Squirrel. This is a squirrelly place.



Dan Schudroff, 2L

The Bridges.



Renina Jarmon, 2L

The Black Bears. They hibernate, and they're very resourceful.



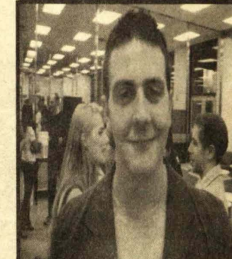
Nick Scott, 3L

The Gunners, or the Sally Mae Slaves.



Bethany Jenkins, 1L

The Badgers.



Will Page, 1L

The Ambulance Chasers.

The Student State of the Union



By S.B.A. President
Brian Simeone

Fall is here, and with the changing leaves comes a changing of the guard; this year's Student Bar Association will not settle for second-tier service to the student body. With a legacy of excellence and a promising lineup in the future, it behooves you to read on. The SBA is proud to announce some recent accomplishments for the student body in the past year. We have worked hands-on with the administration to obtain law school funding for a completely renovated student lounge. We have made available affordable health insurance to all BLS students. Additionally, our "Brooklyn for Brooklyn" campaign has resulted in a student discount program with approximately 25 participants in the area (log onto www.brooklynbsba.com for a list and map of local vendors). What's more, our largest and most successful Barrister's Ball to date entertained almost 500 attendees; block off the entire month of March because you won't want to miss it this year. Our new Outline Bank on our website is operational, and we are accepting

submissions. It's time for you upperclassmen to show the world how you landed that prestigious summer associate position at Jacoby Myers. BARBRI and the SBA invite you to the next Beer & Pizza events on October 24th and November 13th, the latter being a canned foods drive as well. Most importantly Blue Book Party 2006 approaches. A test of such mind-boggling intensity and of such academic magnitude deserves nothing short of an epic celebration. So be prepared - on November 1st, this year's Blue Book Party will be worth approximately 10% of 2 credits worth of your life. For you 1Ls, keep your ear to the pipes of the internet for your 1L Delegate e-mail updates. Additionally, stay tuned next semester for the second annual BLS Law Revue (an open-mic night in Geraldo's),

Race Judicata (an annual 5K charity run through scenic Brooklyn), and of course the Barrister's Ball. Remember, the SBA is here to help make your life a little better. We would like to remind you that your opinion and input is crucial to the success of our programming. Feel free to e-mail your questions, complaints or concerns to your 1L Delegate or to sba@brooklaw.edu, or stop by the SBA office in Room 509 to speak with a representative - or if you just need to share a good cry. We are always receptive to new student group proposals; we sponsor common interest groups and athletic endeavors such as softball, basketball and yoga. If you would like to become involved in a committee or help us coordinate an event, visit our website. Again if you ever have anything to share positive (we can dream) or a concern, please pop in and try and catch us in the SBA office, we being Brian Simeone, Dana Gremaux, Amanda Rogers, Nick Reiter, James Renken and Joe Goljan, or any one of the 22 SBA Delegates.

As always, you stay classy, Brooklyn Law School.

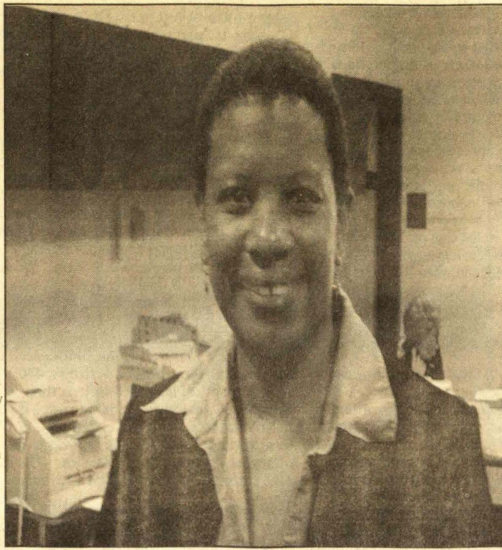
Faculty Profile

Intrepid reporter, Arielle Staller, interviews Director of Student Services, Camille Chin-Kee-Fatt.

Is law school worth the late night study sessions, the back problems suffered from lugging massive text books around, and the overdoses of caffeinated beverages? According to Camille Chin-Kee-Fatt, it is. "The JD is the best degree you'll ever have," says the Director of the Office of Student Services at Brooklyn Law School.

Ms. Chin-Kee-Fatt speaks from experience, attributing her diverse professional career to her degree. Having worked in corporate law, various non-profit organizations, and as the head of legal recruitment for the New York City Law Department and at the Attorney General's Office, Ms. Chin-Kee-Fatt brings a wealth of knowledge to the position.

Although her position as Director began in July, Ms. Chin-Kee-Fatt is well versed with the BLS community. About a decade ago, she was a career counselor in the Career Center. "Brooklyn Law School has stayed near and dear to my heart," Ms. Chin-Kee-Fatt professes, explaining that the passion and drive she sees in the students and faculty here, was not apparent at many other law schools. So, when Ms. Chin-Kee-Fatt was contacted for the director position, she happily returned to BLS. "This is the path I'm supposed to be on," declares Chin-Kee-Fatt. As Director, Ms. Chin-Kee-Fatt explains that the Office of Student Affairs is on the most basic level "here to help with any and all student issues." Whether it be an issue with a professor, the bursar, financial aid, residence life, health insurance, division transfers, joint degrees, or a student organization, the Office of Student Affairs is the place for students to go "when they can't find the answers," says Ms. Chin-Kee-Fatt. Not only is the office available to address problems, but it is available to guide students academically and professionally.



"I'm always thinking what will serve students better in their career and in future settings. Working with students is what brings me joy."

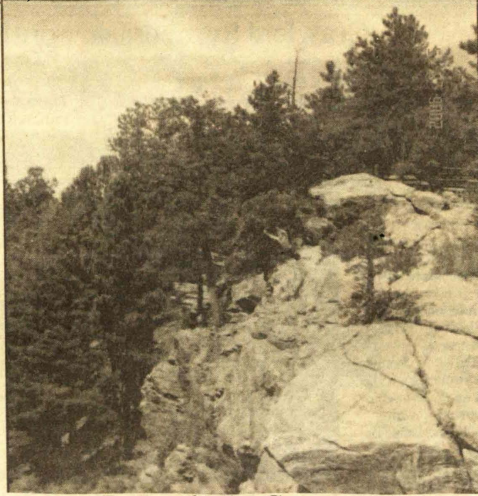
"Law school is your time to sample," says the Director. And while in school, students should take advantage of as many internships, externships, and jobs as possible. "Keep your eyes on the prize," she advises, "as to what you are here for and what you can do." She advises that students sample different types of jobs, including those that make you step out of your box, because later in life one might want to change positions. Knowing what's out there as well as having various experiences on a resume may make it a simpler transition.

Ms. Chin-Kee-Fatt knows what it's like not to be given the chance because of what's not, or rather what is on a resume. After working in corporate law in ERISA and Securities, she decided to work in nonprofit. In the early 1990's leaving large corporate firms for non profit sectors was not so prevalent, "no one would give me the chance," she explains.

Although she eventually transitioned into nonprofit, that experience, according to Ms. Chin-Kee-Fatt, aided in her ability to be a good legal employer later on. Born in Trinidad, she also credits her background as an immigrant and daughter of a single-parent household in enabling her to see more than one side of the picture. This different perspective, Ms. Chin-Kee-Fatt notes, has given her a unique view that allows her to be an understanding student advisor.

She states, "I'm always thinking what will serve students better in their career and in future settings. Working with students is what brings me joy."

The Office of Student Services is located in the Dean's Office on the 9th floor of the BLS main building. Appointments by email are suggested.



Beyond The Courtyard Random Student Revelations This issue: J.P. DeVerna's

Few people understand the psychology of dealing with a highway traffic cop. Your normal speeder will panic and immediately pull over to the side. This is wrong. It arouses contempt in the cop-heart. Make the bastard chase you. He will follow." Hunter S. Thompson's words rung loudly as the blinding lights of the Utah State Trooper shone in my rearview. I considered my options: The rental was in my friend's name and I thought we could lose him in the night. Alas, I obediently pulled over and opened my window. Unaware of how close he was from a high speed chase, the trooper calmly asked how we were doing and wondered why we thought we were being pulled over. I answered we were far better before he pegged us for overtaking his squad car, but wondered why we still got pulled over for going 40 in a 45. We passed two 30mph signs, the straight faced officer answered. Amused, he forgave my indiscretion and let us on our way. Two days and a thousand miles away, we spotted kids cliff diving as were leaving Mt. Rushmore. We looked at each other and without a word pulled over. I was half way up when I realized my friend stood safely by the car. Unabashed, I turned back toward the rock and continued my climb. When I reached the point where the kids were jumping from, a boy spit a wad of chew and said its 60 feet to the water and only one person he knew got hurt- she broke her tailbone. He turned and jumped. When my turn came I peered over, then at my friend with camera ready counted to three, then to five and jumped. I never realized how high 60 feet was until I was about 30 feet down. The water hit hard. I had entered jack-knife. Thank god it was cold. Before I could let out my agony scream I heard the highschoolers cheering the size of my splash. Tight lipped I swam to the shore and for some reason which I'm still not quite sure of, began to once again climb the rock. After my second jump, I walked toward the car. My friend asked if it hurt more the second time, I looked over and answered that we would have been better off in the high speed chase.

**Bored? Angry? Exultant?
Anxious? Appreciative?
Concerned? Dissatisfied?
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Domestic Violence and the 6th Amendment Right to Confrontation

by Yael Friedman

The 6th amendment guarantees the right of an individual to confront witnesses against him. In *Crawford v. Washington*, decided in 2004, the Supreme Court, in an opinion by Justice Scalia, refined this right by holding that testimonial statements are not admissible in court without a prior opportunity to cross-examine, in the case of the witness who is unable to testify at trial but who had made a previous statement against the defendant. Previously, under *Ohio v. Roberts* (1980), such statements by unavailable witnesses were often admitted if they passed a "reliability" test. In rejecting this, Scalia wrote that, "Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty."

While the constitutional implications of confrontation are obvious, its application to statements of domestic violence witnesses is murkier and raises a host of practical questions. Published by BrooklynWorks, 2006. Last Friday, a symposium convened at

BLS to address the legacy of *Crawford* and its progeny, including seemingly intractable questions that have arisen on the domestic violence front.

One of the main tensions left unresolved by *Crawford* lies whether to admit the statements of battered women made about their batterers, which they subsequently do not wish to repeat in court, for fear of retribution, or for other reasons inherent specifically in domestic violence. Many of these statements are made in the initial 911 emergency call in which the victims are both seeking emergency aid, and in the same conversation, almost inevitably relate part of the "story" of abuse by the perpetrator and identify him. This often turns a purely emergency aid call to a testimonial statement. Often, the only statements the prosecutor will have will be the 911 recording, as the victim does not wish to participate in the prosecution of her former, or present, domestic partner.

Two cases, *Davis v. Washington* and *Hammon v. Indiana*, represent the latest efforts by the Court to delineate when statements made by domestic violence

victims can and cannot be used against the defendant at trial when the victim does not testify. In essence, the Court tried to answer the question of when these statements are to be considered testimonial and when not.

In *Davis*, Michelle McCotry called a 911 operator and answered the operator's questions in order for the operator to appraise the situation and help McCotry accordingly:

"911 Operator: Hello.
"Complainant: Hello.
"911 Operator: What's going on?
"Complainant: He's here jumpin' on me again. [***8]
"911 Operator: Okay. Listen to me carefully. Are you in a house or an apartment?
"Complainant: I'm in a house.
"911 Operator: Are there any weapons?
"Complainant: No. He's usin' his fists.
"911 Operator: Okay. Has he been drinking?
"Complainant: No.
"911 Operator: Okay, sweetie. I've got help started. Stay on the line with me, okay?"

"Complainant: I'm on the line.
"911 Operator: Listen to me carefully. Do you know his last name?
"Complainant: It's Davis.
"911 Operator: Davis? Okay, what's his first name?
"Complainant: Adran
"911 Operator: What is it?
"Complainant: Adrian.
"911 Operator: Adrian?
"Complainant: Yeah.
"911 Operator: Okay. What's his middle initial?
"Complainant: Martell. He's runnin' now." App. in No. 05-5224, pp. 8-9. McCotry presumably could have testified as to whether Davis was her assailant, but she did not appear. The Supreme Court of Washington, with one dissenting justice, also affirmed, concluding that the portion of the 911 conversation in which McCotry identified Davis was not testimonial, and that if
Continued on Page 3
portions of the conver-

Crawford Symposium, continued from page 3

Second Look Clinic, Continued from page 2

sation were testimonial, admitting them was harmless beyond a reasonable doubt. (Davis).

In Hammon, the police answered a domestic violence

report at the home of Amy and Hershel Hammon. The police spoke to both Hammons and Amy Hammon eventually made several statements to one of the officers and handwrote the following: "Broke our Furnace & shoved me down on the floor into the broken glass. Hit me in the chest and threw me down. Broke our lamps & phone. Tore up my van where I couldn't leave the house. Attacked my daughter." (Hammon).

At trial, Hammon did not appear, and her statement, as well as the statement of the officer recounting what he heard, were admitted as hearsay exceptions (his as a present sense impression and Hammon's as an excited utterance). The trial court concluded that these statements were not testimonial. The Supreme Court rejected this conclusion.

Under Crawford, a statement is clearly testimonial (and thus inadmissible at trial without chance to cross-examine) if it is the product of police interrogation. Thus, in the joint Hammon/Davis opinion, the court held:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.

They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose

of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. This presents a deceptively easy approach to determining whether a statement by a domestic violence victim is testimonial or not. For instance, what would occur in the case of a 911 call where, interspersed with information necessary to provide aid to the victim, there are statements that are not necessary for emergency purposes but are helpful in the prosecution of the defendant? Furthermore, it was argued by members of the panel, that where such "testimonial" information may seem unnecessary to help the victim in most instances, in the case of domestic violence the "emergency" is ongoing and does not end when the victim hangs up the phone. Very often the batterer returns and the police could use more information than when they normally do when helping the victims of other crimes where the encounter does not last beyond the crime at hand.

This forces trial courts to take 911 calls line by line and decide whether they represent testimonial or non-testimonial statements. Aside from the general problems associated with such an approach, is also the notion that perhaps, in the cases of domestic violence calls, the question should not turn on the testimonial nature of the statements at all and there should be a domestic violence exception. Domestic violence cases are notoriously hard to prosecute, not least because the victim does not wish to testify and none of her statements may be used. Perhaps Crawford is not the appropriate approach in such cases.

murder, and it could be linked to Angela's murder, this would be highly indicative of Jeffrey's innocence.

Thankfully, the Innocence Project accepted Jeffrey's case last year. I met with Michelle Rosengarten and Nina Morrison from the Innocence Project. I gave them all the leads I had tracked down that cast doubt on Jeffrey's guilt. They included these leads in a motion to Judge Colabella asking for a re-test of the DNA. The hope was to run the DNA from Angela's murder against New York State's databank of offenders, in the hopes of finding a match. The District Attorney of Westchester, Janet DeFiore, agreed to have the DNA retested. It was done.

Last Monday I got a call from Nina Morrison from the Innocence Project. There was a match! The DNA from Angela's murder was a dead-on match with a man who was already in jail for a murder in the Peekskill area. The police approached him and he confessed. The District Attorney immediately agreed to have Jeffrey released and exonerated. A hearing was set for Wednesday morning at the Westchester County Courthouse where Jeffrey was sentenced to life in Prison 16 years ago.

I arrived at the courthouse at 9am. We all waited until 11 am for Jeffrey to finally arrive. I guess after waiting 16 years, two more hours wasn't much for Jeffrey. But Judge Colabella refused to have anything to do with this hearing. So Judge Richard Molea, upon joint motion of both Jeffrey's lawyers at the Innocence Project and the District Attorney, granted Jeffrey's 440.10 motion exonerating him. It all happened in less than 10 minutes. Over 16 years in prison and in 10 minutes it was all over. Jeffrey walked out of the courtroom in a blue suit. He spent the next few minutes talking to his family, many of whom he hadn't seen in 16 years. His mother who never gave up hope was in tears as were many members of his family.

Continued on page 7



FALL 2006

NATIONAL ENROLLMENT GUIDE

FIRST YEAR STUDENTS

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All students must have at least \$175 on account (fully credited toward the bar review tuition) to attend the MPRE Review, receive the MPRE Volume and access the MPRE Software at barbri.com.

barbri® Fall 2006 Review Lecture Schedule

CIVIL PROCEDURE

*Running time: 7:30 except where otherwise noted

LIVE → Sun., Nov. 5 - 10:00am (hrs. 1-3)
 → Sun., Nov. 5 - 2:00pm (hrs. 4-7)
 Tue., Nov. 14 - 6:00pm (hrs. 1-3)
 Wed., Nov. 15 - 6:00pm (hrs. 4-7)
 Mon., Nov. 20 - 9:30am (hrs. 1-3)
 Mon., Nov. 20 - 1:30pm (hrs. 4-7)
 Sun., Nov. 26 - 9:30am (hrs. 1-3)
 Sun., Nov. 26 - 1:30pm (hrs. 4-7)
 Tue., Nov. 28 - 6:00pm (hrs. 1-3)
 Wed., Nov. 29 - 6:00pm (hrs. 4-7)
 Fri., Dec. 1 - 9:30am (hrs. 1-3)
 Fri., Dec. 1 - 1:30pm (hrs. 4-7)
 Tue., Dec. 5 - 9:30am (hrs. 1-3)
 Tue., Dec. 5 - 1:30pm (hrs. 4-7)

CONSTITUTIONAL LAW

Running time: 6:30

Sat., Nov. 11 - 9:30am
 Mon., Nov. 20 - 4:00pm (hrs. 1-3)
 Tue., Nov. 21 - 4:00pm (hrs. 4-7)
 Thurs., Nov. 30 - 9:30am
 Sun., Dec. 3 - 9:30am
 Wed., Dec. 6 - 4:00pm (hrs. 1-3)
 Thurs., Dec. 7 - 4:00pm (hrs. 4-7)

CONTRACTS

Running time: 7:10

Fri., Nov. 10 - 9:30am
 Sat., Nov. 11 - 9:30am
 Tue., Nov. 21 - 9:30am
 Sun., Nov. 26 - 9:30am
 Mon., Nov. 27 - 9:30am
 Mon., Dec. 4 - 9:30am
 Fri., Dec. 8 - 9:30am

CORPORATIONS

Running time: 3:20

Sat., Nov. 11 - 2:30pm
 Tue., Nov. 14 - 6:00pm
 Fri., Nov. 17 - 9:30am
 Wed., Nov. 22 - 9:30am
 Fri., Dec. 1 - 9:30am
 Thurs., Dec. 7 - 9:30am

CRIMINAL LAW

Running time: 3:00

Mon., Nov. 13 - 9:30am
 Sat., Nov. 18 - 9:30am
 Wed., Nov. 22 - 9:30am
 Sun., Nov. 26 - 1:30pm
 Tue., Nov. 28 - 6:00pm
 Thurs., Nov. 30 - 1:30pm
 Wed., Dec. 6 - 9:30am

CRIMINAL PROCEDURE

Running time: 3:20

Sun., Nov. 12 - 2:30pm
 Mon., Nov. 13 - 1:30pm
 Wed., Nov. 15 - 6:00pm
 Sat., Nov. 18 - 1:30pm
 Wed., Nov. 22 - 9:30am
 Thurs., Nov. 30 - 9:30am
 Wed., Dec. 6 - 6:00pm

EVIDENCE

Running time: 7:10

Sun., Nov. 12 - 10am ← **LIVE**
 Wed., Nov. 15 - 9:30am
 Fri., Nov. 17 - 9:30am
 Sun., Nov. 19 - 9:30am
 Wed., Nov. 29 - 9:30am
 Sat., Dec. 2 - 9:30am
 Mon., Dec. 4 - 9:30am

1L ESSAY ADVANTAGE

Running time: 4:00

Sun., Nov. 12 - 10:00am ← **LIVE**
 Thurs., Nov. 16 - 9:30am
 Sat., Nov. 18 - 9:30am
 Fri., Dec. 1 - 9:30am
 Fri., Dec. 8 - 9:30am

FUTURE INTERESTS

Running time: 2:10

Sun., Nov. 12 - 3:00pm
 Mon., Nov. 27 - 3:00pm
 Sat., Dec. 2 - 2:00pm
 Fri., Dec. 8 - 9:30am

NEW YORK PRACTICE MINI REVIEW

Running time: 3:30

Fri., Nov. 17 - 9:30am
 Sun., Nov. 26 - 9:30am
 Wed., Dec. 6 - 4:00pm
 Thurs., Dec. 7 - 4:00pm

REAL PROPERTY

*Running time: 6:40 except where otherwise noted

Fri., Nov. 10 - 9:30am
 Thurs., Nov. 16 - 9:30am
 Sun., Nov. 19 - 9:30am
 Wed., Nov. 29 - 9:30am
 Sun., Dec. 3 - 9:30am

TORTS

Running time: 5:00

Sun., Nov. 12 - 9:30am
 Thurs., Nov. 16 - 9:30am
 Tue., Nov. 21 - 9:30am
 Tue., Nov. 28 - 9:30am
 Sat., Dec. 2 - 9:30am

NEW YORK TRUSTS

Running time: 3:30

Sat., Nov. 4 - 10:00am ← **LIVE**
 Sun., Nov. 19 - 10:00am
 Mon., Nov. 27 - 6:00pm
 Wed., Nov. 29 - 6:00pm
 Sat., Dec. 2 - 9:30am
 Mon., Dec. 4 - 9:30am

NEW YORK WILLS

Running time: 7:00

Sat., Nov. 18 - 10:00am
 Thurs., Nov. 30 - 9:30am
 Sun., Dec. 3 - 9:30am
 Tue., Dec. 5 - 9:30am



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MONTAGUE B/W COURT & CLINTON (BROOKLYN HEIGHTS)

What's in a Name?

The Emotional and Legal Consequences of Calling Oneself a Father

by Heather L. Kalachman

What does it mean to be a "father"? To some, it is a role of love and affection, of understanding and mentoring, and of devotion. To others, it may mean wrecked childhoods, abandonment, abuse, or indifference. Who defines what it means to be a father? Usually it is defined by the relationship between a man and child (or lack thereof). Most recently, it was defined by the New York State Court of Appeals.

In January 1996, a baby girl was born in Guyana to one "Shondel J." She believed the father of the girl to be "Mark D.," who, although he had some doubts as to his paternity, agreed and accepted his role as the girl's father. Mark lived in New York when the girl was born, but he visited her in Guyana, introduced his family to her, sent her cards at Christmas signed "love, Daddy," bought her gifts, provided financial support, and even let the girl take his last name. He continued to visit with his "daughter" when she moved with Shondel to New York. There are photographs of Mark and this little girl together, seemingly happy pictures of a father and his little girl.

However, the financial support Mark was provided began to waiver, and in August of 2000, Shondel sought orders of filiation and support in New York Family Court. The next month, Mark sought his own order, for visitation with the little girl. He claimed in his visitation petition that he was the girl's father and that he loved her.

When Shondel and Mark appeared in the support proceedings in October 2000, Mark requested a DNA-paternity test. Although New York State law provided that a paternity test should not be given if it was not in the best interests of the child due to equitable estoppel, the court mistakenly ordered a DNA test. This test

showed that Mark was not the father of Shondel's little girl. The girl was four and half years old. Mark was the only father she had ever known. Because of the result of the erroneously ordered paternity test, Mark completely cut all ties with the girl he had helped to raise for the last four and a half years.

Although the case of Shondel J. v. Mark D. for child support did go to trial, another paternity test was erroneously ordered, with the intention that the issue at trial would be limited to equitable estoppel. Like the first test, this test showed that Mark was not the father of Shondel's child. However, at the trial it was still found that Mark was equitably estopped from denying his paternity because he had held himself out as the child's father. The child's interests at the trial were represented by law guardians from a non-profit law firm in Brooklyn, New York-The Children's Law Center. There was no doubt that the child considered Mark to be her father. The court ordered Mark to pay child support. There had previously been case law throughout all four departments of the



"In other words, typically where a man has acted in a fatherly role-has held himself out to be a child's father-and that child has relied on these representations to her detriment, a court should not order a paternity test."

Appellate Division of the Supreme Court of New York, clearly stating that a paternity test should not be given where it is not in the best interest of the child due to equitable estoppel. In other words,

typically where a man has acted in a fatherly role-has held himself out to be a child's father-and that child has relied on these representations to her detriment, a court should not order a paternity test. The New York Court of Appeals had yet to weigh in on the issue, but it decided to take Mark's appeal in this case.

May 11, 2006 marked the first time in history that the Justices of the New York Court of Appeals came from their bench in Albany to hear oral arguments on Long Island. The oral arguments were held in Suffolk County, in the town of Central Islip. All nine Justices of the Court were present. Shondel J. v. Mark D. was one of four cases the Court heard that day. During oral arguments, Mark's attorney, Ann L. Detiere, argued that Mark was not the biological father and the courts therefore should not impose financial support obligations on him. Next, Shondel's attorney, Steven P. Forbes, argued that the child relied on Mark's representations that he was her father.

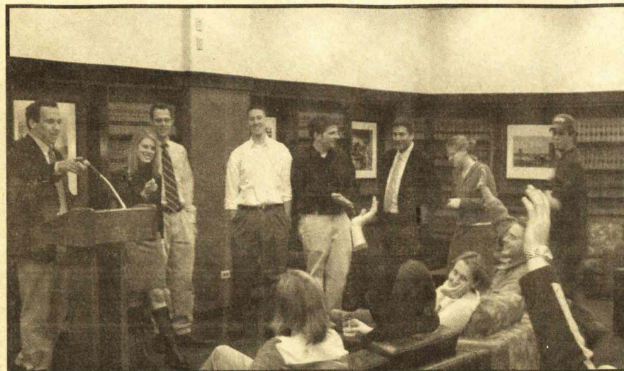
Finally, Barbara H. Dildine, an attorney from The Children's Law Center, argued on behalf of the child that Mark had built a relationship with the child and that interests here were not just financial, but a decision favoring estoppel would go towards achieving stability in familial relationships.

The Court officially handed down its decision in the Matter of Shondel J. v. Mark D. on July 6, 2006. The Court stated "[W]e hold that a man who has mistakenly represented himself as a child's father may be estopped from denying paternity, and made to pay child support, when the child justifiably relied on the man's representation of paternity, to the child's detriment. We reach this conclusion based on the best interests of the child." This is an important case for children in New York State. While it is true that no court order can force a man to form or sustain a relationship with a child, regardless of biology, this case will set the stage for future would-be-fathers who have doubts about their paternity to seek a paternity test before a child gets attached. It is in the best interests of a child that a man who doubts his paternity finds out from the beginning whether or not he is the father, so he can make an informed decision about what sort of relationship he wants to form, if any. Furthermore, this will also allow the child and her mother to seek out the true biological father. If a child builds a relationship with a "father" who years later severs that relationship upon finding out he is not the "biological" father, the results could be disastrous for that child's mental and emotional well-being.

To read the full decision referred to in this case, please see *In the Matter of Shondel J. v. Mark D.*, 7 N.Y.3d 320- (2006). The Children's Law Center accepts applications from Brooklyn Law School students for Fall and Spring internships.

Know It All?
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Beer Pong, Beirut, and the Shamelessness of the Beer Biz



Miras Article, continued from page 4

Jeffrey went outside where he met the media. Boy did he have a lot to say. And the first thing he did was to tell the media about two innocent people who are in jail right now. They hopefully will do their job and follow up. Jeffrey told us his story, how he never gave up hope. Of all the lonely nights in prison. Of how the system failed him and of how so many times he was told there was nothing that could be done, that he had to spend the rest of his life in prison. He spoke for nearly an hour with about 100 people spellbound by his story. He advocated for real reforms in the criminal justice system. Reforms which will ensure that this injustice does not happen to anyone else.

Jeffrey then took questions from the media for over an hour. When asked what was the first thing he wanted to do, he said eat a whole bunch of his favorite food - mussels. When Jeffrey finished talking to the media, I walked up to him and

gave me a handshake, which turned into a huge hug. He then told me that he was about to give up on his case after 16 years in prison and when he got the letter from me and the Second Look Clinic, this gave him the hope to press on.

Jeffrey and I and people from the Innocence Project then went out to lunch at an Italian restaurant in White Plains. Needless to say the first thing he ate was a boat load of mussels, followed by two ice cream sundaes.

Jeffrey and I talked and talked at the restaurant, all while the media was taking pictures of him eating ice-cream and mussels. We have agreed to meet in New York for drinks and he would very much like to come and speak to us here at the Second Look Clinic.

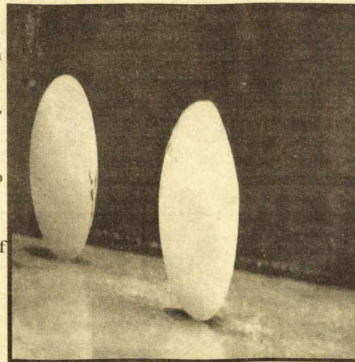
This was by far one of the best days of my life. It made very proud to play a small part. Hopefully there will be many more of these exonerations. Keep fighting the good fight!

By Provie Smith
Beer pong is a favorite pass time in many local bars, especially those which draw their clientele from law schools and/or colleges, making them a key advertising location for beer distributors. Recently, while attending a happy hour at a bar located near NYU Law, I was appalled to discover a sign advertising peer pong as "Beirut." The sign spelled out the rules of peer pong against the backdrop of a Budweiser ad, showing no hesitation to make profits by ridiculing the twenty year civil war in Lebanon.

This would be upsetting even as an isolated instance, but many beer distributors have picked up the lead, advertising their products in similar "Beirut" fashion. Such signs are posted in bars throughout NYC and, as a direct result, the average college kid has taken up calling beer pong "Beirut." It quickly became apparent that these kids had no idea how offensive their remarks would be to someone from Lebanon, especially someone from Beirut. Upon learning that calling beer pong "Beirut," a game where one throws a ball at a target was, in

essence, making light of the thousands of people who were killed during bombings of Lebanon in

careless and arrogant advertising, especially when such advertising makes people think that it



"After all no one would advertose darts under the name "World Trade Center."

the 1970s and throughout the civil war there, most of them were horrified. They had no idea that their light-hearted remarks harbored such offensive and insensitive implications.

For over three decades, Lebanon has sustained enormous losses from bombings; loss of human life, reduction in quality of life, loss of economy, loss of infrastructure, as well as a loss of political stability. It is not right for beer distributors to make light of these facts with such

is alright to call beer pong "Beirut." Whether we like it or not, advertising affects the way in which we think about things and, sometimes even the way in which we relate to each other. The bottom line is that beer distributors have undertaken in some very irresponsible and highly offensive advertising, and that we should make it known that this is not acceptable. After all, no one would ever dream of advertising darts under the name "World Trade Center." Just because Beirut is in another country, and perhaps far from home for most of us, does not mean that such ridicule can be accepted. It is discriminatory and degrading to the people of Lebanon say the very least.

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