Mental Health and the Law

The School of Law’s annual Access to Equal Justice conference on March 18-19, 2004, drew a cross section of 175 academics, practitioners, and students from law, social work, psychiatry, and psychology. Co-sponsored with the University’s George Warren Brown School of Social Work, School of Medicine, and the Department of Psychology in Arts & Sciences, Mental Health and the Law was part of an ongoing project on “Justice, Ethics, and Interdisciplinary Teaching and Practice.”

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The law school’s Clinical Education Program, Center for Interdisciplinary Studies, and Washington University Journal of Law & Policy are collaborating on the project, which includes conferences and published articles on the topic. The goals are to build connections between the University and the community, and to improve the region’s delivery of legal services.

Panels at the 2004 conference addressed issues relating to the death penalty and mental disability; competency and ethical considerations; mental disability and international human rights law; mental health assessments and interventions in the juvenile justice system; and homelessness, homeless courts, and mental health courts.

James W. Ellis, the Dickason Professor of Law at the University of New Mexico, delivered the keynote address on “Mental Disability and the Death Penalty: The Implications of Atkins.” He focused his address on the interdisciplinary collaborations between lawyers and national disability rights organizations to eliminate the death penalty for individuals with mental disabilities.

Named National Law Journal’s 2002 Lawyer of the Year, Ellis successfully argued Atkins v. Virginia, a landmark case in which the Supreme Court of the United States held that executing people with mental retardation violates the Eighth Amendment’s prohibition of cruel and unusual punishment.
Ellis also helped draft a 2003 legislative guide containing statutory language and options for states to use in drafting laws. He's now helping states in the post-Atkins era to define the meaning of mental retardation and to outline pretrial hearing guidelines. “In states that make this judgment prior to trial, there are fewer wasteful and stressful combative cases for both the victims' families and the defendants,” he says.

A longtime advocate of interdisciplinary teaching and practice, Ellis says, “This conference was wonderfully put together with a wide variety of perspectives on the legal system and mental health issues ranging from juvenile considerations to homelessness to substance abuse.”

Peter A. Joy, professor of law and director of the School's Criminal Justice Clinic, served as moderator for a panel discussion on competency and ethical considerations. He was the principal author and counsel of record of a successful amicus brief for the American Civil Liberties Union of Eastern Missouri in *Sell v. United States*. In this 2003 case, the Supreme Court ruled that there are stringent constitutional limits to the government’s involuntary administration of antipsychotic drugs to mentally ill criminal defendants in order to render them competent to stand trial.

Conference coordinator Karen L. Tokarz, professor of law and director of Clinical Education and Alternative Dispute Resolution Programs, says, “This conference was designed to help academics, practitioners, and students better understand and confront the professional and ethical ‘disconnects’ they may encounter when dealing with the diverse and complex needs of most clients, especially those with mental disabilities. The conference also provided new insights about the rewards and challenges of interdisciplinary collaborations in teaching and practice.”

**Imperialism, Art, & Restitution**

Nearly 200 academics, students, and art aficionados gathered March 26–27, 2004, at the School of Law for a spirited debate on whether major works of art acquired during the Age of Imperialism and now held by major museums should be returned to their source nations.

John O. Haley, director of the School of Law's Whitney R. Harris Institute for Global Legal Studies and the Wiley Rutledge Professor of Law, with assistance from John Henry Merryman, the Sweitzer Professor of Law and affiliate professor of art emeritus, Stanford University, organized the conference, which was sponsored by the Institute.

Panels focused on two major works acquired during the Age of Imperialism, followed by a third panel commentary and open discussion. The two works were the Parthenon sculptures, also known as the Elgin Marbles, in the British Museum, and the Bust of Nefertiti, found at Tel-el-Amarna, Egypt, and now residing in the Berlin Staatliche Museum. A separate panel critiqued the administration and effectiveness of the 1992 Native American Graves Protection and Repatriation Act (NAGPRA).

“Theres real passion in these debates,” says Haley. “These artifacts have become national symbols and yet sit in museums outside their countries of origin. Perhaps source countries did not have the means to preserve the artifacts when they were removed, but they do now. Additionally, each is subject to particular claims that it was improperly removed.

“From the museums’ perspective,” he continues, “they have the capacity to maintain the artifacts and view themselves as a ‘universal’ museum with the responsibility to protect the great artifacts of the world.”

James Cuno, professor and director of the Courtauld Institute of Art in London, provided the conference keynote address, sharing the view from the
universal museum. Talat Halman, professor at Bilkent University in Ankara, Turkey, and Turkey’s former minister of culture, provided the view from the source nation.

Friederike Seligman, who holds a doctorate in Slavic languages and literatures and a minor in art history, moderated the Bust of Nefertiti panel. The wife of Joel Seligman, dean and the Ethan A.H. Shepley University Professor, she has been instrumental in acquiring original art for the law school.

“This is something I care about deeply,” she says. “Art transcends cultures and inspires everyone. It brings out the best in us all. Conferences involving different disciplines, such as this one, really help to broaden our understanding of the issues.”

The panel focusing on NAGPRA examined this federal law, enacted to provide a process for museums and federal agencies to return certain Native American cultural items—such as funerary objects, sacred objects, objects of cultural patrimony, and human remains—to lineal descendants, culturally affiliated Indian tribes, and native Hawaiian organizations. It brought to light the “historical horrors of what people did and the costs to both the museums and tribes of returning human remains and artifacts,” says Haley. “Tens of thousands of Native American remains were stored for over a century in museums around the country, including the Smithsonian Institution and the Field Museum in Chicago. At the time they were collected, concern for preserving Indian remains was based on fears that the various tribes might become extinct. So the remains of men, women, and children were collected at the sites of major massacres, while the remains of soldiers from battlefields were either buried or sent to their families.”

Haley believes the conference was “enormously” successful, not only because it received full-page coverage in the St. Louis Post-Dispatch, but also because of the praise from participants: “The speakers themselves thought it was a great success. We have never before received so many e-mails and letters from participants expressing how much each enjoyed and got from it.”

Bankruptcy and Reorganization

The annual F. Hodge O’Neal Corporate and Securities Law Symposium focused on Bankruptcy and Reorganization: Current Events and Future Outlook. Sponsored by the School of Law, the Washington University Law Quarterly, and the University’s Weidenbaum Center on the Economy, Government, and Public Policy in Arts & Sciences, this symposium was held April 2, 2004, at the law school.

“We chose the topic of bankruptcy and corporate reorganization because the recent wave of corporate scandal was punctuated by some of the largest bankruptcies in history, including Enron and WorldCom,” says Troy Paredes, associate professor of law and a conference organizer.

The conference drew 75 panelists and audience members—including lawyers, businessmen, investors, legal scholars, accountants, and company executives—from across the country. “Our goal each year is to have a wide range of viewpoints represented—not just those of academics, but of people in the trenches who are dealing with these issues on a daily basis,” says Paredes.

The first panel, focusing on corporate bankruptcy and reorganization issues, sparked a lively debate on the issue of control. “One camp believes that bankruptcy judges should have a significant role in shaping a company’s reorganization,” Paredes says. “Another camp

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Elizabeth Warren
looks at bankruptcy law as more procedural in nature. They believe that we should let the various corporate constituencies strike their deals and that courts should enforce the parties' agreed-to arrangement, including adherence to the absolute priority rule."

Paredes is particularly interested in the issues of intellectual property ownership faced by many high-tech, start-up companies funded by venture capital in the 1990s. He co-presented a paper on this topic with F. Scott Kieff, associate professor of law.

"Because the bankruptcy process can be slow and because it can be hard for parties to coordinate in bankruptcy, we believe that there's a risk that companies will forego their intellectual property rights if they are underenforced in bankruptcy," he says. "We proposed a system of intellectual property securitization. It draws on the concept of asset securitization, in that it would render a company's IP assets bankruptcy remote by transferring them in a 'true sale' to a separate, special-purpose entity."

A second panel focused on the consequences of corporate failure for employees and benefits. "When a company goes belly up, there's a real concern for employees—not only for their loss of income, but because a large part of their wealth often has been invested in the company's 401K," Paredes says. "We had a debate about whether the courts or Congress should address the issue of executives protecting their own retirement interests or whether market pressure will take care of it."

The rise in personal bankruptcies was the topic of the keynote address by Elizabeth Warren, the Leo F. Gottlieb Professor of Law, Harvard University, and author of The Two-Income Trap: Why Middle-Class Mothers and Fathers Are Going Broke.

When she compared the median earnings of families today with those in the 1970s, Warren found that today's two-income families earned 75 percent more than the previous generation's one-income families (adjusted for inflation). However, families of the 1970s saved 11 percent of take-home pay and averaged 3 percent in consumer debt, while today's families save only 1 percent of take-home pay and average 12 percent in consumer debt. Individual bankruptcy filings have quadrupled over those in the 1970s.

Interestingly, today's families are spending less on clothing, restaurants, and appliances than families of the 1970s. It is the expense of today's mortgages, health insurance, a second car, and child care that leaves them with less money to spend than their parents.

"The issue of bankruptcy is a hot topic whether it is related to middle-class families or corporations," she says. "The symposium addressed some important issues related to current trends in this area of law."