Students’ Arguments Sway Chief Justice, Panel

WEEKS OF PREPARATION helped the winning team remain poised as they persuasively argued before the Honorable John G. Roberts, Jr., chief justice of the United States, in the School of Law’s Wiley Rutledge Moot Court Competition finals on February 6.

“Our winning performance came down to faculty involvement as we prepared for the finals, and to staying in the zone as we argued, where it was just you and five justices, forget about the hundreds of people watching,” noted second-year law student Samir Kaushik, who along with his partner, second-year law student Renee Waters, edged out third-year law students James Frazier and Daniel Rhoads in the competition finals.

Waters noted: “I had a moment at lunch where I realized—he’s really the chief justice of the United States! But when I stood up there, it really wasn’t so bad. In fact, it would have been exciting even if we had lost. Instead, I’ll always get to say the chief justice said we won.”

The problem was based on the criminal appeal of a fictional contest winner’s boyfriend who allegedly threatened a celebrity. All five judges on the panel noted that the competition was extremely close and congratulated all four students on their advocacy skills.

Headed by Chief Justice Roberts, the other members of the panel were: Judge Karen Nelson Moore, United States Court of Appeals for the Sixth Circuit; law school alumna, Judge Catherine D. Perry, United States District Court, Eastern District of Missouri; Judge David R. Herndon, United States District Court, Southern District of Illinois; and Professor Richard J. Lazarus, Georgetown University Law Center.

Senior Lecturer in Law Bill Dorothy, team co-adviser and associate director of the Legal Practice Program, noted: “They were a very challenging bench, thoughtful, asking just the right questions to really test the students’ knowledge of the issues. Most lawyers go through their entire careers and never have an opportunity to have the conversational intellectual interplay with such respected judges.”

Clark Elected to American Law Institute

KATHLEEN CLARK, professor of law and an expert in legal ethics and national security law, has been elected to the American Law Institute.

An organization of approximately 3,000 attorneys, judges, and law professors, the ALI was established in 1923 “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific work.”

The School of Law has 12 other members in this prestigious organization, including a member on the ALI Council. Members are selected for their expertise in various subject matters.

The ALI publishes Restatements of the Law, Model Codes, and other volumes designed to promote law reform and clarify uncertainty in the law. Before approval by the ALI Council and then the full membership, reform proposals undergo a lengthy process of drafting, analysis, discussion, and revision.

Clark serves on the board of the Servicemembers Legal Defense Network, chaired the National Security Law Section of the Association of American Law Schools, and is a member of the editorial board for the Journal of National Security Law & Policy.
Justice O’Connor Shares Views with Law Students

BY ANN NICHOLSON

THE HONORABLE SANDRA DAY O’CONNOR discussed topics ranging from her early days in a male-dominated field to the role of unanimity on the Supreme Court to threats to judicial independence, during a warm and personable exchange with law students.

About 180 first-year law students in Professor Bruce La Pierre’s Constitutional Law classes were invited to attend “A Conversation with the Honorable Sandra Day O’Connor” on February 13. Kent Syverud, dean and the Ethan A.H. Shepley University Professor, moderated the question-and-answer period. Syverud is a former law clerk of Justice O’Connor, who served as an associate justice on the Supreme Court of the United States from 1981–2006.

The event was simulcast to the law school community in the student commons, which was filled to capacity.

Drawing on her own early experiences as one of a few women path-breakers in the legal profession, Justice O’Connor told students that while they may not always be able to begin their careers in a dream job, they should use their legal education to take whatever opportunity comes their way “to turn it into something of value and make it something that is worthwhile.”

“I had to create those opportunities,” she said of her first positions out of law school—volunteering for a district attorney’s office in order to secure a paying position, forming a two-person neighborhood law office with walk-in trade, and identifying appropriate legal support for a mental health facility in her first assignment as an assistant attorney general. “Sometimes you have to make some compromises to get your foot in the door.”

First-year law student Caldwell Collins observed: “Justice O’Connor spoke of her early struggles as a woman in a profession in which females rarely succeeded at the time; to hear a woman at the highest pinnacle of legal excellence talk about having battled to get jobs made me feel as if I shared the legacy. And yet, in describing this epic history, she was incredibly down-to-earth. Justice O’Connor spoke with grace and humility about being the first woman to sit on the Supreme Court.”

As part of her conversation with students, Justice O’Connor also discussed the roles of consensus and dissention on the Supreme Court, her work as a member of the Iraqi Study Group, the court’s role in the Bush v. Gore case, the showmanship that television has brought to the Senate judicial confirmation process, and the challenges of being the first female associate justice, including the media’s portrayal of her.

When asked whether there were any cases that over time she wishes had come out differently, she noted: “I don’t look back. I make it a practice to put my effort in at the front end” and to “work very hard to get it right, and then move on.”

Justice O’Connor also expressed concerns about recent attacks on the judiciary and about use of the label “activist judge.”

She noted that our Democratic system relies on judges deciding cases based on the rule of law and evidence, and not on political pressure.

In her concluding remarks, she told law students, “We need you to stand up and educate others about the importance of a fair and independent judiciary.”

Pauline Kim Receives Research Professorship

PAULINE KIM, professor of law, has been awarded the School of Law’s first Dean’s Distinguished Research Professorship in recognition of her outstanding scholarship. The fellowship provides for a research leave during the spring 2008 semester.

Kim’s scholarship has focused on employment law, empirical legal research, and the courts and judicial decision-making. Her major publications include her co-authored casebook, Work Law: Cases and Materials, and numerous articles in legal journals. Her most recent article on lower court decision-making is forthcoming in the NYU Law Review.
Wrongful Executions Conference

By Janet Edwards

United States Representative William Lacy Clay, Jr., Innocence Project co-director Barry Scheck, and former United States Attorney Roscoe C. Howard, Jr. were among the presenters at the School of Law’s conference on “Convicted, Executed, and Not Guilty? Examining the Risks of Wrongful Executions and the Role of Prosecutors, Defense Attorneys, Academia, and the Press.”

“If we cannot execute the guilty with absolute certainty, then we should not risk executing the innocents,” Clay, D-MO, said in opening remarks during the seventh annual Access to Equal Justice conference last winter.

“When the innocent pay for our mistakes with their lives, then our justice system is broken,” he added. “Fixing it could take a lifetime of work and right-minded leadership.”

Clay described a St. Louis murder case involving Larry Griffin, a local man whom Clay believes was wrongly executed in 1995. During the conference, panels of attorneys, journalists, and law professors discussed that case and three others.

“These cases raise many issues, but one important lesson is clear,” Clay said. “We will never know if all of these defendants were innocent. No person should ever be put to death on the sort of evidence that was used in these cases.”

The conference was both timely and important, said Scheck, who delivered an afternoon keynote address. He is a professor of law and co-director of the Innocence Project at Benjamin N. Cardozo School of Law, Yeshiva University.

Scheck said the advent of DNA testing in 1989 caused a “tectonic shift” in thinking about capital punishment. DNA testing has exonerated 187 people in post-conviction cases, he said, “but the real resonance is in the pre-verdict exonerations.”

To date, charges against tens of thousands of people were dropped based on DNA evidence, he said, and that causes judges, prosecutors, defense lawyers, journalists, and the general public to think that “maybe the judicial system can’t be relied upon as much as people previously believed.”

A partner with Troutman Sanders LLP in Washington, D.C., Howard noted the racial problems with capital punishment: “When you start putting together who’s on death row, and when you have these cross-race identifications, you start to realize that if you’re going to institute a punishment that is indeed perfect, it has to be more than right, it’s got to be beyond reasonable doubt.”

Representing the news media at the conference were reporters from the Chicago Tribune, San Antonio Express-News, St. Louis Post-Dispatch, and The St. Louis American. Presenters included Danny Brown, JD ’06, former reporter for The St. Louis American and now a clerk for Judge Charles Shaw, United States District Court, Eastern District of Missouri, and Bill Freivogel, JD ’01, former editor at the St. Louis Post-Dispatch, and now interim director of Southern Illinois University-Carbondale School of Journalism.

The conference was co-sponsored by the law school’s Clinical Education Program and Center for Interdisciplinary Studies and Saint Louis University. Professor Karen Tokarz, director of Clinical Education and ADR Programs, coordinates the annual symposium.

More information, including conference videos, is available at: law.wustl.edu/ClinicalEd/index.asp?id=1393
Chief Justice Visits School

The Honorable John G. Roberts, Jr., chief justice of the United States, headed the prestigious panel of judges presiding over the finals of the School of Law's Wiley Rutledge Moot Court Competition on February 6, 2007. Named in honor of former law dean and United States Supreme Court Justice Wiley B. Rutledge, Jr., the competition is the School's oldest and largest intramural competition. The team advisers are senior lecturers in law Bill Dorothy and Jo Ellen Lewis.

During his visit, Roberts also spoke at a private luncheon and taught a Constitutional Law class, composed of both Washington University and Saint Louis University law students. Kevin Lipson, JD ’80, was instrumental in helping to arrange the chief justice’s visit.

From left: Chancellor Mark Wrighton, Chief Justice John Roberts, and Dean Kent Syverud.
Chief Justice John Roberts teaches a Constitutional Law class.

Washington University professor Samuel Bagenstos, left, and Saint Louis University professor Isaak Dore with the chief justice.

Law School alumnus Mark Zoole, right, calls the moot court into session.

The panel of judges congratulates the four finalists, front row from left: Samir Kaushik, Renee Waters, Daniel Rhoads, and James Frazier.
Missouri Supreme Court Chief Justice Michael A. Wolff opened the 150th Anniversary Dred Scott Symposium with a keynote address on March 1 placing the case in its legal, judicial, historical, and political contexts.

“The decision of the Supreme Court of Missouri in the Scotts’ case 155 years ago was, unquestionably, our Court’s worst decision ever,” he noted. “But if the Supreme Court of Missouri got the decision badly wrong, the United States Supreme Court got the decision horribly wrong.

“Dred and Harriet Scott are symbols of our greatest failure,” he said. “We do not celebrate the Dred Scott decision, but let us not forget it or them.”

Wolff noted that as startling and distinctly racist as the United States Supreme Court’s decision was that Dred and Harriet Scott, as slaves, were not citizens and did not have a right to sue, the Court should have stopped there. However, due to the politics of the time, it went beyond the scope of the case to rule that the Missouri Compromise was unconstitutional, slaves were property, Congress had no right to interfere with rights of property owners, and the federal government did not have the right to prohibit slavery in the territories.

The three-day symposium on “The Dred Scott Case and Its Legacy: Race, Law, and the Struggle for Equality” brought together the nation’s leading scholars on race and the law, prominent historians, and distinguished lawyers and judges. Co-sponsored by the School of Law and Arts & Sciences, the symposium commemorated the historic events of the case, which began in the Old Courthouse in St. Louis in 1846, and ended with the United States Supreme Court’s decision in March 1857.

“Although a bloody Civil War produced three Constitutional Amendments to reverse that decision, the achievement of full racial, religious, and ethnic equality in this country remains an unfinished project,” says David Konig, one of the symposium organizers and professor of law and history in Arts & Sciences.

The symposium examined why and how this is so, 150 years later, and how it might be changed. It sought to study and resume the struggle that the Scotts began in St. Louis, and to be the focal point for reflection and recommitment to racial equality.

Panels discussed how not all the holdings in the Scott decision were overturned by war and amendments, but rather lived to support strict construction and states’ rights decisions. Other panels examined how contemporary racial disparities have been perpetuated by stereotypes that engender unconscious discrimination, or through ideologies such as that of “white innocence.”

Other highlights were a session in which K–12 educators from St. Louis discussed with panelists how scholarship can be integrated into school curricula; a judicial roundtable on the issues raised by the case and the lessons to be learned about the entry of politics into the judicial process; and a reception at Washington University’s Olin Library, where the Missouri State Archives displayed the original petition signed by Dred Scott to commence the suit.

More information, including conference videos and a full list of co-sponsors, is available at: law.wustl.edu/centeris/index.asp?ID=5296
Bankruptcy Judge Emcees Quiz Bowl

BY JANET EDWARDS

How well do you know Bankruptcy Law? Law students Jordan VanPickerill, Marisa Maclellan, Nick Riggin, and Ravi Nangia recently put their knowledge to the test during the Second Annual Carl J. Spector Memorial Quiz Bowl, which was held at the law school. Aply titled “Go for Broke,” the competition pits Washington University law students against Saint Louis University students.

Chief Judge Barry Schermer, United States Bankruptcy Court for the Eastern District of Missouri, served as emcee. Schermer, JD ’72, teaches Fundamentals of Bankruptcy at Washington University, but displayed admirable fairness as he volleyed questions between the two teams. He also devised the questions, some of which were stumpers.

“I tried to incorporate some pop culture along with substantive questions,” says Schermer, who also co-teaches a Chapter 11 seminar with St. Louis attorney Lloyd Palans and Vice Dean Daniel Keating.

This year’s quiz bowl’s topics ranged from Air America radio and Andy Rooney, to deciphering bankruptcy “slang,” to describing what petitioning creditors must prove in order to prevail in an involuntary petition. The quest for answers spurred intense, secret deliberations on each side of the table.

Win or lose, VanPickerill was thrilled to be part of the contest.

“I’m in Schermer’s class, and I love it. Even though we lost, I wouldn’t have missed it,” she says.

Teammate Maclellan seconded that notion, and observed that with final exams looming, cramming for the contest provided a good opportunity to review bankruptcy course materials.

The contest is named in memory of Carl J. Spector and sponsored by the Bankruptcy Practice Memorial Fund. Competitors and their cheering sections enjoyed a reception with food and drinks, following the event.

While Saint Louis University’s team was victorious this year, Washington University had won the previous year, ensuring that the third annual event will continue the close rivalry.

Community Mediation

Students and faculty in the School of Law’s Alternative Dispute Resolution (ADR) Program and Civil Rights & Community Justice Clinic are partnering with the International Institute of St. Louis on an innovative mediation training project with St. Louis’ ethnic communities.

C. J. Larkin, administrative director of the School’s ADR Program, says the mediation program is helping community leaders to both keep peace within their own community and to establish a good rapport with other nearby ethnic communities.

“Community disputes arise for various reasons, but many are simply the result of misunderstandings about religious or cultural behaviors,” Larkin says. “Mediation helps de-escalate a problem and make it more manageable.”

Pamela DeVoe, Community Connections manager at the International Institute of St. Louis, says the program has proved invaluable for the many local refugees who were forced to leave their homelands and adjust to their new life in St. Louis.

Forty-one individuals representing 26 ethnic groups have received intensive community mediation training. The ASC Foundation, Norman J. Stupp Foundation, and Employees Community Fund of Boeing Inc. helped fund the project, which was expanded to include training for non-English speaking participants through the use of translators.

Gedlu Metaferia, director of the African Mutual Assistance Association, says: “The training helped me a great deal. My elder experience combined with this academic knowledge gives me new insights. I am learning to listen to both sides calmly and to be impartial.”
COMMENCEMENT
CELEBRATION

Navid Choudhury receives his diploma from Kent Syverud, dean and the Ethan A.H. Shepley University Professor, during Commencement 2006. This year’s ceremonies will be held on May 18, 2007. More information is available on the law school’s Web site: law.wustl.edu