

2004

2004 FACULTY PRESENTATION DAY

New York Law School

NEW YORK
LAW SCHOOL

A red-tinted photograph of classical architecture, featuring large columns and a set of steps, serving as the background for the upper half of the page.

Faculty Presentation Day

Wednesday, March 3, 2004

FACULTY PRESENTATION DAY 2004



PEOPLE FREQUENTLY ASK ME WHAT FACULTY MEMBERS DO.

I reply that we teach, write, and perform public service—a simple, but woefully incomplete answer. A deeper description, however, cannot be given glibly or with clever phrases. Indeed, description is itself inadequate. Passively describing a scholar's role cannot demonstrate the process of idea development and the painstaking steps necessary to construct a compelling argument. Descriptions rarely engage the audience (or the reader) directly; they do not involve the active participation of others. The challenge is to show what faculty members actually do, make the demonstration enjoyable, and engage students and others in the enterprise.

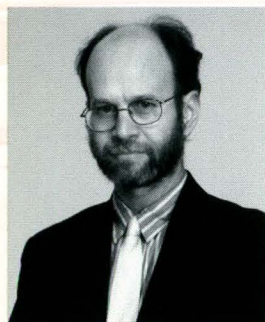
Faculty Presentation Day began as a challenge to the Law School faculty: find an interesting topic, think about it, share your knowledge through presentations and panel discussions with other faculty members and students, make it fun, and produce a written essay (short on the footnotes traditional to law review writing, but long on ideas). The faculty responded with wonderful topics and presentations and several hundred students and others participated in the discussions that followed.

Our first Faculty Presentation Day was held on April 3, 2002. We cancelled classes to devote a full day and evening to showcasing faculty (and some student scholars) presenting their scholarship. We engaged faculty and students in a collaborative intellectual exchange outside the classroom, and twenty-five articles growing out of that day were published in the *Law Review*.

We invite you to join us on March 3, 2004 for the second New York Law School Faculty Presentation Day.

Dean Richard A. Matasar

FACULTY PRESENTATION DAY 2004



FACULTY PRESENTATION DAY IS A SPECIAL MOMENT FOR ALL OF us at the Law School. It is, first of all, an opportunity for faculty and students to join in the scholarly process, and to bridge the gap that sometimes arises between the work we do together in the classrooms and the work that faculty do, in their offices, in developing new ideas and embodying them in scholarship.

It is also an opportunity to tie together the many strands of intellectual inquiry that faculty and students are pursuing here at the school. With 1,500 students, approximately 60 full-time faculty and many adjunct professors as well, and a range of centers and programs exploring particular areas of law, we are, collectively, studying, teaching, and writing about a very wide array of issues. Not even a full day of scholarly presentations can encompass them all, but Faculty Presentation Day goes a long way in that direction.

The result is more than simply a list of intriguing presentations on many different issues—though it certainly is that as well. This day also allows us to connect our interests in ways that our usual activities, from courses to faculty workshops, may not. On March 3, 2004, we will discuss many aspects of legal education, law and commerce, law and tax, and information law and policy, all very important issues. We will also consider the bearing of *Brown v. Board of Education* on a number of legal questions; investigate several issues in sexuality and the law; and, in two different panels, we will explore law and the humanities.

We look forward to the questions, and answers, that Faculty Presentation Day will generate. I hope you will join us in this day's explorations.

Professor Stephen Ellmann
Associate Dean for Faculty Development

FACULTY PRESENTATION DAY SCHEDULE March 3, 2004

9:00 a.m.—10:30 a.m.

PANEL A

International Law

"Unchecked Adversariness: Looking at Brady v. Maryland in the Light of International Human Rights Law"

Eugene Cerruti, Professor of Law

"Law in the Age of Apology: The Many Claims for Reparations"

Paul R. Dubinsky, Associate Professor of Law

"Immigrants and Global Citizenship"

Frank W. Munger, Professor of Law

"Constructing Global Finance: The Role of Lawyers"

Mark Osiel, Visiting Professor of Law

Commentator, **Ruti G. Teitel**, Ernst C. Stiefel Professor of Comparative Law

9:00 a.m.—10:30 a.m.

PANEL B

Information Law and Policy in the 21st Century

"The Accountable Net"

David R. Johnson, Distinguished Visiting Practitioner of Law;
Adjunct Professor of Law

"Official Reports in the Digital Age"

William R. Mills, Professor of Legal Research;
Associate Librarian for Information Services

"Information Games"

Beth Simone Noveck, Associate Professor of Law;
Director, Institute for Information Law and Policy

"Information Economics"

Rudolph J.R. Peritz, Professor of Law

"Legal Mind/Digital World: Law's Adaptation to the Information Society"

Richard K. Sherwin, Professor of Law

10:45 a.m.–12:15 p.m.

PANEL C

Issues in Law and
Commerce I

Moderator, **James Brook**, Professor of Law

"Beyond the Mortgage: Financing the Real Estate Revolution"
Andrew R. Berman, Associate Professor of Law

"The Expanding Scope of Judicial Review of Arbitration Awards"
Aleta G. Estreicher, Professor of Law

*"Publish or Perish: The Case for the Demise of New York's LLC
'Publication Requirement'"*
Anthony Q. Fletcher, Associate Professor of Law

"The Crisis in the Mutual Fund Industry: Real or Imagined?"
Jeffrey J. Haas, Professor of Law

10:45 a.m.–12:15 p.m.

PANEL D

Legal Education

"Integrating Theory and Practice in the Teaching of Legal Research"
Camille Broussard, Professor of Legal Research; Acting Director of Law Library
Karen Gross, Professor of Law

"Academic Support and Legal Pedagogy"
Susan J. Abraham, Associate Professor of Applied Legal Analysis
Kris Franklin, Associate Professor of Law; Director, Academic Skills Program
Elizabeth Rosen, Associate Professor of Applied Legal Analysis

"The Rise and Fall of American Legal Education"
Richard A. Matasar, Dean and President; Professor of Law

Commentator, **Lawrence M. Grosberg**, Professor of Law;
Director, Lawyering Skills Center

Commentator, **Michael L. Perlin**, Professor of Law

12:30 p.m.–2:00 p.m.

PANEL E | Lunch Panel

(Complimentary lunch
will be served)

Sexuality and the Law

*"The Impact of International Human Rights Developments
on Lesbian and Gay Rights"*
Arthur S. Leonard, Professor of Law

"The Teacher Who Advocated Pedophilia: Melzer v. Board of Education"
Stephen A. Newman, Professor of Law

"Freedom of Online Sexual Expression: On the Line"
Nadine Strossen, Professor of Law; President, American Civil Liberties Union

Commentator, **Kris Franklin**, Associate Professor of Law;
Director, Academic Skills Program

Commentator, **Carlin Meyer**, Professor of Law

2:15 p.m.–3:45 p.m.

PANEL F

Law and the Humanities I

"Incommensurability: A Pythagorean Metaphor of Justice"
Robert Blecker, Professor of Law

"Innocence and The Sopranos"
Seth D. Harris, Associate Professor of Law;
Director, Labor and Employment Law Program

"The Real Pragmatist: The Radical Philosophy of Wallace Stevens"
Elizabeth Rosen, Associate Professor of Applied Legal Analysis

2:15 p.m.–3:45 p.m.

PANEL G

Issues in Law and
Commerce II

Moderator, **Kenneth C. Kettering**, Associate Professor of Law

*"The Cable Television Compulsory Copyright Law: Successful Private
Resolution of Intellectual Property Rights"*
Michael Botein, Professor of Law; Director, Media Center

"A Behavioral Approach to Corporate Law"
Peter C. Kostant, Visiting Professor of Law

"Democratizing Capital: The Role of the Community Reinvestment Act"
Richard D. Marsico, Professor of Law; Codirector, Justice Action Center

*"Deconstructing Demsetz: Notes on the Relationship Between Historical,
Anthropological and 'Law and Economics' Views of Property Theory"*
Howard P. Venable, Visiting Professor of Law

4:00 p.m.–5:30 p.m.

PANEL H

Law and Tax

"Income Taxation of Incidental Receipts—A Comparative View"
Richard C.E. Beck, Professor of Law;
Codirector, Graduate Tax Program

*"Does a Commuter's Choice of Where to Reside Implicate the Dormant
Commerce Clause?"*
Robert Firestone, Adjunct Professor of Law

"Section 2036, Partnerships and Value: Fantasy and Reality in Tax Law"
William P. LaPiana, Rita and Joseph Solomon Professor of Wills, Trusts,
and Estates; Director of Estate Planning, Graduate Tax Program

*"Randolph Paul and Robert Montgomery, Tax Leaders in the Legal and
Accounting Professions: Two Approaches to Tax"*
Tanina Rostain, Associate Professor of Law; Codirector, Center for
Professional Values and Practice

"Three Tax Law Leaders of the Progressive Era from New York Law School"
Ann F. Thomas, Professor of Law; Codirector, Graduate Tax Program

2004 FACULTY PRESENTATION DAY REGISTRATION FORM

First Name: _____

Last Name: _____

Class Year (students and alumni): _____

E-mail: _____

Phone: _____

Organization or Firm: _____

REGISTER ONLINE AT:

www.nyls.edu

BY FAX:

212.219.3752

BY MAIL:

New York Law School
57 Worth Street
New York, NY 10013-2960

Please use this registration form to register for Faculty Presentation Day. Your registration in advance will be very helpful to us in scheduling the rooms for the panels. Advance registration is required for the lunch and dinner panels to facilitate the catering for those events.

Faculty Presentation Day is a day-long event. All time slots, except for the Lunch and Dinner, offer two panels on two different topics. Please register for one panel for each time slot. Registration preferences will be honored on a first come, first served basis. If the panel you register for in a particular time slot is full, we will register you for the other panel in that time slot. You will be notified of your registration for the day very shortly after your registration form is received.

If you have any questions about the event or your registration, please contact Claire Voulgarelis in the Office of Faculty Development by e-mail to cvoulgarelis@nyls.edu

This event is open to all members of the New York Law School community and to our colleagues on the bar, bench, and academia. There is no charge for attendance and complimentary lunch and dinner will be served.

Please choose one panel for each time slot.

9:00 a.m.–10:30 a.m.

- ☐ Panel A: International Law
- ☐ Panel B: Information Law and Policy in 21st Century

10:45 a.m.–12:15 p.m.

- ☐ Panel C: Issues in Law and Commerce I
- ☐ Panel D: Legal Education

12:30 p.m.–2:00 p.m. | Lunch Panel

- ☐ Panel E: Sexuality and the Law

2:15 p.m.–3:45 p.m.

- ☐ Panel F: Law and the Humanities I
- ☐ Panel G: Issues in Law and Commerce II

4:00 p.m.–5:30 p.m.

- ☐ Panel H: Law and Tax
- ☐ Panel I: Law and the Humanities II

6:00 p.m.–8:00 p.m. | Dinner Panel

- ☐ Panel J: The Impact of *Brown v. Board of Education*

4:00 p.m.–5:30 p.m.

PANEL I

"Ethical Reflections on Scholarly Writing"

Jethro K. Lieberman, Professor of Law; Associate Dean for Academic Affairs; Codirector, Writing Program

Law and the Humanities II

"Suing Amy: Adventures in a Parallel Legal Universe"

Cameron Stracher, Professor of Legal Writing; Publisher, *New York Law School Law Review*

Commentator, **Susan Abraham**, Associate Professor of Applied Legal Analysis

6:00 p.m.–8:00 p.m.

PANEL J | Dinner Panel

(Complimentary dinner
will be served)

The Impact of *Brown v. Board of Education*

Moderator, **Denise C. Morgan**, Professor of Law

"Separate and Unequal, But Alien: A Commentary on Brown's Limits"

Lenni B. Benson, Professor of Law; Codirector, Justice Action Center

"Judging Brown: On the Possibility that Justice Reed Concurred for the Good of the Country Despite Believing the Decision Was a Mistake"

Stephen Ellmann, Professor of Law; Associate Dean for Faculty Development

"The Effect of Brown on the Movement for Women's Legal Equality"

Isabelle Katz Pinzler, Visiting Professor of Law

Commentator, **Edward A. Purcell Jr.**, Joseph Solomon Distinguished Professor of Law

Law Review Symposium Issue for Faculty Presentation Day 2002 Volume 46 | Numbers 3-4 | 2002-2003

The *New York Law School Law Review's* symposium issue, "Reflecting on the Legal Issues of Our Times: New York Law School Faculty Presentation Day," is a compilation of scholarly contributions (listed below) originating from the first Faculty Presentation Day held April 3, 2002. The publication of this issue is exemplary of the Law School's commitment to create an open environment of scholarly discussion for faculty and students on a wide range of legal topics.

If you would like to receive a copy of this symposium issue, please send an e-mail to **Professor Cameron Stracher, Publisher of the Law Review**, at cstracher@nysl.edu.

REFLECTING ON THE LEGAL ISSUES OF OUR TIMES NEW YORK LAW SCHOOL FACULTY PRESENTATION DAY (2002)

INTRODUCTION

Richard A. Matasar, Nadine Strossen

ARTICLES

LEGAL EDUCATION

Richard A. Matasar, William R. Mills, Michael B.W. Sinclair

DISPUTE RESOLUTION

Lawrence M. Grosberg, Richard K. Sherwin, Donald H. Zeigler

DEALING WITH MENTAL DISABILITY IN TRUST & ESTATE LAW PRACTICE

Michael L. Perlin, Pamela R. Champine, Heather S. Ellis, Clair B. Steinberger

THE ENVIRONMENT AND THE LAW

Sidney M. Cone, III, David S. Schoenbrod and Christi Wilson, Amy Wichowski

PORTRAITS OF GRIEF: REFLECTING ON THE NEW YORK TIMES 9/11 OBITUARIES THROUGH A LEGAL LENS

Karen Gross, Carlin Meyer

CHANGES IN THE LAW SINCE 9/11

Robert Blecker, Stephen Ellmann

ECONOMIC JUSTICE

Rudolph J.R. Peritz, Richard D. Marsico, Edward Samuels

PERSPECTIVES ON THOMAS JEFFERSON

R.B. Bernstein, Paul Kemnitzer



DIRECTIONS TO NEW YORK LAW SCHOOL 57 Worth Street, New York, NY 10013

BY SUBWAY:

IRT-7th Avenue line:

1, 9 (local) to Franklin Street. Exit at Varick Street and West Broadway. Walk two blocks south on West Broadway to Worth Street.

2, 3 (express) to Chambers Street. Exit at West Broadway and walk four blocks north on West Broadway to Worth Street.

IRT-Lexington Avenue line:

4, 5 (express) and 6 (local), to Brooklyn Bridge/City Hall. Exit at Foley Square. Walk north two blocks to Worth Street and west three blocks to Church Street.

IND-8th Avenue line:

A (express) and C (local) to Chambers Street. Exit at Church Street. Walk four blocks north on Church Street to Worth Street.

E (local) to Canal Street, change for the A or C to Chambers Street.

IND-Avenue of Americas (6th Ave.) line:
B, D, Q (express) and F (local) to West 4th Street/Washington Square. Change at West 4th Street for the A or C to Chambers Street.

IND-Broadway line:

N (express) and R (local) to City Hall. Exit on Broadway and walk north on Broadway to Worth Street. Walk west on Worth Street one block to Church Street.

IND-Nassau Street line:

J, Z (express) and M (local) to Chambers Street. Exit at Foley Square. Walk north two blocks to Worth Street and west three blocks to Church Street.

BY BUS:

M1, M6 south to Broadway and Worth Street. Walk one block west on Worth Street to Church Street. M10 south to West Broadway and Worth Street. Walk one block west on Worth Street to Church Street.

BY CAR:

Flat-fee parking is available in a lot adjacent to the Law School at 47 Worth Street.

From the Harlem River Drive/FDR Drive:
Take Exit 2 (Brooklyn Bridge/Civic Center). Bear to the right (toward Civic Center) and proceed down the ramp. Make a right at the light onto St. James Place. Go straight, at the third light (street ends), make a left onto Worth Street. Continue for approximately five blocks.

From the Henry Hudson Parkway/Westside Hwy.:
Take the Chambers Street exit. Follow Chambers Street three blocks and make a left onto Church Street. Follow Church Street four blocks to Worth Street. Make a left onto Worth Street.

From the Brooklyn Battery Tunnel:
At the exit of the tunnel, bear right onto Trinity Place (Trinity Place becomes Church Street after the World Trade Center site). Move to the far left lane. Continue on Church Street to Worth Street. (Worth Street is four blocks past Chambers Street). Make a left onto Worth Street.

From the Lincoln Tunnel:
Take the Westside Highway south (Refer to directions from Westside Highway above).

From the Holland Tunnel:
Stay in the middle lane and take the "Downtown" exit. Make a right onto Varick Street. Varick Street becomes West Broadway. Continue on West Broadway three blocks to Worth Street. Make a left onto Worth Street.

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New York, NY 10013-2960

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