Meetings of the Minds: An Impetus for Change

Through its wide array of academic conferences and symposia, the School of Law has developed a rich source of insightful and provocative legal thought, providing an opportunity to disseminate knowledge on key public policy issues and generate new ideas for their resolution. Locally, a conference on ex-offenders assessed reentry issues and the collateral consequences that attend criminal convictions. On the state level, legislators and members of the health care industry gathered to assess Maryland's new medical malpractice legislation. An avian flu conference brought together scientists, first responders, and lawyers to discuss the ramifications of a national pandemic. And other gatherings took on global, cultural, and economic issues, among many others. The following pages offer a sample of the twenty-plus academic conferences hosted by the law school last year.

Women's Rights:
A Scandal of Global Proportion

"Forty-two percent of Pakistani women accept violence as part of their fate; only 19 percent of them challenged it."

It was just one of the sobering facts in the keynote address delivered by Amnesty International's Sheila Dauer at the April conference "Global Advancement of Women: Barriers and Best Practices," organized by the School of Law's Women, Leadership and Equality Program.

Dauer, director of the Women's Human Rights Program for Amnesty International USA, described violence against women as "the human rights scandal of our time," and said the underlying cause of such violence is discrimination against women. She outlined three types of violence against women—in custody, in war, and in the home—as "crucial mechanisms by which women are forced into subservience." According to Dauer, "One in three women worldwide will be raped, beaten, or attacked this year."

At the conference's welcome dinner in Westminster Hall, School of Law students discussed their experiences abroad. From a new litigation center in South Africa to the World Health Organization in Geneva, Switzerland, the law school has offered students opportunities that combine international and human rights law, helping students to gain real-world experience in the international arena.

"I felt like I was on the cusp of greatness, (that) things were really happening," said Rupa Chilukuri ('05). As part of the school's South Africa externship program, the recent graduate spent a semester in Cape Town at the Women's Legal Center, which aims to protect and advance the rights of women in South Africa. Chilukuri worked on cases related to customary law, Muslim law, and reproductive rights.

An interest in health and human rights led third-year student Markus Rauschecker to an internship in Ethics, Trade, Human Rights and Health Law at the World Health Organization (WHO) in Geneva. Part of Rauschecker's responsibilities was to create a health and human rights database, a collection of treaties, constitutions, case law, and papers relating to the right to health.

The fourth annual conference, held this year on April 6 and 7, was organized by Paula Monopoli, JD, professor of law and founding director of the Women, Leadership, and Equality Program, to explore the role of women in a changing global environment. Papers presented at the conference will be published in an upcoming issue of the University of Maryland Law Journal of Race, Religion, Gender and Class.

Professor Michael Van Alstine (left) of the school's International & Comparative Law Program, moderated a panel of students—from left, Rupa Chilukuri ('05), Markus Rauschecker ('07), and Reena Shah ('07), who discussed their varied international study experiences.
Leaving Prison Behind: Overcoming Post-Release Hurdles

"Crime is an industry in this country," said Ellsworth Johnson-Bey in the sobering opening panel of the November 18 symposium, "A Working Conference on the Collateral Consequences of Criminal Convictions and the Reentry of Ex-Offenders in Maryland." "Reentry and transformation can happen only if we empower and support those reentering by helping them change the mindset that led to the behavior that got them incarcerated," he said. "For many, leaving jail is like being evicted from what, for most, feels like home.

Johnson-Bey, founder of the Fraternal Order of X-Offenders (FOXO), an organization that works to counter the bleak outlook for former prisoners, was one of more than 200 advocates, service providers, lawyers, policy analysts, social workers, formerly incarcerated individuals, and correctional personnel that attended the day-long event. Professor Michael Pinard, who teaches the Law School's reentry clinic, organized the conference to facilitate open discussion about the myriad reentry issues in Maryland, and explore the collateral consequences that attend criminal convictions.

The issues and struggles raised by formerly incarcerated individuals set the agenda for a series of panels, reviewing not only the challenges they often confront, but also some of the ways that the legal system imposes post-release hurdles. The keynote address by New York University School of Law Professor Anthony Thompson emphasized the necessity of collaboration among all of these communities—civil legal service providers and criminal defense attorneys; prosecutors and defense attorneys—with key suggestions on how to put these new ideas into practice.

"This was a unique conference, because it fostered cross-disciplinary discussions. Baltimore City has taken a national lead in addressing the reentry needs of formerly incarcerated individuals," said Professor Pinard.

Working together was the overall theme, stressing how those traditionally disparate communities—correctional personnel and community-based organizations, state's attorneys and public defenders, civil legal services organizations and public defender offices—can develop solutions and practices to address reentry issues. In short, the panelists concluded that providing services alone cannot address these reentry hurdles. Rather, legal reform is necessary to maximize those services and options available both to the individuals and their families.

Speaker Baltimore City state's attorney Patricia Jessamy (top left) with Professor Brenda Bratton Blom, director of the School of Law's Clinical Law Program. UMLaw Assistant Professor Renee Hutchins (above), who teaches a post-trial clinic course that examines both appellate and post-conviction practice, participated as a panelist, with Paul DeWolfe, district public defender for Montgomery County.

An Emerging Star in Clinical Education

UMLaw and the Baltimore community at large have long known the work of Professor Michael Pinard, organizer of the ex-offenders conference. Now his stature has been recognized anew: the American Association of Law Schools awarded him the 2006 Shanara Gilbert Award at its April meeting in New York City.

Designed to honor an "emerging clinician," the annual award is bestowed by the AALS section on Clinical Legal Education upon an outstanding recent entrant (ten years or fewer) into the field.

"Michael Pinard was nominated by faculty members here and at other institutions," says Brenda Bratton Blom, director of the School of Law's Clinical Law Program, "because of the wonderful work that he does in supporting legal and clinical education. He promotes justice in all his work, but particularly in the areas of race and the criminal justice system."

Professor Pinard, armed with a JD from the New York University School of Law, spent time as a staff attorney with the Neighborhood Defender Service of Harlem and the Office of the Appellate Defender in New York City. From 1998 to 2000, he was a Robert M. Cover Clinical Teaching Fellow at Yale Law. Prior to his arrival at Maryland in 2002, he was an assistant professor at St. John's University Law School and a Visiting Associate Professor at St. Louis's Washington University School of Law.

An accomplished scholar, Professor Pinard continues to publish works that affect public policy, both local and national. Two of his recent articles include "An Integrated Perspective of the Collateral Consequences of Criminal Convictions and the Reentry of Formerly Incarcerated Individuals," to be published in the Boston University Law Review and "The Logistical and Ethical Difficulties of Informing Juveniles about the Collateral Consequences of Adjudications," in the Nevada Law Journal.
The players assembled onstage last November 16 at the Hippodrome Theatre for a lively evening of dialogue: actors, a casting director, playwright, literary manager, director, and a professor.

The ongoing "Linking Art & Law" series teams up UMLaw with the Hippodrome Foundation Inc.—Baltimore’s successful nonprofit presenter of shows right down the street; the panel took on one of Hollywood’s (and the arts at large) perennial issues: non-traditional casting.

This is just the latest in a long line of creative interchanges with local theaters; collaborations on issue-related programs have included a panel on the racially charged trials and a staged reading of trial transcripts from Brown v. Board of Education.

School of Law professor Robert Suggs took part in the lively discussion about using actors of different races, genders, or disabilities for roles where they may not have originally been considered. Joining in were actor Clayton LeBoeuf, of NBC’s "Homicide: Life on the Street"; casting director/producer Pat Moran, veteran of numerous John Waters and HBO projects; Donald Hicken, theater director of Baltimore School for the Arts; playwright Rosemary Frisino Toohey; and Center Stage literary manager Otis Ransey-Zoe.

Area actors illustrated the day’s points by performing non-traditionally cast scenes.

Radio host Marc Steiner of WYPR (left, above) moderated the panel discussion. School of Law professor Taunya Banks (right), who was instrumental in organizing the symposium, with actor Clayton LeBoeuf of NBC’s "Homicide: Life on the Street."

Suggs noted that copyright law infuses the questions raised by such casting. A change in the race, gender, sexual orientation, or disability of a character, may create an unauthorized derivative work that infringes on the owner’s copyright. A copyright holder has the exclusive right to prepare a derivative work, which could include a translation or film of a novel.

"If you switch the races of the principal protagonists, that very well may be a derivative work. The license would be to publicly perform the work, not to create a derivative work, and a judge has the power to enjoins it," Suggs said, adding that it’s not clear when a new work is created.

While lawsuits have undoubtedly been filed by actors who have been denied a role, "there’s nothing that’s ever gotten anywhere," Suggs said. "How many people are they going to audition, 100? And [if] there’s only one that’s chosen, how do you know you’ve been discriminated against? If you bring the action, you get a reputation as a troublemaker, litigious. And who wants a troublemaker? You’d have to be the best actor in the world for anyone afterwards to take a chance on you."

UMLaw professor Taunya L. Banks, who was instrumental in putting together the event, agrees that the issue raises many questions without answers. "Are there certain productions that by their very nature demand that the characters be a certain race or a certain gender?" she said, wondering just how much control a copyright holder should have. "Is it fair for you not to allow people to visualize it the way they want? Isn’t that what creativity is all about?"

Radio host Marc Steiner of WYPR (left, above) moderated the panel discussion. School of Law professor Taunya Banks (right), who was instrumental in organizing the symposium, with actor Clayton LeBoeuf of NBC’s "Homicide: Life on the Street."

Taking Hartz: A Liberal Schmooze

Its name may suggest more fun than serious research, but the Constitutional Law Schmooze is anything but frivolous. Now this annual tradition has become a leading national interdisciplinary gathering of law professors and political scientists on topics of mutual professional interest.

This year’s event, held March 4 and 5, focused on “Constitutional Liberalism at the Turn of the 21st Century,” using Louis Hartz’ classic 1955 text, The Liberal Tradition in America, as a starter.

“According to Hartz, the United States as a liberal society had no idea how to deal with a non-liberal society. There’s an obvious connection to Iraq and its reconstruction,” says organizer Mark Graber, professor of government and law at UMLaw and at College Park.

“One of the features of America that most concerned Hartz—is its tendency to view all those elsewhere in the world who were not liberals as incomprehensible, unreasoning, dangerous, and often evil aliens, so that America must seek to avoid them, transform them, or crush them—has reappeared in a dismaying new form: the embrace of preemptive wars to spread liberal democracy," wrote Schmooze participant Rogers M. Smith, of the University of Pennsylvania, in his article, “Why No ‘Liberalism’ in the United States.”

The twenty-five participants in this year’s Schmooze included several Maryland faculty in addition to Smith, and James Fleming (Fordham University School of Law), Gordon Silverstein (University of California, Berkeley), Keith Whittington and Ken Kersch of Princeton University, and Paul Frymer (University of California, Santa Cruz).

“The Schmooze is a terrific intellectual boon to our faculty and a catalyst for some extremely good work,” says associate dean Richard Boldt. "It's an exciting event with accomplished scholars, who all go home raving about our law school."
The medical malpractice legislation enacted in 2005 by the Maryland General Assembly was so sweeping that it took a special session of the legislature and the override of a gubernatorial veto to finalize its passage.

It was also a complex and comprehensive piece of legislation, which included tort reforms, insurance reporting requirements, efforts to improve patient safety, and the establishment of a fund to reduce medical malpractice premiums. After the legislation passed, some said it went too far, others said it didn’t go far enough. In order to provide a forum for further discussion of opportunities for reforms, the School of Law’s Center for Dispute Resolution and the Law and Health Care Program held two full-day conferences.

On September 23, legislators, attorneys, physicians, academics, and hospital administrators gathered for part one, “The New Medical Malpractice Legislation: Issues, Implementation and Impact,” to review the new law, its major provisions, and the policy tensions and political compromises that led to its passage.

A month later, on October 28, a similar assemblage addressed the second part, “Beyond the New Medical Malpractice Legislation,” at which speakers explored new approaches to issues of patient safety, medical malpractice litigation, and compensation of injured patients.

“The first part was practical, geared toward informing people about the legislation as it had passed. What were the implementation challenges, and what would the impact be on various stakeholder groups?” says Professor Diane Hoffmann, associate dean for Academic Programs and director of the Law and Health Care Program.

“The second part was more forward-looking and academic. As the title says, it went ‘beyond’ the legislation to consider next steps.”

In part one, representatives from the governor’s office and the legislature, including Michael Busch, speaker of the Maryland House of Delegates, discussed the pressures and compromises that produced the legislation. Busch said the legislature had to act in order to halt premium rate increases of more than 30 percent that would have put many physicians out of business.

Other panels discussed the legislation’s tort reform, its new initiatives calling for alternative dispute resolution (ADR) and mandatory mediation before proceeding with a malpractice suit, and its new data reporting requirements.

Panels considered patient safety and the possibility that medical malpractice suits could be avoided through early apology, early intervention, mediation, or ADR.

William M. Sage, MD, JD, professor of law at Columbia University, and the lead editor of Medical Malpractice Reform in the United States: New Century, Different Issue, delivered the annual Stuart Rome Lecture on “The Role of Medicare in Medical Malpractice Reform.” Noting that medical liability within the current framework affects cost, quality, and access to health care for many Americans, Sage argued that the real crisis is the lack of connection between the current malpractice system and the health care system, and spoke about the “mismatch” between negligence and litigation in the current malpractice framework. He also said Medicare could be a vehicle for malpractice reform, if it adopts an administrative mechanism for dispute resolution to serve plaintiffs better than the current system.
Do boards of directors owe a fiduciary duty exclusively to stockholders? Or do they also have a new duty to the corporation's creditors?

As the Enron case continues to dominate the corporate landscape, leading authorities persevere in addressing those questions. The debate raged last November when dozens of legal scholars, practicing lawyers, and members of the judiciary from across the nation assembled at the School of Law for the fourth annual business conference, "Twilight in the Zone of Insolvency: Fiduciary Duty and Creditors of Troubled Companies."

"Courts embracing the zone of insolvency doctrine have characterized the duties of directors as running to the corporate entity rather than any individual constituency. This approach is incoherent in practice and unsupportable in theory," said UCLA professor Stephen Bainbridge, a prolific scholar and expert on corporate and securities law. "Courts should focus on whether the board has an obligation to give sole concern to the interests of a specific constituency of the corporation."

Held in cooperation with the School's newest scholarly journal, Journal of Business & Technology Law, which will publish the conference's proceedings and papers in one of its upcoming issues, the conference addressed the trend among numerous courts toward the imposition of a common law duty running from a corporation's board of directors to the corporation's creditors.

New York Times' Greenhouse Takes Us Inside the Supreme Court

For Pulitzer-Prize-winning Supreme Court reporter Linda Greenhouse, of The New York Times, examining the papers of Justice Harry Blackmun for two months before their release to the public was a once-in-a-lifetime opportunity—and not just for her. Speaking at a December 1 roundtable, Greenhouse, the author of Becoming Justice Blackmun, said it is unlikely any Justice will ever again provide such a trove of material, more than 1,600 boxes of papers given to the Library of Congress's Manuscript Division.

Greenhouse focused on two aspects of Justice Blackmun's life: the incredible coincidence of being appointed to the Supreme Court within a year of the appointment of his boyhood friend, Warren Berger, and his transformation into the Court's most liberal member.

"When they sat down side by side for sixteen years, Berger expected undying loyalty, and Blackmun was not going to be in anybody's pocket. They got off on the wrong foot from the get-go," said Greenhouse.

The reporter was joined in a panel discussion by Maryland professors Mark Graber and Robert Percival (a former Supreme Court clerk), and Joel Grossman, professor of political science at Johns Hopkins University and an adjunct at UMLaw.
Avian Flu—
Meeting a Pandemic Head-On

For once, hyperbole meets reality in the realm of worldwide devastation, when noted researchers agree with the screaming headlines: "The nation is now bracing for what may be the most serious public health threat in decades—with comparisons being made to the 1918 "Spanish Flu" pandemic, which is estimated to have caused approximately 50 million deaths worldwide and 500,000 nationally," said Michael Greenberger, JD, a professor at UMLaw and director of the University's Center for Health and Homeland Security.

The Center spearheaded a timely event on January 13 to address the issue. More than 250 scientists, lawyers, first-responders, and other concerned individuals filled Westminster Hall for the day-long symposium "Avian Flu: What Can We Do?"

Twenty-three national avian flu experts met to discuss problems related to the illness, and create partnerships to fight the threat of a pandemic flu outbreak. Panel discussions included the basic science of avian influenza; vaccine development; quarantine and isolation; anti-virals; and the roles of institutions, government, and practitioners.

To start the day, research scientists presented background information about the influenza virus, and how it can "shift" or mutate into a different strain. Shift occurs when two strains merge and produce a deadlier, new strain with elements of both, resulting in a pandemic.

According to Daniel Perez, PhD, assistant professor at the Department of Veterinary Medicine at the University of Maryland, College Park, and the Virginia-Maryland Regional College of Veterinary Medicine, the challenge is to devise a test to predict whether a strain will "shift or drift," and then to develop a vaccine that addresses the specific virus.

Another panel of experts focused on vaccine development. James Campbell, MD, a clinical vaccine trial specialist at the University of Maryland Center for Vaccine Development (CVD), reported on the University's progress in testing a flu vaccine that could aid the nation's preparedness.

"So far, we have tested the vaccine in adults and have reached a level of immunity with two doses. We need to improve the immune response," he said. The CVD is one of three testing sites in the country for avian flu vaccine.

Though pleased with the success of the conference, Greenberger expressed concern about the nation's state of readiness.

"People should be expecting more out of their federal government," he said. "If bird flu is as serious as people say it might be, it's not going to be like Hurricane Katrina. You're talking a Category 5 hurricane in every city of the country."

The full proceedings of the symposium, along with supporting materials provided by the panelists, are available online at law.umaryland.edu/avianflu
Ruling on Solomon Puts Law Schools on Notice

Law professors usually study and discuss Supreme Court rulings. This year, they found themselves at the heart of one.

In Rumsfeld v. FAIR, handed down on March 6, the Supreme Court rejected the arguments of FAIR, an association of thirty-six law schools and law faculties dedicated to supporting educational institutions in opposing discrimination, and upheld the constitutionality of the Solomon Amendment.

The School of Law was right in the thick of the debate surrounding this ruling: in November, looking forward to the Court's ruling, the School of Law hosted a two-part series about the Solomon Amendment, "FAIR-ly Speaking About Military Discrimination," followed a week later by "Rumsfeld v. FAIR: the Arguments Leading to the Supreme Court." The first part addressed the Solomon Amendment's impact on the lives of law students; the second in the series featured Scott R. McIntosh from the Department of Justice, principal counsel on the government's brief to the Third Circuit, supporting the constitutionality of the Solomon Amendment.

The law school's support of FAIR extended beyond the conference series. In his role as vice president of the National Association for Law Placement (NALP), Associate Dean José Bahamonde-González led a subcommittee that prepared an amicus brief for the Supreme Court, affirming NALP's support for non-discriminatory policies in hiring lawyers.

"It is clearly our duty, and one we take very seriously, to ensure that every job opportunity that comes through these doors is available to every Maryland law student regardless of race, gender, ethnic background, disability, and sexual orientation," said Bahamonde-González.

Chai Feldblum (center), professor of law and director of the Federal Legislation Clinic at the Georgetown University Law Center, and a founding member of FAIR, served as keynote speaker. She was joined by panelists José Bahamonde-González, associate dean of UM Law; James Leipold, executive director of the National Association for Law Placement; Sharra Greer, director of Law and Policy for the Servicemembers Legal Defense Network; and Dean Rothenberg.

A trio of nationally renowned legal scholars made a major impact at the School of Law as the first faculty to share their insight and perspectives through the new Distinguished Visitors Program. Dorothy Roberts, the Kirkland & Ellis professor of law at Northwestern University School of Law, delivered the inaugural Juanita Jackson Mitchell Lecture last October. The first African American woman to graduate from the School of Law, and the first to practice law in Maryland, Mitchell understood systemic barriers to achievement better than most, making Roberts' lecture, "The Problem with Racial Disparities in the Child Welfare System," particularly appropriate.

Stephen Bainbridge, a professor of law at UCLA with expertise on the law and economics of public corporations, made his visit to Maryland in conjunction with the fourth annual business law conference (see page 10), where he delivered the keynote address.

And after spending the entire academic year at Maryland, constitutional law expert Maxwell Stearns, of George Mason University, decided to extend his stay indefinitely and joined the law school's faculty full-time (see page 41).

The program invites distinguished academics from both legal and non-legal disciplines, as well as prominent judges and legal practitioners, to join the School of Law community for short or longer-term academic visits. These visits include opportunities to work with students and faculty, conduct "mini-symposia," and otherwise make presentations to the law school on topical issues.

This year's slate of Distinguished Visitors is introduced on page 40.
What if instead of giving closing arguments, trial attorneys simply showed the jury a movie they’d made about the case?

That’s what happened in Standard Chartered PLC v. Price Waterhouse, where plaintiffs used an eighteen-minute “summa-
tion video,” which interspersed shots of the defendants with clips from a 1958 British film about the Titanic. The idea behind the montage: to make an analogy between the alleged negligence of Price Waterhouse accountants to that of the Titanic’s officers—failing to heed repeated warnings as their vessel headed for disaster. This novel trial technique worked, and the jury awarded the plaintiffs more than $338 million.

This creative use of film and visual imagery was the focus of the March 31-April 1 symposium, “The Impact of Film on Law, Lawyers, and the Legal System,” which brought together dozens of legal scholars, film critics, and filmmakers from around the country to discuss the unusual interaction of law and film. The conference examined the use (and abuse) of film in modern legal practice, and explored ways to move beyond the myth of law school and lawyers perpetuated by decades of films and television shows.

The symposium was organized by Jacob A. France Professor of Equality Jurisprudence Taunya Banks, who says most law students and professors are woefully uninformed about the use of visuals in modern trials.

“We really need to start training students in the uses and pitfalls of film in the courtroom,” she says. It’s because film mon-
tages in closing arguments are just the beginning; trials have also employed computer-animated re-creations; filmed confessions and police surveillance tapes; amateur and professional news video; and videotaped depositions. All of these have unique benefits and drawbacks that Banks says legal scholars and practicing trial attorneys would do well to understand.

“I’ve become increasingly aware of the uses of film in the courtroom, and of how it can be manipulated,” said Banks, noting that the defense team of four Los Angeles police officers accused of beating Rodney King used a slowed-down, digitized re-creation of the event, which made it seem more likely that the officers were responding to the suspect’s “aggressive” behavior, rather than simply striking without provocation.

In his keynote address, Richard Sherwin, professor and Visual Persuasion Project director at New York Law School, noted that the principal storytellers of modern culture are television and film. As a consequence, if trial attorneys want to reach the jury, they have to know “how to get their message out, how to tailor content to medium, how to spin the image, edit the bite, seize the moment on the screen—and in the mind of the viewer.”

In other words, says Sherwin, the attorney must “gain control over reality.”

—Paul Spelman (’07)