

News in Brief @ Yale Law School

LAW AND THE FAMILY



Clinical Professor Jean Koh Peters and some of her students work on a new website about the representation of children.

Representing Children Worldwide

New website records how children are heard in 249 jurisdictions

IN 1996, AS SHE FINISHED a book on how children are represented in child protective proceedings in the U.S., Clinical Professor of Law Jean Koh Peters wanted to compare practices in all fifty states. But since nobody had studied this subject before, she had to gather all the data herself. “It’s very hard to research because what neglect and abuse cases are called in each state varies, what they call the representative varies,” says Peters. “It was just a massive undertaking.” Peters supervised a research assistant who pulled the information together over four months, and her book *Representing Children in Child Protective Proceedings* came out with an appendix of state-by-state listings of the relevant laws, along with a discussion based on their research and a local contact person.

“I remember telling my publisher, ‘I’ll never do it again,’” says Peters. Indeed, she left the appendix out of the second edition of the book in 2001.

But events at three conferences led her to reconsider. The first conference was in Tuscany in 2003, where Peters learned about the Convention on the Rights of the Child, which had been ratified by every nation except Somalia and the U.S. and included a provision that children “be provided

the opportunity to be heard in any judicial and administrative proceedings affecting the child.” Peters started researching and writing about the comparative experiences of representing children and planned an international edition of her book. The second conference was in New Mexico, and there Peters heard one speaker cite her 1996 study as the most current data on U.S. practices. “Maybe I’m the only person with the resources to do this research,” she realized. On her way to the third conference—this time in Washington, D.C.—a new idea hit her. “I get on the plane and, as I’m clicking my seatbelt closed, I see it: a website, 250 jurisdictions... I would do three semesters of a seminar, the students, as part of the seminar, would do the research.”

The difficulties of researching practices in the U.S. were multiplied as the project went international: jurisdictions ballooned from fifty to 250; different languages were added to differences of terminology; the researchers had to find contacts in Uzbekistan as well as Utah. But Peters believed her students could do it, and they have. The website Peters imagined, *Representing Children Worldwide* (www.law.yale.edu/rcw), launched in December.

Bree Grossi Wilde ’06 was one of the students who took Peters’s seminar, and she researched two states, three jurisdictions within the U.K., Uganda, and Swaziland. Her research began with reports each country submitted to the committee that oversees the CRC. These gave her a general sense of what the system was like in each country, as well as a notion of the key terms and institutions. She then sought out all the relevant statutes, looking for codes that specifically dealt with how children are represented in neglect and abuse

cases. She read books, treatises, and papers by NGOs to get an idea of how well each country implemented its laws. Finally, she tracked down experts who could vet her research and add their insights.

How this process went could vary greatly: With the U.K. jurisdictions, Wilde says the challenge was to wade through excesses of information. For Uganda, “It turns out that a librarian at another law school in the United States was the person who pulled together the code, and she just literally photocopied me a copy.” With Swaziland, Wilde never located a relevant code. “You can completely understand why this is the case, when you have significant political corruption and a third of the adult

reporting.” Nonetheless, she has gained some insights from all the new information. For instance, countries in South and Central America have strongly adopted the provisions of the CRC. “Costa Rica has now enunciated nearly a hundred substantive rights for children. I’ve never seen a document like this before. My jaw dropped when I saw it.”

Learning about the different systems, Wilde says, impressed on her the importance of understanding the full context of the system. For instance, in Scotland, many neglect cases are handled in Children’s Hearings—local lay tribunals—and the child is usually represented by a social worker rather than a lawyer. “I think it’s

Different languages were added to differences of terminology; the researchers had to find contacts in Uzbekistan as well as Utah.


population infected with HIV. Swaziland has bigger things to worry about.”

Peters says that the resources and support of the Lillian Goldman Law Library and its “saintly” librarians, as well as generous help from the Law School’s gifted IT staff, made the project possible. “Students will say, I’ve done exhaustive research, and I’ve found that there is only one in-print source for the laws of this country, and then they go to the Lower East Side [of the library] and it’s sitting on our shelf.” Students with diverse language skills took part in the project, though many also used translators. Peters adds, “I don’t know how many parents, roommates, or friends have helped with little steps along the way.”

One of Peters’s fundamental principles in guiding her students was “to approach this in a spirit of non-judgment... We’re just

really important to have a sense of what the proceeding looks like, so you can evaluate whether the person playing the role of the representative is the right kind of person,” says Wilde.

Peters hopes that the website will provide a starting place for researchers in a field that has very little available data. But she also hopes that *Representing Children Worldwide* will be of use to policymakers and practitioners. “I would be most thrilled if it would actually help children’s voices be heard better.”

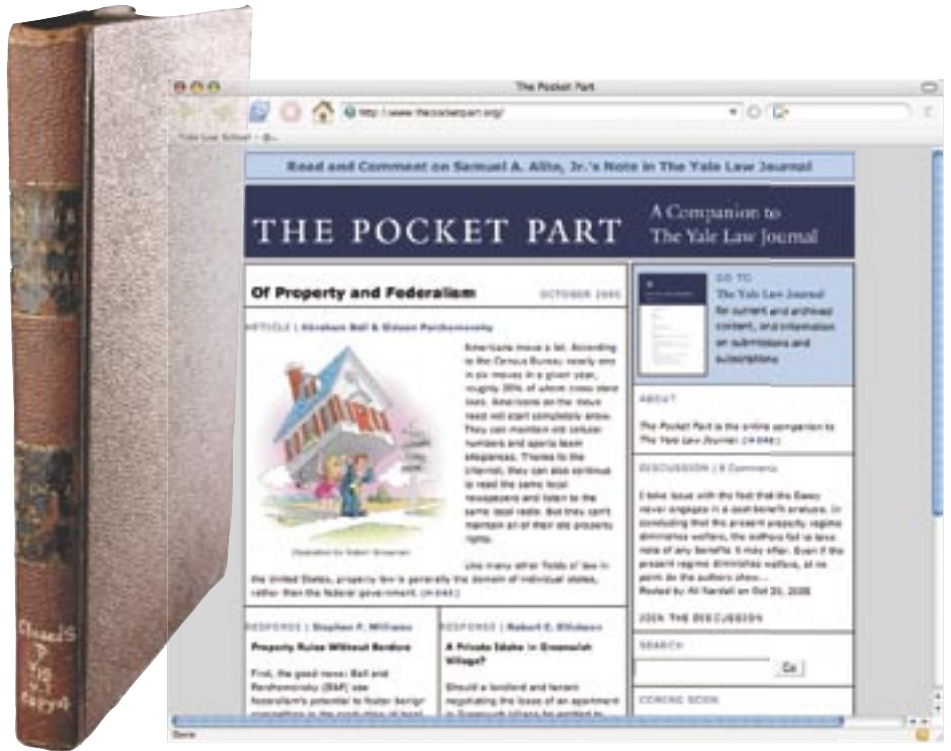
Another one of Peters’s guiding principles was, “Being a lawyer means learning and teaching.” She admits that this whole project “started in embarrassment”—when she knew nothing about the CRC. Now all that she and her students learned is available to the whole world. 

What Is Old Is New Again

THE YALE LAW JOURNAL launched a high-tech initiative in October. The Pocket Part (www.thepocketpart.org), the *Journal's* new companion website, features op-ed length summaries of articles from each issue, critiques from experts, and comments from visitors to the site.

What is a “companion website”? The Pocket Part isn’t a blog—the pieces that appear on it are carefully edited and reviewed. But it’s not a recapitulation of the print *Journal*, either—the pieces are tailored specifically for this new forum. “The real thrust of this online venture was to make accessible legal scholarship for students and practitioners to read in the middle of a busy schedule,” says Ian Bassin ’06, one of the creators of The Pocket Part.

Despite the novelty of The Pocket Part’s digital format, Robert Gordon, the Chancellor Kent Professor of Law and Legal History, says, “In some ways the *Law Journal* is returning to an earlier form.” He explains that the first law school-based law reviews were founded in the late nine-



teenth century and printed summaries of recent court decisions, doctrinal analysis, and commentary on current events. One of their key objectives was to provide guidance to practicing lawyers and judges, and their articles were short compared to modern law reviews.

During the era of the New Deal, Gordon says, law reviews incorporated more theory and more policy discussions. In part this was a response to the unprecedented questions raised by New Deal legislation, such as the federal income tax. By the 1970s, says Gordon, “the whole process




Judge Frank H. Easterbrook of the United States Court of Appeals for the Seventh Circuit delivered the Inaugural Judge Ralph Winter Lectureship on Corporate Law and Governance on December 5 entitled “The Race for the Bottom in Corporate Governance.” The Lectureship was recently established by former law clerks and students of Judge Winter’s to commemorate his scholarship in corporate law and his distinguished career as a jurist. Judge Winter’s 1977 article, “State Law, Shareholder Protection, and the Theory of the Corporation,” written while he was a member of the Law School faculty, changed the terms of debate about the federal system of corporate law. Here, Judge Winter ’60 (left) chats with Judge Easterbrook following the inaugural lecture.

gets more academicized.” (Think of law and economics or critical race theory.) Long pieces, written in specialized jargon with hundreds of footnotes, became standard. “Less of it is accessible to generalist outside audiences, though a lot of it is still relevant to outside audiences,” says Gordon. He compares the more theoretical pieces to an architect’s technical plan, which requires an engineer to put it into practice.

Gordon sees *The Pocket Part* as playing this engineer’s role: “It’s a vehicle for presenting thoughtful academic views to the profession and the public.”

Indeed, a look at the first issue of *The Yale Law Journal* (October 1891) supports Gordon’s comparison. The articles cover topics of broad interest and can be easily read by a non-lawyer. Short commentaries and notes address recent decisions and legislation—just as *The Pocket Part* hopes to publish more current commentary. What’s more, the pieces range from a paragraph to fifteen pages in length, with seventeen footnotes in the whole issue. (*The Pocket Part* has banished footnotes in favor of links.)

The early *Journal* editors and *The Pocket Part* editors seem to be interested in the same subjects. The first edition of *The Pocket Part* featured an article that argues in favor of making property rights more flexible by allowing people to register property under the legal regime of any state they choose. This proposal was inspired by the practice of registering corporations in the state with the most favorable laws. An article in the second issue of the *Journal* discussed the then-controversial and burgeoning practice of “incorporation in one state for business to be done in another.”

Gordon argues that *Journal* articles have had great influence on “the way lawyers think,” and he cites “The Reliance Interest in Contract Damages” by Lon L. Fuller and William R. Perdue as an example. But, he adds, “The kind of influence that ideas have on practice is always indirect... They need to be taken up by someone who can get things done.” *The Pocket Part* seeks to facilitate this process. 

Ruebhausen Gift Supports Professorship, Student Activities, and Fellows

YALE LAW SCHOOL RECEIVED a gift from the estate of Oscar M. Ruebhausen ’37 that is expected to provide more than \$30 million to the School. The gift to the Law School is one of the largest in the history of American legal education.

The Law School designated September 21 as Oscar M. Ruebhausen ’37 Day, to recognize the generosity of Ruebhausen and his wife, Zelia P. Ruebhausen. Their gift will serve to support an Oscar M. Ruebhausen Professorship of Law awarded to Professor Roberta Romano ’80, a leading expert in corporate law. The fund will also support Oscar M. Ruebhausen Visiting Fellows; the Zelia P. Ruebhausen Student Fund; and the Oscar M. Ruebhausen Fund.

“Yale Law School could not survive without the generosity of its alumni, few of whom were more dedicated to their alma mater than Oscar M. Ruebhausen,” said Yale Law School Dean Harold Hongju Koh. “He was the type of lawyer that our students and graduates hope to become. He was a social architect deeply committed to the very best values of the law and the legal profession.”

The events on September 21 included a panel discussion on “Nationhood and International Law” by the first slate of Oscar M. Ruebhausen Visiting Fellows: Aharon Barak, President of the Supreme Court of Israel; Dieter Grimm, Former Justice of the Constitutional Court of Germany; Frank Iacobucci, Former Justice of the Supreme Court of Canada; and Jon O. Newman ’56, Senior Judge for the U.S. Court of Appeals for the Second Circuit. Professor Roberta Romano also gave her inaugural lecture as the first Oscar M. Ruebhausen Professor of Law, discussing “After the Revolution in Corporate Law.”



Joint degree student Justin Muzinich and Tara Helfman ’06 announce student projects supported by the Zelia P. Ruebhausen Student Fund, as Associate Dean Mark Templeton ’99 (left) looks on. The new fund, part of a \$30 million gift from the estate of Oscar M. Ruebhausen ’37, was established to support projects that benefit the intellectual life of the School and social and intellectual interactions with students and faculty.



John G. Simon, Augustus E. Lines Professor Emeritus of Law, was honored at an unveiling of his portrait at the Law School on September 19. Professor Simon, his wife Claire, and artist Dan Duffy are shown with the portrait, which now hangs in the Alumni Reading Room.

Samuel Alito '75 Nominated to U.S. Supreme Court

PRESIDENT GEORGE W. BUSH nominated Samuel A. Alito Jr. '75 to be an Associate Justice on the United States Supreme Court on October 31. Alito has served as a judge on the U.S. Court of Appeals for the Third Circuit since 1990.

Alito was born in Trenton, New Jersey, and attended Princeton University before coming to YLS. While at Yale Law School, Alito was an editor of *The Yale Law Journal*.

Alito went on to clerk for Judge Leonard Garth of the Third Circuit and then served as Assistant U.S. Attorney in the appellate division. In 1981 he was named Assistant to the Solicitor General and argued twelve cases on behalf of the federal government in the U.S. Supreme Court.

From 1985 to 1987, Alito worked in the Office of Legal Counsel in the Department of Justice. He was next appointed U.S. Attorney for the District of New Jersey and prosecuted white-collar and environmental crimes, drug trafficking, organized crime, and violations of civil rights. After he was appointed to the federal judiciary by President George H.W. Bush in 1990, Alito was confirmed by a unanimous voice vote in the U.S. Senate.

YLS GRADUATES ON THE SUPREME COURT:

Sherman Minton '17 LLM
served on the court 1949–56

Abe Fortas '33
served on the court 1965–69

Potter Stewart '41
served on the court 1958–81

Byron White '46
served on the court 1962–93

Clarence Thomas '74
serving on the court since 1991

Cultural Cognition Project Studies Democratic Decision-Making

ACCORDING TO DAN KAHAN, Deputy Dean and Elizabeth K. Dollard Professor of Law, a democratic government is required to reach policy decisions on issues most citizens know little about. "You hear about a chemical the name of which is even complicated to pronounce, and you're

supposed to have an opinion. How in a democracy do people form opinions about those things?" asks Kahan. He is leading a multi-disciplinary consortium of scholars, called the Cultural Cognition Project, to try

The results confirmed that cultural orientation more strongly predicted people's perceptions of various risks than other individual characteristics, such as gender, race, or income.

to answer this and other questions about democratic decision-making.

The project started by looking at the issue of gun control. Says Kahan, "The question was, what sorts of gun risks people took more seriously—the risk that you'll be shot by some bad guy or that you or your child will be injured in a gun accident, on the one hand, or the risk that if you don't have a gun you won't be able to defend yourself." Kahan and his group predicted that people's cultural outlook would reliably predict how they felt about the risks of guns, and their early survey supported this thesis.

They developed two scales of cultural orientation. The first measures where one falls on a spectrum of hierarchy-egalitarianism—which Kahan summarizes with the question, "How much differentiation do you think there should be in society?" The second scale measures individualism-solidarism—or, according to Kahan, "How much do you think that the interests of the community should come first? How much do you think individuals should be protected from interference in their lives?"

The group conducted a survey of 1,800 people, called the National Culture and Risk Survey. The results confirmed that cultural orientation more strongly predicted people's perceptions of various risks than other individual characteristics, such as gender, race, or income. For instance, hierarchical and individualist people generally opposed gun control. The survey also expanded to other issues. For example, it found that hierarchical individuals were

more likely to think that abortion was a risky procedure, whereas people of egalitarian and individualistic worldviews perceived abortion as being relatively safe.

"We have a pretty good theory about why you would expect to see this," says Kahan. "People have to ask other people what they think about whether an issue like global warming is a serious threat.... They can't figure it out necessarily by trial and error or just by trying to read an economics journal or something like this. So, who do they ask? Well they're talking to and accepting the word of other people who are like them."

The Cultural Cognition Project has developed these insights into several papers and has made its findings available through the project's website, <http://research.yale.edu/culturalcognition>.

Symposium Fetes and Dissects New Book by Prof. Bruce Ackerman

STERLING PROFESSOR Bruce Ackerman's new book, *The Failure of the Founding Fathers*, was the center of attention at the first Lillian Goldman Law Library New Book Symposium on September 16.

Ackerman's arresting thesis? The Framers of the Constitution made several mistakes in crafting the presidency, and these mistakes quickly came to threaten the entire American enterprise of constitutional government in events surrounding the election of 1800.

Four scholars responded to Ackerman's ideas, calling the book everything from "fine historical detective work" and "a stunning book" to "misguided." (You can read a description of the program at www.law.yale.edu/outside/html/Public_Affairs/651/yls_article.htm.)

The library has planned a second New Book Symposium, to focus on William Eskridge's forthcoming book on gay marriage, for March 31, 2006.

UPDATE

Military Recruitment Issues

RUMSFELD V. FAIR (Forum for Academic and Institutional Rights), a case that may affect law school recruitment policies, was argued in the Supreme Court on December 6, 2005. A friend-of-the-court brief was filed by forty-four faculty members at the Law School, who argued that the Solomon Amendment regarding military recruitment on university campuses threatens academic freedom and seeks to prevent law professors from disassociating themselves from the military's campaign of open discrimination against gays, lesbians, and bisexuals.

The brief also argues that facts in the case prove that the Department of Defense has, at all times, had ample access to Yale Law School's students for legitimate recruitment purposes. Yale Law School does not bar anyone from recruiting on campus, but it does not aid and abet discrimination or assist outside

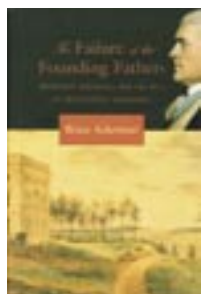
employers, who seek to hire some Yale students but not others, based on their race, gender, or sexual orientation.

Several other amicus briefs were filed, including one by Yale University with six other universities: Columbia, Cornell, Harvard, New York University, University of Chicago, and University of Pennsylvania. A brief was also filed by the American Association of University Professors, which argues that the Solomon Amendment "uses the funding leverage to coerce universities to abandon protected speech in areas wholly unrelated to the government's exercise of its spending power" in violation of well-settled First Amendment law.

Another brief was filed by two Law School student organizations: the Student/Faculty Alliance for Military Equality (SAME) and OutLaws, an organization for lesbian, gay, bisexual, and transgender students.

A Supreme Court decision is expected in the spring. ☞

MAKING A DIFFERENCE



Students Respond to Crisis in New Orleans

(From left to right): Kristen Eichensehr '08, Richard Re '08, Peter Harrell '08, Yale Law School Director of Student Life Marilyn Drees, and Meryl Raymar '08 (in front) delivered checks to the American Red Cross as part of the Class Challenge for Hurricane Katrina, which raised nearly \$14,000 from law students for a variety of relief efforts on the Gulf Coast. The fundraiser marked the debut of the Law School's Hurricane Relief Law Project, which raises funds and takes on law-related research projects for lawyers and legal institutions in the affected areas.