



A WEEKEND ODYSSEY


EXPLORING SCIENCE AND LAW



ALUMNI WEEKEND 2010

GOVERNMENT USE (AND MISUSE) OF SCIENTIFIC INFORMATION, INTERNET PRIVACY, ENVIRONMENTAL LAW, THE LEGAL CHALLENGES OF EMERGING TECHNOLOGIES, AND THE IMPACT OF SCIENTIFIC DEVELOPMENTS ON CRIMINAL INVESTIGATIONS AND CRIMINAL LAW WERE JUST SOME OF THE TOPICS DISCUSSED DURING THIS YEAR'S REUNION.

Alumni and their guests spent October 8–10 in New Haven, revisiting the halls and classrooms of the Sterling Law Building and reuniting during an all-alumni luncheon, class reunion dinners, and special Sunday morning brunches. The Yale Law School Association Award of Merit was awarded to four alumni who were instrumental to the founding of the Natural Resources Defense Council and have had distinguished careers focusing on environmental issues: Richard E. Ayres '69, Principal, Ayres Law Group; John E. Bryson '69, Retired Chairman & CEO, Edison International; J. Gustave Speth '69, Professor of Law, Vermont Law School, and former dean, Yale School of Forestry & Environmental Studies; and Edward L. Strohbehn, Jr. '69, Partner, Bingham McCutchen.

website  Videos of panels and photo galleries from the weekend's events are available at www.law.yale.edu/AW10.

Photographs by Harold Shapiro



THE LEGALITIES OF INNOVATION

Panelists discuss constraints created by patent law, the rise of synthetic biology, and the legal and ethical issues surrounding secondary findings in clinical research

A discussion of emerging technologies and the legal challenges they pose took center stage during an Alumni Weekend panel titled “The Next Technological Revolution: The Legal Challenges Posed by Emerging Technologies From Nano to Neuro.”

Dan M. Kahan, Yale Law School’s Elizabeth K. Dollard Professor of Law, served as the panel’s moderator. The panelists were: Lori B. Andrews ’78, Distinguished Professor of Law, Chicago-Kent College of Law and Director, Institute for Science, Law and Technology, and Associate Vice President, IIT Chicago-Kent College of Law; David Singh Grewal ’02, Junior Fellow, Harvard University Society of Fellows; and Susan M. Wolf ’80, McKnight Presidential Professor of Law, Medicine & Public Policy, Faegre & Benson Professor of Law, and Professor of Medicine, University of Minnesota Law School.

Andrews began the panel with a discussion about changes in patent law, including how patent law can challenge innovation.

“In the past, patents used to be granted for inventions, nuts and bolts things. But now patents are being awarded for broad concepts; instead of for a mouse trap, for the idea of capturing mice and covering all possible ways of doing it, even if invented by other people,” she explained. “The patent trend has gotten into this situation where rather than encouraging innovation, we might actually be stopping innovation in some ways. From genetics to neuro to nano technology, patent enforcement can create barriers to innovation and also, surprisingly, can interfere with some constitutional rights—right to speech, religion, reproductive freedom.”

Grewal spoke about both the science and legal issues surrounding synthetic biology—and whether or not it can be an area of open technology. Medicines, biofuels, and biosensors are all possible products of synthetic biology, he explained. Grewal also introduced the audience to MIT’s registry of standard parts, which acts as a catalog of biological parts. “Very high level things like medicines are being produced, but if the technology works, it shouldn’t require fancy multimillion-dollar teams to do everything. It should be something that smaller groups of academics and students should be able to play around with. One key part of getting that working is having a registry of parts,” Grewal said.

Wolf focused on the emerging question of how researchers should handle incidental findings in human subjects research—



the unintended discoveries that researchers often make about research participants’ health. She discussed NIH-funded research projects she has led analyzing this problem in the context of imaging research as well as genetics. In CT colonography research (a type of CT scan often called “virtual colonoscopy”), researchers scan most of the torso and the rate of incidental findings can be as high as 89 percent, Wolf explained. In genetic and genomic research, incidental findings range from misattributed paternity to discovery of an unexpected mutation associated with serious disease risk. “We urgently need rules for handling incidental findings,” she said. “Most research consent forms say nothing about this.... Researchers don’t know what to do.”

Wolf argued that the problem of incidental findings challenges the deep structure of health law and bioethics. Both are built on a divide between research and clinical care. However, the problem of incidental findings suggests that researchers should bear some clinical responsibilities. Wolf suggested that the growing power of research technologies to generate data of clinical significance will require restructuring both law and ethics. **Y**

To watch a video of this and other panel discussions that took place during Alumni Weekend 2010, visit www.law.yale.edu/AW2010.



Alumni Weekend 2010 included several panels devoted to science and law. The quotes below give a brief taste of those discussions. For more, visit www.law.yale.edu/AW2010.



J. Gustave Speth ’69
Professor of Law, Vermont Law School; and former dean, Yale School of Forestry & Environmental Studies

From the panel “Generations of Environmental Law—What Have We Done, What Remains To Be Done, and How and Who Should Tackle Those Challenges”

“Our consumerism is out of control... We’re investing so much of life and life’s energy into things... The environmental community has been relatively reluctant to talk about lifestyle changes, about the need to do with less... The corporate sector, I think, needs deep fundamental change. The drive for profit is the biggest thing in our economic world...I think, in the end, we’re going to have to challenge this growth fetish. This idea that we’re prioritizing economic growth over everything else, it trumps everything in our politics. We can’t even save the climate unless we can demonstrate that it’s going to have economic benefits—or not big economic costs. I mean, how unbelievable that is, when you think about it.”



The Honorable James E. Boasberg ’90
Superior Court of the District of Columbia

From the panel “The CSI Effect? How Do Popular Conceptions of Criminal Proof Affect the Criminal Process”

“The predominant complaint...is that the government in its prosecutions is frequently relying on science that isn’t really science, be it fingerprints, bite marks, tool marks, ballistics identification, handwriting, and so forth. But in contrast, what I think occurs every day in our courts is something different... But what I’m seeing every day is the government’s efforts to explain to juries who want scientific evidence why they won’t get such evidence, and why that evidence doesn’t exist. And this, I think, is the true CSI effect.”



Wendy E. Wagner ’87
Joe A. Worsham Centennial Professor, The University of Texas School of Law

From the panel “Science and the Three Branches of Government: How Congress, Courts, and Executive Branch Agencies Use (or Misuse!) Scientific Information”

“To me [this area] is ... where the legal system, I think, looks the worst: If you can’t control the research because you’re not producing it—instead the research is coming from third parties—what you want to do is attack the hell out of it... What’s worse is that when efforts to discredit the research don’t pan out, then you go ahead and go after the researchers, too ... So it may have a chilling effect even on the kinds of projects and priorities that scientists pick out.”