


THE EMERGING LEGAL LANDSCAPE



JUDITH SANDALOW '90 CHILDREN'S LAW
 REED HUNDT '74 CLEAN ENERGY
 ALAN U. SCHWARTZ '56 ARTISTS' RIGHTS
 A.T. WALL '80 CORRECTIONS SYSTEM
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SIX LAWYERS TALK ABOUT WHAT'S ON THE HORIZON IN THEIR RESPECTIVE FIELDS

Yale Law School counts among its graduates a great number of innovators and trailblazers—people whose willingness to imagine new possibilities and whose persistence in pushing boundaries have changed the landscape of the legal world. Trailblazers, of course, can sometimes shatter the rules, become enmeshed in new or longstanding controversies, and draw criticism in a push to tackle problems and rethink the norm.

The following profiles highlight just a few of the alumni who have been working on the front lines in different areas of the law. They spoke recently to the YLR about what's on the forefront in their respective fields.

BY KAITLIN THOMAS

Judith Sandalow '90
Executive Director, Children's Law Center

Expecting A+ work — an innovative model of representation

When Judith Sandalow joined the Children's Law Center (CLC) as its Executive Director in 2000, it had only three staff members. Today, the nonprofit children's advocacy group represents more than 1,000 at-risk children in D.C., and employs a staff of seventy-five. The CLC staff also has 300 pro bono attorneys with whom they work.

From the beginning, Sandalow's plan for growing the CLC was simple: "I made sure that we hired top-notch lawyers and then held them to high standards," she says. "I came to this work assuming that every lawyer I hired would do A+ work. It never crossed my mind that we should expect less because our clients are poor. Our job is to succeed for our clients. That means not giving up—it means not settling for less for your clients. You have to be smart, of course, but you also have to be willing to be boots-to-the-ground."

That alone, she says, is a departure from the norm.

"The really sad thing is that taking an innovative approach to child's law and poverty law is to create a framework in which lawyers do good work—which means lowering case loads. It's sad to say this, but it's true. Truly life-altering decisions are being made in this type of work and the best thing you can do is to give lawyers only the number of cases that they can handle well. And that is innovative."

Among the CLC's many successes is the case of a seven-year-old girl who was failing second grade. The girl had



severe asthma that required her to be in the ER two nights each week. When the CLC became involved in her case, they sued her family's landlord to exterminate the rats and roaches infesting their apartment. As soon as they were exterminated, the girl's health improved, the hospital visits stopped, and she is now an A-student

Sometimes it's the most basic of rights that cause the biggest stir. Among the hot topics of discussion for those working in poverty law right now, Sandalow says, are access to justice and right to counsel. And for children's lawyers, due process is a longstanding issue. "There has long been a tension between 'courts as due process' and 'courts as therapy,'" Sandalow explains. "In my view, we've gone way too far in the direction of 'therapeutic courts.' Judges can sometimes lose perspective about the fact that they have to hold people accountable. The big problem facing kids' lawyers is how to help show judges that due process is better for kids." And cases need to be heard on "kid time," because a two- or three-year delay is a very long time in the life of a child, Sandalow adds.

Sandalow photograph courtesy of the Children's Law Center

Schwartz photograph courtesy of Greenberg Traurig



Alan U. Schwartz '56
Shareholder, Greenberg Traurig

Protecting artists' rights in an ever-changing market

Alan Schwartz's introduction to the world of artists began when he was a student at Yale Law School. He spent much of his final year of law school in New York City and became enmeshed in the world of writers, befriending some of the young literati of the 1950s and gaining empathy for the struggles of artists. Schwartz still oversees the trust left by one of his most famous writer friends and clients—Truman Capote.

Though Schwartz has long been a champion of writers and the written word (in fact, one of his sons, John Burnham Schwartz, is a critically acclaimed, bestselling author), he is best known for his work in the movie world. In the early 1960s, as the youngest employee in a New York law firm, Schwartz was tasked with finding something to do for a floundering writer named Mel Brooks. Schwartz remains Brooks's attorney after more than forty years, developing new, creative approaches to financing film projects, including *The Producers*. An innovator in split rights film financing deals and enhanced bank lending arrangements, Schwartz became a trailblazer in rethinking how film financing gets done—and his clients benefitted. (That famous *Spaceballs* line, "May the Schwartz be with you," was Brooks tipping his hat to his trusted attorney.)

Fast-forward to the present. Schwartz is still practicing, now at Greenberg Traurig, and is ever as impassioned about artists' rights.

One of the major issues attorneys face in the entertainment world today is the question of electronic books versus printed books and the protection of the latter, Schwartz says. As publishers, agents, authors, and attorneys await a settlement expected to decide the fate of Google's bid to publish e-books, Schwartz worries about the impact that electronic delivery systems will have on authors' rights and their finances. Though a hardcover book may cost \$27, an e-book costs less than half that.

With authors earning approximately 10 to 15 percent of the cover price, lower sales prices could translate into devastating effects for writers.

"We're in the middle of a whole new kind of negotiation between publishing houses, e-book publishers, and authors about how future revenue from that kind of publication is going to be divided," Schwartz explains. "That's going to be a very big issue—it really will affect how authors are going to survive under these new delivery systems."

Changes in the delivery of visual media have also been causing some concern and uncertainty among entertainment lawyers, Schwartz says. With the window of time shrinking between theater premieres and DVD releases, the revenue stream is changing. And the increased use of video on demand has added even more complexity to forecasting profits.

"We have all of these media delivery systems converging, and people cannot figure out when they're doing projections on a new movie, for example, how much money they can expect to get percentage-wise from any one medium," Schwartz says.

"... [I]t's continually changing: people are beginning to watch movies on the Internet—three years ago, nobody watched movies on the Internet. So the whole business is being scrambled; it's like a kaleidoscope where the whole picture is changing all the time. How do you negotiate one against the other? What is a movie company supposed to do when it's trying to figure out how to make its money back? This is a major economic and also cultural issue right now and there are no real answers to these issues."

Also complicating the issue is the rampant problem of piracy—particularly international piracy. "People are stealing this stuff and putting it up for a dollar, trying to sell it," Schwartz says. "We're screaming at the government to try to do something, the government is screaming at world trade organizations, and it's a long way from being resolved."

The result of all these pressures, Schwartz believes, is that fewer movies and television shows are being made and that creators are more risk averse. With less assurance about profit and the astronomical cost of marketing, producers are favoring sure-thing blockbusters over smaller, riskier films and shows.

Savvy entertainment lawyers today need to think like businessmen, Schwartz says. "You have to know the business you're in," he says. "You need to be able to look at a projection sheet of a movie that's coming out next February and say, 'Who made these projections? Are they crazy? You're telling me that DVDs are going to account for 60 percent of the marketing on the film? They won't!'"

Reed Hundt '74, CEO, Coalition for Green Capital

Long-term, low-cost financing for clean energy

Best known for his work with technology and communications issues, former FCC Chairman Reed Hundt has turned his attention to issues of clean energy. Hundt is CEO of Coalition for Green Capital, a nonprofit dedicated to advocating for tax and finance policies that support investment in energy efficiency and clean energy at the state, national, and international levels.

"All reasonable people, and even some unreasonable people, agree that economies need to be on a stable platform," Hundt says. "If you took out a blank sheet of paper, the last thing in the world you'd come up with is a plan that relied on oil from autocratic and difficult countries. We are dependent on oil because of history—and the biggest problem we are facing is escaping from that history."

Politics for the foreseeable future will not allow us to rely on taxes, Hundt says.

"We need a new idea that has political viability and that is linked to the political crisis—that is unemployment. We need an idea that moves us in a new area and that addresses that crisis of unemployment."

Hundt's idea: a "Green Bank" that would direct financing to clean energy projects.

"It lets us lower the cost of clean energy and lets us send a different price signal. We need to take advantage of low-cost, long-term financing that is available now," Hundt says. "We're probably the only economy in the world that doesn't use low-cost, long-term financing to build a clean energy grid."



A.T. Wall '80, *Director, Rhode Island Department of Corrections*

A fundamental shift in philosophy



The State of Rhode Island defines its correctional system quite broadly; the corrections department includes not just the institutions of prisons and jails, but probation and parole services as well. Any adult under any form of correctional authority in Rhode Island falls under the umbrella of A.T. Wall's department. That means one in every twenty-one men in Rhode Island is under Wall's department's authority every day. In Providence (Wall's hometown, where he still lives and has his phone number listed in the telephone book), one in every four men in the 18-to-35 year-old age bracket falls under the corrections department's jurisdiction.

Wall first started working in corrections before he attended law school—he was a line probation and parole officer in the 1970s. A lot has changed since that time. Prison populations have grown and changed and, as a result, the corrections system has moved closer to the center of politics and of the economy. Managing special populations within the prisons—namely an increasing number of juvenile offenders incarcerated as adults, geriatric inmates, and mentally ill inmates—has also provided new challenges.

But perhaps the biggest challenge today involves the economy.

"Corrections is caught in a double bind at this time," Wall says. "Correctional institutions are expensive and states are cash strapped." The inmate census has been soaring over the past few decades—and states have no appetite to expand, Wall explains. The only solution is to reduce the growth in the inmate census. "Those decisions run up against a very powerful current of public concern," Wall says. "There's very little tolerance for releasing inmates or failing to incarcerate inmates when a notorious crime occurs. Those offenses may be the exception, but they drive public sentiment. Political leaders are really reluctant to take that risk."

With prisons now more secure, orderly, and constitutional than they were decades ago, the focus of the Rhode Island Corrections Department has shifted to prisoner reentry. Wall and his colleagues take seriously the use of practices based on evidence—they analyze data, and focus on close collaboration with local law enforcement and community-based agencies. The focus on reentry makes sense for public safety—with a recidivism rate hovering close to fifty percent, it also makes sense from a fiscal standpoint.

"We have no death penalty here," Wall says. "We have twenty-six offenders serving life without parole—they will die behind our walls. However, we also have 20,000 commitments—20,000 admissions—into the system every year. Every

single one of them, with the exception of those twenty-six, is going to be released again.

"In our system, 46 percent of the inmates we release each year are back in our custody within twelve months. Given the financial picture, the steps we take to reduce that percentage have a direct impact on the bottom line," Wall continues. "Corrections is a field which is politically charged, the stakes are high, people are talking about people's sense of safety. Prisoner reentry is neutral ground because, as I say to people in Rhode Island, 'He is out, you don't have to like it or agree with it, I may not like it or agree with it, but that decision has been made.'"

"Corrections is a field which is politically charged, the stakes are high, people are talking about people's sense of safety."



Susan Crawford '89

Assistant Professor of Law, Cardoza Law School

Law and policy in the Information Age

A former member of President Obama's "Geek Squad," Susan Crawford is an outspoken proponent of network neutrality, which would require Internet access providers to treat all content equally. She has also been an unabashed critic of those who have sought to minimize the importance of U.S. policy on high-speed Internet access for all Americans. Crawford is among those who view Internet access as akin to a utility—a basic service all modern citizens need to succeed.

"One of the key building blocks to society is a speedy infrastructure," Crawford says.

As a partner at Wilmer, Cutler & Pickering until the end of 2002, she represented major online companies, startups, and joint ventures. In addition to her experience teaching cyberlaw and intellectual property law at a number of law schools (among them Yale, Michigan, and Cardoza), Crawford is a prolific blogger writing on everything from the threat of cyber attacks and massive virtual blackouts to online identity and privacy issues. She served on President Obama's transition team, co-leading its Federal Communications Commission Review team, and then as coordinator on tech-policy issues for the National Economic Council.

The legal world is struggling to take account of changes to the nature of technology, Crawford says. "We are shifting from an economy of goods to an economy of information, and society depends on counsel having nuanced understanding of this shift," she adds.

Among Crawford's concerns about the future is that of access to information.



"The Internet is under substantial threat," she says, "and the policies that we adopt will have an impact on this... People are worried about the Internet as a threat to national security and have worries about unsavory speech. My concern is that these types of threats will convince governments to lock down something that could be beneficial for mankind."

a prestigious summit until he releases political prisoners," Roth explains. "But as the world becomes more multi-polar, with powerful governments emerging in the global South, we find that Western pressure alone is often not enough. In Zimbabwe, for example, the West has a strong human rights policy, but the key to changing Robert Mugabe is South Africa," he says.

HRW's response to this new challenge has been, in part, to work more closely with local media and civil society in key capitals of the global South. "We know that all governments behave better when watched," Roth says. "By encouraging the local press and civil society to scrutinize more closely these governments' foreign policies and by building relationships with allied officials within these governments, we hope gradually to transform these Southern powers into more reliable defenders of human rights."

Some of Human Rights Watch's most innovative work involves, ironically, areas where there is no law, Roth says. "For example, international human rights law speaks mainly to the conduct of states, not private actors," Roth explains. "But by highlighting areas where, for example, corporations are complicit in human rights violations, Human Rights Watch has helped to build public expectations about how corporations should behave. Few corporations want the risk to their reputations that comes from flouting these powerful, if informal, norms of conduct." Y

Kenneth Roth '80, *Executive Director, Human Rights Watch* Working where there is no law

Since 1993, Kenneth Roth has served as Executive Director of Human Rights Watch (HRW), one of the world's leading international human rights organizations. Under Roth's leadership, HRW investigates human rights conditions in ninety countries, and works to focus international attention on human rights violations with the hope of giving voice to victims, bringing oppressors to justice, and protecting human rights across the globe.

Traditionally, Roth explains, HRW has sought help from influential Western governments to pressure abusive leaders with economic or diplomatic incentives to end abuse. "We might ask governments in Washington, London, Paris, Berlin, or Brussels to cut off arms shipments to an abusive leader until he ends summary executions, or to condition loans on his ending torture, or simply to deny him an invitation to

