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UB Law Hosts Three National Conferences

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Faculty

UB Law hosts three national conferences

Baldy Center hosts workshop on poverty, low-wage labor and social retrenchment

BY JOANE SI IAN WONG '99

Do welfare recipients lack moral character and a work ethic? Should they be forced to find work? These were among the questions that were addressed by a panel of internationally renowned scholars here last September. The Baldy Center for Law and Social Policy sponsored an intensive two-day workshop which attracted faculty from Harvard, Columbia, University of Pennsylvania, Boalt Hall (Berkeley) and UCLA on the topics of poverty, low-wage labor and social retrenchment.

The workshop was organized and chaired by Professor Frank Munger, who has been teaching and writing about welfare reform for the past several years. The workshop will result in a volume edited by Professor Munger on the conditions and effects of low-wage work, to be published by the Russell Sage Foundation, the main source of the program's funding.

Welfare reform has been high on the political agenda of the past three administrations. Cutting welfare costs emerged as a lead issue during the first Clinton presidential campaign. As job security and actual wages decrease, contemporary reformers focus on work as the central moral issue in welfare reform.



Left to right: UB American Studies Professor Michael H. Frisch, UB Law Professor Frank Munger and graduate student Julie Goldsmith

For years, reform advocates have argued that many welfare recipients can work, but choose not to because they have become dependent upon welfare and lack the moral character and work ethic possessed by those who are employed. Since August 1996, significant changes in the federal welfare laws have produced time limits and mandatory work requirements intended to force most welfare recipients to find work and achieve self-sufficiency.

"Such requirements assume that work is available for persons with limited qualifications — typically, work at or near minimum wage; that work without benefits is sustainable; and that low-wage work will uplift persons morally and lead them economically to better work at a living wage," explains Professor Munger.

According to Munger, this workshop grew out of the frustration of scholars at UB and other universities with such false assumptions which form the basis of contemporary welfare reforms.

The workshop was conceived by a group of UB faculty, participants in the Baldy Center Program on Community and Difference, who met during the year preceding the workshop to consider the focus and possible workshop participants. UB faculty members Peter Pitegoff (Law), Michael Frisch (American Studies and History), Bruce Jackson (English) and Meghan Cope (Geography) wrote papers or provided comments on papers at the workshop, and many other UB faculty attended and participated in discussions. A number of the better-known scholars from other institutions came to the UB campus a day early to give public lectures about their work and to meet with faculty and students before the workshop began.

Participants in the Baldy Center workshop offered a different approach to the study of poverty and the impact of welfare. As a group, they have employed the methods of ethnography, oral history and other forms of qualitative research in order to understand the con-

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ditions of poverty and the responses of individuals to poverty, work and welfare.

Professor Carol Stack, an anthropologist at the University of California at Berkeley, and author of "All Our Kin", has studied the networks of mutual support among poor families and welfare recipients. Such networks provide for the needs of individuals when work fails

welfare recipient's experiences with the welfare system. He commented on similarities and differences in the experiences of welfare recipients in navigating the welfare system then and now.

Professor Kathryn Edin, a sociologist at the University of Pennsylvania, discussed the decision by poor women to marry or not to marry, drawing material from her extensive interviews with women on welfare.

Professor Edin's recent book, "Making Ends Meet," has received national recognition for its examination of economic survival strategies in circumstances where neither work nor welfare meets the needs of a single-parent family.

Harvard University Law Professor Lucie White spoke about the need to examine opportunities for self-help and transformation by the poor instead of depending upon government programs alone to provide poverty relief. Her study of the entrapment of poor women in a jobless, uneducated and violently oppressed status is widely considered to be among the best explorations of the interplay of personal identity and poverty.

Scholarship presented at the workshop was selected to reflect a wide range of perspectives and included papers by the following: Columbia University sociologist Saskia Sassen, whose work

on the emerging structure of the global city describes the growing importance of informal labor markets; Rome's Universita "La Sapienza" oral historian Alessandro Portelli, who presented a paper comparing interpretations of poverty by Appalachian and Italian workers; UCLA law professor Joel Handler, who compared European and American approaches to welfare; and University of California at Berkeley sociologist Loic Wacquant, who presented a theory of

the formation of the American ghetto. Speakers included, among others, economist Sanders Korenman, a member of the President's Council of Economic Advisers, and Dr. Fedila Boughanemi, a research director from the European Community.

Workshop discussions emphasized the importance of qualitative studies of poverty. "Until recently, we knew little about how alternative strategies for economic survival are created or managed by those at the bottom of the income distribution," says Munger. "The work of the scholars attending the workshop has begun to demonstrate the importance of experience-based choices and preferences of individuals on one hand, and the economic conditions which shape opportunities for work on the other."

A common theme prevalent throughout the workshop was the importance of understanding the behavior of the poor from the perspective of the poor. Many of the studies presented and discussed during the workshop examined low-wage work and welfare from the perspectives of the working poor, welfare recipients and marginally employed men and women. Such studies clarify the complex circumstances, experiences and decisions that affect opportunities for sustained work and alter an individual's outlook and expectations for the future. Panelists agreed that the path-breaking qualitative descriptions of lives in poverty provided by the workshop research will be among the richest contributions to new literature on poverty.

Some workshop participants argued that we must not forget to integrate the results of such interpretive research with our own knowledge of social structure and the context of poverty. Still others focused their research in another light, seeing in the very act of speaking for and about themselves, an opportunity for those on the economic margins to understand the causes of their suffering and to learn new ways to help themselves.

Says Munger, "The value of the narratives offered by ethnography, biography and autobiography lies not only in its detail, but in its capacity to make the experience of poverty — and thus the actions of those who live in poverty — intelligible to others." ■



University of California at Berkeley Sociology Professor Loic Wacquant, left, and Dr. Fedila Boughanemi, research director from the European Community



UB Law Professor Isabel Marcus, left, and University of California at Berkeley Anthropology Professor Carol Stack

and public relief is inadequate. Professor Stack presented research from her current study of young people employed in the fast food industry and the effects of low-wage employment on personal outlook.

Professor Michael Katz, a historian at the University of Pennsylvania, is known internationally for his extensive writing about the history of social welfare policy. Professor Katz presented a case history of an early 20th century wel-

National conferences

Leading experts discuss federal criminal law reform

Leading experts in criminal law from across the United States assembled at the Buffalo Criminal Law Center's second conference on federal criminal law reform. Almost 10 years to the day since the enactment of the United States Sentencing Guidelines, the most sweeping reform in the history of federal criminal law, the center hosted "Toward a New Federal Criminal Code."

Organized by UB Law Associate Professor Markus Dubber, and held at UB Law School's O'Brian Hall on Nov. 8, 1997, the day-long conference set out to accomplish three goals: attract attention to the need for federal criminal code reform; document the need for federal criminal code reform; and propose actual reforms of the federal criminal code.

"We expect that UB Law will shortly become known as a national center for excellence in criminal law," said Vice Dean R. Nils Olsen in opening remarks. UB Law Professors Guyora Binder, Charles Patrick Ewing and George Kannar, and Russell Christopher of Columbia University School of Law chaired the four conference panels and commented on the presentations.

Composed of local criminal attorneys, UB faculty members from the departments of psychology, sociology, philosophy and law, and scholars from various academic institutions throughout the country, the audience engaged in spirited debate and discussion

throughout the day. Experts addressed both general questions of federal criminal law reform as well as specific proposals for reform.

The first panel, "Why Federal Criminal Code Reform?" was led by Ronald L. Gainer, a partner in the Washington, D.C., law firm of Gainer, Rient & Hotis, and a former deputy associate attorney general in the criminal division of the United States Department of Justice; and Kathleen F. Brickey, James Carr Professor of Criminal Jurisprudence at Washington University School of Law.

Gainer and Brickey discussed both the need for federal criminal code reform and the feasibility of accomplishing it. "Plainly, we haven't been able to apply our laws to the degree of efficiency that is necessary to generate public confidence in our criminal justice system. It is the basic architecture of the criminal law that needs our attention," said Gainer. Both Gainer and Brickey expressed skepticism about the current Congress' ability and willingness to undertake a lengthy review of the code.

According to Dubber, most criminal law experts agree that reform of the federal criminal code requires a re-examination of the American Law Institute's Model Penal Code which has influenced criminal codification throughout the United States since its publication in 1962. The second panel, "Foundations: The Model Penal Code," featured a lively debate about the merits of the Model Penal Code on its 35th anniversary.

The participants in the debate were George P. Fletcher, Cardozo Professor of Jurisprudence at

Columbia University School of Law Professor and Vice Dean Gerard E. Lynch, left, and UB Law Professor Guyora Binder



Columbia University School of Law, and Paul H. Robinson, a professor of law at Northwestern University School of Law and a former commissioner of the United States Sentencing Commission.

Fletcher opened the debate by presenting a comprehensive critique of the Model Penal Code. In his response, Robinson acknowledged the importance of criticism and debate in moving toward change and improvement. "That's how

criminal law can move ahead," he explained. "The process of formulation, criticism, reformulation, is something that over time will generate a better criminal law."

Speakers on "Reforming the General Part," the third panel, included Sarah N. Welling, Wendell H. Ford Professor at the University of Kentucky College of Law and a member of the Bank Secrecy Act Advisory Group of the

United States Department of Treasury; and Cynthia Kwei Yung Lee, an associate professor of law at the University of San Diego School of Law. Welling and Lee considered possible changes of the federal criminal code's general part, which would contain general provisions applicable to all federal crimes, such as defenses and jurisdictional bases.

Lee proposed a new code section on self-defense. Lee argued, "One of the



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many failings of the current federal criminal code is the absence of a part on defenses which clearly specifies which definitions are recognized and the elements of those definitions."

Welling discussed reforming the federal law of attempt as one small step toward broader change. "It looks like we're doing a piecemeal reform and what appeals to me about a piecemeal approach is that change seems much more possible. It seems that it has in fact been happening and there's hope that more of it could happen."

The final panel, "Reforming the Special Part" included Jeffrey A. Standen, associate professor of law at Willamette University College of Law, and former deputy general counsel to the United States Sentencing Commission; and Gerard E. Lynch, Paul J. Kellner Professor and Vice Dean at Columbia University School of Law and former chief of the criminal division of the United States Attorney's Office of the Southern District of New York. Standen and Lynch discussed the federal code's special part, paying particular attention to the implication of the federal sentencing guidelines for any reform of the federal criminal code.

Standen argued, "We need better and more plausible definitions of crime in the federal statute because it is those definitions that restrain prosecutors in their charge of discretion."

Lynch addressed federal criminal code reform at yet another level. "We need to take seriously the role of the penal code as a statement of moral values toward society," said Lynch. Lynch also advocated more specific definitions of crime, and distinctions in conduct to minimize discretion at the judicial level.

"The quality of the presentations and the discussion was high, and the participants said they were pleased with the conference," said Dubber. "Our success is the result of another outstanding collaborative effort by UB law students, support staff and faculty colleagues."

Dubber noted that the proceedings from this conference will be published in a forthcoming edition of the *Buffalo Criminal Law Review*. Managing editor Corinne A. Carey '98 hopes that this issue will attract further attention to the center's criminal code reform project

and "will help to broaden the national dialogue on substantive issues in federal criminal law." Last year's inaugural issue of the *Buffalo Criminal Law Review* featured papers from the center's 1996 conference entitled "Rethinking Federal Criminal Law" and was distributed to leading experts in criminal law and to federal policy makers.

Law Professor Richard Singer of Rutgers-Camden, one of the country's leading criminal law scholars, wrote that "the review is a great idea ... You've got one of the more exciting new developments in criminal law."

Similarly, Professor David Yellen, of Hofstra, upon reading the *Review's* inaugural issue "cover to cover," commented that "the work of the center really looks fascinating." From the University of Houston, Professor Gerry Moohr congratulated the center on a "very interesting" first issue. Last but not least, Judge Jack Weinstein of the Eastern District of New York wrote that the issue "had

already proven helpful."

For more information about the Center's federal criminal law conferences, its federal criminal law reform project, the *Buffalo Criminal Law Review*, or other center activities, please visit the center's Web site at <http://wings.buffalo.edu/law/bclc>. ■



Ronald L. Gainer, partner in the Washington, D.C. law firm of Gainer, Rient & Hotis



University of Houston Law Center Associate Professor Sandra Guerra, left, and University of San Diego School of Law Associate Professor Cynthia Kwei Yung Lee

National conferences

Scholars from across the nation participate in tax conference

Political theory and taxation were the topics of the day at a workshop titled "Taxation in a Democracy" held at the law school's faculty lounge on Sept. 26 and 27, 1997. Chaired by UB Law Professor Nancy C. Staudt, the workshop was well-attended by tax scholars from law schools across the country, including Yale, Columbia, Cornell and Stanford.

"It was an exciting conference," said Staudt, "the first time a group of nationally prominent scholars were brought together to discuss a subject that is of interest to most individuals — the intersection between politics and taxation."

Staudt teaches in the areas of tax policy, federal income taxation, corporate taxation, and state and local taxation. She is currently a Visiting Scholar at Stanford University, where she has been invited to give two public presentations on her work and where she continues to undertake research in this area of law.

Workshop participants investigated a wide range of topics. "We explored not only how the tax laws are made — who wins and who loses — but how the tax laws should be made in order to ensure overall fairness and efficiency in the democratic state," she explained.

The Friday morning panel entitled "Distributive Justice Among Citizens" was moderated by Professor Gwen Thayer Handelman, of Washington & Lee University School of Law. Panelists

included Regina Jefferson, a professor of law at the Catholic University of America—Columbus School of Law. Jefferson spoke on medical savings accounts and their disproportionate benefit to high-income individuals, healthy individuals and individuals able to perform cost benefit analyses of health care procedures.

Jefferson was followed by Barbara Fried, professor of law at Stanford University Law School, who addressed the positive and negative impact of shifting from an income to a consumption tax, including the distributional effects of a switch. The morning's final speaker was Professor Edward Zelinsky, of Columbia University School of Law, who raised the question of whether tax benefits are constitutionally equivalent to direct expenditures of public funds.

Friday afternoon's session, "The Politics of Taxation," was moderated by Cornell University Law School's Professor Mary Louise Fellows. Daniel Shaviro, a professor of law at New York University School of Law, began the session with a discussion of the defects of tax politics, and the policy benefits of comprehensive income or consumption taxation. Professor Michael Graetz, of Yale Law School, spoke on the dilemma of protecting a restructuring of the nation's tax law from future political interference and manipulation. Deborah Weiss, professor of law at New York University School of Law, followed with a presentation of a formal model of agency problems in representative governments. Weiss concluded that a representative democracy produces a distorted fiscal system.

The discussions continued Saturday morning with a panel moderated by Sylvia Lazos, a professor of law at Florida State University College of Law, and

Duchess Harris, a professor of political science at Macalester College. Panelists tackled the topic of "Raced Citizenship." Professor Adrienne Davis, of American University—Washington College of Law, examined the economics of political justice and racial equality. Davis proposed that full citizenship for black Americans requires economic redress in the form of reparations.

Karen Brown, a professor of law at the University of Minnesota and a visiting professor of law at George Washington University Law School, spoke on foreign direct investments by U.S.-based multinational enterprises in developing countries. Brown suggested ways in which the federal income tax system can provide incentives for investment that do not result in the exploitation of developing country resources.

Professor Barry Friedman, of Vanderbilt University School of Law, moderated Saturday afternoon's panel "The Politics of the Budget." Professor Elizabeth Garrett began the panel discussion with a presentation on the procedural transformation of federal budgeting and budget rules. Garrett is a professor of law at the University of Chicago Law School. Garrett was followed by Lisa Philipps, a professor of law at York University—Osgoode Hall Law School. Philipps presented an in-depth analysis of Canada's new tax referendum laws. The final speaker at the event was Professor Staudt, who spoke on fiscal constitutionalism and the reformation of the political process by a balanced budget amendment to the U.S. Constitution.

"The workshop was extremely successful," said Staudt. "It facilitated serious discussion of an important topic and may lead to additional conferences and publications in the future." ■