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## Serving the Public Interest: Faculty Play Pivotal Role in Effort to Revise the New York Not-For-Profit Corporation Law

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## Serving the public interest

*Faculty play pivotal role in effort to revise the NY Not-for-Profit Corporation Law*

Last spring in New York City, UB Law School's Peter Pitegoff and Lauren Breen brought together two dozen leading state and national experts in non-profit corporation law. As a critical step toward comprehensive revision of the New York Not-for-Profit Corporation Law (NPCL), they organized a full-day meeting on March 29 at New York University School of Law, co-hosted by the National Center on Philanthropy and the Law, the New York State Bar Association and UB Law School. The spirited and high-level discussion set the stage for an ongoing effort by the NYSBA Committee on Corporations and Other Business Entities to substantially improve the law governing non-profit organizations in New York.

It was an impressive gathering. Co-authors of the definitive treatise on the NPCL were there, as were two former heads of the Charities Bureau of the Office of the New York State attorney general and the executive director of the Nonprofit Coordinating Committee of New York, an umbrella organization with a membership of over 1,000 non-profit corporations. Bringing a national perspective were, among others, representatives of the American Law Institute's Project on Principles of the Law of Non-profit Corporations and drafters of new proposed revisions to the American Bar Association's Model Nonprofit Corporation Act. Rounding out the group were organized bar representatives, and leading scholars and practitioners in the field. These experts reviewed and discussed the nascent policy proposals of the NYSBA, informing and providing guidance for a process of legislative change that is likely to continue for a number of years.

Peter Pitegoff is vice dean for academic affairs and professor at UB Law School. Lauren Breen is a longtime clinical instructor and supervising attorney in the UB Legal Assistance Program, the Law School's clinical education program.



In crafting last spring's event at NYU, Breen and Pitegoff worked closely with Fred Attea, partner at Phillips Lytle LLP in Buffalo and a member of the UB Law School Dean's Advisory Council. Attea chairs the state bar committee that has undertaken this policy initiative and, two years ago, drew UB Law School to the center of this project.

Other organizers included Michael de Freitas, a member of the bar committee and an attorney at William Moran & Associates in Williamsville; Nixon Peabody partners Gregory Blasi, chair of the NYSBA Business Section, and Michael

Cooney; and Harvey Dale, professor of law and director of the Center on Philanthropy and the Law at New York University.

The meeting marked an important moment in the NYSBA effort to review and revise the NPCL, bringing the process from behind closed doors to a more public arena. Initially undertaken to conform the NPCL to the current New York Business Corporation Law, this process has evolved into a comprehensive draft revision of the NPCL. The non-



Peter R. Pitegoff, vice dean for academic affairs and professor, and Lauren E. Breen '89, clinical instructor.

ably with comparable laws in other states and, if enacted, will reduce current incentives for organizations in New York to incorporate out of state." Attention to other concurrent drafting initiatives such as those by the American Law Institute and the American Bar Association should ensure that New York's revised NPCL reflects the best practices nationally.

Still a work in progress, the revisions seek a more consistent statutory framework for non-profit corporations and business corporations in New York State. Such symmetry will simplify the practice and interpretation of New York corporate law, particularly given the significant overlap of non-profit and business law practice. The proposed revisions also reflect an effort to reduce excessive barriers to formation of or changes in a not-for-profit corporation in New York, streamlining approval processes while maintaining adequate government oversight and the fiduciary responsibilities of directors and officers. The proposed revisions further simplify the NPCL by eliminating the designation of and distinctions among four separate statutory "types" of not-for-profit corporations, an idiosyncratic provision unique to New York law that creates undue complexity in formation, ambiguity at the borders between types, and potential dissonance with federal Internal Revenue Code categories for tax exemption.

The federal Sarbanes-Oxley Act, enacted in 2002 in the wake of scandals in large publicly traded corporations to protect shareholders against financial fraud and abuse by directors and officers, has given rise to similar legislative proposals

at the state level to govern certain not-for-profit corporations. The public debate around the Sarbanes-Oxley Act already has yielded heightened awareness and action in the non-profit sector with respect to transparency, internal procedures and safeguards against fraud.

In drafting its NPCL revisions, the NYSBA is taking careful account of the need to prevent wrongdoing, but also of the differences between publicly traded corporations and not-for-profit corporations. The proposed revisions strengthen protections against misuse of charitable funds and assets received for specific purposes, while resisting wholesale importation of new restrictions that were designed for publicly traded companies.

Revision of the New York Not-for-Profit Corporation Law is moving slowly but steadily into a more public phase. In the months and years to come, it eventually will wind its way into and through the complex political process of law reform in New York State. UB Law School will continue to play a pivotal role in the process.

profit sector in New York State is enormous and wide-ranging – foundations and charities, health care organizations, service agencies, clubs and neighborhood groups, cultural institutions, religious organizations, research and educational centers, chambers of commerce, economic development corporations, and more. The goal of this initiative is to produce a revised statute that best serves the public interest and the New York non-profit sector.

"Our proposed revision of the statute," said Pitegoff, "compares favor-

Photo by Mark Muville