

IN THEIR OWN WORDS

On behalf of the faculty of the University at Buffalo Law School, The State University of New York, Dean Nils Olsen is pleased to announce the appointment of five new faculty members:

Mark Bartholomew

Irus Braverman

Rick Su

Winnifred Fallers Sullivan

Mateo Taussig-Rubbo

We introduce them to you with brief profiles, and they introduce themselves in their own words.



Mark Bartholomew

Associate Professor

An authority in intellectual property, Mark Bartholomew is a 2000 graduate of Yale Law School, where he was a senior editor of the Yale Law Journal and an editor of the Yale Journal of Law & Humanities. His undergraduate work was at Cornell University, where he received his bachelor's degree in 1994. After law school, he clerked for Cynthia Holcomb Hall, Senior Judge for the Ninth Circuit Court of Appeals. He then practiced law in San Francisco, handling a variety of civil litigation matters including trademark infringement, bankruptcy, and securities regulation. Before joining the University at Buffalo faculty in 2006, he worked as a deputy county counsel for the County Counsel of Sonoma County where he represented the county in employment benefit and mental health conservatorship cases.

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Bartholomew writes and teaches a variety of classes relating to his research interests in copyright, trademarks, cyberlaw, advertising law, and intellectual property.

My current scholarship centers on two areas: the effect of advances in communication on intellectual property regimes and legal history.

First, on a variety of fronts, I am studying what technological change means for cultural output and the construction of social identity. My article "Advertising in the Garden of Eden" tackles life in "virtual worlds." What is fascinating to me about virtual life is its potential, not only for shedding physical restraints but also for offering a second chance to correct lingering social problems reinforced by real world legal doctrine. The focus of the article is advertising regulation as I suggest that when the main functions of advertising—informational, persuasive, and personally expressive—are mapped onto the contours of virtual life, there is a poor fit. I recommend that virtual world participants adopt methods, which are not available in the real world, of limiting their exposure to commercial pleas.

Another area of interest is online file sharing and other methods of exchanging information. Often the legal targets of information rights holders are not the primary



user of the information, but rather the technologists that facilitate information transfer. This calls into question legal doctrines of secondary liability. In an ongoing project, I am exploring the justifications for secondary liability in general and comparing them to current intellectual property secondary liability regimes. One interesting finding so far has been that

secondary liability standards differ markedly in the copyright and trademark realms. In a paper with John Tehranian, I speculate that a panic over potential new technologies like file sharing has overtaken the courts, resulting in increasingly broad indirect liability standards for copyright while leaving trademark liability standards unchanged.

Second, a deep interest in legal history actually meshes well with my primary focus on intellectual property. In an article called "Advertising and the Transformation of Trademark Law," I explore the historical currents that gave birth to modern trademark doctrine. In just a few years at the beginning of the twentieth century, the courts inaugurated an era of robust rights for advertisers, quickly revising nineteenth-century rules for trademark protection. The staying power of this model stems from a particular judicial construction of the human mind. Progressive era judges were convinced of the efficacy of advertising. At the same time, however, they thought competition would be preserved because the advertiser's hold on the consumer's mind could always be displaced by a better quality product with a different brand name. I argue that the judiciary's faith in the ability of consumers to shake off their attachment to a trademark is misplaced given recent findings in cognitive psychology and that infringement doctrine needs to be adjusted accordingly.

Irus Braverman

Associate Professor

Growing up in Israel, with its intense focus on spatial issues, Irus Braverman developed an interest in the politics of space.

In particular, her doctoral thesis at the University of Toronto explores the social construction of natural landscapes in Israel/Palestine as well as in four North American cities.

Braverman joins the UB faculty from Harvard University, where she was an associate at The Humanities Center and previously a visiting fellow at Harvard Law's Human Rights Program. A 1995 graduate of the Hebrew University of Jerusalem Faculty of Law cum laude, Braverman served for several years as a public prosecutor and then as an environmental lawyer.

Later published as a book, her Masters thesis in Criminology from the Hebrew University of Jerusalem (magna cum laude) focuses on the making of illegal spaces in East Jerusalem.

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Braverman writes and teaches in the areas of law and geography and property.

My primary area of research is the relationship between law, spatiality, and scientific technology, and I mostly pursue these directions utilizing an ethnographic methodology. The study of law and space is the focus of increasing interdisciplinary attention. I first came to acknowledge the importance of the physical environment for the work of the law while conducting an ethnographic study of translators in Jerusalem's criminal trial court. I found that the location of the court on the imaginary/real border between East and West Jerusalem has a crucial effect on the identity and practices of court translators.

My next project pursued a much more pronounced legal/geographical stance: I examined the planning regulations in East Jerusalem, the everyday bureaucracies of constituting illegality in housing, and the subsequent demolition of such illegal houses, usually owned by Palestinian Jerusalemites. This project culminated in a couple of articles as well as a book titled *Powers of Illegality: House Demolitions and Resistance in East Jerusalem* (in Hebrew). Interrelated with this line of research, I explored the unique space of the check-



point in the occupied territories. Based on over three years of continuous weekly monitoring of Israeli soldiers' behavior at checkpoints, my work in this context centers on various spatial technologies of surveillance and discipline developed in the particular space of the border. Specifically, I wrote about the gaze and the power relations that can be ascertained through its study in the space of the checkpoint (forthcom-

ing as a short chapter in a book collection edited by Engin Isin).

My subsequent project, conducted in the course of a doctorate (SJD) in law, also examined the relationship of the physical environment to the working of the law, this time by focusing on landscape and nature. During the course of my doctorate I pursued three years of ethnographic research on the political role of trees both in four

North American cities and in Israel/Palestine. This research makes visible how technologies of power operate through everyday practices of landscaping and, in particular, how they manifest through utilizing ecological narratives that revolve around the tree. The thesis demonstrates how this form of tree governance is utilized to naturalize and thereby legitimize the governance of (some more than other) humans. Throughout the thesis I emphasize the power of the law in the governance of trees, identifying the myriad ways in which the law manifests in what I call "tree wars" in these various settings. Finally, I suggest that this emphasis could provide some insight into the working of the law and into its complex interrelations with nature, scientific technology, and materiality. I am currently in the beginning stages of transforming my thesis into a book.

Finally, I am now conducting background research for my next spatio-legal project, this time one that focuses on a highly regulated and gendered yet still under-examined space: the public wash-room.

Rick Su

Associate Professor

Rick Su brings to UB Law his experience and research interests in local government law and immigration law. Born in Taiwan, he grew up in Los Angeles and remains fluent in Chinese. His undergraduate work was at Dartmouth College. He graduated from Harvard Law School magna cum laude in 2004, where he served as an Articles Editor for the Harvard Law Review. He has also clerked in the U.S. Court of Appeals for Judge Stephen Reinhardt on the Ninth Circuit, and worked for the federal Department of Housing and Urban Development as a law clerk in the legal honors program.

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Su writes and teaches in the areas of Immigration and Local Government.

Immigration has long been viewed as a quintessential federal issue and, as such, is widely considered to be legally and conceptually distinct from the local focus of local government law. It is therefore no surprise that neither immigration nor local government scholars have given the relationship between the national discourse on immigration and the local politics of community much serious consideration. Indeed, in the cities described by local government scholars, one would be hard-pressed to find any sign of immigrants. Similarly, with respect to the way immigrants are often portrayed in the legal academic literature, one would assume that they had no relationship with any governmental institutions other than the nation-state.

Notwithstanding this gap, it is becoming increasingly clear that the local dimension of immigration plays a significant role in not only the development of our immigration policy, but also how immigrants are perceived in American society. Just as the character and effectiveness of our immigration regime often depend on how local government laws organize the cities and towns in which immi-



grants settle, the type of local communities that we foster and the fate of many localities are also, in many ways, dependent on the kind of immigration laws that we adopt.

My research aims to bridge this divide by exposing the intricate and complex relationship between immigration and local government law. I am currently exploring how local government law's

pervasive regulation of space and community can be understood to be a critical component of our overall immigration regime. I posit that the finer distinctions that local government laws make possible supplement the federal regime by providing for more effective ways to balance the competing interests that surround the issue of immigration. Instead of seeing

the mechanisms of exclusion that operate at our national borders and our municipal boundaries as distinct and unrelated features of American society, I am considering whether they might be better understood as interrelated and interdependent components of a broader system of closure.

I am also focusing on the role that local governments play in the immigration context. I am exploring how the doctrinal presumption of federal exclusivity with regard to immigration is premised in part on competing, but often unexamined, concerns about the relationship between cities, their immigrant residents, and national and state interests. I believe that highlighting these concerns not only leads to a more nuanced understanding of what underlies our bias against local participation in the immigration context, but also allows us to imagine alternative distributions of powers and responsibilities that might promote a more positive role for localities in our nation's immigration project.

Winnifred Fallers Sullivan

Associate Professor

Winnifred Fallers Sullivan directs the Law and Religion Program at UB Law School. A scholar of comparative religions, she earned a doctoral degree from the University of Chicago Divinity School, where she has taught and held administrative positions, and the J.D. from the University of Chicago Law School. Following her graduation from law school, she practiced in a Chicago firm, then worked for the Federal Trade Commission before becoming an assistant professor of religion at Washington & Lee University. Her undergraduate work was at Cornell University. She spent the 2006-07 academic year as a fellow of the National Humanities Center, in North Carolina.

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Sullivan writes and teaches in the area of law and religion.

Governments around the world today—at every level—are rethinking the regulation of religion. And, increasingly, the transnational migration and mutation of religion means that the traditional partnerships, more and less formal, between indigenous religious institutions and government, partnerships that defined and stabilized religion, are making less and less sense. Furthermore, religious authority everywhere is coming to be located in the individual, not in established religious authorities.

I am trained in law and in religious studies. I am interested in what happens to religion and to law about religion when religion is understood, humanistically and sociologically, as a remarkable and enduring product of the human imagination, rather than when it is understood theologically.

My first book, *Paying the Words Extra* (Harvard 1995), considered the various opinions of the justices of the U.S. Supreme Court in *Lynch v. Donnelly* from the perspective of the academic study of religion. Each opinion was shown to be employing a different discourse about religion and a different model of the opera-



tion of the religion clauses of the first amendment, displaying among them the major U.S. options for organizing the intersection between religion and government.

The Impossibility of Religious Freedom (Princeton 2005) is a close reading of a district court RFRA trial held in Boca Raton, Florida. At issue was whether the activities of the plaintiffs constituted exercises of religion within

the meaning of the Florida RFRA. The lack of properly constituted—in other words, established—authorities to fix the boundaries of orthodoxy in the U.S. make it impossible for courts to determine what constitutes religion. Five academic experts in religious studies presented five different understandings of the plaintiffs' activities at the Boca Raton trial. The court, the first interpreter of

the Florida Act, created its own model, ruling the plaintiffs' actions memorializing their relatives in a Florida cemetery, as not being religion, legally speaking.

A companion volume, provisionally entitled *Poison Religion: The Bible, the Koran and Dr. Seuss* (under contract with Princeton University Press), considers the ambiguities inherent in the assumptions underlying current law regulating faith-based social services. The trial which forms the centerpiece of this volume concerned the constitutionality of an in-prison residential treatment program provided by contract to a state prison by a faith-based organization. The plaintiff-prisoners complained of proselytization and discrimination against prisoners who did not share the religious views of the contract provider.

My next research project will move outside the U.S. to consider legal discourses about religion comparatively, in the U.S., the U.K. and in France, with a view to developing a typology of such discourses moving along a range from established to disestablished.

Mateo Taussig-Rubbo

Associate Professor

Mateo Taussig-Rubbo is an anthropologist, and just completed the dissertation for his doctoral degree in anthropology at the University of Chicago, where he also did his undergraduate work. He earned the J.D. at Yale Law School in 2001; practiced for two years in the area of cross-border transactions at a New York City firm; and clerked for a U.S. District Court judge in the Southern District of New York. Taussig-Rubbo focuses on such anthropological concepts as gift, sacrifice and consecration, as they apply to modern political and legal situations.

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Taussig-Rubbo writes and teaches in advanced topics in Constitutional Law.

My work concerns the forms of meaning at stake in the changing cultural life of the law, especially in the connections between legal categories and forms of meaningful violence. Take the notion of sacrifice in the context of the war on terror. Analyses of the responses to 9/11 have focused on the relation between security and the rule of law in unfamiliar settings, but the grounding of law and sovereignty in sacrifice by citizens is the subject of another, just as vital contestation.

Sacrifice is more often discussed as the act that U.S. citizens have not been asked to perform. It is, instead, the act America's enemies employ, as martyrs. Even so, sacrifice is visible at sacred sites like ground zero and in our reception of the deaths of our soldiers in war, and we still detect republican currents by which sacrifice and citizenship are mutually constitutive. So it cannot be true that ours is a completely post-sacrificial moment. Those subordinated by the legal order have routinely pointed to their sacrifice and service as grounds upon



which to demand equal treatment; those deemed ineligible for sacrifice find that it is a reason for their exclusion.

Tensions over sacrifice and the law are especially visible, for instance, with respect to private military contractors. We might think of the emergence of the contractor as an

effort to displace or outsource sacrifice—and an effort to use the legal form of contract to render certain deaths banal for a national audience. But this effort has encountered difficulties. Consider the American reception of the spectacular televised killing and desecration of four con-

tractors in Fallujah in 2004. Actors who had contracted their security services to the private sector became reconceived as sacralized citizen-subjects; their bodies a visible site for the idea of the nation. This and other such events prompted a rethinking of the legal position of contractors as they were brought more closely into the normal military legal order.

In other work, based on ethnographic field research in an immigration detention center, I have used anthropological discussions of exchange, contract and sovereignty to illuminate the changing treatment of immigrants in detention in the U.S. What fascinated me during this research was the perspective, voiced in court opinions and by immigration officials, that detention was an act not of deprivation or violence but of beneficence, even a gift. Through fieldwork I explored the cultural meanings of this sovereign's gift, as I called it, to show how it framed interactions between officials and aliens.

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