

ALSO IN THIS ISSUE

Criminal Law and Mechanisms of Social  
Control: Recent Faculty Scholarship

The 50th Anniversary of the Root-Tilden-Kern  
Scholarship Program **AND** Recent Initiatives  
in Public Interest Law

# The Law School

THE MAGAZINE OF  
NEW YORK UNIVERSITY  
SCHOOL OF LAW  
AUTUMN 2003

## **Training Environmental and Land Use Lawyers for the New Millennium**



# Message from Dean Revesz

I have now completed my first academic year as dean of NYU School of Law. It has been such a great privilege!

Having spent 17 years on the faculty before becoming dean, I knew that the Law School was blessed by extraordinary professors, exceptional students, and accomplished administrators and staff members. These were the individuals with whom I interacted every day and who made my job as a faculty member so special. One of the highlights of this year has been to spend considerable time with another group, our alumni body — through law firm visits, regional trips, academic events, and individual and small-group meetings. The remarkable transformation of the Law School in the last 50 years is due in large part to the love and loyalty that alumni have for the Law School, and to the extent that they are willing to contribute their time, expertise, good judgment, and resources to continuing on this extraordinary journey.

The last issue of *The Law School* began the practice of focusing on one substantive area of law in which NYU School of Law has extraordinary strengths. Last year, we described how the Law School's standing as the leader in international legal education following the founding of the Hauser Global Law School Program in 1994 had been solidified by the recent addition of several outstanding professors to an already extraordinary faculty and by the creation of the Institute for International Law and Justice and the Center for Human Rights and Global Justice.

In this issue, we highlight our environmental and land use program. As a faculty member in this area, I marvel at my world-class faculty colleagues, seriously committed students, rich array of curricular offerings, and path-breaking research. The strength of our program ensures that our graduates will have the intellectual tools, problem-solving skills, and practical experience necessary to be leaders in national and international efforts to tackle the serious environmental threats that plague us. At the same time, the Law School's dedication to enabling diverse forms of scholarship guarantees that our faculty will continue to have a significant impact on the development of public policy.

I am confident that an independent peer review would conclude that, among the leading law schools in the country, we have the strongest programs in international law and in environmental and land use law. In the coming years, we will write about other programs that meet this ambitious standard.

Our other feature, "Public Interest: Yesterday and Today," focuses on the Root-Tilden-Kern Scholarship Program, which has produced many outstanding leaders in diverse sectors of the legal profession who share an overarching commitment to public service. This academic year marks the 50th anniversary of the graduation of the first Root-Tilden class — a wonderful reason for celebration. Through the Root-Tilden-Kern program and our other public interest initiatives, we further our goal of becoming not only the leading law school, but also the law school that leads in public service by providing the education, scholarship, and vision needed to improve our nation and the world.



A handwritten signature in black ink, which appears to read "Richard Revesz". The signature is fluid and cursive.

Richard Revesz

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### Training Environmental and Land Use Lawyers for the New Millennium

NYU School of Law offers a broad, unparalleled program in environmental and land use law. The program boasts a world-class faculty, a rich curriculum, path-breaking research centers and initiatives, and exciting opportunities for students and alumni. This article details the innovative program and the Law School's commitment to training future leaders in this evolving field.

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## Public Interest: Yesterday and Today

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# The Law School

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## Criminal Law and Mechanisms of Social Control

Once again, the magazine of New York University School of Law highlights the academic work of the Law School faculty. NYU School of Law has the strongest and most intellectually diverse faculty in criminal law and justice in the nation — as is apparent from the range and caliber of the work explored in the following pages. This year's featured authors — Professors David Garland, Daryl Levinson, James Jacobs, Rachel Barkow, Stephen Schulhofer,

and Bryan Stevenson — examine a wide variety of topics, from crime control to gun control, from group punishment to capital punishment, from the role of juries to our handling of terrorists, and more.

NYU School of Law's criminal law faculty has extensive and deep ties to the criminal justice community in the New York City metropolitan area, across the country, and worldwide. In addition to this year's featured authors, the faculty with expertise in the criminal law area includes Professors

Anthony Amsterdam, Jennifer Arlen, Paul Chevigny, Jerome Cohen, Harry First, Barry Friedman, Martin Guggenheim, Randy Hertz, Holly Maguigan, Ronald Noble, David Richards, Jerome Skolnick, Kim Taylor-Thompson, and Anthony Thompson. The faculty also includes two distinguished emeritus professors, Chester Mirsky and Harry Subin, as well as adjunct professors John Gleeson, U.S. district judge for the Eastern District of New York; Ronald Goldstock; and S. Andrew Schaffer.

# Crime, Social Change, and the Culture of Control

By David W. Garland  
ARTHUR T. VANDERBILT  
PROFESSOR OF LAW

*The following article was adapted from Professor David Garland's recent book, The Culture of Control: Crime and Social Order in Contemporary Society, published by the University of Chicago Press (2001). The book charts the dramatic changes in crime control and criminal justice that have occurred in America and Britain over the last 25 years. Garland explains these transformations by showing how the social organization of late 20th century society has prompted a series of political and cultural adaptations that alter how governments and citizens think and act in relation to crime. Garland, who is also a professor of sociology at NYU, is the author of the award-winning books Punishment and Welfare (Heinemann/Gower, 1985) and Punishment and Modern Society (University of Chicago Press, 1990), which are widely regarded as landmark studies in criminology and the sociology of law.*

We quickly grow used to the way things are. The American public now seems quite accustomed to living in a nation that holds two million of its citizens in confinement on any given day, and puts criminal offenders to death at a rate of one or two per week. In much the same way, the British public no longer seems surprised by the existence of private prisons that house an increasing proportion of Britain's rapidly rising prison population, and citizens go about their business hardly noticing the surveillance cameras that stare down on the streets of every major city. On both sides of the Atlantic, mandatory sentences, victims' rights, community notification laws, private policing, "law and order" politics, and an emphatic belief that "prison works" have become commonplace points in the crime control landscape and cause no one any surprise, even if they still cause dismay and discomfort in certain circles.

To the moderately informed citizen, these are the taken-for-granted features of contemporary crime policy. They have the same familiarity and easy intelligibility as other common elements of our everyday world like cable television, cell phones, or suburban shopping malls. But the most striking fact about these crime policies is that every one of them would shock a historical observer viewing this landscape from the vantage point of the recent past. As recently

as 30 years ago, each of these phenomena would have seemed highly improbable, even to the best-informed and most up-to-date observer. The trajectory of British and American crime control over the last three decades has been almost exactly the contrary of what was anticipated in 1970 when rehabilitation, minimal use of custody, and the end of capital punishment shaped the agenda.

How can one explain these surprising developments? The immediate causes are, of course, to be found in the policy-making processes that shape crime legislation, sentencing laws, and institutional objectives. But behind these policy choices there is a larger story, to do with fundamental respects in which our social world has changed in the last half-century, and the ways in which these changes in social organization have come to affect our attitudes towards crime and control. Contrary to conventional wisdom, today's world of crime control and

though they did their part to sharpen its expression and translate it into harsh penal policies. It is a culture that is grounded in a new collective experience of crime, brought into being by social and economic changes that transformed daily life in the second half of the 20th century.

From the 1950s until the early 1980s, the U.S.A. — and every other Western society — experienced a sharp and sustained rise in rates of crime and violence. In retrospect, the reasons for this increase are fairly clear, and have to do with the interaction of three basic variables. *First*, there was the massive increase in criminal opportunities that resulted from the increased circulation of cash and consumer goods — notably TVs, stereos, jewelry, and above all, automobiles (thefts of which, and from which, came to form the largest single category of property crime). *Second*, there was a relaxation of social and situational controls that came about as a corollary of some otherwise welcome social reforms and changes in the way that we live. Women joined the labor force in increased numbers, leaving households empty and teenagers unsupervised. Families moved to the suburbs, disrupting the organic controls

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Contrary to conventional wisdom, today's world of crime control and criminal justice was not brought into being by rising crime rates or by a loss of faith in rehabilitative measures, or at least not by these alone.

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criminal justice was not brought into being by rising crime rates or by a loss of faith in rehabilitative measures, or at least not by these alone. These were proximate causes rather than the fundamental processes at work. It was created instead by a series of adaptive responses to the social conditions of "late modernity" — conditions that included riskier everyday routines, new fears and insecurities, and new attitudes towards welfare-state arrangements and the group relations that they implied. And although many of these changes were enacted courtesy of a populist "law and order" politics, these politics were popular only because they tapped into a collective experience of crime that was very different from that which had given rise to the reformism that dominated penology for much of the 20th century. The "culture of control" that has emerged in the last few decades is not the product of opportunistic politicians and a sensationalist media,

of high-density urban neighborhoods. Retail shops became self-service and downtown areas became depopulated, leaving them vulnerable to degradation. Traditional norms of deference slackened, reducing the power of authority figures to command obedience and exert control. *Third*, there was an increase in the supply of likely offenders, as the post-war "baby boom" produced a cohort of teenagers, most of whom were more mobile, more affluent, and less closely supervised than ever before.

The combination of these three ingredients was a sure-fire recipe for a massive increase in offending, which is precisely what occurred: The Uniform Crime Reports record a 300 percent increase between 1960 and 1980. By the middle of the 1970s, the U.S.A. had become a "high crime society" in which crime avoidance was an organizing principle in the daily lives of most people — including well-to-do social groups who had

previously been relatively immune from this kind of problem. The result was that crime took on a new salience in everyday life and in electoral politics. High crime rates and a growing perception that criminal justice was failing presented severe challenges for the police, the courts, and the prisons, prompting all sorts of policy revisions and reversals. But it was also an issue for individuals, households, communities, and corporations, who became much more conscious of crime and began to develop avoidance behaviors and preventative measures to minimize its impact wherever possible.

Over time, these new habits and anxieties crystallized into practical routines and psychological attitudes and produced settled cultural effects. They changed how people thought and felt, what they talked about, how they planned their daily travel routes, how they taught their children, or advised newcomers to the neighborhood. The fear of crime — or rather a collectively raised consciousness of crime — gradually became institutionalized. It was written into our common sense and our everyday routines. It was woven into the texts of our news programs, our real estate categories, and our insurance contracts, and, in more fantastic forms, into our urban myths and TV entertainment. It was this institutionalized culture, this “crime complex,” that ensured that even when crime rates decreased (in response to the new infrastructure of preventive practices) the demand for punishment and security remained steady. From about 1992 onwards, rates of crime and violence have shown a substantial and continuing year-on-year decline. Meanwhile, governments continue to enact draconian new sentencing laws and the U.S. prison population has doubled.

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The desire for security, orderliness, and control, for the management of risk and the taming of chance is, to be sure, an underlying theme in any culture. But in recent decades that theme has become a more dominant one, with immediate consequences for those caught up in its repressive demands, and more diffuse, corrosive effects for the rest of us. In one social realm after another, we now find the imposition of more intensive regimes of regulation, inspection, and control and, in the process, our civic culture becomes increasingly less tolerant and inclusive, increasingly less capable of trust. After a long-term process of expanding individual freedom and relaxing social restraints, control is now being re-emphasized in every area of social life — with the singular and startling exception of the economy, from whose deregulated domain many of today’s major risks routinely emerge.

The rise to dominance of this cultural theme has the character of a reaction or a



Professor David Garland, who moved to NYU School of Law from the University of Edinburgh in 1997, is also a professor of sociology.

backlash — an attempted undoing of accumulated historical change. The 1950s, 1960s, and 1970s were decades of rapid social and economic change during which families and communities were severely dislocated, even as individuals and social groups enjoyed new freedoms, more varied lifestyles, and an enhanced range of consumer choices. That earlier phase gave way to a wave of anxiety about the breakdown of family, the relaxation of institutional disciplines, and the collapse of informal norms of restraint. In the closing decades of the 20th century, the pursuit of freedom came to be overshadowed by a new sense of disorder and of dangerously inadequate controls — a sense that September 11 has only reinforced and extended.

hemmed in by the communal controls of local belonging, steady work, and tight-knit family. What has happened is that the individual freedoms granted by late modern morals and markets have been shored up by a new structure of controls and exclusions, directed against those groups most adversely affected by the dynamics of economic and social change — the urban poor, welfare claimants, and minority communities.

Convinced of the need to reimpose order, but unwilling to restrict consumer choice or

give up personal freedoms; determined to enhance their own security, but unwilling to pay more taxes or finance the security of others; appalled by unregulated egoism and anti-social attitudes, but committed to a market system that reproduces that very culture, American voters and their representatives seek resolution for their ambivalence in zealously controlling the poor, punishing offenders, and excluding marginals. Above all, we impose controls upon “dangerous” offenders and “undeserving” claimants whose conduct leads some to suppose that they are incapable of discharging the responsibilities of the late modern freedom. The most vehement punishments are reserved for those guilty of child abuse, illegal drug

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## Recognition that social and economic processes can create undeserved hardship has given way to a more moralistic account of labor market success and failure, in much the way that social explanations of crime have been displaced by the moralism of rational choice.

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This underlying disquiet found expression in a powerful narrative of moral decline in which crime has come to feature — together with teenage pregnancies, single parent families, welfare dependency, and drug abuse — as the chief symptom of the supposed malaise. The 1980s and 1990s have seen a consequent return to restraint, a retrofitting of controls, an attempt to put the lid back on a newly disordered world. But despite these efforts, the clocks have not been turned back. There has been no return to a world in which all individuals are more

use, or sexual violence — precisely the areas in which mainstream social and cultural norms have undergone greatest change and where middle-class ambivalence is at its most intense.

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The same kinds of effects can be seen in other areas of social and economic policy, above all, in the treatment of the poor. In political discourse and government policy the poor are once again deemed undeserving. Their poverty, or homelessness, or



## Praise for The Culture of Control

Professor Garland's book *The Culture of Control* was named one of the "Outstanding Academic Titles of 2002" by the magazine *CHOICE: Current Reviews for Academic Libraries*. This prestigious list reflects the best in scholarly titles reviewed by *CHOICE*. Selections are made based on criteria such as overall excellence in presentation and scholarship, and importance relative to other literature in the field.

Here is what others have said about *The Culture of Control*:

"With the publication of *The Culture of Control* David Garland has completed an important trilogy that was begun with *Punishment and Welfare* in 1985 and followed by *Punishment and Modern Society* in 1990.... Taken as a whole this trilogy represents a stunning achievement."

**Malcolm Feeley**, professor of law, Boalt Hall, University of California at Berkeley, *Theoretical Criminology*

"*The Culture of Control* is unparalleled in its sophistication, breadth, and insight, and will undoubtedly serve as a reference point in the field — a field that Garland has done much to create."

**Katherine Beckett**, associate professor, Department of Sociology, University of Washington, *Law and Society Review*

"David Garland's book is deserving of the same landmark status in criminology as his earlier works.... It demonstrates yet again the power of the 'sociological imagination' he so skillfully deploys in the analysis of the contemporary landscape of crime control."

**Russell Hogg**, faculty of law, Australian National University, *Current Issues in Criminal Justice*

"Garland's book is more than just an important contribution to criminology. It is also a major work of social analysis [that] provides one of the clearest and most convincing characterizations of contemporary society in general."

**Robert Reiner**, professor of criminology, London School of Economics and Political Science, *The Times Literary Supplement*

"*The Culture of Control*... is a persuasive, indeed compelling account of economic, social, and political transformations that not only addresses the topics at hand but also offers a model for scholarship in related areas. [It] is a vast and complex work that has the potential to recast our thinking about culture, crime, and social causation."

**John Gilliom**, professor of political science, Ohio University, *Law and Politics Book Review*

joblessness are attributed to their supposed lack of effort, their feckless choices, their distinctive culture, and their freely chosen conduct. In the prosperous world of the 1990s, these persistently poor populations were easily viewed as "different" and not merely "disadvantaged." Like persistent offenders and "career criminals," they were regarded as a class apart, a residuum left behind by the fast-paced, high-tech processes of the globalized economy and the information society.

The themes that dominate crime policy — individual responsibility, rational choice and the structures of control, deterrents and disincentives, the normality of crime, the threatening underclass, the failing, overly lenient system — have come to organize the politics of poverty as well. The same premises and purposes that transformed criminal justice are evident in the programs and policies of "welfare reform."

Beginning in the 1980s, the provision of welfare has been skirted round with work conditions and disciplinary restrictions. "Choice" and "responsibility" have been emphasized, "dependency" anathematized, and "the market" has come to be viewed as a providential force of nature rather than a set of social relations that requires careful regulation and moral restraint. The termination of benefits is increasingly used as a means to force claimants off the rolls — usually into low-paid work, but no doubt also into the alternative economy of drugs and crime. Recognition that social and economic processes can create undeserved hardship has given way to a more moralistic account of labor market success and failure, in much the way that social explanations of crime have been displaced by the moralism of rational choice.

The solidarity with victims of social and economic dislocation that characterized the "Great Society" programs has given way to a more condemnatory view of claimants, many of whom are now viewed as members of a culturally distinct and socially threatening "underclass." At the same time, chronic unemployment for certain social groups has come to be seen as a normal fact of economic life, quite beyond the reach of government policy or regulatory control. In this new economic order, only entrepreneurial conduct

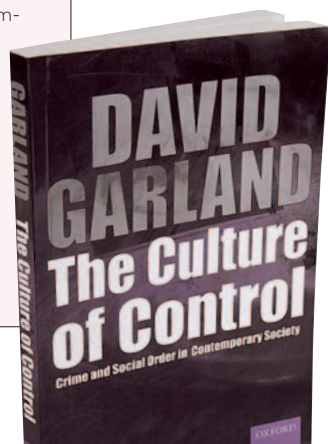
and prudent risk-management can offset the threat of insecurity: the state no longer acts as the insurer of last resort; citizenship no longer guarantees security. Like the system of criminal justice,

the welfare state has come to be viewed as a generator of problems and pathologies rather than a cure for them. Reform efforts focus upon reducing costs, strengthening disincentives, surrounding benefit payments with controls and restrictions, and "getting people off welfare." Less effort is directed to addressing the structural sources of unemployment, poverty, and ill-health. The parallels with the new field of crime control are impossible to miss.

With welfare, as with crime, large sections of the middle and working classes see themselves as victimized by the poor and by a system that reproduces the problem it is supposed to solve. What J. K. Galbraith called a "culture of contentment" has increasingly given way to an anti-welfare politics in which the market freedoms and economic interests of the middle and upper classes dictate a more restrictive and less generous policy towards the poor. In the prosperous 1990s, these policies succeeded in reducing welfare rolls and limiting the growth of social spending. It remains to be seen how they will function now that the economy has begun to falter and unemployment levels once more begin to rise.

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Historians have pointed to a recurring pattern of social development in which the upheaval and disruption characteristic of periods of major social change subsequently give way to efforts at consolidation and the reimposition of order. This dialectic between freedom and control has been a characteristic of the last 30 years of American history. In certain respects, the social liberation of the 1960s and the market freedoms of the 1980s are now being paid for in the coin of social control and penal repression. Where the liberating dynamic of late modernity emphasized freedom, openness, mobility, and tolerance, the reactionary culture of the end of the century stresses control, closure, condemnation, and confinement. The continued enjoyment of market-based personal freedoms has come to depend upon the close control of excluded groups who cannot be trusted to enjoy these freedoms. So long as offenders and claimants appear as "other," and as the chief source of their own misfortune, they offer occasions for more privileged groups to impose strict controls without giving up freedoms of their own. In contrast to an egalitarian vision of social control in which all individuals give up some personal freedom in order to promote collective welfare, this version of market individualism is the freedom of some premised upon the exclusion and close control of others. And as the most recent imprisonment figures attest, these "others" now number in the millions. ■



# Group Punishment, Primitive and Modern

By Daryl J. Levinson  
PROFESSOR OF LAW

*In an article titled “Collective Sanctions,” forthcoming this fall in the Stanford Law Review, Professor Daryl Levinson explores when and why legal and other regulatory regimes aim sanctions at groups rather than individuals. This is a question that has been mostly left to moral philosophers, who tend to discuss it in backward-looking terms of collective responsibility for wrongdoing. From this perspective, group punishment is conventionally viewed as a disreputable atavism of premodern, communalist cultures, destined to disappear from modern, liberal societies. Blood feud, frankpledge, and other such primitive uses of group punishment are as anachronistic as “punishing the innocent” is immoral.*

*Yet group punishment has hardly disappeared from modern societies. Legal systems routinely impose collective liability on shareholders for the torts and crimes of corporations, on co-conspirators for one another’s criminal acts, and on polluters for the costs of cleaning up toxic waste. Governments inflict international sanctions on the populations of other states in response to the policies of their leaders and on innocent civilians in retaliation for acts of terrorism or resistance. Voters collectively sanction politicians by voting against political parties. Economic arrangements such as insurance, partnerships, and employee stock ownership plans focus economic rewards and punishments on groups instead of individuals. Parents sometimes punish all their children when one misbehaves, and communities tar entire families with reputational sanctions for the failings of individual members.*

*By shifting to a forward-looking, functional perspective, Levinson’s article attempts to make sense of these and other regimes of collective sanctions. Group members might be punished not because they are deemed collectively responsible for wrongdoing, but because they are in an advantageous position to identify, monitor, and control responsible individuals — and can be motivated by the threat of sanctions to do so. On this understanding, collective sanctions can be conceived as a strategy of “delegated deterrence,” inasmuch as responsibility for deterring individual wrongdoers is effectively delegated by the sanctioner to a group that is well-situated to implement an efficient regulatory regimen. The article develops a model of collective sanctions that combines this basic instrumental insight of delegated deterrence with economic and sociological theories of collective action and group organization. It then applies the model to a number of legal, economic, political, and social regimes of collective sanctions, ranging from group lending by microcredit banks in developing countries to the assimilation of minority groups in response to discrimination.*

*What follows is adapted from the introductory sections of the article.*

**A**round midnight of August 13, 1906, a group of armed men, 10 or 20, ran through the town of Brownsville, Texas, firing their weapons down the streets and into buildings. A police officer on horseback was shot and wounded, and a bartender was killed in the doorway of his saloon. Suspicion immediately fell upon a battalion of black soldiers that had recently been stationed at

Fort Brown, on the outskirts of the city. The rioting occurred in a neighborhood adjacent to the enlisted men’s barracks; empty shells collected along the rioters’ route seemed to have come from Army-issue rifles; and several Brownsville townspeople claimed to have recognized the rioters as black soldiers. As for motive, racial tension between the soldiers and townspeople had been simmering since the battalion arrived. Brownsville residents had greeted the soldiers with Jim Crow restrictions and other gestures of racial hostility. In two cases, soldiers had been physically assaulted by white civilians, purportedly in retaliation for “disrespectful” behavior. On the day of the shootings, a soldier was accused of attempting to rape a white woman. Based on this evidence, Army investigators were quickly convinced that the rioters were members of the black battalion.

When the soldiers were questioned in an attempt to discover which men were responsible, “the countenance of each individual being interviewed assumed a wooden, stolid look, and each man positively denied any knowledge in the affair.” Unable to identify the guilty soldiers, the inspector general of the Army wrote a report to President Roosevelt recommending that every member of the battalion be discharged without honor and forever barred from re-enlisting or from employment in any civil service job. The inspector general acknowledged that many men who did not participate in the riot would suffer as a result. Nevertheless, it was his view that, as they “appear to stand together in a determination to resist the detection of the guilty, therefore they should stand together when the penalty falls.” The president found the report convincing and ordered his secretary of war, William Howard Taft, to carry out its conclusion. All of the 167 black soldiers in the battalion, including six Medal of Honor recipients, were dishonorably discharged.

Roosevelt’s decision understandably infuriated black communities throughout the nation. Even if some of the dismissed soldiers were guilty, group punishment in a case like this will strike most people as deeply unjust. It may be illuminating to consider the reasons why. The most obvious reason is that group punishment in the Brownsville context may be a form of race discrimination. In his 1906 annual message, issued in the midst of the Brownsville controversy, Roosevelt explained to black Americans that they were collectively blamed by white Southerners for the behavior of black criminals (in particular, rapists) and that they should take more responsibility for bringing these criminals to justice. If black individuals could be lumped together as a group in the eyes of Southerners for purposes of attributing criminal responsibility and blame, then,



Professor Daryl Levinson, who joined the Law School faculty in 2002, seeks to unify the study of public law and private law in his scholarship.

we might suspect, so too for purposes of group punishment in the Brownsville case.

Indeed, much of our legal and moral thinking about group liability and responsibility is inflected by race and ethnicity. Debates about reparations for slavery, for example, focus on the moral and legal obligations of wrongdoing groups to compensate victim groups, where both groups are defined by race. Racial identity is the essential glue that joins wrongdoers and payers of compensation, as well as victims and beneficiaries, into unified groups for purposes of assessing obligations and dessert. The same is true with respect to ethnic and national identity in the context of reparations paid by the United States government to Japanese Americans interned during World War II, and by Germany to Israel for the Holocaust. Needless to say, there is deep disagreement about the moral significance of the racial, ethnic, or national bonds among individuals that arguably create group responsibility in these cases.

More generally, group liability strikes many as objectionable because it seems to reflect an anti-liberal embrace of communal responsibility. Racial essentialism is, in this view, just one (especially pernicious) manifestation of the communalist failure to take individuals seriously as moral agents. Liberal conceptions of morality insist that agency and responsibility be attributed only to individuals, not groups. Group liability will strike liberals as an unfortunate atavism of preliberal or primitive societies, which, conventional wisdom holds, were fundamentally communal in both their social organization and their approach to morality.

To be sure, in cultures where clans and tribes are the relevant unit of moral agency and blame, group liability will seem natural. Collective responsibility for wrongdoing, and collective punishment, are widely recognized as defining features of “primitive” law and norms. In traditional societies organized around kin groups or tribes, a person who wrongfully harms a member of another group commonly invites retaliation against, or the extraction of compensation from, not just himself but any of his kinsmen. When the process of mutual retaliation by and against kinship groups continues through several rounds of approximately proportionate exchanges of violence, it attains the status of blood feud. Back-and-forth killings between rival groups, each collectively vulnerable as targets and collectively responsible for retaliation, might persist indefinitely, until the opposing groups are both annihilated. Mercifully, in societies with surplus wealth, blood vengeance and feud tends to give way to a system of compensation (“blood money”) paid to the victim or his kin. In these societies, the principle of collective liability typically

follows blood to money, so that the wrongdoer’s kinsmen are responsible for making payments, and vulnerable to violent retaliation in the event of default.

These basic patterns of privately-administered collective sanctions have been documented in any number of pre-industrial societies. Several variations are also common. In societies with a system of public law, the sanctioner may be the state. For example, traditional Chinese law provided for official

pre-liberal societies in which groups, not individuals, are the atomic moral unit. Primitive law and social norms direct punishment at groups because they follow primitive morality’s conception of collective blame. In modern, liberal societies, on the other hand, where the relevant moral unit is the individual, punishing groups for the misdeeds of individuals will be regarded with deep skepticism. Most modern readers of Genesis will sympathize with Abraham’s case to God on

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## Whereas from a moral perspective we should expect collective sanctions to disappear from modern societies because moral responsibility has become individuated, from a functional perspective perhaps we should expect them to disappear because the state has bloomed while groups have withered.

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punishment of the family members of criminals. The crime of rebellion against the Empire was punished by the execution of every adult male in the family, enslavement of the rest of the family members, and confiscation of all familial property. Or the sanctioning agent may be supernatural. Murder among the Cheyennes, for instance, was a sin that “bloodied the Sacred Arrows” and brought great suffering — lost wars and famine — upon the entire tribe. Similarly, among the Ashanti of western Africa, crimes were offensive to the tribal ancestral spirits and, if left unpunished, would invite misery for the tribe. Another type of supernatural collective sanctions is the ancient Greek (as well as biblical) idea of “pollution.” For the Greeks, a murderer who went unpunished caused the pollution of his city, as Oedipus’s murder of his father brought plague upon Thebes. Finally, the sanctioning agent may comprise decentralized enforcers of societal norms. In traditional societies, an individual who misbehaves tarnishes the honor or reputation of his family, affecting his relatives’ opportunities with respect to education, employment, and marriage.

All of these sanctioning regimes are commonly thought to reflect an organic conception of social groups in which agency and responsibility for wrongdoing are attributed to the corporate entity — family, clan, tribe, or village — and not disaggregated among individual members. On this understanding, collective sanctions are a peculiar feature of

behalf of the evil cities of Sodom and Gomorrah: “Will you really sweep away innocent and wicked together? Suppose there are 50 innocent in the city; will you really sweep it away ... ?” In taking sides with Abraham, we distinguish ourselves from the ancients.

But collective sanctions need not depend upon collective agency or responsibility. Where it would be costly or impossible for an outside sanctioner to identify or reach an individual wrongdoer, the sanctioner might instead inflict costs on the wrongdoer’s group with the expectation that these costs will be passed on, in some form, to the responsible member. The threat of sanctions to the group will create an incentive for group members to monitor and control each other’s behavior, whether through group norms or more formal internal governance structures. Especially in societies lacking centralized investigatory and law enforcement apparatuses, collective sanctions may reduce deterrence costs by delegating the tasks of controlling wrongdoers to solitary groups. Moral questions of group versus individual responsibility aside, the use of collective sanctions in primitive and ancient societies may be understood, from a functional perspective, as a useful strategy for leveraging the solidarity of closely knit kinship groups in order to deter individual wrongdoers more efficiently.

As this functional perspective contemplates, and the moral one obscures, primitive

societies seemed to have no trouble disgregating and individuating responsibility within groups. Reviewing the anthropological literature, Sally Falk Moore hypothesizes, "Where every member of a corporate group has the power to [invite] collective liability, a corollary rule always exists whereby the corporation may discipline, expel or yield up to enemies members who abuse this power or whom the corporation does not choose to support ... ." Thus, while a Tallensi creditor could raid the livestock of any clansman of a defaulting debtor, that clansman could then claim restitution from the responsible debtor, who might even be forced to pawn a child or sell himself into slavery in order to settle the claim. The fear of supernatural sanctions or pollution can also be understood as a mechanism for inducing the group to inflict worldly punishments on individual wrongdoers. A Cheyenne tribe could purify itself from the collective taint of murder by performing the sacred ritual of renewing the Medicine Arrows, but only after it had banished the individual murderer. That the costs of collective sanctions would be routinely transmitted by the group to individual wrongdoers in need of deterrence may seem anomalous from the viewpoint of group moral responsibility, but it is a straightforward prediction of a functional account.

Moving away from primitive societies and toward more modern ones, the functional understanding of collective sanctions seems to displace the moral one. In common with primitive societies, medieval England faced severe problems of social disorder with limited state resources for solving them. Violent crime was rampant: homicide rates may have been double those of contemporary America (quite a feat in the absence of firearms). Lacking a public police force or centralized law enforcement bureaucracy, the Crown mobilized mediating groups as instruments of social control. Responsibility for crime control devolved to artificially-created groups whose members were held collectively accountable for bringing wrongdoers in their midst to justice before the county and royal courts, on pain of group fines. Most famously, the frankpledge system required the majority of adult men to organize themselves by tens into groups ("tithings") that were held collectively liable for the crimes or misdeeds of any member who escaped prosecution.

Now, there is considerable historiographical debate about the extent to which (or, more accurately, the respects in which) medieval England was a "communal" society. But no one would think that the frankpledge system was inconsistent with individualized attribution of wrongdoing. The point of the system, after all, was to create incentives for groups to identify,

## The New Generation of Constitutional Scholars

Professor Daryl Levinson, who joined the faculty at NYU School of Law in 2002 after six years on the faculty at the University of Virginia Law School, teaches and writes in the areas of constitutional law, remedies, and democratic political processes. Levinson is a leader in a new generation of constitutional scholars who seek to unify the study of public law and private law. In contrast to constitutional scholarship that emphasizes issues of theory, doctrine, or history, Levinson explores the actual effects on behavior of constitutional rules, including the behavior of the governmental actors who are the subject of most constitutional doctrines. By shifting analysis to practical consequences, Levinson suggests that many constitutional doctrines are misconceived, counterproductive, or rest on faulty empirical assumptions.

In several major publications, he has challenged broad swathes of the conventional wisdom in constitutional law and theory: "Framing Transactions in Constitutional Law," *Yale Law Journal* (2002); "Making Government Pay: Markets, Politics, and the Allocation of Constitutional Costs," *University of Chicago Law Review* (2000); and "Rights Essentialism and Remedial Equilibration," *Columbia Law Review* (1999). Important themes in Levinson's scholarship include the instrumental purposes and mechanisms of constitutional law, the relationship between private and public law, and the distinction between markets and politics as institutions of social ordering. His work draws on interdisciplinary sources from economics, public choice, and political theory.

capture, and offer up for punishment individual wrongdoers. Frankpledge groups seem to have had no important social role aside from their suretyship function — and, correspondingly, no independent social identity to which wrongdoing could be ascribed. This is not to say that frankpledge had no connection to social solidarity. It would be pointless to assign policing responsibility to groups whose members did not have, or potentially have, sufficient opportunities to monitor one another's behavior. And, reversing causality, social solidarity was surely strengthened by a system that made each man his brother's, or neighbor's, keeper. Frederic William Maitland says of medieval England, "Much of the communal life that we see is not spontaneous. ... Men are drilled and regimented into communities." Groups were important to the frankpledge system because their solidarity could be leveraged in the service of law enforcement, just as frankpledge was important for groups because it created or bolstered their solidarity.

If collective sanctions have instrumental utility in (relatively) primitive societies quite apart from any moral conception of group responsibility, then we need not presume that modern liberalism makes them obsolete. Nonetheless, it may be tempting to think that the conditions under which collective sanctions make functional sense are also limited to primitive societies. The public law enforcement institutions of developed legal systems lower the costs of identifying, apprehending, and punishing individual wrongdoers. At the same time, the atomism and anonymity of modern urban (or suburban) life has done away with the kind of cohesive kinship and village groups that can easily observe and influence their members' behavior. So, whereas from a moral perspective we should expect collective sanctions to disappear from modern societies because moral responsibility has become individuated, from a functional perspective perhaps we should expect them to disappear because the state has bloomed while groups have withered.

This prediction takes for granted that individual sanctions are generally superior and that resort to collective sanctions is justifiable only in the kind of dire circumstances confronted by primitive societies, where identifying and reaching individual wrongdoers is virtually impossible. Yet collective sanction regimes — or at least close functional analogues — are a central feature of modern legal systems. Vicarious or gatekeeper liability across numerous areas of substantive law is designed to improve deterrence of agents by sanctioning principals. Joint and several liability as applied to products liability in tort and the statutory Superfund scheme similarly displace liability from individual wrongdoers to some set of individuals or firms. Corporate liability, civil or criminal, works in much the same way, by forcing shareholders to bear the costs of managerial misconduct. Insurance delegates deterrence responsibilities to a risk pool, whose members exercise control over individual insureds through the governance structure of an insurance company. Each of these legal regimes deploys the basic functional mechanism of blood feud and frankpledge: deterring wrongdoers indirectly by delegating enforcement authority to some third-party or -parties who are well-situated to monitor and control them. Moreover, each has the potential to deter wrongdoing more efficiently than any plausible substitute regime of sanctions targeted directly at individual wrongdoers. In the modern world, no less than the primitive one, the optimal target of sanctions often will not be the individual whose behavior the sanctioner hopes ultimately to affect, but instead some group to which that individual belongs. ■

# Can Gun Control Work?

By James B. Jacobs

CHIEF JUSTICE WARREN E. BURGER  
PROFESSOR OF CONSTITUTIONAL LAW  
AND THE COURTS, AND DIRECTOR OF  
THE CENTER FOR RESEARCH IN CRIME  
AND JUSTICE

*The following essay draws, in part, from the preface of Professor James Jacobs' book Can Gun Control Work? (Oxford University Press, 2002)*

To a large extent, gun control is something that people believe in. Believers embrace gun control in principle without attending to practicalities, implementation, enforcement, and costs. Many people assume that effective, cost-efficient gun controls are readily available if only the opposition of the evil National Rifle Association (NRA)-led gun lobby could be overcome. There are very few scholarly articles or advocacy documents that flesh out the details of specific gun controls, much less grapple with likely problems of implementation and enforcement, or with the probable impact on violent crime.

It is no doubt far easier and more satisfying to debate gun control in principle, to locate oneself on the moral high ground and to demonize those who take the opposite position, than to face the extraordinarily difficult problems of designing, implementing, and enforcing a regulatory regime that would successfully deny access to firearms to some or all private citizens, or keep track of the whereabouts and ownership of every gun. In *Can Gun Control Work?*, I approach gun control as a regulatory problem.

I have been thinking about gun crime, on and off, for much of my career. For five years at NYU School of Law I taught a seminar, "The Regulation of Weaponry in a Democratic Society," sometimes with Professor Ronald Noble (during those years, undersecretary of the Treasury for enforcement). In my opinion, the regulation of firearms and other weapons is one of the most fascinating and difficult topics in all of criminal justice. I think my students would agree.

We must begin thinking about a firearms policy for the United States by recognizing that we are not writing on a blank slate. We do not have the luxury of asking what policy would make sense for a brand new country that has few, if any, guns in private hands or whether in the abstract, an armed citizenry is a good or bad idea. We must confront a much tougher question: What policy options are



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available to the United States at this point in its history? To answer the question we need to examine the current status of firearms in American society and the administrative challenges, enforcement dilemmas, and unintended consequences that would be posed by the whole range of gun control options.

At the outset, readers may wonder why the United States cannot just adopt the gun control policies that work in European countries, Japan, and elsewhere. The simplest answer is that none of those countries

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We must begin thinking about a firearms policy for the United States by recognizing that we are not writing on a blank slate.

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has had to implement a strict regulatory or prohibitory regime at a time when almost half its households own guns and in the context of a strong tradition of private firearms ownership and a thriving contemporary gun culture. A more nuanced answer is that there is no single European gun policy and that it is not at all clear that European gun control "works."

A cross-cultural comparison is beyond my ambition. Such a study, while much needed, would be a tremendous challenge.

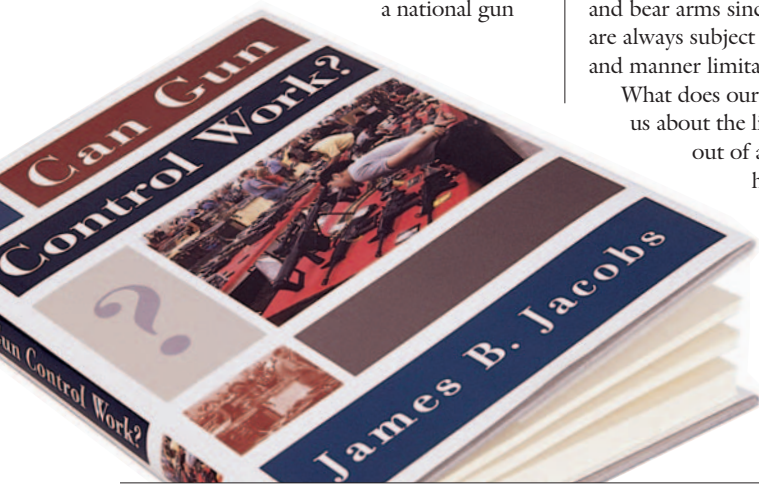
Evaluating the efficacy of gun controls in other countries is very complicated. For example, in Europe, as in the United States, there is no gun control uniformity. France, Belgium, and Scandinavia, for example, allow much more gun ownership than the United Kingdom. European countries differ on how easy it is to obtain a license to possess a firearm. New York state, Massachusetts, Washington, D.C., and certain other U.S. jurisdictions have stricter gun control laws than practically any European country. And our federal law imposes much more draconian punishments on criminals who possess and use guns than any European legal system.

Moreover, in Europe as in the United States, there is a difference between gun control laws and gun owning practices. We threaten persons who have a felony record with 10 years' imprisonment for just possessing a gun, yet hundreds of thousands of individuals choose to possess guns illegally. Legal and illegal gun possession is increasing in Europe; in many big European cities, guns are readily obtainable on the black market. In the last year or two, a horrific school shooting stunned Germany and a political assassination shocked Holland. Great Britain has the strictest prohibitory firearms regime in Europe, but gun crime has been increasing steadily.

You might well ask whether I am assuming that American attitudes, conduct, and politics with respect to firearms can never change. The answer is emphatically "no." Directed political and social change is possible. Shifts in public opinion and political power are possible. Policy interventions can make a difference. But the "givens" constrain what is possible politically and

administratively, and what is enforceable. We have to get beyond clashing platitudes and slogans. What gun control policy options are available to us?

After *U.S. v. Printz* (striking down that part of the Brady Law requiring state and local law enforcement officials to conduct criminal background checks on prospective handgun purchasers), a national gun



right to keep and bear arms, many gun owners are suspicious (and with good cause) that gun control proposals are being put forward as steps down the road to prohibition, and therefore they oppose all of them. (Ironically, it might be possible to pass more gun controls if the Supreme Court were to rule in favor of the NRA position on the individual's right to keep and bear arms since constitutional rights are always subject to reasonable time, place, and manner limitations.)

What does our regulatory history teach us about the likelihood of getting guns out of all, most, or some private hands? Is there anything to be learned from

National Prohibition or from the current drug war? Interestingly, many gun control believers are atheists when it comes to government regulation of mood- and mind-alter-

a million each year, exceeds the number of guns used in crimes. (Ammunition is more like drugs in that it is a consumable good that requires replenishing. But, like some drugs, bullets are easy to manufacture and, in the event they were prohibited, would surely generate a black market.)

Guns present a tougher regulatory challenge than drugs because guns enjoy a higher social and political status and are far more widely used. Drugs, at least cocaine and heroin, are regularly used by less than 1 percent of the American population. By contrast, there are firearms in 45 percent of American households. Drug use is not supported by a powerful movement or ideology. Drugs are not mentioned in the Constitution. Only a small number of libertarians believe that Americans have a right to ingest whatever drugs they want. Most critics of the drug war regard drugs as an unfortunate social and medical problem that ought to be rooted out by persuasion, education, and treatment. Complaints about government interference with the enjoyment of mood- and mind-altering drugs would have no political traction, while complaints about government interference with the enjoyment of firearms cause politicians to sit up and take notice.

Tens of millions of Americans, including senators, members of Congress, governors, business leaders, and other members of society's elite, are unabashed gun owners who believe that the U.S. Constitution guarantees law-abiding adult Americans the right to keep and bear arms. (The Supreme Court has not rendered a Second Amendment interpretation since an ambiguous ruling in the 1930s, but even a ruling against the individual rights interpretation would not change the minds of most gun owners.) Tens of millions of Americans participate in hunting and shooting sports, read gun-oriented magazines, and vote against political candidates who espouse or are suspected of harboring pro-gun control views. More than three million Americans are members of the National Rifle Association, the most powerful single-issue interest lobbying organization in the United States. Indeed, Joe Lieberman and others have attributed Al Gore's defeat in the 2002 presidential election to the votes of gun owners in a few swing states.

Granted, the analogy between regulating drugs and regulating guns is imperfect. The goal of drug regulation is eradication of drug use. While some gun controllers favor prohibition and disarmament, others favor making the regulatory regime that we now have — allowing law-abiding adult Americans free access to personal firearms (but not assault weapons or machine guns), while denying firearms to potentially

## Evaluation studies demonstrate that the Brady Law has had no effect on violent crime generally or on firearm crime specifically. This is not surprising since the Brady Law left the sale of secondhand guns by non-dealers completely unregulated.

control regime might have to be administered by federal employees rather than through the states. What kind of administrative agency would be needed and who would enforce the law? What kind of nullification could we expect from prosecutors, judges, and juries in states where guns are popular and gun control is not? (Gun control proponents often recommend that guns be regulated like cars. Consider the fact that there is a motor vehicles office in every U.S. county and that local police actively enforce auto registration and drivers' licensing laws. Nevertheless, hundreds of thousands of people drive without insurance and licenses; more than a million vehicles are stolen each year.)

Effectively regulating firearms poses a monumental challenge, often ignored or minimized by proponents of more gun controls. As much as 45 percent of U.S. households contain a firearm; all told, private U.S. citizens in 2003 possess at least 250 million firearms (including 80-plus million handguns). Since many gun controllers argue that there is no federal constitutional

ing drugs, insisting that such drugs cannot be kept from those who want to use them. They point out that after an investment of many billions of dollars, and the incarceration of hundreds of thousands of individuals, our three-decades-long drug war has achieved few, if any, positive results. This ought to sound a note of caution for those who would run head-long into a war on private firearms ownership.

Arguably, regulating firearms poses a greater regulatory challenge than regulating the mood- and mind-altering drugs. Since drugs are a consumable good, drug users must constantly resupply themselves; past regulatory failures do not have decisive consequences for future policy. By contrast, guns are durable goods that may last 100 years or longer if properly maintained. A gun owner may only need to make one purchase in a lifetime, while a heavy drug user needs to make constant purchases. Indeed a gun can be borrowed for hunting, target practice, or crime, and used by a number of different people. And the number of stolen guns, half

dangerous people — more effective. Under federal law and the laws of most states and localities, adults may possess a firearm, at least at home, unless they are a member of an ineligible group, like persons with a felony record.

The dominant federal gun policy evolved over three-quarters of the 20th century. It began with the Federal Firearms Act of 1938, was strengthened by the Gun Control Act of 1968, and carried forward by the Handgun Violence Prevention Act of 1993, popularly known as the Brady Law, which required federally licensed gun dealers to give the government an opportunity to carry out a background check on a prospective firearms purchaser before finalizing a sale. (Currently the background check is carried out by an automated federal insta-check system.)

It took seven years for the Brady Bill to wend its way through Congress. It was a hot-button issue in two sets of presidential debates and in four congressional elections. The citizenry was repeatedly polled and large majorities repeatedly indicated support. Scores of newspapers and magazine editorials opined on the virtues of the Brady Law. President Bill Clinton, members of Congress, the media, and advocacy groups on both sides called the 1993 Brady Law this generation's most important federal gun control law. Nevertheless, its impact has been negligible. (One impact the law did have was to generate a sharp increase in the number of gun sales in the years before passage.)

Proponents predicted that the Brady Law would significantly reduce gun violence and, at the moment of its passage, praised it as a turning point in the politics of gun control and crime control. Evaluation studies have not confirmed that prediction, rather they demonstrate that the law has had no effect on violent crime generally or on firearm crime specifically. This is not surprising since the Brady Law left the sale of secondhand guns by non-dealers completely unregulated. In other words, a private gun owner can sell her gun to anyone she wishes, no questions asked, unless she knows the purchaser to have a felony record. Likewise, a person with a felony record, ineligible to purchase a firearm from a federally licensed firearms dealer, can place a "gun wanted" ad in the newspaper or on the Internet, or just go to a gun show and purchase a gun from a private seller. Starting from where we are now, it would be massively difficult, probably impossible, to extend the Brady regulatory regime to the secondary market. And, even if that could be accomplished, a black market (like the one in drugs) might well provide the criminally-minded with easy access to guns. Indeed, even now, only a small minority of criminals obtains its firearms from licensed dealers.

Trying to prevent dangerous and irresponsible persons from getting hold of a gun in the first place is not the only type of American gun control. There is a wide range of other existing and proposed gun controls, including:

- prohibiting handguns or all firearms;
- prohibiting or strictly regulating ammunition;
- meting out sentence enhancements for crimes committed with a gun;
- prohibiting individuals who have been convicted of felonies and certain misdemeanors from possessing firearms;
- requiring firearms registration;
- requiring firearms licenses;
- establishing "gun free" buildings and zones;
- prohibiting the manufacture, sale, and possession of especially "dangerous" firearms such as machine guns and assault rifles;
- requiring guns to be sold with safety locks;
- requiring guns to be transported and stored in a specified manner;
- holding manufacturers civilly liable for firearms injuries.

My book examines each of these strategies with a critical eye.

I am not ideologically opposed to gun controls. And I am certainly not arguing that there is no control that could save a single life or make us a little bit better off. There are some controls that seem quite sensible to me (for example, prohibiting gun shows and limiting gun purchasers to one gun per month). But we must forget the idea that there is some gun-free alternative for the United States or that there is a gun control panacea for violent crime. Interpersonal violence is a complex problem, only weakly connected to firearm prevalence and availability. Gun controls, at best, are an indirect, difficult to implement and enforce, and marginally productive remedy.

By illuminating gun controls in practice, highlighting difficulties of design, implementation, administration, and enforcement, my goal is to refocus our debate. Gun control is mostly desirable for its violent-crime reducing potential. If there are no implementable and enforceable control options, we ought to be spending our time on other crime control strategies. We ought not to lose sight of the fact that while the number of firearms in private hands increased steadily throughout the 1990s by four million to six million per year, both gun crime and violent crime generally experienced an unprecedented decline. While the causes of the decline have not yet been persuasively identified, gun control can be ruled out. ■

## Reactions to Can Gun Control Work?

"Much of the debate over gun violence is dominated by ideologues who muddy the waters, mesmerize the press, and undermine the reasoned debate that is the heart of a true democracy. Jacobs, in contrast, adopts the clear-eyed analytical approach of a first-rate legal scholar.

Jacobs usefully underscores how difficult it would be to overcome all the obstacles — constitutional, political, and practical — to the effective regulation of guns in a society that is not fully committed to that goal."

**John Donohue**, professor of law, Stanford University School of Law  
*The American Prospect*

"Jacobs's lucid history of twentieth-century gun control and its abject failure in preventing crime is a good reason to read *Can Gun Control Work?* Unlike most scholars — not to mention a great many politicians — Jacobs has taken the time to understand how guns actually work and which groups of people firearms regulations typically harm."

**Eli Lehrer**, senior editor, The American Enterprise Institute  
*The Weekly Standard*

"If close attention to facts, reason, and common sense has any claim on the public's thinking, this book may well break the polarized debate over gun control and make it possible to settle on a sensible public policy regarding guns, gun safety, and the reduction of gun violence. This is a 'must read' for anyone concerned about the debate over gun control."

**Jan Dizard**, professor, Amherst College; co-editor, *Guns in America*

"In his new book *Can Gun Control Work?*, James Jacobs doesn't so much enter the fray as propose terms for negotiations. He offers a persuasive critique of some common but misguided approaches to gun control. And in so doing, he helps point us toward strategies that might save lives while still accommodating the place guns have, and will continue to have, in our national life."

**Barton Aronson**, prosecutor, Washington, D.C.  
*FindLaw Book Reviews*



# Recharging the Jury

## The Criminal Jury's Constitutional Role in an Era of Mandatory Sentencing

By Rachel Barkow  
ASSISTANT PROFESSOR OF LAW

*The following is a summary of an article that will appear in the University of Pennsylvania Law Review.*

**W**e live in an age of mandatory criminal punishments. Commit a drug offense, and you face a mandatory minimum prison sentence. Indeed, commit any federal offense and you face a pre-determined sentence under the Federal Sentencing Guidelines. Under these sentencing laws, judges have little power to police prosecutorial overreaching or correct overinclusive legislative pronouncements. As a result, these laws have sparked a barrage of academic commentary demanding more discretion for federal judges.

What has been all but ignored, however, is that these laws inhibit another actor in our system of separated powers: the criminal jury. It is possible to understand the full import of mandatory sentencing laws only by considering the effect of these laws on *both* judges and juries in tandem.

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**T**he criminal jury forms a core part of the judiciary under the Constitution. Even before the addition of the Bill of Rights, Article III — the framework for the judiciary — provided that “the trial of all Crimes ... shall be by Jury.”

The criminal jury's judicial role has, from the beginning, been much greater than that of a mere factfinder. The jury has the power to issue a general verdict of guilt or innocence, and the Double Jeopardy Clause shields its verdict of acquittal *absolutely* from review. This necessarily vests the jury with power to decide the law as well as the facts in criminal cases — and it enables the jury to act as a check on the executive and the legislature. The jury's unreviewable power to acquit allows it to ignore the letter of law when it believes justice so requires and prevents a subsequent prosecution for the same offense.

This power to mitigate — some would say nullify — the law in an individual case is no accident. It is part of the constitutional design and has remained part of that design since the nation's founding. The right to jury trial in criminal cases was one of the rare subjects on which both the Federalists and

the Antifederalists agreed. Alexander Hamilton noted in Federalist No. 83 that “[t]he friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury.” As he put it, the distinction is, at most, between the Federalist view that it is “a valuable safeguard to liberty” and the Antifederalist view that it is “the very palladium of free government.”

The Framers often compared the jury's power to that of a voter, checking the government and its laws. The jury was the means by which “the people” were injected into the affairs of the judiciary. Thomas Jefferson felt the jury was so critical that he claimed, “Were I called upon to decide whether the people had best be omitted in the Legislative or Judiciary department,

the *right* to answer questions of law. But although this had the effect of limiting the instructions and evidence the jury received, the Court's decision did not curtail the jury's *power* to check the state and reach an equitable result. The criminal jury has retained its power to issue an unreviewable general verdict of acquittal, thus protecting the jury's law application function and reaffirming that the criminal jury performs more than a factfinding role under the Constitution. Indeed, perhaps the greatest testament to the criminal jury's power is the fact that the Supreme Court has not allowed the kinds of limits on the criminal jury that it has condoned in the civil context. Devices to correct errors of law that are permissible in the civil context, such as judgments notwithstanding the verdict, are not available to the government in criminal cases. Thus, the Supreme Court has left open a critical, if imperfect, safety valve for jurors to check general criminal laws.

Perhaps a more significant development that undercut the jury's checking function was the growth of discretionary sentencing,

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I would say it is better to leave them out of the Legislative.”<sup>1</sup> The jury, in other words, was to check the law in a particular case to promote justice. Even if their representatives believed behavior should be criminalized, the framing generation wanted the people themselves to have a final say in each case to ensure that an individual would not lose her liberty if it would be contrary to the community's sense of fundamental law and equity.

It would be misleading, however, to stop the historical analysis at the time of the Constitution's framing. For the jury's role has changed dramatically in the past two centuries — and aspects of its authority have eroded.

Notably, the U.S. Supreme Court has concluded that criminal juries do not have

which allowed judges to sentence defendants within a wide range. Under this regime, a judge could increase punishment on the basis of the judge's, as opposed to the jury's, factual findings. It is undeniable that this development curtailed the jury's factfinding power. But even accepting judges' power over sentencing *facts* — whether for the sake of argument or because of its strong historical roots and longevity — discretionary judicial sentencing did not diminish the jury's equitable power over *law*.

When judges sentenced defendants under the discretionary sentencing regime, they did so based on their assessment of the individual and the particular facts and circumstances of the case. There were no generally applicable laws being applied by



judges. And, in fact, their sentencing decisions were largely unreviewable. This gave judges power much like that possessed by juries, for it allowed judges to adjust their rulings to the individual circumstances before them regardless of legislative or executive demands.

Thus, although judges' power increased vis-à-vis juries to decide facts, the *judiciary* as a whole did not sacrifice any power to the legislature or executive. Judges and juries together retained broad power to ensure equitable results in particular cases. Judges made their own factual assessments about

morally inappropriate. Thus, to avoid these high-error costs, it makes sense that a more substantial check would be used to ensure that general laws are, in fact, well conceived and make sense in a particular case.

Second, the risk of this harm is not hypothetical. Criminal laws (like all laws of general applicability) will be overinclusive. Legislatures cannot predict *ex ante* all the situations that will be covered by a general law; therefore, the law will inevitably be overbroad and cover some situations that legislators (and those voting for them) would not want covered.

point that the judiciary provides a critical check on the executive and legislative branch. Less commonly observed is the fact that the judiciary is made up of *both* judges and juries and that this division also checks state abuse of power.

This is not to say, however, that this jury power comes at no costs for defendants or the system. It is of course possible that the jury might exercise this discretionary power in undesirable ways, and history offers plenty of examples of troubling acquittals. But it is important to recognize that the same risks are present whenever *any* actor in the criminal

justice system — police officers, prosecutors, judges — is given discretion to mitigate punishment. No criminal justice or sentencing scheme will eliminate all disparity, as long as some actors in the process have discretion. Yet some discretion is necessary to ensure that the application of the laws remains just.

The jury's enshrinement in the Constitution and the retention of its unreviewable power to acquit for 200 years reflects the judgment that any risk of disparity from jury involvement in the criminal justice process is outweighed by the benefits the jury brings. The jury adds to the criminal justice system a unique perspective: the views of the community. Even when all the government actors agree that the defendant's behavior should be punished, the jury stands as a final barrier.

The jury trial is where the law meets the individual. Where the law can yield to emotion and community values. Where government abuse can be checked by the people. If rigid and predictable application of the law were the goal, the criminal jury trial would never have been mandated in the Constitution in the

first place, and we would have long ago dispensed with the unreviewable general verdict of acquittal.

While the reasons for mitigation will not always be laudable, giving the jury this power allows it to err on the side of protecting the legally and morally innocent, even if we might sometimes disagree with the moral judgment made by the jury. Like the reasonable doubt standard, this power symbolizes our societal judgment that it is better to let a guilty person go free — or at least be punished to a lesser degree — than to punish the legally or morally innocent.

My argument depends critically on this conception of the jury and its importance. For those who reject this, and instead view the criminal jury as an anachronistic



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sentencing, and juries retained the power to determine which (if any) general laws imposing punishment applied. Thus, juries could continue to check those laws in particular cases if they believed equity demanded such a result.

This check on general laws may at first blush seem in tension with “rule of law” values. Why should 12 (or even fewer) individuals override millions of voters? There are at least two reasons for this equitable safety valve in criminal cases.

First, the potential deprivation of liberty is greatest in criminal cases. An inequitable or rigid application of an overbroad law in this context means the most extreme deprivations of liberty the state can exact — criminal punishment — even when punishment is

People view the law quite differently depending on whether they are acting as jurors or voters. As voters, people consider the overall threat of crime. Jury trials force the people — in the form of representatives of the community — to look at crime not as a general matter, but instead to focus on the particular individual being charged. The result is a more measured, individualistic evaluation of whether liberty deprivation is appropriate.

The Constitution, therefore, does not establish the political process as the only check on the government's determinations of what is criminal. Instead it places a judicial veto in the people because the danger of state abuse is especially high and the consequences especially troubling. It is a familiar

## Investigating Criminal Law

Rachel Barkow, a former associate at the Washington, D.C., firm of Kellogg, Huber, Hansen, Todd & Evans, joined NYU School of Law's faculty in Fall 2002.

At Kellogg, Huber, Hansen, Todd & Evans, Barkow focused on telecommunications and administrative law issues in proceedings before the Federal Communications Commission, state regulatory agencies, and federal and state courts. Barkow clerked for Judge Laurence Silberman on the D.C. Circuit and for U.S. Supreme Court Justice Antonin Scalia.

Her main academic fields are administrative and criminal law, and she is especially interested in how the lessons of administrative law can be applied to the administration of criminal justice. Her most recent works include "More Supreme Than Court: The Fall of the Political Question Doctrine and the Rise of Judicial Supremacy" *Columbia Law Review* (2002) and "A Tale of Two Agencies: A Comparative Analysis of F.C.C. and D.O.J. Review of Telecommunications Mergers," co-authored with Peter Huber, *University of Chicago Legal Forum* (2000), as well as the piece excerpted here.

Barkow's writing also draws on legal history to explore the role the political question doctrine and the jury requirement play in a system of checks and balances.

holdover that fits uneasily in the modern administration of criminal justice, the remainder of the argument may be unsatisfying. But for those who continue to believe in the jury's importance — because the Constitution enshrines its power, because history documents the jury's use of its power to protect liberty, because the jury continues to act as a valuable check against the state — mandatory sentencing laws should be a great cause of concern.

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Mandatory sentencing laws pose the same threat as other general criminal laws. Indeed, these sentencing laws resemble general criminal laws in all key respects. Under these laws, judges make the same type of factual determinations that juries make under general criminal laws. And these findings have predetermined, and significant, consequences for the defendants' punishment *as a matter of law*.

The key difference is that these laws are being applied by judges, not juries. What does that mean as a practical matter? If the prosecutor believes the trial judge has ignored the letter of these laws, she can appeal the ruling and the appellate court must rule for the government if the trial

judge misapplied the law. There is, then, little room for the trial judge to bend the law as a matter of justice or equity. This obviously strengthens the legislature's and executive's hand as compared to the position the political branches would be in if the jury applied these laws. If the jury applied the law and determined it should not apply in a particular case, for whatever reason, that is the end of the matter.

Mandatory sentencing laws such as the Sentencing Guidelines therefore work an enormous change in the balance of separated powers. Under the discretionary regime that existed before mandatory minimum sentences and sentencing guidelines, judges and juries together had ample authority to ensure that a defendant received punishment commensurate with his or her individual circumstances. The jury applied any general criminal law dictating punishment to ensure it properly applied in a given case. If that general law imposed a range of punishment, the judges then had the discretion to sentence based on whatever facts the judge deemed appropriate and without the threat of a government appeal.

To be sure, this was not a perfect system. With such broad power, there was the potential for abuse and disparity. But there was no question that the *judiciary* had the power to prevent an overinclusive law from applying when it would be unjust; the executive and the legislature did not have unchecked power to make the determination.

The problem with modern sentencing law is that it strips this power from *both* judicial actors. The legislature passes general laws with particular punitive effects, but it requires judges to apply those laws within confined limits — or face an appeal by the prosecution. As a result, neither the judge nor the jury has the power to ensure that the law is being properly applied in a particular case. This is the danger of stripping the adjudicatory process of discretionary power: It paves the way for unchecked legislative and executive power that can be abused and threaten individual liberty.

Unfortunately, the Supreme Court thus far seems uninterested in correcting this imbalance of power. Although it has taken an interest in jury power over the last few terms, the Court ultimately came up with a test for defining the province of the jury that does little to protect the jury's function. As long as the finding of a fact under a general law does not trigger punishment above a statutory maximum, the Court has permitted those general laws to be applied by judges.

This statutory maximum test for identifying what juries must decide rests on the formalistic argument that the jury's conviction authorizes punishment up to that point. It undermines the point of the jury,

however, to give it the power to apply only the laws that impose the statutory maximum for the offense, because those laws represent only one of the laws in a proceeding that might be unjust to apply in a particular case or that might be unjust as a general matter. To be sure, that authority allows the jury to shield a defendant from all punishment if the jury acquits the defendant of all charges. But if the jury convicts the defendant of any of the charges, the government can seek to invoke additional general laws in the same proceeding that dictate criminal punishment. And those laws pose *the same equitable threat as the law imposing the statutory maximum*. Because the threat

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is the same whether it is a sentencing or liability law — overinclusive general laws subject to executive and legislative overreaching — the response should be the same: an equitable check by the people.

Thus, in developing a benchmark for when laws associating facts with criminal punishment must be applied by juries instead of judges, the key is whether the *judiciary* has sufficient discretion to ensure that the law is properly applied in an individual case. If the judge's discretion is curtailed in this regard, the laws that mandate punishment on the basis of those facts should be applied by juries, which have built-in discretionary power to check those laws to ensure they properly lead to criminal punishment in an individual case. ■

<sup>1</sup> Letter from Thomas Jefferson to the Abbé Arnoux (July 19, 1789) in 15 *THE PAPERS OF THOMAS JEFFERSON* 283 (Julian P. Boyd & William H. Gaines Jr. eds., 1958).

# Liberty and Security After September 11

By Stephen J. Schulhofer

ROBERT B. MCKAY PROFESSOR OF LAW

*The following article was adapted from an article in the March 2003 issue of The American Prospect, and from a report titled The Enemy Within: Intelligence Gathering, Law Enforcement, and Civil Liberties in the Wake of September 11 (Century Foundation Press, 2002).*

**T**he struggle to promote both order and liberty is perhaps the central problem in the organization of a free society. The struggle is constantly reshaped not only by chronic social ills (crime, psychiatric disorder, sexual misconduct), but also by acute emergencies, including armed conflict among nations, natural disasters, public health crises (SARS, for example), and of course organized terrorism.

In wartime, the first responsibility of national leaders is to keep us safe and to ensure the survival of our democratic form of government. In such a crisis, what role — if any — should remain for judicial review and other limits on executive power? Since September 11, civil libertarians have been reminded, early and often, of Justice Jackson's famous dictum that "the constitution is not a suicide pact." Television pundits confidently assert that, in wartime, constitutional safeguards are suspended and deference to the commander-in-chief becomes the normal order of the day. Checks and balances are dismissed as a luxury we cannot afford. Attorney General John Ashcroft has warned that "those who scare peace-loving peoples with phantoms of lost liberty . . . only aid terrorists, for they erode our national unity and diminish our resolve. They give ammunition to America's enemies."

Despite the currency of these views and the absence, at least in the mass media, of virtually any challenge to them, they are at odds with American responses to previous national emergencies. Constitutional imperatives vary with the context but are never simply put on hold. The U.S. Supreme Court's view, stated emphatically during the Civil War and consistently reaffirmed since, is that the "Constitution of the United States is the law for rulers and people, equally in war and peace, . . . at all times, and under all circumstances." Jackson himself was equally emphatic, in an opinion that pundits who cite his "suicide pact" dictum invariably

ignore. Voting to strike down emergency powers claimed by President Truman during the Korean War, Jackson wrote that "[n]o penance would ever expiate the sin against free government of holding that a President can escape [judicial] control of executive powers by . . . assuming his military role."

In the political arena as well, the currently prevalent notion that wartime dangers require deference to the commander-in-chief, the widespread outrage and frequent challenges to patriotism that attend many of the most tentative criticisms of President Bush, are all new developments, not customary American responses. At the height of the Korean War, when President Truman nationalized the steel mills to prevent a strike that would interrupt production of vital war materiel, Republicans in the House of Representatives introduced a resolution calling for his impeachment. In December 1941, less than two weeks after Pearl Harbor, a U.S. senator passionately insisted that "criticism in time of war is *essential* to the maintenance of democratic government." The speaker was Robert A. Taft, the man long known as "Mr. Republican," and his views, diametrically opposed to those of Attorney General Ashcroft, are worth quoting further:

Too many people desire to suppress criticism simply because they think it will give some comfort to the enemy . . . . If that comfort makes the enemy feel better for a few moments, they are welcome to it as far as I am concerned, because the maintenance of the right of criticism in the long run will do the country maintaining it a great deal more good than it will do the enemy . . . .

Those of us who teach and study at NYU School of Law, just a few miles from Ground Zero, need no reminder of the horror that was September 11, 2001. Nor do any of us doubt the need for vigorous action to strengthen law enforcement, just as Taft did not doubt the need for a vigorous military response to Pearl Harbor.

Ashcroft recently told *Time* magazine, "There are no civil liberties that are more important than the right to be uninjured and to be able to live in freedom." That common view is not only self-contradictory (when there are no civil liberties, the ability to live in freedom has disappeared), it also poses a false choice. Restricting civil liberties will not inevitably make us safer. And even when restrictions on civil liberties are useful, our only options are not simply to grant unbridled counter-terrorism powers or no counter-terrorism powers at all. Instead, as in all areas of constitutional governance, order and liberty flourish together when necessary

powers are framed by structures of accountability to ensure that authority is used effectively and with the least risk of abuse.

How well is the Bush administration meeting this challenge? An accounting should begin with the positives. Unlike previous wartime governments, the current administration has not sought to prosecute dissenters for political speech, has not attempted anything comparable to the internment of Japanese Americans during World War II, and (technically, at least) has not tried to suspend the writ of habeas corpus.

But to measure performance by these standards is to set the bar terribly low; these were sorry historical embarrassments. And September 11 has already produced several comparable missteps. The administration's efforts to stymie habeas corpus rival the civil liberties low points of prior wars, as does its determination (wholly without precedent) to hold American citizens indefinitely on disputed charges without affording them a trial in any forum, civil or military. Also without precedent are the oddly imbalanced means chosen to fight this battle. Never before in American history has an administration stunted on national-security expenditures and made

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tax cuts its top priority at a time of war. Conventional wisdom about "striking a balance" between liberty and security obscures the fact that responses to September 11 are flawed from both perspectives.

## Surveillance and Privacy

**T**he USA PATRIOT Act, passed in October 2001, gave investigators new authority to track Internet use and to obtain previously confidential business and educational records. Prosecutors gained access to the broad search and wiretap powers of the Foreign Intelligence Surveillance Act. The Treasury Department expanded its authority to require banks, brokers, and other businesses to report cash transactions and "suspicious activities," which include any

transaction that differs from ones the customer typically conducts. Though the Justice Department created a furor with its proposal to encourage voluntary snooping by private citizens, the Treasury regulations *require* private citizens and businesses to become eyes and ears for the government.

Many Americans are ready to sacrifice these sorts of privacy to obtain any nugget of information about al-Qaeda plans. Nonetheless, the rollback of privacy rights has two flaws that should trouble us all. First, worries about terrorism provide no reason to expand law enforcement power to investigate *unrelated behavior*. Yet FBI and Treasury agents can use most of their new powers to seek out evidence of prostitution, gambling, insider trading, or any other offense. There is no excuse for exploiting September 11 to intrude on privacy in pursuit of these unrelated goals.

Second, *accountability measures*, though neglected in the rush to pass the PATRIOT Act, need not impair the new powers and, if well designed, will enhance them. The FBI's "Carnivore" system for spying on email, for example, desperately needs procedures to preserve audit trails and ensure the accountability of agents who have access to it.

### Unleashing the FBI

In May 2002, headlines featured the startling news that in July and August 2001, agents in Minneapolis and Phoenix had urged investigations of Zacharias Moussaoui and the flight schools, only to be stifled by FBI headquarters — an enormous blunder. In response, Attorney General Ashcroft called a press conference to denounce "bureaucratic restrictions" that were preventing FBI agents from doing their jobs.

The rules he had in mind grew out of extensive FBI abuses in the 1950s and 1960s. Free to pursue random tips and their own hunches, agents intimidated dissidents, damaged reputations, and produced thousands of dossiers on public figures, private citizens, political parties, and social movements. By 1975, FBI headquarters held more than half a million domestic intelligence files.

Such sprawling dragnets are as inefficient as they are abusive. Rules to rein them in — adopted in 1976 by President Gerald Ford — have been reaffirmed by every president since. Nonetheless, Ashcroft ridiculed these guidelines as absurdly restrictive, and he announced that he was solving this problem by allowing FBI agents to operate with much less supervision.

The civil liberties community responded with outrage. But far from hurting Ashcroft's popularity, the criticism reinforced his intended message — that law enforcement had been hobbled by defendants' rights. The failure to pursue the flight school leads was in effect



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blamed on the ACLU, and the Justice Department presented itself as taking firm corrective action.

What actually occurred was rather different. One set of guidelines the attorney general relaxed governs investigations of "general crimes" — offenses *not* related to terrorism. The other guidelines he loosened govern investigations of *domestic* terrorist groups. Unnoticed in the brouhaha, the rules governing international terrorism cases — the ones that apply to al-Qaeda — weren't affected by the changes at all.

Behind the screen of this public relations maneuver, damage was inflicted in several directions. Public frustration with central oversight was understandable under the circumstances, but none of the guidelines impeded the kinds of investigative steps the Minneapolis and Phoenix agents had urged. What the field offices needed was better supervision, not less of it. Yet Ashcroft's actions obscured responsibility for FBI missteps, and instead of censure, the FBI was rewarded with greater discretion. The guideline revisions don't address the al-Qaeda threat that preoccupies the public, yet they leave us with heightened risks to civil liberties and less effective management at the FBI.

### The Assault on Habeas Corpus

Jose Padilla, the so-called "dirty bomber" who allegedly planned to explode a bomb laced with radioactive material, was arrested in May 2002 in Chicago, counsel was appointed for him, and he was scheduled for a court appearance on June 11.

Instead, two nights before, President Bush decided that Padilla was an "enemy combatant," a finding that the Justice Department tenaciously argues cannot be reviewed by any federal judge.

That night, without notice to his counsel, Padilla was taken from detention in Manhattan, put on a military plane bound for South Carolina, and thrown into a Navy brig. That was on June 9, and Padilla literally hasn't been heard from since. The government has refused to let him speak to the press or to his own attorney, and has done everything in its power to deny him access to the courts.

When Padilla's lawyer, Donna Newman, tried to file a habeas petition on his behalf, the government argued that the petition was invalid because he hadn't signed it. Having blocked all contact between Padilla and the outside world, the government told the court that a valid habeas petition required his signature, and that his own lawyer

had no standing to ask the court's help because she had no "significant relationship" with him. Federal Judge Michael Mukasey ultimately dismissed these arguments as frivolous. He ruled that Newman had to be granted access to her client and that he would review the "enemy combatant" designation to be sure it was supported by "some evidence."

Mukasey's decision was announced on December 9, yet Padilla remains incommunicado. At this writing (July 2003), the government continues to find reasons why Newman should be denied all contact with him. Detention (incommunicado, to boot) has continued for more than a year with no judicial review whatsoever. Normally, detention without a hearing becomes unconstitutional after 48 hours.

More important, what's left of the writ of habeas corpus? Paradoxically, Padilla was lucky, because the administration initially treated him as a material witness, and a judge appointed counsel for him. Next time, the government will just send the detainee straight to the Navy, without stopping first in a federal court. The Navy won't let him communicate with anyone in the outside world, and there won't be any Donna Newman to file a habeas petition for him.

The other worry in Mukasey's decision, for any case that gets to court, is the standard of review — "some evidence." The charge against Padilla is based on a Pentagon affidavit reporting tips from unidentified informants who are unavailable for cross-examination. That's obviously not proof

## Discarding Bedrock Constitutional Principles

Professor Stephen Schulhofer is the author of *The Enemy Within: Intelligence Gathering, Law Enforcement, and Civil Liberties in the Wake of September 11* (2002) and author of a chapter titled "No Checks, No Balances: Discarding Bedrock Constitutional Principles" in *The War on Our Freedoms: Civil Liberties in the Age of Terrorism* (2003). He joined the NYU School of Law faculty in 2001, after almost three decades on the law faculties at the University of Chicago and the University of Pennsylvania.

Schulhofer has also written opinion pieces on civil liberties and homeland security. In an opinion piece published in the *Los Angeles Times* (May 28, 2003), Schulhofer commented:

The Bush administration has won a reputation for toughness by claiming sweeping surveillance authority and broad emergency powers to detain citizens and foreign nationals without judicial approval. But when money is needed, homeland counter-terrorism priorities repeatedly take a back seat to the president's tax-cutting agenda.

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One lesson of the attacks in Saudi Arabia [in May 2003] is that unlimited government powers of surveillance, detention, and interrogation are of little value if attractive targets are left lightly protected. The U.S. ambassador has publicly criticized the Saudi government for its halfhearted efforts to beef up security at residential enclaves. That neglect left those targets vulnerable, even after intelligence officials warned specifically that an attack against Americans in the country was imminent. Do we think it can't happen here?

At a November 2002 conference, "Civil Rights and National Security: Must We Choose?," one of Schulhofer's co-panelists commented on *The Enemy Within*:

"This report is the best account I've read. In particular, I found two central points key: the need for an independent assessment of the pre-September 11 intelligence failures and an assessment of what, if any, enhanced surveillance and other powers would have helped us prevent September 11 or the next September 11."

**Mary Jo White**, partner, Debevoise & Plimpton and former U.S. attorney for the Southern District of New York

beyond a reasonable doubt. It's not even probable cause sufficient to support a routine wiretap, because the affidavit gives no basis for assessing the informants' reliability. But there is *some* evidence.

If the Supreme Court upholds the "some evidence" standard, it won't matter whether detainees get to file habeas petitions. An unsupported tip from a confidential source will be all it takes to support detention for the long duration of this conflict, without any trial at all.

The government says it needs to continue interrogating Padilla indefinitely, in order to find out what he knows. If he hasn't talked at this point, it's hard to believe that more time will do the trick or that whatever he knows isn't stale. But we can't rule out the possibility that after many months or years of isolation, a suspect might eventually reveal something useful.

The problem with that argument is the Constitution — not just its fine points, but the very idea of a government under law. If the mere possibility of a useful interrogation is enough to support indefinite detention incommunicado, then no rights and no checks and balances are available at all, except when the executive chooses to grant them. If a ruler in any other country claimed unilateral powers of this sort, Americans quickly recognize the affront to the most basic of human rights.

The government claims as precedent for its approach *Ex Parte Quirin*, the German saboteurs case. In World War II, German naval officers, one a U.S. citizen, landed secretly in the United States and were arrested. After trial by a military tribunal, seven were executed. The Supreme Court held that since they were members of the enemy armed forces, the military had jurisdiction (as it did over members of our own armed forces) to try them. The Court said that military jurisdiction was permissible because the defendants were "admitted enemy invaders."

The Bush administration argues that *Quirin* squarely settles its power over Padilla. The administration is right only if there is no important difference between being an admitted enemy and being an accused enemy. The argument boils down to the claim that since a person who admits guilt can be punished, the law should allow the same result when the president reviews a secret record and finds the crucial facts in the privacy of the Oval Office.

The American homeland has been threatened before. The Civil War brought four years of fighting on American soil, and Hawaii was a theater of active military operations throughout World War II. In both situations, the military argued the need for displacing civilian courts, and in both situations, the

Supreme Court rejected the argument explicitly. "Martial law," the Court said in *Ex Parte Milligan*, "cannot arise from a threatened invasion. The necessity must be actual and present, ... such as effectually closes the courts.... If martial law is continued after the courts are reinstated, it is a gross usurpation of power." This presumption against military detention is not merely a doctrinal technicality. The central premise of government under law is that executive officials cannot be allowed unreviewable power to imprison a citizen. Even in times of dire emergency, the Supreme Court has been consistent and emphatic on this point.

### "Fiscal Restraint"

While eroding civil liberties, the administration has neglected many obvious security priorities. An essential step in a serious counterterrorism effort is to determine what mistakes we made before September 11. President Roosevelt ordered an independent inquiry less than three weeks after Pearl Harbor. President Bush acted within hours to order an independent inquiry into the Columbia space shuttle disaster. Yet it's now more than a year since September 11, and an independent inquiry into what went wrong is just getting started. And with a budget that cannot exceed \$14 billion, its prospects are not auspicious. By comparison, to investigate President Clinton, Congress gave Independent Counsel Kenneth Starr \$70 million.

Other expenditure decisions are even more scandalous. Last year Congress appropriated \$82 million for upgrading FBI counterterrorism technology, \$39 million for inspecting cargo containers at our ports, and \$165 million for protecting the food and water supply. But, in August 2002, President Bush froze all these funds, stressing the need for "fiscal restraint." The National Nuclear Security Administration, the agency that protects our nuclear stockpile and our weapons laboratories, is now struggling with a shortage of security guards. Yet, the agency was forced to announce a hiring freeze last November because of budget constraints.

There is a startling disconnect here. The rhetoric of war is invoked over and over to support limits on civil liberties, but when the subject is tax cuts, talk of a national emergency stops. The administration's strategy is not captured by the cliché about "shifting the balance" from liberty to security because it is cutting corners on both. The decision to blame civil liberties and to draw attention away from other aspects of an effective counterterrorism strategy is a dangerous choice. ■

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# Close to Death

## Reflections on Race and Capital Punishment in America

By Bryan A. Stevenson  
PROFESSOR OF CLINICAL LAW

*The following article is excerpted from a chapter written by Professor Bryan Stevenson for a book on capital punishment to be published in late 2003 (Oxford University Press).*

Even before I began representing people on death row, I was opposed to capital punishment. The logic of gratuitously killing someone to demonstrate that killing is wrong eluded me. We don't rape those who rape, nor do we assault those who have assaulted. We disavow torturing those who have tortured. Yet we endorse killing those who have killed.

The death penalty has always seemed to me to be a punishment rooted in hopelessness and anger. My own moral and religious background caused me to believe that each of us is more than the worst thing we've ever done. No one is just a crime. Punishment must be constrained by basic human rights. I also recognized before I became a lawyer that the criminal justice system was replete with arbitrary and unfair decision-making, particularly for the poor and people of color.

In the almost two decades that I have been working as an attorney for condemned prisoners, I have developed a far more direct and personal understanding of the degree to which this country's capital punishment system is riddled with flaws and tainted with injustice. I have come to believe that the practice of capital punishment in the United States undermines the integrity of legal institutions and frustrates this nation's quest for equal justice to all.

Criminal justice policy has been incident driven in the United States for many years. Crimes, sensationalized by the media, have resulted in policies that are uninformed by analysis and research. Policymakers have defended ill-conceived and irrational sentencing schemes by invoking public support for tougher sentences. The broader, long-term implications of these policy choices are rarely considered. This approach to sentencing has made the death penalty immune to rational analysis and discourse. Public policy and state punishment of an offender too often become personal issues featuring the private tragedy of a particular victim, whose story is more or less important depending on the victim's wealth, status, race, class, or "newsworthiness."

It is in this context that the death penalty has taken shape in America and become a defining feature of criminal justice in the United States.

In the last several years, dozens of innocent people have been released from death row after narrowly escaping execution. For every eight executions that have occurred in the United States since resumption of capital punishment in the 1970s, one innocent person has been discovered on death row and exonerated. The shockingly high error rate has prompted a retreat from the death penalty in some circles, even wholesale commutation of every death sentence by the governor of Illinois. It has become increasingly clear that capital punishment in America is a lottery shaped by poverty, race, geography, and local politics. It is a punishment that has become notorious for its unreliability and unfairness and has increasingly come to symbolize a disturbing tolerance for error and injustice that has undermined America's commitment to human rights.

took place in Monroe County, which has an African-American population of over 40 percent, the trial judge changed venue to Baldwin County, Alabama, which has a black population of less than 15 percent. Only one African American served on McMillian's jury after the state excluded other black qualified jurors by means of peremptory strikes. The district attorney improperly told jurors about McMillian's rumored affair with a young white woman. Evidence from over a half-dozen black witnesses who testified that McMillian was at home working on his truck at the time of the crime, miles away, was simply ignored.

I began representing McMillian shortly after he was sentenced to death. A witness who had been coerced to testify falsely against McMillian contacted me and recanted his trial testimony. He told me that the police interviews where he was pressured to falsely implicate McMillian were tape-recorded. We found these recorded statements and other evidence buried in a case file in another county.

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It has become increasingly clear that capital punishment in America is a lottery shaped by poverty, race, geography, and local politics. It is a punishment that has become notorious for its unreliability and unfairness and has increasingly come to symbolize a disturbing tolerance for error and injustice.

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### The Death Penalty in Operation: The Case of Walter McMillian

Walter McMillian, a black, 45-year-old pulp wood-worker with no prior felony convictions, was arrested, convicted, and sentenced to death for a crime he did not commit in Monroe County, Alabama. The 1987 high-profile murder of a white college student caused great apprehension in south Alabama and enormous pressure on law enforcement to solve the crime. McMillian was placed on death row for 15 months before going to trial. He had previously had a romantic affair with a young white woman and believes he was targeted for prosecution because of this relationship. Upon his arrest, the sheriff subjected him to threatening remarks and racial slurs and at one point told him, "I ought to take you off and hang you like we done that nigger in Mobile."

McMillian's capital murder trial took place in just two days. Although the crime

After several evidentiary hearings and four years of intensely contentious litigation, the Alabama Court of Criminal Appeals finally overturned McMillian's conviction and death sentence based on the state's failure to disclose favorable evidence. All three of the witnesses who had falsely implicated McMillian admitted that their trial testimony was false. The state finally acknowledged that McMillian was innocent. On March 3, 1993, all charges against McMillian were dismissed. After nearly six years on death row, he was free.

### Capital Punishment and the Legacy of Racial Bias in America

At the beginning of 2003, there were 3692 people on death row in the United States. Thirty-eight of the 50 states have death-penalty statutes. Since the death penalty was resurrected in 1976, there have been over 800 executions, 89 percent of which have occurred in the American South.

Women, juveniles, and the mentally ill are among the hundreds who have been shot, electrocuted, asphyxiated, hanged, and injected with lethal poisons by state governments in America. Most of these executions have taken place in the last 10 years, as support for capital punishment has acquired greater political resonance and as federal courts have retreated from the degree of oversight and review that existed in the early 1980s. In the last year of the 20th century, the world's "leading democracy" executed close to 100 of its residents. All of the executed were poor, a disproportionately high number were racial minorities convicted of killing white victims, many of the executed were mentally ill, and some were juveniles at the time their crimes occurred. There is no meaningful assurance that all of the executed were guilty.

Last term, the U.S. Supreme Court banned the execution of persons with mental retardation, but the United States remains among the small number of nations that permit the execution of individuals who were under the age of 18 at the time of the crime. I have frequently dealt with the especially troubling issues generated by legal representation of 16- and 17-year-old kids who have been sentenced to death. The existence of the death penalty has justified the prosecution of hundreds of even younger children, many 13 and 14 years of age, who are spared the death penalty but sentenced to life imprisonment without parole.

Serious problems plague the administration of the death penalty in the United States. However, the pervasive and indelible taint of racial discrimination reveals a fundamental problem endemic to capital punishment that implicates American society in a significant way that transcends the administration of criminal justice.

The most glaringly obvious symptom of the dysfunctions of the American criminal justice process, readily apparent to even the most casual observer, is the stark overrepresentation of people of color (primarily African Americans and Latinos) in the ranks of those who are prosecuted for crimes in the United States. One out of three African-American men between the ages of 18 and 35 is in jail, in prison, on probation, or on parole in the United States. Evidence of disparate treatment of racial minorities becomes more pronounced at each juncture of the criminal justice process (arrest, filing of charges, pre-trial detention, conviction, and incarceration) as systemic decision-makers (police officers, prosecutors, and judges), who tend to be predominantly white, frequently exercise their discretion in ways that disfavor people of color. Even though there is evidence of disproportionately high involvement by African Americans and Latinos in some



Professor Bryan Stevenson, who serves as executive director of the Equal Justice Initiative in Montgomery, Alabama, has represented capital defendants and death-row prisoners in the South since 1985. He has been recognized by national publications and organizations as one of the nation's top public interest lawyers.

criminal offense categories, the disparities in arrest, sentencing, and incarceration persist even where offender rates are racially proportionate. For example, while African Americans make up 13 percent of the nation's estimated monthly drug users, they represent 35 percent of those arrested for drug possession, 53 percent of those convicted of drug offenses, and 75 percent of those sentenced to prison in this offense category.

When the Supreme Court struck down the use of capital punishment in 1972 in *Furman v. Georgia*, some of the justices frankly acknowledged the existence of racial bias in this country's administration of the death penalty. In 1987, in *McCleskey v. Kemp*, the Supreme Court was presented with empirical data documenting the existence of racial bias in Georgia's use of the death penalty. Yet, the Court nonetheless rejected the challenge to Georgia's capital punishment system and upheld McCleskey's death sentence. The Court freely admitted that race-based sentencing disparities are "an inevitable part of our criminal justice system." Expressing the concern that responding to racial bias in death-penalty cases might require confronting racial bias in other criminal cases, the Court concluded that the Constitution does not place such "totally unrealistic conditions" on the use of capital punishment or the administration of criminal justice.

It seems unimaginable that the Supreme Court, an institution vested with the responsibility to achieve "equal justice under the law," could issue an opinion that condones the existence of racial bias in the criminal justice system, let alone in the application of a penalty as grave and irrevocable as capital punishment. However, it is precisely this acceptance of bias and the tolerance of racial

discrimination that has come to define America's criminal justice system, including the administration of the death penalty.

In the years since *McCleskey*, the evidence of racial bias in the capital punishment system has continued to mount. A report by the U.S. General Accounting Office in 1990 concluded that 82 percent of the empirically valid studies on the subject show that the race of the victim has an impact on capital charging decisions or sentencing verdicts or both. A 1998 study found — on the basis of data from 27 of the 37 states that have employed the death penalty — that more than 90 percent of these jurisdictions exhibit patterns of racial bias in capital charging or sentencing of defendants accused of killing white victims. In 2000, a review of the federal death penalty revealed similar racial disparities in sentencing and charging decisions. President Clinton and Attorney General Janet Reno concluded that a moratorium on federal executions was necessary to conduct a further study of the problem. That study was abandoned in 2001 by newly appointed Attorney General John Ashcroft, who asserted that a supplemental study showed "no evidence of racial bias in the administration of the federal death penalty" and who declared that the Department of Justice would not suspend executions on the basis of doubts about racial fairness.

In some capital cases, the existence of racial bias is overt and graphic. The Supreme Court vacated the death sentence of Victor Saldano in 2000 after the attorney general of Texas conceded that the "prosecution's introduction of race as a factor for determining 'future dangerousness' constituted a violation of the appellant's right to equal protection and due process." But the Texas Court

of Criminal Appeals thereafter reinstated Saldano's death sentence, declaring that the issue was procedurally barred and that the state's attorney general had no authority to confess error in a death-penalty case appealed to a federal court.

Many appellate courts have shown a willingness to excuse overt racial bias in death-penalty cases. Anthony Ray Peek, an African American, was wrongly convicted of capital murder and sentenced to death in Florida after a white trial judge improperly admitted evidence and expedited the penalty phase proceedings by stating from the bench, "Since the nigger mom and dad are here anyway, why don't we go ahead and do the penalty phase today instead of having to subpoena them back at cost to the state." Although the Florida Supreme Court reversed the conviction, the reversal was on other grounds and the court's only response to the claim of racial bigotry by the judge was to urge state judges to "convey the image of impartiality." Peek was retried in front of a different judge and acquitted.

In 1989, a federal judge found that Wilburn Dobbs was tried by a state court judge who had spent his life and career defending racial segregation and who would only refer to Dobbs at trial as "colored" or "colored boy." Dobbs was convicted by jurors who later revealed that they believed that the Ku Klux Klan did good things in the community and that black people are more violent than whites. Dobbs was defended by an attorney whose racist views included a belief that black people are morally inferior, less intelligent, and biologically destined to steal. The federal district and circuit courts nevertheless affirmed Dobbs' conviction and death sentence. These rulings eventually were reversed by the U.S. Supreme Court on other grounds.

When one turns the lens to Alabama, a state in which I have represented many condemned prisoners and capital defendants, evidence of racial bias in the use of the death penalty is readily apparent. Of the persons executed in Alabama between 1981 and 2001, 70 percent have been African American. Although nearly 65 percent of homicide victims in Alabama are African American, 80 percent of Alabama's death-row prisoners have been sentenced for crimes involving victims who are white. Race of the defendant and race of the victim are significant predictors of who is sentenced to die in Alabama.

In Alabama, overt bias is frequently evident at capital proceedings. Herbert Richardson was executed in 1989 after the prosecutor urged the sentencing judge to impose the death penalty, in part because of Richardson's alleged association with the "Black Muslim organization." Samuel Ivery, an African American, was tried by a nearly all-white jury that was told by the prosecutor that the defen-

dant's lifelong history of mental illness, which included a prior commitment to a state mental hospital, was nothing more than "niggeritous" — an effort to fake mental illness to avoid criminal prosecution and punishment. The jury sentenced Ivery to death and the Alabama Court of Criminal Appeals found no error in the prosecutor's comments.

Racial discrimination resurfaces in the form of prosecutors' use of peremptory challenges to remove African Americans from juries. Although the Supreme Court outlawed this practice in *Batson v. Kentucky* in 1986, prosecutors continue to use a variety of tactics to attempt to evade *Batson's* protections. In the past several years, there have been two-dozen Alabama death-row prisoners who have had their convictions and death sentences declared unconstitutional because of prosecutors' racially discriminatory jury selection practices.

There have been 23 executions in the state of Alabama since the resumption of the death penalty in 1975. In 21 out of 23 cases — 91 percent — African Americans were significantly underrepresented in the juries that condemned the accused to death. In over a third of these cases (35%), the jury was all-white, despite the fact that the population in each county was between 33 and 47 percent African American. In 61 percent of the cases in which prisoners have been executed in Alabama since resumption of the use of capital punishment, the juries were either all-white or had only one black juror.

The indifference with which most policymakers consider issues of racial bias in the administration of criminal justice is especially troubling in the death-penalty context. The death penalty occupies an insidious place in the socio-historical framework that shapes criminal justice debate and policy. Social order rhetoric structures and fuels the enactment of criminal laws and the enforcement of certain punishments. In the South, lynchings and legally sanctioned executions have historically played a primary role in sustaining racial subordination and hierarchy. Imposition of extreme and lethal violence against the poor and African Americans is inexorably linked to the legacy of racial apartheid in the United States. The tolerance of racial bias in the modern death-penalty era, placed within the context of this troubling history, represents a serious threat to anti-discrimination reforms and equal justice in America.

When American policymakers, politicians, judges, and other decision-makers accept racially discriminatory imposition of the death penalty, they necessarily undermine the effort to confront the legacy of slavery and the continuing struggle to achieve racial equality. The African-American experience of criminal justice administration in the United States has resulted in distrust and bitterness for

over 200 years. Every act, or perceived act, of discrimination and racial injustice sustains and perpetuates this history. Because the death penalty *appears* to be infected by racial bias, one could reasonably support its abolition as a principled gesture of anti-racism in the shadow of America's troubled past. Instead, most policymakers and political leaders take the opposite view: They treat the criminal who offends as not worthy of any consideration or protection in the struggle to overcome race discrimination in America. However, it is precisely in the administration of the death penalty, where we deal with some of the most despised, hated, and reviled people in America, that the clearest evidence of our willingness to confront conscious and unconscious racial bias must be measured.

### The Confluence of Race and Poverty

Poverty and economic disadvantage among people of color increase the risk of wrongful or unfair treatment in the criminal justice system and compound the problem of race in death-penalty cases. The inability of the poor to obtain adequate legal assistance has been apparent for years to those familiar with the realities of the capital punishment system. Two justices of the U.S. Supreme Court have publicly commented on the pervasive inadequacy of appointed counsel in capital cases.

Over 80 percent of those currently under sentence of death in Alabama were tried, convicted, and sentenced to death with defense attorneys whose compensation was capped at \$1000 for all out-of-court work. In 1997, I represented a death-row prisoner on appeal whose appointed trial attorney did not call a single witness or present any evidence whatsoever on behalf of his client at either the guilt or penalty phases of his trial. The evidentiary portion of the penalty phase occupies less than a single page of the court's transcript. In a 2000 Dothan, Alabama case, the trial lasted only seven hours — including closing statements and jury instructions — before an indigent accused was convicted of capital murder. After the state's presentation of evidence, the defense presented no witnesses and the jury began deliberating at 3:15 p.m. on the same day that the trial had started. After being convicted of capital murder, this defendant was sentenced to death.

There are too many capital cases in the United States where indigent defendants were represented by attorneys who were asleep during trial proceedings, under the influence of drugs and alcohol, or otherwise engaged in unprofessional conduct as counsel for the capitally accused. Poor and minority defendants have been sexually abused by defense attorneys, subjected to racial slurs and bigotry by their counsel in open court, and undermined by the very advocate assigned



to defend them. One attorney, by his own admission, defended a capital client with mysticism, prophecy, clairvoyance, and his alleged ability to communicate with the jury by means of telepathy.

These problems go uncorrected in post-conviction proceedings where the U.S. Supreme Court has declared that there is no right to counsel, even for death-row prisoners who want to challenge a wrongful conviction or death sentence in collateral appeals. There are hundreds of death-row prisoners in America who are currently without legal representation. Many are literally dying for legal assistance. The consequence of all of these factors is that capital punishment really does mean that “them without the capital gets the punishment.” Support for capital punishment necessarily means accepting a punishment that is applied unequally and that largely condemns poor and disfavored defendants who are unable to obtain adequate legal assistance.

### New Moral Issues

As unrepresented death-row prisoners are scheduled for execution because they have failed to obtain legal representation in time to meet state and federal appeal deadlines, capital punishment in America takes on defining characteristics that raise a completely different set of moral questions. Can people who are committed to confronting racial bias and economic discrimination accept the execution of prisoners whose death sentences are a product of unequal and unjust application of the law against the poor and people of color? I believe that they cannot and that they must seek an end to capital punishment.

Beyond the abstract debate itself, the racial and economic features of the modern death penalty present moral questions about the death penalty that cannot be adequately answered. Race and poverty bias create results in death-penalty cases that are unreliable and unfair. Judges are required to either accept the unfairness or order new trials. The frustration, delay, and angst over accepting a conviction or sentence that is unfair prompt judges and most politicians to relax the law’s requirements for fairness so that executions can take place expeditiously. However, this cannot be a morally acceptable approach to capital punishment. As Professor Ronald Dworkin has stated, tolerance of an unfair or unjust administration of the death penalty creates its own immorality.<sup>1</sup>

Ultimately, the moral question surrounding capital punishment in America has less to do with whether those convicted of violent crime deserve to die than with whether state and federal governments deserve to kill those whom it has imprisoned. The legacy of racial apartheid, racial bias, and

## Committed to Change

The accompanying article is excerpted from Bryan Stevenson’s chapter in a book that presents various perspectives on capital punishment and will be published by Oxford University Press later in 2003. The book also features chapters by Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit, Paul Casell, Hugo Adam Bedau, and Stephen Bright.

Professor David Cole of Georgetown University Law Center has said that Stevenson’s chapter demonstrates his “great talent” in “using narratives and experiences gained from years working in the death penalty system to convey deep structural injustices of that system to a wide audience.” Professor Charles Ogletree of Harvard Law School has predicted that this chapter will make a “substantial difference” to those who seek to gain a deeper understanding of the complex relationship between race and the death penalty.

Stevenson is nationally and internationally renowned for his work in the capital punishment field. In June 1999, he addressed members of the Russian Parliament as part of a program that resulted in the commutation of all 800 death sentences in Russia by then-President Boris Yeltsin. Stevenson also has been working with lawyers in the Caribbean on legal strategies aimed at restricting executions in that region. Throughout the last 10 years, he has been successful in getting death sentences overturned in Alabama.

Stevenson has won numerous awards, including the Olaf Palme Prize for International Human Rights and the MacArthur Foundation Fellowship Prize.

ethnic discrimination is unavoidably evident in the administration of capital punishment in America. Death sentences are imposed in a criminal justice system that treats you better if you are rich and guilty than if you are poor and innocent. Embracing a certain quotient of racial bias and discrimination against the poor is an inexorable aspect of supporting capital punishment. This is an immoral condition that makes rejecting the death penalty on moral grounds not only defensible but necessary for those who refuse to accept unequal or unjust administration of punishment.

In the 21st century, human rights around the globe looms large as one of the defining issues of our time. Terrorism, religious and ethnic conflict, and protection of human rights in the face of new fears, tensions, and wars make the commitment to fair and just application of the law essential. Without such a commitment, there is no principled distinction between those who kill out of anger to avenge the death of another and those who seek to end killing. The death penalty is not disconnected from this struggle but core to it. As Albert Camus wrote,

“A punishment that penalizes without forestalling is indeed called revenge.”<sup>2</sup>

As has been frequently stated, we measure the civility of society — the commitment of a nation to equal justice — not by how it treats the wealthy, the privileged, or the esteemed, but rather how it treats the poor, the disadvantaged, and the disfavored. Death-row prisoners are the most despised, rejected, and hated people in American society. It is easy to ignore evidence of bias or unfair application of law in the cases that control their fate. However, in the face of such pervasive evidence, one cannot support capital punishment without retreating from a meaningful commitment to combating racial bias and economic inequality or giving into vengeful rage that blinds us to problems of unfairness. Either position is morally indefensible in a nation that is committed to the rule of law, human rights, and equal justice.

### Conclusion

Sooner or later, capital punishment will be abolished in the United States. The problems with the death penalty are too significant and too overt for this practice to survive. The death penalty is dis-enabling to a nation still struggling to overcome the legacy of slavery and racial apartheid, because it operates in a manner that reveals insidious race consciousness. The death penalty presents the wealth-dependent character of the American criminal justice system in a light that raises fundamental questions about our dedication to equal justice under law.

No one can dispute that the death penalty is a punishment that leaves no room for error. It requires completely reliable procedures that leave no question of fairness or injustice unanswered. Yet, capital punishment is administered in court systems that are frequently unreliable and that are replete with errors, misjudgments, and questionable outcomes.

If courage and understanding overcome fear and anger, the changing debate about the death penalty in the United States will evolve into a discussion about how and when capital punishment must be abolished, not whether it should be abolished. Until that time, those who are close to the administration of capital punishment in America must reflect conscientiously about all the moral requirements of equal justice under the law. I am convinced that informed reflection will lead to an end to the use of the death penalty and a commitment to fair and just application of the law, even for the condemned who occupy death rows across America. ■

<sup>1</sup> Ronald Dworkin, “The Court’s Impatience to Execute,” *L.A. TIMES*, July 11, 1999.

<sup>2</sup> Albert Camus, “Reflections on the Guillotine, in *RESISTANCE, REBELLION, AND DEATH 197-98* (1960).





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## Training Environmental and Land Use Lawyers for the New Millennium

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*The Lorax*, Dr. Seuss's cautionary tale of how a myopic mentality that "business is business and business must grow" destroyed an idyllic land of truffula trees, brown barbaloots, and humming-fish, ends with the admonition:

**UNLESS** someone like you cares a whole awful lot, nothing is going to get better. It's not.

The environmental and land use program at NYU School of Law is seriously committed to training lawyers to help make things "get better." Blessed with outstanding students who come to the Law School caring deeply about the environmental threats that face our nation and world, the Law School's world-class faculty offers a rich array of foundational courses, specialized seminars, cutting-edge colloquia, and innovative clinical programs designed to equip those students with not only the will, but also the intellectual tools, problem-solving skills, and practical experience to tackle those threats. Under the umbrella of the Center on Environmental and Land Use Law and the Furman Center for Real Estate and Urban Policy, J.D. and graduate students, post-graduate fellows, and an extraordinary collection of core faculty, affiliated faculty from other University departments and schools, global professors, and adjunct faculty from the top of the New York bar collaborate to produce path-breaking research and practical solutions to conundrums that besiege environmental and land use regulation. As the home of the Hauser Global Law School Program and its transformative approach to legal education for a globalized world, NYU School of Law provides unparalleled training for students to confront the challenges of environmental problems that know no jurisdictional boundaries. The depth, breadth, and strength of the Law School's environmental and land use programs will splendidly equip a new generation of lawyers to forge and implement new tools to restore, preserve, and protect the environment fairly and efficiently.



## Environmental and Land Use Law at New York University School of Law

**H**ow should the law mediate between claims that genetically modified organisms offer the promise of cheaper, better food for malnourished children while reducing dependence on polluting pesticides and herbicides, on the one hand, and charges that genetic modification poses the risk of far-reaching, irreversible ecological damage on the other? How should the World Trade Organization balance the demands of free trade against differing national views about the need for, and the appropriate tools to achieve, conservation of the world's fisheries or endangered species? What value should be assigned to a life saved in the next generation by an environmental regulation that will impose significant near-term costs in order to secure environmental benefits decades later? What role do and should cultural values play in how nations (and within nations, local governments) choose among regulatory goals and instruments? How should undesirable land uses, and desirable amenities such as parks, be distributed among communities and neighborhoods? How can we best provide affordable housing to the poor? How can land use law be sufficiently local to reflect, and encourage, differences among communities while addressing impacts from development that cross local borders? What role do land use and housing regulations play in differences in the cost of building housing across cities and countries?

These are the kinds of problems that will confront our students upon graduation, and will be central to the work of environmental and land use lawyers in the 21st century. Solving such problems will require a far broader set of analytical and practical legal skills than sufficed for prior generations. Today's environmental and land use lawyers must understand economic

theory, be able to problem-solve within the sociological and political dynamics of different communities, be conversant in fields of law ranging from local government law to the law of the sea, be prepared to draw on diverse laws from nations and international organizations around the globe, and know enough to ask the right questions about an expert's use of methodological tools ranging from regression analysis to biological markers.

NYU School of Law's environmental and land use law program takes on those challenges. Its superb faculty and collaborative intellectual atmosphere produce innovative research and path-breaking theoretical advances. The Law School offers extraordinary opportunities for students to develop and apply their skills in both academic and practice settings through specialized seminars, interdisciplinary colloquia, state-of-the-art clinical programs, and internships and fellowships with governments and environmental organizations. Debate and inquiry are enriched by a vast assortment of symposia, speaker programs, roundtable and brown-bag lunch discussions, and lecture series addressing current environmental and land use issues.

The pages that follow detail the extensive and wide-ranging resources that NYU School of Law devotes to training our students to be leaders of the environmental and land use bar, and to be creative policy analysts and strategists. That commitment, unmatched by any of our peer schools, along with the dynamism and innovativeness of NYU School of Law's approach to teaching, research, and problem-solving makes NYU School of Law's environmental and land use program the best venue to study, learn, and develop practical experience to resolve the vexing environmental problems the coming years will present.

# Faculty

**T**he Law School's core environmental and land use law faculty are widely recognized as among the most distinguished academics of their generations. The six full-time members of the faculty at the center of the program — Professors Vicki Been, Benedict Kingsbury, Michael Schill, Richard Stewart, and Katrina Wyman, along with Dean Richard Revesz — are national and international leaders in their fields.

Among them, they have published more than 35 books and hundreds of articles, many of which have been reprinted in the annual “best of” environmental and land use scholarship volume published by the *Land Use and Environment Law Review*. Their research and writing offer many of the most innovative ideas in environmental and land use law, both in the United States and internationally. The core faculty also are actively involved in law reform efforts on a wide variety of current policy issues, including climate change, the role of cost-benefit analysis in environmental regulation, “smart growth,” regulatory federalism, the use of economic incentives for environmental protection, “next-generation” approaches to environmental regulation, challenges to land use and environmental regulations as “takings” of developers’ property, and the regulation of genetically modified foods and crops. The faculty often appear as counsel or amici in prominent litigation over environmental and land use regulation, and frequently contribute to the public debate over environmental and land use policy through testimony to Congress and state legislatures, service on advisory committees, and membership on the boards of non-profit environmental and land use organizations.

The core faculty is augmented by several very talented full-time faculty members from other NYU departments, who offer courses and research opportunities in urban policy, state and local government law, environmental economics, law and science, and other fields that are closely related to environmental

and land use law. The core faculty also is bolstered by a stellar array of adjunct professors — distinguished practitioners in the public and private sectors who teach a range of specialized courses to enrich the curriculum, and who serve as a valuable resource for students interested in careers in environmental law.

## **Vicki Been** Professor of Law; Director, Program on Land Use Law

Vicki Been has long been at the cutting edge of legal scholarship in the intersection of land use and environmental law. She currently is examining the increasing convergence of land use and environmental law, and the implications that convergence may have for judicial review of environmental regulations. She also is exploring how local land use “impact fees” can be used as environmental taxes to ensure that development fully internalizes the costs it imposes on the surrounding natural and built environment. She has written extensively about the effect the expropriation requirements contained in the North American Free Trade Agreement and a growing number of other bilateral and multilateral investment agreements may have on environmental and land use regulations. Been also is a leading authority on environmental justice. Her nationwide study of the demographic characteristics of communities asked to host undesirable land uses set the standard for empirical research about environmental discrimination. She is the co-author of one of the nation’s leading land use case-books, *Land Use Controls: Cases and Materials* (with Robert Ellickson), and is



Vicki Been

currently completing *Foundations of Property Law*, a multidisciplinary reader for first-year property courses. Been teaches Property; Land Use Regulation; State and Local Government; and seminars on topics ranging from environmental justice to the Fifth Amendment’s Takings Clause. She co-teaches a Colloquium on the Law, Economics, and Politics of Urban Affairs with Professors Ellen and Schill.

## **David Bradford** Adjunct Professor of Law

David Bradford, a professor of economics and public affairs at the Woodrow Wilson School of Princeton University, visits NYU School of Law each year. Bradford has directed the Science, Technology, and Environmental Policy Program at Princeton’s Woodrow Wilson School of Public and International Affairs. His research has focused recently on greenhouse gas emissions trading and innovation in energy policy. As part of an interdisciplinary, decade-long research effort to understand and manage the global carbon cycle, for example, Bradford is developing a model to estimate the health changes caused by an incremental ton of NOx emissions from power plants in the northeastern United States, a first step toward assessing policy alternatives for NOx emissions. He also is exploring the implications that certain abrupt climate changes might have for global climate policy. At NYU School of Law, Bradford co-teaches the Tax Policy Colloquium, and serves as a valuable resource for Law School faculty and students interested in environmental and land use law.



David Bradford

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The core faculty is augmented by several very talented full-time faculty members from other NYU departments, who offer courses and research opportunities in urban policy, state and local government law, environmental economics, law and science, and other fields that are closely related to environmental and land use law.

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**Sarah Chasis**  
Adjunct Professor of Law

Sarah Chasis, who co-teaches the Environmental Law Clinic with Eric Goldstein, is a senior attorney at the Natural Resources Defense Council (NRDC) and director of its Water and Coastal Program. She works on NRDC's recently-launched Ocean Initiative, which focuses on promoting responsible management of ocean resources through the elimination of destructive fishing practices and the protection of valuable ocean habitats. She also is working to implement key recommendations to substantially reform ocean governance that were contained in two recently released Ocean Commission reports.



Benedict Kingsbury

**Ingrid Gould Ellen**  
Associate Professor of Public Policy and Urban Planning, Robert F. Wagner Graduate School of Public Service

Ingrid Gould Ellen co-teaches a Colloquium on the Law, Economics, and Politics of Urban Affairs with Professors Been and Schill. She also teaches courses in microeconomics, urban economics, and housing policy at NYU's Wagner Graduate School of Public Service. Ellen's research interests center on housing policy, neighborhood change, and urban economics. She published *Sharing America's Neighborhoods: The Prospects for Stable Racial Integration* (Harvard University Press, 2002). Ellen is currently studying how affordable housing investment influences property values in surrounding neighborhoods, using longitudinal data from New York City. She is also studying segregation in the New York City public schools and the effects of housing subsidies on decisions about household composition. Ellen received her B.A. in applied mathematics from Harvard University in 1987, an M.P.P. from Harvard's Kennedy School of Government in 1991, and a Ph.D. in public policy from Harvard in 1996. She has been a fellow in mathematics and natural sciences at Emmanuel College at Cambridge University in England and a research fellow at both the Urban Institute and the Brookings Institution. She also participated in the Robert Wood Johnson Foundation's Health Policy Research Program, studying the effects of housing and neighborhood residence on health.

**Sarah Gerecke**  
Adjunct Assistant Professor of Planning, Robert F. Wagner Graduate School of Public Service

Sarah Gerecke co-teaches a seminar on Land Use, Housing, and Community Development in New York City with Professor Schill and Adjunct Professor Salama.

Gerecke has over 20 years' experience in the field of affordable housing and community development. She is currently the chief operating officer of Neighborhood Housing Services of New York City, a nonprofit, community-based organization that promotes affordable homeownership. Gerecke also serves on Mayor Bloomberg's Neighborhood Investment Advisory Panel and on

Fannie Mae's Housing Impact Advisory Council. Gerecke previously served as vice president for Housing Programs at Westhab, Inc., a provider of homeless housing and services; worked for the City of New York on homeless programs and policy; and was the assistant commissioner for production and planning at the Department of Housing Preservation and Development. Gerecke began her career as a real estate attorney at Paul, Weiss, Rifkind, Wharton & Garrison.

**Eric Goldstein**  
Adjunct Professor of Law

Eric Goldstein, a senior attorney and co-director of the Urban Program at the Natural Resources Defense Council, co-teaches the Environmental Law Clinic with Sarah Chasis. He recently completed an analysis of the environmental impacts of the World Trade Center attacks. He also has prepared a new plan for land acquisition and smart-growth programs throughout the one-million-acre New York City watershed. Goldstein represents the local community group West Harlem Environmental Action in addressing continuing problems at New York City's 170 million gallon-a-day North River Sewage Treatment Plant.



Gerald López

**Benedict Kingsbury**  
Professor of Law; Director, Institute for International Law and Justice

Benedict Kingsbury, a highly regarded international law scholar, teaches several courses of interest to those pursuing environmental law careers, including International Law and the Seminar on Indigenous Peoples in International Law. He also co-teaches the Colloquium on Globalization and Its Discontents with Professor Stewart. Kingsbury has written widely about international law topics, including trade-environment disputes, international tribunals, and international civil society. He has had extensive academic and practical involvement with issues relating to indigenous peoples. He recently published "Reconciling Five Competing Conceptual Structures of Indigenous People's Claims in International and Comparative Law," in the *NYU Journal of International Law and Politics*, and is currently completing a book on indigenous peoples' claims for Oxford University Press.

**Gerald P. López**  
Professor of Clinical Law

Gerald López teaches the Community Outreach, Education, and Organizing Clinic, which trains lawyers to work with low-income, of color, and immigrant communities on developing unconventional strategies to attack pervasive social problems; and the Community Economic Development Clinic, which trains lawyers to work with these communities to effectively foster and equitably channel economic growth and opportunity. López is the author of *Rebellious Lawyering*, perhaps the most influential book ever written about progressive law practice and community problem solving. In 2003, López founded the Center for the Practice & Study of Community Problem Solving at NYU School of Law to improve the quality of problem solving — legal and non-legal — available to low-income, of color, and immigrant communities (see p. 107). Through the Center's various projects, and working closely with community residents, service providers, and interdisciplinary researchers, López and the Center staff aim to provide high-quality problem-solving services, coordinate and anchor the efforts of diverse problem solvers, study systematically the effectiveness of a variety of problem-solving approaches, and encourage all problem solvers to adapt flexibly to what research reveals about what works and what does not.

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Among them, the environmental and land use law faculty have published more than 35 books and hundreds of articles, many of which have been reprinted in the annual “best of” environmental and land use scholarship volume published by the *Land Use and Environment Law Review*.

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López came to NYU School of Law in 1999 after teaching at Stanford Law School, where he was the Kenneth & Harle Montgomery Professor of Public Interest Law and founded the Lawyering for Social Change Program, and at UCLA, where he co-founded the Program in Public Interest Law and Policy.

### **John Payne** Visiting Professor of Law

John Payne is visiting at NYU School of Law in the fall of 2003 from Rutgers School of Law-Newark, where he is professor of law and the Justice Frederick W. Hall Scholar. At NYU School of Law, he will teach Land Use Regulation, but his courses at Rutgers also include Constitutional Law, Civil Rights and Remedies, Local Government, State and Local Taxation, and Torts. He is the co-author (with Daniel Mandelker) of *Planning and Control of Land Development: Cases and Materials*, and has published scores of articles about land use and housing issues. Payne has been actively involved in the Mt. Laurel affordable housing litigation in New Jersey since 1983, and is one of the nation's leading experts on affordable housing. As an ACLU volunteer attorney and a volunteer attorney for New Jersey Future, Inc., Payne has participated in many of the most innovative lawsuits that have been brought in the last two decades over land use, affordable housing, and homelessness policies. He was a founding member of the Alliance for Affordable Housing, currently serves on the board of trustees of the Coalition on Affordable Housing and the Environment, is a member of the Housing Advisory Committee of the State Planning Commission, and serves on the board of directors of Preservation New Jersey.

### **Richard Revesz** Dean, NYU School of Law; Lawrence King Professor of Law; Director, Program on Environmental Regulation



Richard Revesz

Richard Revesz has published more than 50 articles and books on environmental and administrative law. His work on issues of federalism and environmental regulation, the valuation of human life and the use of cost-benefit analysis, and the design of liability rules for environmental protection has set the agenda for environmental law scholars for the past decade. He has been

active in a variety of public policy and law reform efforts, including serving as a member of the Environmental Economics Advisory Committee of the U.S. Environmental Protection Agency Science Advisory Board, serving as co-reporter for the Judicial Review section of the Administrative Procedure Act Project of the American Bar Association Section on Administrative Law and Regulatory Practice, and authoring amicus briefs filed in environmental and administrative law cases pending before the U.S. Supreme Court. In spring 2002, he was appointed dean of NYU School of Law. Even while serving as dean, Revesz continues to write, most recently publishing “The Biases of Risk Tradeoff Analysis: Towards Parity in Regulatory Policy,” *University of Chicago Law Review* (2002) (with Samuel Rascoff). Revesz teaches Environmental Law, Advanced Environmental Law, Administrative Law, and a variety of seminars on environmental law topics.

### **Jerry Salama** Adjunct Professor of Law

Jerry Salama co-teaches a seminar on Land Use, Housing, and Community Development in New York City with Professor Schill and Adjunct Professor Gerecke. Salama manages and develops low- and middle-income housing in Harlem. In 1997, he was awarded a fellowship from the Open Society Institute to evaluate the redevelopment of troubled public housing in three cities across the United States. Throughout the 1990s, Salama served in a number of government posts, as deputy commissioner for housing management and sales of the New York City Department of Housing Preservation and Development (HPD), the acting general manager (chief operating officer) of the New York City Housing Authority, counsel to the deputy mayor for finance and economic development, and director of HPD homeownership programs. Salama also served as a real estate attorney with Paul, Weiss, Rifkind, Wharton & Garrison.

### **Michael H. Schill** Professor of Law and Urban Planning; Director, Furman Center for Real Estate and Urban Policy

Michael Schill has written or edited three books and dozens of articles on various aspects of housing policy, deregulation, finance, and discrimination. His recent research projects have evaluated regulatory and other impediments to housing construction, examined the housing and neighborhood conditions of immigrants, and analyzed the impact of public investments on housing values. Schill also is the principal investigator on a project to provide the New York City Council with options for brownfields redevelopment, and recently served as the principal investigator on a national evaluation of the Fair Housing Act election process funded by the U.S. Department of Housing and Urban Development. Schill is vice chair of the New York City Loft Board; a current or former member of the housing task forces of the New York City Council speaker, Manhattan borough president, and public advocate; and a member of the board of directors of Neighborhood Restore, the advisory board of the New



Michael Schill

York City Fannie Mae Partnership Office, and the editorial board of Housing Policy Debate. He was recently appointed by Mayor Bloomberg to New York City's Neighborhood Investment Advisory Council. Prior to joining the Law School faculty in 1994, Schill was a tenured professor of law and real estate at the University of Pennsylvania. Schill teaches Property; Real Estate Transactions; and Housing and Urban Development: Law and Policy. He co-teaches the seminar on Land Use, Housing, and Community Development in New York City with Adjunct Professors Gerecke and Salama, and co-teaches a Colloquium on the Law, Economics, and Politics of Urban Affairs with Professors Been and Ellen.

**Richard Stewart**  
 University Professor; John Edward Sexton Professor of Law; Director, Center on Environmental and Land Use Law

Recognized as one of the world's leading scholars in environmental and administrative law, Richard Stewart has published eight books and more than 70 articles in this area. His writing has been a major influence in the shift from command-and-control regulation to the recognition of market-based approaches for strengthening environmental protection. His current research centers on the issues raised by the genetic modification of crops and other organisms. He has served as a member of international commissions and U.S. government advisory bodies and frequently testifies before Congress on environmental legislative issues. Stewart has led major law reform projects on environmental legislation in China, the use of economic incentives to address environmental problems such as climate change, and international regulatory conflicts on genetically modified organisms. Before joining NYU School of Law, Stewart had served as Byrne Professor of Administrative Law at Harvard Law School and a member of the faculty of the Kennedy School of Government at Harvard, assistant attorney general in charge of the Environment and Natural Resource Division of the U.S. Department of Justice, and chairman of Environmental Defense. Stewart teaches Torts; Advanced Environmental Law; the International Environmental Law Clinic; the Administrative and Regulatory

State; and seminars on law, new technologies, and risk. He co-teaches the Colloquium on Globalization and Its Discontents with Professor Kingsbury.

**Kerwin Tesdell**  
 Adjunct Professor of Law

Kerwin Tesdell teaches a seminar on Community Development Law. He is the president



Richard Stewart

of Community Development Venture Capital Alliance (CDVCA), an organization that promotes the use of the tools of venture capital to create jobs, entrepreneurial capacity, and wealth for low-income people in distressed neighborhoods. Prior to joining CDVCA, Tesdell served as a program officer at the Ford Foundation and as the director of the Community Development Legal Assistance Center, which provides corporate, tax, and real estate legal

assistance to community development organizations in New York. Previously, he was an associate with the law firm of Debevoise & Plimpton and a law clerk to a federal judge.

**Darren Walker**  
 Adjunct Professor of Law

Darren Walker, who teaches Housing and Urban Development: Law and Policy, is currently the director of the Rockefeller Foundation's Working Communities Division, which funds innovative work on housing, community development, public education, employment, and civil rights. Prior to joining Working Communities, Walker served for six years as the chief operating officer of Abyssinian Development Corporation, one of the nation's leading community development corporations. Under Walker's leadership, Abyssinian sponsored projects ranging from Harlem's first full-service supermarket, a \$90 million retail/commercial project, to a micro-enterprise loan fund for emerging entrepreneurs. Walker has a B.A. and B.S. from the University of Texas, and received his J.D. from the University of Texas Law School in 1986. After graduating from law school, Walker was an associate with Cleary, Gottlieb, Steen & Hamilton and an

investment banker with Dean Witter Reynolds, Inc. and the Union Bank of Switzerland. Walker has served on a number of boards, including the Association for Neighborhood Housing and Development, the National Low-Income Housing Coalition, the National Housing Institute, and the New York Federal Reserve Community Development Advisory Board, among other non-profit organizations.

**Jake Werksman**  
 Adjunct Professor of Law

Jake Werksman, a prominent international environmental law practitioner and scholar, teaches International Environmental Law. As the environmental institutions and governance adviser to the United Nations Development Programme (UNDP), Werksman provides policy assistance and advice to the UNDP headquarters in New York, as well as to more than 130 country offices worldwide. He has held the post of lecturer in international economic law at the University of London, and has served as a visiting professor at the United Nations University Institute of Advanced Studies and the University of Connecticut Law School, among others. Werksman has published widely on the relationship between environmental treaties and World Trade Organization rules, and the enforcement of international agreements. He facilitates student placements at U.N. agencies and other environmental organizations.

**Katrina Wyman**  
 Assistant Professor of Law; Director, Program on Common Property Resources

Katrina Wyman joined the NYU School of Law faculty in 2002. A graduate of the University of Toronto and Yale Law School, she teaches in the areas of environmental and property law. Her research interests include environmental and natural resources law and policy, the regulatory process, and comparative environmental regulation. Wyman is currently working on a series of case studies about why government regulators choose to use or not use property rights and markets for environmental protection and natural resource management systems. ■



Katrina Wyman





## Environmental and Land Use Law Curriculum

**N**YU School of Law's first-year curriculum and its extensive upper-year courses, colloquia, and seminars in environmental and land use law provide Law School students with an in-depth grounding in the theory and practice of environmental and land use law. The program's clinical courses in U.S. and international environmental law and community economic development then provide a rich array of practical, hands-on opportunities for students to apply their classroom learning to the solution of important environmental and land use problems in New York City, the nation, and abroad.

### The First Year

In the first year, students are exposed to environmental and land use issues in their property and torts courses. Professors Been, Schill, and Wyman teach first-year Property, and regularly use land use and environmental problems as a springboard to discuss basic property law concepts. The modern-day property course (which is a far cry from the tortured study of the rule against perpetuities that many alumni may recall) focuses on such issues as the tragedy of the commons, and the regulatory responses to the broader problem of externalities that "tragedy" embodies; the convergence of property, contract, and tort law in the landlord/tenant revolution of the 1970s and '80s; and the special challenges posed to property law by residential racial segregation and the need for affordable housing. Today, the Property course focuses less on the details of the estates system, and more on how the law might respond to Dr. Seuss's classic warning, *The Lorax*, which illustrates the cover of this magazine. Similarly, in first-year torts, Professor Stewart and others introduce a range of environmental examples to illustrate the basic principles of tort law.

In addition, students may elect to take a section of the Law School's new Administrative and Regulatory State course that focuses on environmental regulation. The Administrative and Regulatory State recently was added to the first-year curriculum to give students a basic grounding in public law and regulation, and to counterbalance the long-standing dominance of private law subjects in first-year courses. The section of the course that focuses on environmental regulation, taught by Stewart, uses the Clean Air Act as an example to help students examine the interplay between the legislative process, administrative implementation of regulatory statutes, judicial review of administrative action, and statutory interpretation in the development and implementation of regulatory programs. The course equips students to understand and work with legislative and administrative procedures and materials and to analyze statutes closely. It supplies an invaluable foundation for the many upper-year courses and fields of law practice that involve statutes and administrative programs. For students with an interest in environmental law, Stewart's section



provides an invaluable introduction to many of the important themes and issues in current U.S. environmental law, including the reasons for adoption of environmental regulatory programs and their basic design; issues of federalism in environmental policy; the choice of regulatory instruments, including economic incentives and information-based systems as well as traditional command regulation; and the relevance of economic analysis and other normative foundations for environmental regulation.

## Upper Years

### The Foundational Courses

Students interested in environmental or land use law usually begin their second years by taking one or more of several introductory survey courses.

**Environmental Law** offers an introduction to the legal regulation of environmental quality. The course considers the theoretical foundations of environmental regulation, including economic and non-economic perspectives on environmental degradation; the scientific predicate for environmental regulation; the objectives of environmental regulation; the valuation of environmental benefits; the distributional consequences of environmental policy; and the choice of regulatory tools, such as command-and-control regulation, taxes, marketable permit schemes, liability rules, and informational requirements. The course then analyzes the role of the various institutional actors in environmental regulation, the allocation of regulatory authority in a federal system, and public choice explanations for environmental regulation. After laying that foundation, the course analyzes the principal environmental statutes, particularly the Clean Air Act; the Clean Water Act; the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Endangered Species Act; and the National Environmental Policy Act.

**International Environmental Law** surveys the customary law and treaty-based principles, rules, and institutions whereby states cooperate to respond to transboundary and global environmental challenges.

After a general overview of the legal and political landscape, the course focuses on those challenging issues currently shaping international environmental law, including global warming, declining fish stocks, loss of biological diversity, the regulation of genetically modified organisms, and the potential clashes between environmental objectives and the rules and institutions of the World Trade Organization. The course combines framing lectures with interactive sessions in which students are

encouraged to test the boundaries of international environmental law by arguing opposite sides of these controversial issues.

**Land Use Regulation** examines how land use is shaped and controlled through government regulation. It begins by discussing the circumstances under which regulation might be needed to temper the private market ordering of land use patterns. It develops a typology of the kinds of regulatory and market-based tools that are available to control land use, and provides a framework for evaluating the appropriateness of alternative tools. It also explores the rights an owner of land has if a particular regulation of land is inefficient, unfairly burdensome, or unfairly disruptive of the owner's settled expectations, or an infringement on the owner's civil liberties. The course then switches sides to examine the rights those who oppose the landowner's plans may have to stop, or require modifications to, those plans.



## Administrative and Regulatory State Student Perspectives

### Warren Braunig ('05)

For me, Professor Stewart's Administrative and Regulatory State class provided a valuable link between the scholarly and sometimes abstract elements of the first-year curriculum and the real world in which policy is created, manipulated, and adjudicated. Exposure to this material during my first year was particularly important for two reasons. First, as someone who came to the Law School somewhat interested in environmental and administrative law, the class enabled me to dip my toe into those bodies of law, determine that I indeed wanted them to be the focus of my Law School career, and shape my second-year class choices appropriately. Second, having a solid foundation in administrative law was a competitive advantage for finding the summer job of my choice and has allowed me to be more efficient and successful on the job this past summer.

The Administrative and Regulatory State class didn't just turn me on to environmental and administrative law, it turned me on to the practice of law and the power that lawyers have to effect real change.

### Alexandra Knight ('05)

With a bachelor's degree in environmental engineering and an interest in environmental law, I knew from the start that I wanted to take the environmental section of the Administrative and Regulatory State course. Yet I did not realize that having the course on my transcript would give me such an advantage when applying to environmental law positions for the summer. Employers were very impressed that as a first-year student I had already learned both the fundamentals of administrative law and been introduced to the intricacies of important environmental regulation like the Clean Air Act.

This past summer, I worked for an environmental law organization in Mexico. The fundamentals of the U.S. environmental regulatory scheme that the Administrative and Regulatory State course provided me proved to be quite applicable to my work because many Mexican environmental norms are taken directly from U.S. regulations. The course also introduced us to international environmental norms like the precautionary principle embodied in the Rio Declaration, which I used to research human rights and environmental violations stemming from a chemical plant explosion in Veracruz. Taking the course solidified my decision to pursue a career in environmental law and offered critical insight into the wide range of economic and political considerations involved in the legislative and rule-making process that I could not have received from other traditional first-year private law classes.

Finally, the course focuses on particular problems that plague the land use regulatory system, such as the financing of development, exclusionary zoning, the fair distribution of undesirable land uses, and “smart growth.”

**Other areas of the law.** In addition to the introductory environmental and land use courses, students interested in these areas usually take related foundational courses, such as Administrative Law, Constitutional Law, Corporations, International Law, Local Government Law, Real Estate Transactions, Remedies, and Taxation.

### Seminars and Colloquia

To build on the foundational courses, students take a wide variety of more specialized seminars and colloquia.

#### Advanced Environmental Law Seminar

Advanced Environmental Law, which will be taught in 2003-04 by Professor Wyman, concerns prominent issues in environmental and natural resources law and policy in the United States and abroad. Topics covered include the ongoing debates about the use of analytical tools such as cost-benefit analysis and the precautionary principle in establishing environmental objectives, and current concerns about the factors now influencing the choice of instrument in environmental regulation, especially the obstacles to greater use of economic instruments such as tradeable permits. The seminar also considers interjurisdictional disputes over the allocation of water, current controversies in the regulation of fisheries and marine mammals, and environmental issues specific to densely populated urban areas. The interac-

tion between international trade and the environment also is discussed, and in this context the seminar considers the ongoing conflict between the United States and Europe about the regulation of genetically modified organisms.

#### Colloquium on Globalization and Its Discontents

The Globalization and Its Discontents Colloquium provides a weekly forum in which leading scholars from diverse fields present papers on legal and institutional responses to the consequences of globalization, and discuss those papers with students and faculty in a lively roundtable format. The colloquium is one of a number of curricular innovations resulting from the Law School's recent recruitment of five outstanding new faculty in international law—Professor Kingsbury and Professors Philip Alston, David Golove, Mattias Kumm, and Joseph Weiler—joining the Law School's extraordinary senior international law faculty. In Spring 2003, the colloquium was convened by Professors Kingsbury and Stewart.

Over the semester, students use class discussion and written work to consider core theoretical issues about globalization. They consider, for example: the meanings and usages of concepts such as “governance,” “civil society,” “democracy,” and “accountability” in the context of increasing international interdependence; the significance of global inequalities; relations between international and national law; arguments for and against international regulation by formal institutions; the need for and prospects of international administrative law; and unmet demands for justice and fairness at the global level.



### Globalization and Its Discontents Colloquium Student Perspectives

Liesle Theron (LL.M. '03)

The Globalization and Its Discontents Colloquium was one of the more stimulating classes I took at NYU School of Law. It offered me a further valuable perspective on the work I had been doing on environmental health and safety regulation and trade/competition. It provided a unique opportunity to discuss with academics their leading work on the implications of globalization. Whether their work was at a general level or on a specific subject, discussions were stimulating and relevant as Professors Kingsbury and Stewart focused the seminar on drawing parallels with and implications for students' work. The student work also covered a broad range of subjects and discussions allowed for cross-referencing of each other's work and that of the visiting academics.

Robert Yezerksi  
(LL.B. '03, University of Sydney)

The great achievement of the Globalization and Its Discontents Colloquium is that it explores the common challenges that the phenomenon of globalization poses for regulatory fields as diverse as genetically modified foods, competition law, and international criminal law. The course focuses heavily on institutional design and explores the ways in which regulation may be achieved beyond the ordinary channels of international law and politics. Perhaps the best aspect of the colloquium is that it brings together a range of experts (from both inside and outside the Law School), exposing students to the leading scholarship in a diverse range of fields.

Students were required to prepare reaction papers to the various speakers, and most speakers spent considerable time discussing these responses during their presentations. This meant that students were able to engage the guest speakers directly, voicing their own perspectives, opinions, and objections. The overall experience of the colloquium was therefore one of collaboration and debate, rather than mere exposition. My colloquium paper proposed development of an international system of criminal liability for oil-tanker owners who violate environmental regulatory requirements.



These theoretical issues are then applied and developed in the concrete setting of current global problems and controversies, including many involving environmental and land use law. In Spring 2003, sessions tackled the following issues:

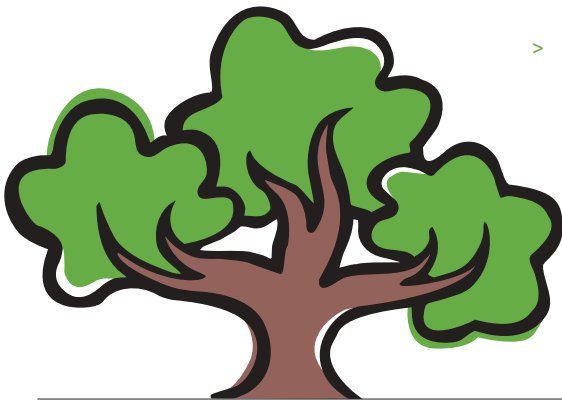
- > Governance of Plant Genetic Resources: A Regime Complex (paper presented by Professor Kal Raustiala, UCLA Law School, co-authored with David G. Victor, Stanford University)
- > Taking Embedded Liberalism Global: The Corporate Connection (paper presented by Professor John Gerard Ruggie, John F. Kennedy School of Government, Harvard University, formerly U.N. assistant secretary-general and senior adviser for strategic planning to Secretary-General Kofi Annan)
- > Regulating Genetically Modified Organisms (paper presented by Professor Stewart)
- > The Jurisprudential Achievement of the WTO Appellate Body (paper presented by Professor Robert Howse, University of Michigan Law School)



Professor Richard Stewart discusses his paper "Regulating Genetically Modified Organisms" at a session of the Globalization and Its Discontents Colloquium.

- > The New Transformation of Europe (paper presented by Professor Charles Sabel, Columbia Law School)
- > The Constitutional Challenge of New Governance in the European Union (paper presented by Grainne de Burca, European University Institute, with comment by Professor Francesca Bignami, Duke University Law School, and Emile Noël Visiting Fellow, Jean Monnet Center, NYU School of Law)
- > Competition Law and Policy: Global Governance Issues (paper presented by Professor Frédéric Jenny, ESSEC, Paris, and vice-chair, Conseil de la concurrence; chair, OECD Competition Law and Policy Committee; and chair, WTO Working Group on Trade and Competition Policy; with comment by NYU School of Law Professors Harry First and Eleanor Fox)
- > Climate Change and the Rules vs. Standards Problem in International Governance (paper presented by Professor Daniel Bodansky, Emily and Ernest Woodruff Professor of International Law, University of Georgia, formerly climate change coordinator, U.S. Department of State, 1999-2001)
- > Is There Really a "Democratic Deficit" Problem in Global Governance? (paper presented by Professor Andrew Moravcsik, Government Department, Harvard University)

In 2004, the colloquium will focus on international administrative law and the development of mechanisms for participation and accountability for international decision-makers and institutions. This is part of a major research project convened by Kingsbury and Stewart along with Institute for International Law and Justice Hauser Research Fellow Nico Krisch, in which students are actively involved (see p. 43).



The Globalization and Its Discontents Colloquium provides a weekly forum in which leading scholars from diverse fields present papers on legal and institutional responses to the consequences of globalization, and discuss those papers with students and faculty in a lively roundtable format.



## Colloquium on the Law, Economics, and Politics of Urban Affairs

### Student Perspectives



#### Jennifer Coughlin ('03)

Taking a course that was jointly offered in the Wagner School of Public Service and NYU School of Law was one of the most interesting experiences of my Law School career. It was a unique opportunity to examine relevant and current problems confronted in the urban setting from a variety of viewpoints. Law students often become used to confronting issues from an exclusively legal perspective. By taking a course with students in the Wagner School, we were able to go beyond a simple legal analysis and study the causes of urban problems and the results of legal responses to those problems from different methodological perspectives and through the lens of different disciplines. Such a breadth of perspective was also brought to the *Environmental Law Journal's* annual colloquium last spring, which focused on environmental impact review, the subject of a class being offered in the Wagner School. Several Wagner students attended the colloquium and were able to call attention to some of the broader policy concerns raised by such laws and regulations.

#### Ashley Miller ('04)

As a student interested in both law and urban planning, I knew right away that the Colloquium on the Law, Economics, and Politics of Urban Affairs was a course I wanted to take, but even with high expectations I was happily surprised. The participation of both law and planning students added a new dimension to the discussion, which I found useful in addressing such inherently interdisciplinary topics. It was inspiring to interact with scholars on their own work in progress, especially on such current and difficult issues as exclusionary suburban zoning, common-interest communities, and gentrification in New York City. The colloquium gave me a new appreciation for the complexity of urban issues, and a sense of the technical challenges of basing policy decisions on empirical work. The colloquium also highlighted the atmosphere of engagement and innovation at the Law School, as well as the benefits of being in New York City. New York gives students the ability to observe firsthand urban planning issues in context, as well as access to top-notch scholars working in the field.

#### Hannah Richman (Wagner '03)

The best aspect of the Colloquium on the Law, Economics, and Politics of Urban Affairs was the collaboration between top-notch professors from the Wagner School and the Law School. Their complementary approaches to the evaluation of issues were stimulating. The process of formulating critical questions for the guest speakers, and thereafter preparing written critical evaluations of their answers, cultivated skills essential for graduates from both schools. The professors' high standards and expectations also made the colloquium a particularly challenging and motivating course and experience. The Law School and the Wagner School exist in relative isolation from each other, but this colloquium afforded professors and students the opportunity to collaborate in a positive and intellectually stimulating environment.

## Colloquium on the Law, Economics, and Politics of Urban Affairs

This colloquium, taught jointly by Professors Been and Schill from the Law School and Professor Ellen from the NYU Wagner School of Public Service, allows students to explore current debates about critical urban policy issues. Leading scholars from planning, law, economics, and political science present early drafts of new research, which students then critique and discuss. The colloquium also is widely attended by faculty from the Wagner School and its Taub Urban Research Center, and from the Metropolitan Studies Program of the College of Arts and Sciences. Faculty from other area law schools and urban planning and economics programs, government officials, and policy-makers from

both New York City and Washington, D.C., also frequent the colloquium. Topics addressed in Fall 2002 included:

- > Local Land Use Controls and Demographic Outcomes in a Booming Economy (by John Quigley, I. Donald Turner Distinguished Professor and Professor of Economics, University of California at Berkeley)
- > Housing and Political Participation (by John Mollenkopf, Distinguished Professor of Political Science and Sociology, Graduate Center, City University of New York)
- > Gated Communities: Protecting Public Values in the Private City (by Richard

Briffault, Joseph P. Chamberlain Professor of Legislation, Columbia Law School)

- > Medium-term Economic Prospects for New York City in the Aftermath of the 9/11 Attacks (by Andrew Haughwout, senior economist, Federal Reserve Bank of New York)
- > School Vouchers: A Critical View (by Professor Helen Ladd, Sanford Institute of Public Policy, Duke University)
- > Gentrification and Displacement in New York City (by Lance Freeman, assistant professor, Urban Planning Department, Graduate School of Architecture Planning and Preservation at Columbia University, and Frank Braconi, executive director, Citizens Housing and Planning Council)



## Housing and Urban Development: Law and Policy

This seminar, which will be taught in Fall 2003 by Adjunct Professor Walker, explores a broad range of issues concerning U.S. housing policy. Students study the historical development of interventions in the housing market as well as the economic justifications for these interventions, and compare and contrast various regulatory and spending programs, with special attention to the comparative advantages and disadvantages of government programs designed to stimulate supply and those geared to increasing demand. The course also addresses non-profit, community-based housing; discrimination in the housing market; housing finance; and homelessness. Throughout the semester, students draw comparisons and contrasts between housing laws and policies in New York City and those of the nation as a whole.

## Indigenous Peoples in International Law

Issues concerning indigenous peoples (including descendants of pre-colonial inhabitants in the Americas and Australasia, and groups in Asia and elsewhere) are increasingly significant in many countries and in the United Nations, World Bank, Organization of American States, and other international institutions. The Indigenous Peoples seminar, taught by Professor Kingsbury, discusses challenges to standard liberal concepts and to democratic theory posed by such issues as the meaning and problems of the concept of indigenous rights; the nature and meaning of the right to self-determination; tensions between individual rights and group rights, such as those that arise over discriminatory membership rules; minority rights regimes in international law; removal of children from indigenous communities; the activities of multinational corporations; tensions between indigenous peoples' rights and environmental law; and indigenous peoples' rights under international trade and intellectual property regimes.

### Environmental and Land Use Topics Featured in Other Law School Colloquia

In addition to the several colloquia that are aimed specifically at environmental and land use topics, NYU School of Law offers a wide variety of other colloquia, at which papers on environmental and land use law often are presented. In 2002-03, for example:

**Erica Field**, Ph.D. candidate in the Economics Department at Princeton University, presented "Entitled to Work: Urban Property Rights and Labor Supply in Peru," a study of how land titling programs in Peru affected labor market participation, at the Colloquium on Law, Economics, and Politics. Field's study was later featured in an article in the *New York Times*.

**Professor Clayton Gillette** of NYU School of Law presented "The Locality's Relationship with the State: The Scope of Local Autonomy" at the Colloquium on Law, Economics, and Politics.

**Keith Maskus** from the World Bank presented "Problems Patents Pose for Developing Countries" at the Colloquium on Innovation Policy.



Several student papers in the Spring 2003 seminar focused on environmental issues. Kristen Genovese ('04) wrote on "Alaska Native Corporations, Oil Development, and Environmental Management"; Deborah Im ('04) analyzed "Korean Transnational Logging Companies and Indigenous Land Rights in Nicaragua"; and Nicholas Olmsted (J.D.-M.P.P. '03) explored "The Central Kalahari Game Reserve and San Land Rights in Botswana." Many students wrote on environmental problems facing indigenous peoples in other courses also. Aderito Soares (LL.M. '03), a member of the East Timor Constituent Assembly, for example, drew on his firsthand experience to write on "Community Responses to the Freeport McMoran Mine in West Papua." Some of the students developed their seminar papers into publishable notes. Gerald P. Neugebauer III ('03) is publishing his exploration of recent attempts to use human rights to protect Latin American indigenous groups from harmful petroleum exploration, for example, as "Indigenous Peoples as 'Stakeholders': Influencing Resource-Management Decisions Affecting Indigenous Community Interests in Latin America," *New York University Law Review* (2003). His note argues that such legal protections have failed to fully safeguard indigenous communities, and explores whether increased corporate use of the "stakeholder" theory of corporate decision-making would be a better approach. Kingsbury is editing a special issue of the *International Journal of Minority and Group Rights* that is publishing a collection of intensively revised papers by students in the seminar dealing with indigenous peoples' issues in East and Southeast Asia. Many of these papers make available to the scholarly community source materials and commentary not otherwise available in English.

### Law, New Technologies, and Risk Seminar

Professors Stewart and the late Dorothy Nelkin (see p. 98) introduced this seminar in 2002. It explores the role of law and legal institutions in addressing the environmental risks of new technologies, focusing on the use of genetically modified organisms (GMOs) in foods and crops. The seminar examines the emerging conflicts over GMOs, including the arguments of proponents that the technology will enhance food productivity while lessening use of agricultural chemicals, and those of opponents, who emphasize the novelty of the technology and claim that it poses uncertain but potentially significant environmental and health risks. The seminar considers the role of public values and attitudes in relation to government regulation and consumer acceptance of GMO products, international trade/regulatory conflicts over GMOs between the United States and the European Union, and the potential role of GMOs in developing country efforts to meet the food needs of their growing populations. Guest speakers addressed the following issues in the seminar:

- > Environments at Risk: Norms and Public Policy (by Mark Sagoff, The Institute for Philosophy and Public Policy, University of Maryland at College Park)
- > Technology-Based Health Risks, Corporate Practices, and Regulation in Historical Perspective (by David Rosner, Columbia University)
- > The Biotech Wars (by Susan Sechler, Rockefeller Foundation)
- > Scientific Uncertainties and Conflicting Expertise (by Rebecca Goldberg, Environmental Defense)

- > A Business Perspective on Biotech (by Jonathan Malkin, ATP Capital, LP)
- > Consumer and Environmental Protests (by Carol Foreman, Consumer Federation of America)
- > Questions of Liability and Risk Management (Gordon Stewart, Insurance Information Institute)
- > Domestic Regulatory Frameworks (Emily Marden '98), Sidley, Austin, Brown & Wood LLP)

### Property Theory

The concept of private property arguably has been more central to U.S. law and legal scholarship in the past 25 years than it has been any at any point since the period from the 1880s through the 1930s — the Lochner era. Now, as then, contentious debates in society at large about the appropriate role of government often are translated into conflicts about the boundaries of private property, and the related question of the constitutional limits of government regulation of private property. The Advanced Property Law seminar, which will be taught in Fall 2003 by Professor Wyman, examines contemporary debates about property using a range of legal, historical, and philosophical materials. Among the topics students explore are the classic rights-based and utilitarian justifications for property, and the contemporary use of these theories. Throughout the seminar, students apply such theories to current debates in areas such as environmental and land use law, as well as intellectual property law.

### Seminar on Community Development Law

This seminar, taught by Adjunct Professor Tesdell, introduces students to major policy and legal issues related to housing, economic development, and development finance activ-



ities of community-based organizations. It examines such recent legislative initiatives as creating empowerment zones, altering the Community Reinvestment Act, and capitalizing community development financial institutions. In simulation exercises, students grapple with policy concerns raised in class as they negotiate community control of resources, draft restrictions on the use of housing, design and create corporate structures, deal with regulatory constraints, and debate adoption of various corporate forms. Students learn and apply the legal skills of the corporate, tax, and real estate transactional and regulatory lawyer.

### Seminar on Land Use, Housing, and Community Development in New York City

This seminar, co-taught by Professor Schill and Adjunct Professors Gerecke and Salama, analyzes the roots and consequences of urban distress, and assesses federal, state, local, and community responses to urban distress. It reviews initiatives to build housing and commercial projects in low-income communities and analyzes several aspects of these initiatives, including policy underpinnings, real estate financing, the role of subsidies, community participation, legal procedures for undertaking various land use actions, environmental review processes, and legal challenges to these projects. Students work together in groups to provide research and policy analysis for local community-based organizations. Last year, for

example, students analyzed proposed reforms to the city's land disposition policies for New York City Deputy Mayor Dan Doctoroff; explored how to legalize or enforce the building code against illegal residential dwellings in New York for Asian Americans for Equality; evaluated the city's tax lien sale process for New York City's Housing and Preservation Department; examined a new tenant cooperative initiative of the city's Third Party Transfer Program for Neighborhood Restore; and assessed housing preservation in the financial district for New York City Councilman Alan Gerson.

### Clinics

To put what is learned in foundational courses, seminars, and colloquia to the test, many students take one or more of the Law School's clinical courses.

### Environmental Law Clinic

The Environmental Law Clinic, co-taught by Adjunct Professors Chasis and Goldstein, involves students in public interest environmental litigation and policy initiatives in the New York City office of the Natural Resources Defense Council (NRDC), one of the nation's leading public interest environmental groups. Students recently have worked, under the close supervision of NRDC attorneys, on projects involving protection of New York City's drinking water, global fisheries, energy efficiency and conservation, new source review of proposed power plants, the Everglades





National Park and Florida Bay, mercury contamination, lead abatement, and environmental justice litigation. Students attend a weekly NRDC seminar to review and discuss a range of cases and projects being undertaken by the organization.

### International Environmental Law Clinic

The International Environmental Law Clinic engages Law School students in major projects exploring international environmental issues, such as climate change, environmental law reform in developing countries, biodiversity protection, resolution of international water conflicts, public access to environmental information, and controls on genetically modified organisms. The clinic places students with public and non-profit clients, including U.N. organizations, developing countries, international and domestic environmental groups, and international development banks. Students research and prepare legal briefs, position papers, and law reform strategies for the negotiation and implementation of international and regional environmental agreements and domestic law efforts to ensure sustainable development. The clinic is linked to the International Environmental Law course, which provides students with a grounding in the basic elements of international environmental law and a forum to explore cross-cutting issues in the field. Students have an opportunity to share and discuss with other students the insights they have gained through their client work.



## Environmental Law Clinic

### Student Perspectives

#### Erik Bluemel ('04)

As a student interested in environmental law, but often humbled by the odious "Socratic Method," I knew that participating in the Law School's Environmental Law Clinic at the Natural Resources Defense Council (NRDC) was necessary to revive my interest in the law after that tortuous first year. I was, for the first time in my legal career, right on the mark. The clinic put me where the action was: right in the middle of a lawsuit.

From the day the clinic started to the day it finished, I was heavily involved in a suit that NRDC brought against the U.S. Department of Energy (DOE) challenging DOE's rollback of recently promulgated appliance efficiency standards. The standards, designed to reduce the per-kilowatt-hour energy consumption of air conditioners and heaters, and promulgated at the end of the Clinton administration, were suspended and then rescinded by the Bush administration. NRDC brought the lawsuit because the statute under which the standards were created provides that the standards can never be weakened, and because the rollback occurred without following the required public "notice and comment" procedures.

My involvement was surprisingly large, as I was immediately thrown into the thick of things. I conducted research in support of, and edited and revised large portions of, two appellate briefs submitted to the Second Circuit. Though I was completely enthralled by my Civil Procedure course, there is just no substitute for the real-world experience of seeing what a proper pleading and brief looks like.

As an aspiring environmental lawyer, I cannot say enough about my participation in the Environmental Law Clinic — it has been my most rewarding experience in Law School thus far, even surpassing the beloved Civil Procedure. But who knows? Maybe the International Environmental Law Clinic will top it.

#### Anika Singh ('04)

At NRDC, I worked on a lawsuit to enforce lead abatement laws and regulations, and helped to draft legislation to provide tax credits for energy-efficient and transit-accessible developments in New Jersey. I took the clinic because of my interest in land use and development issues, and was pleased to pursue that interest in the clinic projects. It was exciting to work on legislation that finally last May, was introduced in the New Jersey state legislature. Working on tax credit legislation definitely informed my understanding of tax incentives and preferences while I was taking Income Tax last semester. The clinic seminars were extremely educational, with topics varying from air-conditioner efficiency to preserving the Everglades. Our discussions of landmarks preservation and environmentally-friendly economic development especially enhanced my understanding of how environmental law affects the types of issues — affordable housing and economic development — that I'm interested in.

#### Emily Willits ('03)

I worked with attorneys in NRDC's Urban Program on projects aimed at protecting the cleanliness of New York City's water supply. The most important lesson I learned at NRDC is that effective environmental advocacy requires equal attention to legal strategy, policy planning, and public relations. On any given visit to NRDC, I could expect to research a complicated legal issue, participate in a strategy session for a town hall meeting, or review a press release relating to one of my assignments. The work was fast-paced and varied, and each component was critical.

The clinic provided an exciting opportunity to learn about the inner workings of one of the most highly regarded environmental action organizations in the world. Each week our seminar featured a guest visitor, either from within NRDC or from another environmental organization or government agency. I left the clinic with an understanding of environmental issues that I had not thought about before, not to mention a binder full of sample legal briefs and memoranda written by some of the best environmental lawyers in the country. I still receive occasional updates about the projects I worked on at the clinic — just last spring, I attended a hearing in Albany for a case that I worked on in Fall 2002.





## Community Economic Development Clinic

NYU School of Law is pleased to introduce a new clinic on community economic development, taught by Professor López. The clinic responds to the growing recognition that a wide variety of lawyers now find themselves dealing increasingly (some say, inescapably) with economic development work, but lack the training and tools to address the issues such work poses. The clinic will address that gap through a classroom component in which students will study theories about and actual dynamics of political economics; the degree to which many familiar and notable development initiatives characteristically reflect and respond to the needs and aspirations of low-income, of color, and immigrant communities; how lawyers and other problem solvers (and the offices, organizations, coalitions, and networks of which they are a part) might conceive of and follow through on their work to help shape future initiatives responsive to these concerns and aspirations; how the use of sophisticated empirical research might inform and make accountable public, private, and mixed ventures (particularly in terms of promoting social wealth, equality, and civic participation); and the problem-solving practices of all those (including lawyers) involved in community economic development work. Students will regularly participate in simulated exercises designed to identify and enhance those ideas, skills, and sensibilities central to community economic development practice.

The classroom component will be supplemented and enriched through fieldwork in which students will work on such projects as evaluating whether, and influencing how, empowerment zones and redevelopment proposals accountably respond to community needs; assessing how best to incorporate minority, immigrant, and ex-offender populations into neighborhood, metropolitan-wide, and regional planning processes; assisting in the enforcement of laws governing access to capital; and providing advice and counsel to small and micro-businesses. The clinic will work closely with the Center for the Practice & Study of Community Problem Solving, which López recently founded at NYU School of Law (see p. 107). ■

## International Environmental Law Clinic Student Perspectives

### Lauren Godshall ('03)

My participation in the International Environmental Law Clinic was an extremely important part of my third year of Law School in that I was able to revive and greatly advance several strands of research I had begun in earlier courses and internships, and unite them in a single research paper that I hope will now be used by other activists and researchers in the field.

For my project, I chose to develop a comparative study on the international regulation of the use of antibiotics and genetically modified organisms (GMOs) in the agricultural industry. This turned out to be an exciting project because national and international policy in these areas was in constant flux and even became considered a political stake in the controversy surrounding the E.U.'s involvement in the U.S.-Iraq conflict. Because of the dual aims of the project, I was working for both Dr. Becky Goldberg at Environmental Defense, an environmental non-governmental organization headquartered in New York, and Professor Stewart's GMO research project at NYU School of Law.

Through the clinic work, I learned more about research methods and the dynamics of modern international policy than I had in any previous courses or clinic work. My final paper went beyond mere legal research and ultimately incorporated scientific debates, ethical concerns, trade and economic issues in developing countries, and the clash of political and free trade principles of the developed nations — as well as the effects and interplay of these facts in influencing national policies on antibiotic use and GMOs.

### Charles Olson ('03)

This clinic provided an exciting opportunity to work with the World Resources Institute (WRI) on a project designed to promote grassroots-driven environmental progress in the developing world. Through "The Access Initiative," WRI partnered with the U.N. Development Programme and numerous governments to promote access to environmental information, participation in environmental decision-making, and access to environmental justice. My research focused on developing indicators to rate countries in terms of practical access by citizens to courts or other tribunals to protect environmental interests — the "law in action," not just the "law on the books."

To understand the practical barriers to access to justice in developing countries, I not only researched and reviewed the published literature, but also interviewed many students and members of the Law School community with personal experience litigating in the developing world. I was struck by their willingness to help identify practical impediments to access to justice through their native legal systems and their passion for addressing the difficulties that I was researching. The resulting paper helped produce a set of analytical tools and indicators that WRI and governments of developing nations can use to monitor and promote access to justice and, more generally, facilitate local environmental advocacy.

### Andrew Wolman ('03)

For my project, I worked with Alon Tal, director of Israel's Arava Institute of Environmental Studies. I did a comparative study of water pollution effluent trading schemes around the world for a project exploring whether such schemes can be effectively implemented in Israel. For me, this was a great opportunity to learn more about the use of economic incentives in environmental regulation under the tutelage of Professor Stewart, one of the world's foremost experts in the field. One clinic highlight was getting together with the other clinic students from all around the world at Professor Stewart's house, where we talked about our projects and international environmental law in general.

For Spring 2003, I went to Madrid for an internship with the International Institute for Law and the Environment, one of Spain's leading environmental law centers. The institute director, Ana Barreira (LL.M. '96), is an alumna of the International Environmental Law Clinic. The internship was extremely valuable, both to learn environmental law from a European perspective and to have a firsthand view of environmental NGO operations. I worked on a wide variety of projects, from researching water allocation rights along the India-Nepal border to writing a conference proposal on the environmental issues connected to E.U. enlargement to writing a report on the use of conservation easements in Latin America. The experiences provided practical as well as substantive education in international environmental law.



## Research on Environmental and Land Use Law

**N**YU School of Law's research programs on environmental and land use regulation are organized by two research centers. The Center on Environmental and Land Use Law, directed by Professor Stewart, brings together four major areas of research: the Program on International Environmental Law, directed by Professor Stewart; the Program on Environmental Regulation, directed by Dean Revesz; the Program on Common Property Resources, directed by Professor Wyman; and the Program on Land Use Law, directed by Professor Been. The Furman Center for Real Estate and Urban Policy, directed by Professor Schill, focuses on the legal and public policy aspects of real estate development and the provision of affordable housing, with particular emphasis on the special challenges those issues pose in New York City.

The two Centers enable faculty, students, and research fellows to collaborate on a wide variety of research projects designed to provide the empirical and theoretical basis for the next generation of environmental and land use regulation.

### Program on International Environmental Law Project on International Regulatory Conflicts Over Genetically Modified Crops and Foods

Global conflicts in trade and regulation of bioengineered foods and crops containing genetically modified organisms (GMOs) are being addressed through a three-year research project by the Center on Environmental and Land Use Law under the leadership of Professor Stewart. The most dramatic example of such conflict is the case recently filed by the United States against the E.U. before the World Trade Organization (WTO), complaining that the E.U. (driven by public opposition to GMOs) has shut out exports

of transgenic U.S. soy, corn, and other crops that have been modified with genes to make the crops resistant to pests and herbicides. The E.U. defends its GMO regulations based on potential environmental and health risks and the uncertainties posed by the new agricultural biotechnologies. Proponents of GMO crops contend that they provide significant economic and environmental benefits (including reduced use of chemical pesticides) and are not fundamentally different from other agricultural technologies, such as the use of hybridization techniques to create new "Green Revolution" crop varieties, that are widely accepted. GMO regulatory issues are an emerging concern in many other countries, including developing countries faced with the need to feed growing populations that look to GMO technologies to enhance crop yields, but that are concerned about potential risks.



trade/regulation disputes; the role of the Biosafety Protocol to the Biodiversity Convention, which regulates international transfers of GMO crop and food products; and the activities of the Codex Alimentarius, an international body that sets safety standards for food and plant products. The roles of environmental and consumer organizations, groups representing the interests of developing countries and farmers, and business in international regulatory governance of GMOs are also being examined. Important issues being addressed by the project include the extent to which countries should be allowed, consistent with international trade rules, to invoke a “precautionary principle” to ban or restrict GMO products in the absence of specific scientific evidence that they pose a significant risk of harm, and the extent to which countries can invoke cultural or social values (for example, the desire to preserve traditional agricultural practices or foods) to justify such restrictions.

The project, funded by the Rockefeller Foundation, involves NYU students as well as researchers from 10 different countries around the world. It was launched by Stewart; Professor Philippe Sands of the University of London, former Global Law Faculty member at the Law School; and the late Professor Nelkin, University Professor and member of the Law School faculty. Jane Bloom Stewart (’79), director of the Center’s International Environmental Legal Assistance Program, is also participating in the project. The project will issue a report proposing options and recommendations for managing international GMO regulatory conflicts so as to minimize damage to the international trade governance system, and ensure that countries, especially developing countries, have the legal and other capacities to make their own informed judgment about the appropriate role of GMO technologies.

The project is conducting studies of GMO regulatory policies in 10 different jurisdictions, including the United States, E.U., Switzerland, Japan, China, India, Kenya, South Africa, Costa Rica, and Brazil. NYU School of Law students have contributed research on GMO regulatory policies in Mexico and Egypt, and on international trade and GMO regulation in China. In addition, students in the project-related seminar on Law, New Technologies, and Risk, taught by Nelkin and Stewart (see p. 36), contributed papers on GMO food-labeling controversies, GMO-related issues of intellectual property rights for crop products in India and the United States, and the regulation of transgenic ani-

mals. The project has also completed a published study on the “Starlink” controversy, in which GMO corn that had regulatory approval for use solely in animal feed ended up in taco shells for human consumption. Through these studies, the project seeks to understand the roots of international conflicts in the divergent economic, political, social, and cultural factors that affect policies toward food and agricultural and GMO regulation in different countries.

In addition, Sands and Stewart are addressing the principles of international law and the institutions of international governance for dealing with such conflicts, including the principles and procedures used by the WTO for resolving GMO

regulation in different countries.

The project, initiated in 2002, recently held a meeting at the Rockefeller Foundation villa in Bellagio, Italy. The project leaders and researchers were joined by a group of international advisers, including important figures from government, environmental and consumer groups, and industry in the United States, Europe, and developing countries.

Through these studies, the project seeks to understand the roots of international conflicts in the divergent economic, political, social, and cultural factors that affect policies toward food and agricultural and GMO regulation in different countries.



## International Environmental Legal Assistance Program

NYU School of Law's International Environmental Legal Assistance Program, directed by Jane Stewart, enlists NYU School of Law faculty, students, and outside experts to provide assistance to developing countries in strengthening and better enforcing their environmental and land use laws and policies. The Program has conducted major projects in China and Eastern Europe; Law School students have been significantly involved in research, law drafting, policy development, and other legal assistance activities of the projects. The Program is currently launching a major new project, funded by the Global Environmental Facility (GEF), to assist four countries in the Danube region of Central and Eastern Europe to promote public access to environmental information.

The Program provided legal assistance over a four-year period to the Environmental and Natural Resources Protection Committee of China's National People's Congress to revise and strengthen China's environmental, land, and natural resources protection laws.

NYU School of Law's International Environmental Legal Assistance Program, directed by Jane Stewart, enlists NYU School of Law faculty, students, and outside experts to provide assistance to developing countries in strengthening and better enforcing their environmental and land use laws and policies.

## Fellow Manages Hungary/Slovenia Project

Isaac Flattau ('00) served as a fellow in the Center's International Environmental Legal Assistance Program from June 2001 to November 2002. He played a key role in the successful implementation of the Program's project to assist governments and environmental groups in Hungary and Slovenia in promoting public access to environmental information and public participation in environmental decision-making. Flattau participated in the day-to-day management of all phases of the project, which included legal support to the Hungarian and Slovenian governments in reforming and strengthening their environmental information access laws, consistent with the standards set by international conventions. He was extensively involved in the research and drafting of project legal materials, as well as financial management and reports to the project funders. He helped plan and participated in several capacity-building and technical assistance workshops and clinics in Central Europe, as well as a New York and Washington, D.C., study tour on U.S. environmental information laws and practices for the Hungarian and Slovenian participants. Following completion of the project and his fellowship, Flattau served as a consultant in the Humanitarian Policy Division of UNICEF and is currently working for the Coalition for the International Criminal Court, responsible for coordinating the activities of the coalition's members in implementing the Rome Statute for the International Criminal Court through domestic legislation.

Student work contributed to the enactment of a new land administration law and a significantly strengthened water pollution prevention and control law for China.

Recently, the Program successfully completed a two-year pilot project to assist government officials and environmental groups in Hungary and Slovenia to improve public access to environmental information and public participation in decision-making, with a special emphasis on water pollution issues. Isaac Flattau ('00), the Center's first legal fellow, assisted Jane Stewart in directing the project. Law School students contributed research and helped develop legal options for improving public involvement in environmental decision-making in these countries. The pilot project was funded by GEF and implemented in partnership with the Regional Environmental Center for Central and Eastern Europe and Resources for the Future.

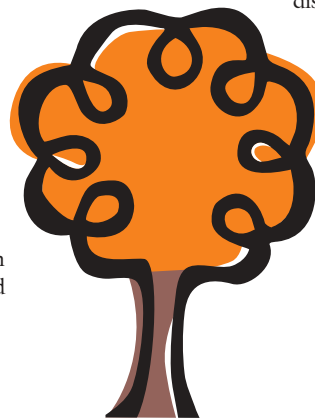
Based on the success of the pilot program, the Program and its partners were invited by GEF to create a similar, follow-on project to improve public access to environmental information in support of public participation in four other Central and Eastern European countries in the Danube River Basin. GEF recently approved the expanded project and provided \$2 million to finance it; work is expected to begin in Romania, Bulgaria, Croatia, Serbia, and Montenegro in late 2003 and will continue through 2006. NYU School of Law students will play a significant role in the new project.

The Danube has suffered extensive contamination by discharges of nutrients and

toxics. These discharges, including discharges from the Danube countries involved in the GEF projects, have significant transboundary impacts, including contamination of downstream reaches of the river and the Black Sea. The pilot project was designed to enable Hungary and Slovenia to provide better public access to Danube and other water-related environmental information, thereby increasing opportunities for informed public involvement in efforts to reduce discharges to the Danube River Basin. Experience in the United States, Western Europe, and elsewhere demonstrates that enhancing public access to environmental information promotes, through a variety of mechanisms, more effective environmental protection. Hungary and Slovenia, like the four other Danube River Basin countries that will participate in the new Follow-On Project, are in economic and political transition and currently experience significant barriers to effective public access to information, including the legacy of state secrecy and public passivity from prior undemocratic regimes; inadequate laws, implementing regulations, and guidance to public officials; and lack of government and NGO know-how.

Among these barriers, government and NGO participants from both pilot project countries agreed that the lack of guidance to government officials and their broad discretion to decide whether and

how to provide water-related environmental information was a priority problem. The pilot project assisted Hungary and Slovenia in developing practical and effective measures to overcome these barriers, through a two-year program of capacity building and technical assistance. The pro-



ject also assisted them in implementing the Aarhus Convention, a U.N.-sponsored international agreement to promote public access to environmental information and participation in environmental decision-making to which Hungary and Slovenia are parties. The measures developed through the pilot project for Hungary include a handbook for government officials who are responsible for providing environmental information to the public that explains how to carry out their responsibilities to provide this information. A similar measure, a set of guidelines for public officials, was developed for Slovenia. In addition, the pilot project developed recommendations for reforms of Slovenia's current laws to improve public access to environmental information and a citizens' guide to accessing water-related environmental information in Hungary. The project brought nine Hungarian and Slovenian representatives to the Law School and to Washington, D.C., for two weeks in Spring 2001. All project resource materials and measures developed through the project can be accessed on the Web site, [www.rec.org/REC/Programs/PublicParticipation/DanubeInformation/Outputs.html](http://www.rec.org/REC/Programs/PublicParticipation/DanubeInformation/Outputs.html), which was created to help disseminate the results of the project.

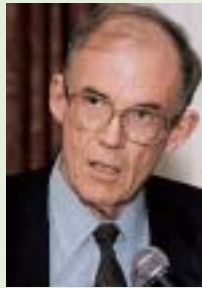
The Follow-On Project in Romania, Bulgaria, Croatia, and Serbia will be based on the successful experience gained in the pilot project in Hungary and Slovenia and will be directly linked to a larger, GEF-funded effort to restore and clean up the Danube River.

## Global Administrative Law Project

Professors Kingsbury and Stewart are launching a major new NYU School of Law research Project on Global Administrative Law under the auspices of the Institute for International Law and Justice with the participation of the Center on Environmental and Land Use Law. The project will enlist NYU School of Law students and leading academics from around the world to help develop and shape an entirely new field of law — global administrative law — in order to promote greater public accountability and participation with respect to the decisions of international authorities in environmental and other regulatory fields.

Increasingly, decisions by international organizations, such as the World Trade Organization (WTO), the International Monetary Fund, and the World Bank, and by informal coordinating networks of national governmental officials in fields such as antitrust, telecommunications, and food and drug regulation, have significant social, economic, and environmental impacts in the context of

## Stewart on Administrative Fatigue and Revivification The Inaugural Sexton Professorship of Law Lecture



Professor Richard Stewart

Despite the fact that administrative fatigue was the focus of Professor Stewart's inaugural John Edward Sexton Professorship of Law Lecture, students, faculty, and alumni in attendance failed to crack a yawn. The John Edward Sexton Professor

of Law and director of the Center on Environmental and Land Use Law at the Law School, Stewart is considered the world's foremost expert on the use of economic incentives for environmental protection.

Titled "Administrative Law in the 21st Century," Stewart's lecture traced the evolution of administrative regulation in the United States, outlined recent efforts to overcome "administrative fatigue," and concluded with a look at the emerging international aspects of administrative law.

The administrative state is rooted in common law, and grew up during the industrialization of the 19th century through the managerialism of the New Deal. In the late 20th century, the administrative state was democratized in reaction to the rise of consumer activism, and was later adapted to its current form by the Reagan Administration, which focused on costs and benefits. Stewart said he sees this current form as an amalgam of four historical approaches to public regulation.

According to Stewart, contemporary U.S. administrative law is a combination of tort law in the form of Section 983 and Bivens actions, adjudicatory enforcement, judicially-supervised interest group mediation, and analytic focus on efficiency. Stewart went on to describe the phenomenon that he calls "administrative fatigue."

"Americans demand higher and higher levels of regulatory protection, yet regulatory administrative government seems less and less capable of providing such protection in an efficient and effective manner," he said.

The regulatory process is slow and unresponsive, Stewart said, because the federal government is reliant on command-and-control methods of regulation in which agencies attempt to govern millions through rule-making. This problem is exacerbated by the fact that the two dominant approaches to rule-making — interest group representation and cost-benefit analyses — are themselves painstakingly slow and cumbersome.

To help relieve the problem of administrative fatigue, two new methods for regulatory reform have emerged: government-stakeholder network structures and economic incentive systems, the latter of which is favored by Stewart. Under a government-stakeholder network structure, parties to the process overcome the traditional constraints of a top-down approach by forming partnerships across agency lines and between agencies, industry representatives, private firms, and public organizations. Under the economic incentive method, government agencies attempt to channel behavior through the use of market mechanisms like tradable pollution permits and environmental taxes.

U.S. administrative law will continue to evolve toward a more diversified and precisely analytical review that is less costly and time-consuming, according to Stewart. He sees in this evolution a greater role for economic incentive measures, and said that new networks should be created to respond to new regulatory options. Stewart said that regulatory bodies must devise new approaches, which will increasingly move away from judicial solutions, to mediate conflicts and ensure accountability and compliance. Moreover, as transnational regulatory agreements become more common, U.S. administrative law will become increasingly international.

Stewart's new professorship and the lecture he delivered are named for John Sexton, president of New York University and former dean of NYU School of Law. Sexton is honored for his extraordinary service to the Law School since he joined as a professor in 1981, and went on to serve as dean from 1988 to 2002. Sexton is known for being generous with hugs, which infused all the talk of regulation with an affectionate spirit.

The idea for a professorship to honor Sexton crystallized more than 10 years ago with six forward-looking Law School alumni: Thomas Brome ('67), Ciro Gamboni ('65), Martin Lewis ('51), Frank Morison ('67), Stuart Schlesinger ('67), and Paul Tagliabue ('65). Each pledged equal funding for a professorship to be renamed for Sexton when he left the deanship of the Law School. Created in 1993, the professorship initially was known as the Emily Kempin Professorship, commemorating the first woman to attend regular law classes at NYU. Kempin also conducted the first women's law class here in 1890. The professorship will continue to embody the commitment to the community that was the hallmark of Sexton's years at NYU School of Law.

intensified globalization at both the domestic and international levels. For example, some decisions by the WTO have held that domestic environmental regulatory measures in the United States and other countries are inconsistent with international free trade rules. In addition, the rules for implementing important international environmental treaties, such as the Kyoto Protocol, Convention on Trade in Endangered Species, and the Biosafety Protocol to the Convention of Biodiversity, are established by international bodies. Yet, these decisions are made with only imperfect political accountability to domestic governments and their citizens. The project will consider whether techniques of administrative law, including procedural and participation requirements for decision-making and review mechanisms, could be a workable and desirable means of promoting greater accountability for international regulatory decisions. This goal might be accomplished by extending domestic administrative law requirements and procedures to international regulatory decisions, or by creating new bodies of administrative law at the international level. These arrangements will also have to take account of the important role of non-governmental organizations and multinational businesses in international regulatory governance.



ducted over several years, and will include the research and publication of a major scholarly book as well as workshops and an international conference on the subject of global administrative law. NYU School of Law students will be engaged in all phases of the project. For example, global administrative law will be the focus of this coming Spring's Law School Colloquium on Globalization and Its Discontents, taught by Kingsbury and Stewart. The colloquium will enable students to research and write papers on this

cal issues presented in relation to an integrated set of theoretical ideas that will help carry global administrative law forward as an academic field as well as an important area of practice. Building on experience with administrative law in countries in Europe and elsewhere as well as in the United States through studies by participating scholars from around the world, the project will consider how far global administrative law should focus on ensuring the legality of international regulatory decisions, or on broader objectives including promoting more informed and responsive exercise of policy discretion by international decision-makers, expanded participation, and effective regulatory performance. In doing so, it will need to confront some important distinctive characteristics of global governance arrangements, including their multi-level character, shared responsibility for decisions, informality of decision-making, the general absence of strong international courts or tribunals with power to review the decisions of international actors, and the substantial direct involvement of the private sector. These characteristics will make it difficult to simply transplant domestic administrative law arrangements to the global administrative level. At the same time, domestic experience should provide an important source of ideas and experience for the development of global administrative law. Further, there are emerging international practices, including the institution of an Inspection Panel at the World Bank to review compliance by World Bank officials with its environmental and other policies and the submission of amicus briefs by non-governmental organizations to WTO dispute settlement tribunals, that could also provide a foundation for the development of a global administrative law.



The intellectual foundations for the project include prior work on accountability by the Institute for International Law and Justice, and a lecture by Stewart on Administrative Law in the 21st Century, delivered last fall on the occasion of his installation as the John Edward Sexton Professor of Law, which emphasizes international administrative law as an emerging major new field (see p. 43). The project will be con-

important emerging subject, including papers on the applications in the field of environmental law and other regulatory topics. Students will also be engaged in research and other work for the project book, workshops, and conference.

The project will document and assess existing applications of national or international law to the administration of global governance; evaluate the need for new or modified administrative law mechanisms to meet new demands for accountability arising from globalization; and frame the practi-



## Program on Environmental Regulation

### Project on the Valuation of Environmental Benefits

Four years ago, Dean Revesz embarked on a series of projects to develop and encourage a more progressive approach to the use of cost-benefit analysis in the environmental regulatory process. First, he explored the policies many regulatory agencies had adopted of discounting the value assigned to the saving of human lives in the context of latent harms (those in which there is a time lag between the exposure to a harmful substance and the resulting death), and in the context of harms to future generations. His work was published as “Environmental Regulation, Cost-Benefit Analysis, and the Discounting of Human Lives,” 98 *Columbia Law Review* 941 (1999). It revealed serious conceptual problems, not previously recognized, with treating the two situations alike, and with discounting the value of lives saved in future generations.

Next, working with Samuel Rascoff, a post-graduate fellow at the Center on Environmental and Land Use Law (see p. 64), Revesz examined the anti-regulatory bias of risk tradeoff analysis, in which the value of risk reductions are discounted to account for the fact that decreases in one risk sometimes perversely promote increases in other risks. When the risk of death in a car accident is reduced by the use of seatbelts or airbags, for example, the benefits of the risk reduction are discounted by the fact that people sometimes drive faster because of the security they feel from the safety features, thereby offsetting the reduction in risk from those safety devices. But the ancillary benefits of risk reduction, such as the fact that policies to reduce the carbon dioxide emissions associated with greenhouse gases may have the ancillary benefit of reducing other air pollutants as well, are not similarly taken into account. Revesz and Rascoff revealed the systematic inattention to such ancillary benefits in “The Biases of Risk Tradeoff Analysis: Towards Parity in Regulatory Policy,” 69 *University of Chicago Law Review* 1763 (2002). They argued that ignoring ancillary benefits while accounting for risk tradeoffs results in institutional and methodological biases against environmental and health and safety regulations. The William and Flora Hewlett Foundation funded Revesz’s work on risk tradeoff analysis.

Revesz currently is working with Laura Tesser (’00), the Center’s 2003-04 post-graduate fellow, to determine whether method-

ologies being used in pending regulatory proceedings to estimate the potential benefits of proposed environmental regulations have an anti-regulatory bias.

Revesz serves as a member of the Environmental Economics Advisory Committee of the U.S. Environmental Protection Agency’s (EPA) Science Advisory Board, and participated in the committee’s review of various policies the EPA had adopted concerning the cost-benefit analysis of environmental regulation. The committee provided the peer review for EPA’s *Guidelines for Preparing Economic Analyses* (1999), and for its *Cancer Risk*

*Whitepaper* (2000), which focused on the proper valuation of fatal cancer risk reduction benefits. Revesz also testified on issues concerning the valuation of human lives before the Committee on Environment and Public Works of the U.S. Senate.

Revesz describes his ongoing work on cost-benefit analysis as “an effort to move environmental regulatory processes toward a more rational approach, one that treats the valuation of environmental benefits no less sympathetically than the valuation of the costs of regulation.”

## Clean Air Litigation Alumni Perspectives

### Eric Albert (’02)

This Law School offers an unparalleled opportunity for students to work with professors on matters of tremendous importance. As a first-year student, I was fortunate to be able to assist Professor (now Dean) Richard Revesz in writing an amicus brief for a consortium of environmental advocacy organizations in the U.S. Supreme Court case of *American Trucking Associations v. EPA*. The Supreme Court granted certiorari to hear the case primarily because the D.C. Circuit, in overturning the Environmental Protection Agency’s 1997 Clean Air Act rule-making, had revived the nondelegation doctrine for the first time in more than 60 years. If the D.C. Circuit’s ruling had been affirmed, it would have had devastating consequences for all manner of environmental, health, and safety regulations. The chance to work on an amicus brief in a Supreme Court case, let alone one of such importance, is one few law schools can offer their students. Moreover, although my role was primarily that of a research assistant, Professor Revesz treated me as a collaborator, discussing strategic and tactical decisions with me and even including portions of my research memos in the final brief. I came to NYU School of Law knowing that I wanted to pursue a career in environmental litigation, and even as a student I felt that my career had already begun.

Following the end of my judicial clerkship in August 2003, I began a two-year fellowship in environmental litigation with the Institute for Public Representation (IPR) at the Georgetown University Law Center. As an IPR fellow, I represent clients of Georgetown’s Environmental Litigation Clinic in state and federal court and administrative bodies on a wide range of environmental issues. This is exactly the kind of work I dreamed about doing before I came to the Law School, and the education I received at NYU School of Law made it possible.

### Vickie Patton (’90)

When the U.S. Supreme Court granted review of the most important Clean Air Act controversy in a generation, Environmental Defense (formerly Environmental Defense Fund) turned to Dean Revesz. Despite a fully committed summer of academic activities, the dean filed not one but two amicus curiae briefs in two closely related cases before the high court. The briefs were submitted on behalf of Environmental Defense and a coalition of public health and environmental organizations. In a unanimous opinion, the Court affirmed the integrity of the Clean Air Act and reversed a D.C. Circuit opinion that the U.S. Environmental Protection Agency acted unconstitutionally in establishing national health-based air-quality standards protecting millions of Americans.

It was not surprising that we turned to Dean Revesz when the Clean Air Act was hanging in the balance in the summer of 2000. A dozen years earlier, wanting to train for a career in environmental law and policy, I had timidly knocked on his door to ask whether he would be my faculty adviser on an environmental law paper. And, it was the dean’s Environmental Law course, which concentrated on the Clean Air Act, that sparked my interest in clean air issues. Now, while spearheading Environmental Defense’s national and regional clean air programs, I routinely turn to NYU School of Law professors, like Professor Stewart and Dean Revesz, for guidance. I continue to knock because I know that NYU School of Law is a vibrant center of the nation’s leading environmental law scholars, and because I am certain that the dean will help even the most timid law student interested in an environmental law career.



## Program on Common Property Resources Project on Market Mechanisms in Environmental Regulation



For more than 20 years, economists and legal scholars, led by Professor Stewart, have been arguing that many of the regulatory tools currently used to manage pollution and natural

resources should be replaced with economic instruments. Nonetheless, regulators have been slow to adopt economic instruments, such as tradeable environmental allowances and taxes. The Center's Project on Market Mechanisms, directed by Professor Wyman, is concerned with understanding the factors that promote and delay changes in the choice of environmental regulatory instrument.

A native of Canada, Wyman brings a comparative perspective to her work on environmental regulation. Reflecting her background, she is particularly interested in the implications of different institutional structures, and cultural and historical traditions for the choice of regulatory instrument.

This past year, Wyman spent a considerable amount of time studying the regulation of fisheries in the United States and other countries, a subject of considerable concern given the depleted state of many world fisheries and recent proposals for reforming U.S. fisheries regulation. Indeed, fisheries have been on Wyman's mind so much recently that she gave her first-year Property students a final exam about a law professor (imaginary, of course) who decided mid-career that she would rather be a fisherwoman in a gentrifying New England fishing community.

Wyman's work on fisheries builds on her previous research on the choice of instrument for regulating air pollution. In 2002,



NYU Law's Regulatory Expropriations in International Law Conference brought together experts on domestic environmental and land use regulation, along with comparative and international law luminaries from Mexico, Canada, the United States, South America, and Europe. Organized by Professors Vicki Been and Philippe Sands, participants included (from left): Hugo Perezcano, general counsel for international trade negotiations, Secretariat of the Economy, Mexico; Lori Wallach, director, Public Citizen's Global Trade Watch; Darryl Lew, White & Case; and NYU Law Professor Mattias Kumm.

she published an article that challenged the conventional explanation for the greater openness that the United States has demonstrated for experimenting with air pollution markets compared with other countries. Conventionally, the United States' greater willingness to experiment with pollution markets has been explained as a product of a greater enthusiasm here for markets and property rights more generally. But drawing on a case study of air pollution regulation in Canada, Wyman argued that the large number of potential market participants in the United States, and the U.S. environmental regulatory institutions, may have been more influential in prompting the early openness to markets than a pro-market culture.

In 2003-04, Wyman will convene a roundtable on the use of market mechanisms to manage commons resources such as air, water, and fisheries. The roundtable will bring together parties who have been actively

involved in implementing property rights and market approaches for regulating commons resources to explore the factors promoting, and complicating, the introduction of tradeable environmental allowances.

## Program on Land Use Law Project on Regulatory Expropriations in International Law — Update

In April 2002, NYU School of Law hosted a stellar group of academics, practitioners, and policymakers from environmental, land use, comparative, and international law to debate how far international trade and investment agreements should go in requiring legal protections for foreign investors who complain that a host government's environmental or land use regulations have diminished the value of their investments. That issue is a focal point in the broader debate over the tensions between liberalizing international trade and investment and maintaining domestic protection for the environment, public health, and labor. It is central, for example, to current controversies over the proposed Free Trade Area of the Americas, the Framework Convention on Tobacco Control that the World Health Organization recently opened for signature, and the possibility that the World Trade Organization might seek to negotiate a multilateral investment agreement.

The conference, organized by Professors Been and Sands, along with Lenore Marquiss ('02) and Stephanie Toti ('03), and

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For more than 20 years, economists and legal scholars, led by Professor Stewart, have been arguing that many of the regulatory tools currently used to manage pollution and natural resources should be replaced with economic instruments.

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“ One initiative that NYU School of Law might undertake would ... develop a ‘policy analysis clinic’ in which law, planning, and urban economics students and faculty would provide research and policy analysis as well as legal advice to local governments ....”

PROFESSOR VICKI BEEN ('83)



the colloquium editors of the *NYU Environmental Law Journal*, continues to have a significant impact on debate in Washington and abroad over what kind of investor protections should be included in trade and investment agreements. Articles resulting from the conference were published in volume 11 of the *Environmental Law Journal*. In addition, as a result of the conference, Been has published a series of works exploring the challenges investor protections in international agreements may pose for environmental and land use regulators around the world. Her recent work includes:

- > “The Global Fifth Amendment: NAFTA’s Investment Protections and the Misguided Quest for an International Regulatory

Takings Doctrine,” 78 *New York University Law Review* 30 (2003) (with Joel Beauvais ('02));

- > “Will International Agreements Trump Local Environmental Law?,” in *New Ground: The Advent of Local Environmental Law* (John R. Nolon, ed. 2003);
- > “NAFTA’s Investment Protections and the Division of Authority for Land Use and Environmental Controls,” 32 *Environmental Law Reporter* 11001 (2002).

### Project on Pricing Development

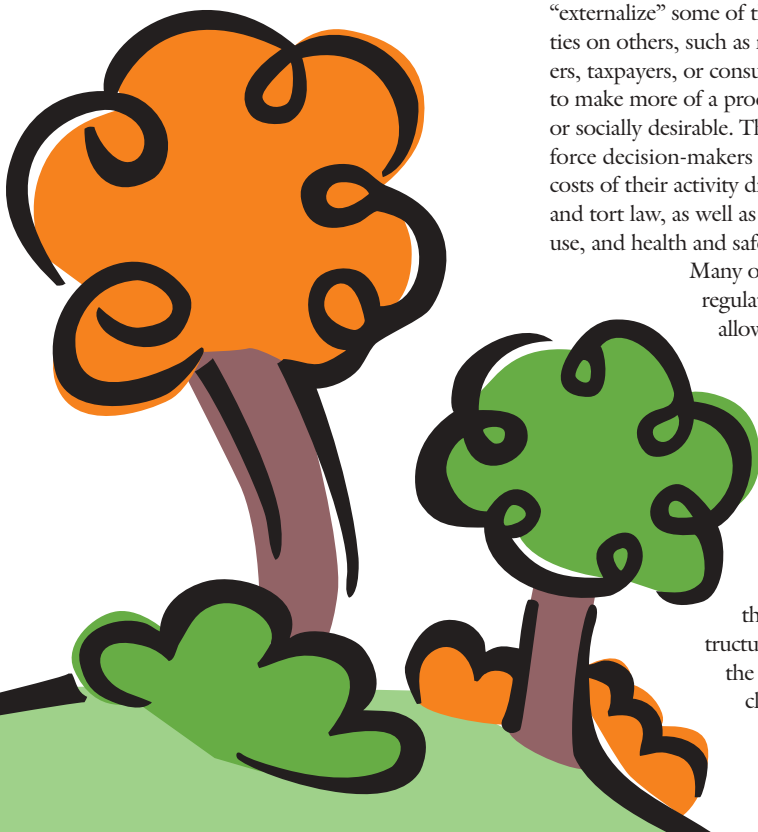
Fundamental economic principles require that the price of a good or service include all of the costs and benefits that the production of that good creates. If producers are able to “externalize” some of the costs of their activities on others, such as neighboring landowners, taxpayers, or consumers, they will decide to make more of a product than is efficient, or socially desirable. The problem of how to force decision-makers to internalize all the costs of their activity drives much of property and tort law, as well as environmental, land use, and health and safety regulation.

Many of the nation’s land use regulatory systems currently allow land development projects to externalize some of the costs of the development. Taxpayers, neighboring landowners, neighboring jurisdictions, and future generations often subsidize part of the expense of the infrastructure needed to support the development, or of the clean-up or mitigation of

the environmental damage the development creates, for example. Professor Been, who has long been a student of local government policies designed to force land developers to bear, or “internalize” the social costs of their development projects, has launched a series of initiatives designed to help land use and environmental policy-makers understand how local governments can more effectively deploy user fees, development impact fees, and local tax policies to ensure that the costs development projects impose on a community do not outweigh the benefits the projects bring.

As a first step, Been, working with Elizabeth Stein ('03), is using a nationwide survey of local governments to document the prevalence and nature of local government efforts to value or “price” development projects accurately. The survey seeks to remedy substantial gaps in our understanding of how local governments employ fee and tax policies. It probes how municipalities assess the potential costs and benefits of development, and seeks to understand the legal, political, and methodological barriers local governments face in their efforts to conduct more accurate assessments.

The results of the survey, along with interviews of local government officials, will form the basis of a conference designed to bring the most innovative and thoughtful legal, urban planning, and economic experts together to chart out an agenda for the research needed to help local governments better assess the costs and benefits of development proposals. The conference, which will be held in spring 2004, will identify the conceptual, methodological, and technological advances needed to help local governments more accurately assess the likely impact of proposed developments and the costs and benefits of those impacts, and will attempt to jump-start the research necessary to secure those advances. Conference participants will



grapple with such questions as how local governments should address the distributional impacts of better pricing, whether and how intergovernmental institutional arrangements may promote better cost-benefit analysis, and how legal restrictions on the use of impact fees and taxes can promote efficient fees and deter over-regulation or abusive regulatory practices by local governments.

Depending on the results of the survey and the conclusions reached in the conference, Been then plans to develop both research projects, and training and legal assistance programs to help local governments overcome the barriers they face in assessing the potential costs and benefits of development projects accurately. "There is currently no 'information bank' that local governments could turn to with confidence to get the latest research on cost-benefit analysis of development projects," Been noted. "There is no 'best practices' library of analytical tools that have proved helpful, or even of the assessment policies or user and impact fee or tax policy tools that local governments have used successfully. One initiative NYU School of Law might undertake would use the model of our clinical programs to develop a 'policy analysis clinic' in which law, planning, and urban economics students and faculty would provide research and policy analysis as well as legal advice to local governments seeking to improve their cost-benefit analysis of development projects, design better impact fee or tax policies, or defend those policies against legal challenges." Been cautioned that "the 'solutions' must await better information about the problem," but she sees "enormous possibilities for our students to help local governments develop better policies, while improving their own research, analytic, and problem-solving skills."



## The Furman Center for Real Estate and Urban Policy

Founded in 1994, the Furman Center for Real Estate and Urban Policy is widely acknowledged to be the leading academic research center in New York City devoted to the public policy aspects of real estate development. The Center, which is directed by Professor Schill, is dedicated to the following three missions:

- > Conducting objective academic and empirical research on the legal and public policy issues involving real estate, housing, and urban affairs, with a particular focus on New York City.
- > Providing a forum for discussion and interchange among leading practitioners, policy-makers, scholars, faculty, and students about real estate and urban policy.
- > Promoting innovative teaching techniques and learning experiences in real estate and urban-related topics.

The Center draws on the strengths of the university's faculty. Fifteen faculty members from NYU School of Law, the Wagner School of Public Service, the Stern School of Business, and the Economics Department of the

Faculty of Arts and Science participate in the Center's interdisciplinary research, teaching, and programmatic activities. In addition, the Center employs two full-time research fellows, as well as several student research assistants.

### Studies

The Center and its staff have completed numerous studies on issues of housing, development, and planning in New York City, including the projects described below.

#### The Impacts of Housing Development, Crime Reduction, and Education Quality on Housing Values in Low- and Moderate-Income Neighborhoods

Center faculty have published two articles and completed three additional papers on the impact of city housing programs, crime reductions, and school quality on neighborhood housing values. The first article, which found that middle-income homeownership projects generated significant property value increases, was featured recently in an article in the *New York Times*. Future work in this area will examine the link between economic development and environmental amenities and home values.

#### Reducing the Cost of New Housing Construction in New York City

The Center's study on how to reduce the cost of housing construction, co-sponsored by the New York City Partnership and the city's Department of Housing Preservation and Development, has had considerable influence since its publication in 1999. The study's recommendations were published in an article in the *New York Times*, were endorsed by Mayor Giuliani in his 2001 State of the City Speech, and inform many of the proposals Mayor Bloomberg set forth in his 2002 New Marketplace housing plan. In May 2003, Schill presented the findings to the U.S. Department of Housing and Urban Development.

#### Understanding Differences in Cooperative and Condominium Apartment Values in New York City

Schill and Furman Fellow Ioan Voicu, in partnership with appraiser Jonathan Miller, have begun a series of studies on the valuation of



cooperatives and condominiums in New York. The first paper examined whether the difference in legal form affects value and was featured in a cover story in the *New York Times* Real Estate Section. Future papers will examine the relationship between cooperative/condominium prices and the stock market, the city's economy, and distance from amenities.

### Tracking Changes in New York City's Housing and Neighborhoods

The Center publishes an annual report, titled *The State of New York City's Housing and Neighborhoods*, which contains more than 300 pages of the latest data on housing and neighborhood conditions. In 2002, the Center received a \$457,000 matching grant from the U.S. Department of Commerce to create an interactive Web-based data system for New York City that would make all of this data and mapping capability available to all New York citizens, free of charge. The New York City Housing and Neighborhood Information System (NYCHANIS) is scheduled to become operational in September 2003 (see p. 108).

### Events

Each year the Furman Center sponsors a series of events to bring members of New York's real estate and development community together with academics, students, and policy-makers to discuss important policy issues facing New York City.

### Research Conferences

The Center has sponsored several conferences over the past eight years on a variety of issues. These conferences have featured academic papers and discussants from a variety of fields. The results have typically been published in conference volumes. The topics included housing and community development policy in New York City; rent regulation (co-sponsored with the Rent Guidelines Board); immigration in New York City (co-sponsored with Fannie Mae); research on housing and economic development, and policies to promote affordable housing (both co-sponsored with the Federal Reserve Bank of New York).

### International Housing Conferences

The Center has co-sponsored three conferences with the New York City Department of Housing Preservation and Development that have brought together housing and community development officials from around the world to discuss creative solutions to housing and urban planning problems. The most recent conference took place in March and featured housing professionals from Australia, Canada, England, France, Germany, Northern Ireland, Norway, and Poland, as well as the United States.

### Housing Breakfasts

Over the past year, the Center has hosted breakfasts for members of the housing and community development industry as well as the academic community. Recent speakers included Deputy Mayor Dan Doctoroff, Housing Commissioner Jerilyn Perine, Finance Commissioner Martha Stark ('86), and Center Research Fellow Shaun Donovan.

### VU 2002 and VU 2003 Real Estate Market Panels

The Furman Center has co-sponsored with the *New York Times* biannual panels on the commercial and residential real estate markets. Recent guests have included Daniel Brodsky, Barbara Corcoran, William Rudin, Stephen Spinola, and William Zeckendorf.

### Students

Students are at the center of all the Furman Center activities. NYU students participate in all Center conferences. In addition, instruction takes place in several other ways:

### Segal Real Estate Roundtable

Through the generosity of NYU School of Law alumni Andrew ('92) and Justin ('96) Segal, the Center funds monthly lunches for students modeled after the Dean's Roundtable. Speakers have included Henry Elghanayan ('66), chief executive officer, Rockrose Development; Jay Furman ('71), principal, RD Management; Fran Reiter, former New York City deputy mayor for



New York City Deputy Mayor Dan Doctoroff speaks at a breakfast, sponsored by the Furman Center, for the housing and community development sector.

economic development and planning; Jonathan Rose, president, Jonathan Rose Associates and Jonathan Vogel ('96), general counsel, Jonathan Rose Associates (see p. 60); Joseph Rose, partner, Georgetown Company; Jack Rudin, chairman, Rudin Management; Larry Silverstein, president and chief executive officer, Silverstein Properties; Martha Stark ('86), commissioner of the New York City Department of Finance; and Carl Weisbrod ('68), president, Alliance for Downtown New York.

### Student Research Fellowships

Through the generosity of two alumni — Herbert Gold ('40) and Ronald Moelis ('82)—two student fellowships have been endowed in the Center. Each year students compete for the opportunity to receive the fellowships, which also include the opportunity to work on research projects with Center faculty.

### The Authority

Four students work on *The Authority*, a quarterly journal devoted to the law of housing and urban redevelopment. *The Authority* is edited by Schill for the Housing and Development Law Institute in Washington, D.C.

Center faculty and staff also advise or consult with several city agencies, governmental officials, and non-profit organizations. For example, Schill serves or has served as a member of the Housing Task Forces of City Council Speaker Peter Vallone, Manhattan Borough President C. Virginia Fields, and Public Advocate Betsy Gotbaum. In addition, he is vice chair of the New York City Loft Board and a member of Mayor Bloomberg's Neighborhood Investment Advisory Panel. He is also a member of the board of directors of Neighborhood Restore. ■

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In addition to all of the conferences, panels, and research described in this brief overview, Center faculty and staff advise or consult with several city agencies, governmental officials, and non-profit organizations.

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## Student and Alumni Activities

**N**YU School of Law offers varied and interesting activities for students and alumni to explore their interests in environmental and land use law. From student journals and groups, such as the *NYU Environmental Law Journal* and Environmental Law Society, to alumni panels, roundtables, and events related to environmental and land use law, NYU School of Law students and alumni benefit from extraordinary educational opportunities.



(from left): Jennifer Coghlan ('03), Kate Sinding ('97), and Carrie Noteboom ('03) attended the *NYU Environmental Law Journal* annual event, which explored new approaches to environmental review.

### *NYU Environmental Law Journal*

In 1992, a group of students interested in environmental law, led by Michael Anastasio ('92) and Bernard Weintraub ('93), launched the *NYU Environmental Law Journal* (ELJ) to promote high-quality scholarly debate about environmental law and policy from a wide range of perspectives. In the ensuing 12 years, ELJ has published a wide range of articles on environmental and land use topics of both national and international scope, in

addition to articles addressing the particular challenges confronting urban environments such as New York City. This coming year, ELJ will begin hosting a national writing competition titled the "NYU ELJ Urban Environment Writing Competition," which will center around environmental issues important in urban settings, including water availability, water quality, land use, air pollution, sewage treatment, and recycling, among many others. The journal now stands as one of the leading environmental law journals in the nation, and is carried by more than 340



libraries at law schools, law firms, government agencies, and courthouses throughout the United States and the world.

ELJ's staff is composed of about 50 second- and third-year law students, many of whom are dedicated to pursuing careers in environmental and land use law. The journal strongly encourages students to publish notes, and features case comments and book reviews by students as well. Each year, the faculty advisers — Professors Been, Revesz, Stewart, and Wyman — encourage students on the journal to embark on a research paper that will be publishable as a student note by hosting a “note topic dessert party.” At the party, faculty and 3Ls share suggestions about how to choose a good topic for a research project over apple crisp and other treats baked by the faculty.

Each year, ELJ hosts a colloquium on an emerging topic of concern in environmental and land use law. Past colloquium topics have included New Approaches to Environmental Review; Regulatory Expropriations in International Law (see p. 46); Ozone Non-Attainment in the Northeast: Moving Towards an Effective Cure; and The Impact of Title VI on Environmental Enforcement. This fall, ELJ will host a colloquium titled Governing Transboundary Water Allocation in the 21st Century (see p. 53). ELJ publishes the proceedings of its colloquia in the journal, and those colloquia issues serve as an especially valuable resource for practitioners and academics trying to stay abreast of important developments in environmental law.

### Reviewing Environmental Review: The NYU Environmental Law Journal Colloquium

“I’m a big musical theater fan,” declared James Connaughton, chairman of the Council on Environmental Quality at the White House. “I always think of the song ‘The Farmers and the Cowhands Must Be Friends’ when discussing environmental review. We need better collaboration and less cultural and institutional conflict.”

Connaughton delivered the keynote speech at the *NYU Environmental Law Journal* Colloquium “New Approaches to Environmental Review.” Although Congress passed the National Environmental Policy Act (NEPA) in 1970, the journal organized the discussion to address several recent challenges to environmental review: the Bush administration’s initiative to “modernize” the statute through the NEPA Task Force; current deliberations about how to apply environmental review to the redevelopment of Lower Manhattan; and the growing use of environmental review procedures around the world.

## NYU Environmental Law Journal: Recent Issues

### Volume 10, Number 3 (2002)

#### Articles

The Illusion of Care: Regulation, Uncertainty, and Genetically Modified Food Crops  
*Rebecca Bratspies*

Water, Conflict, and Regional Security in Central Asia  
*Eric W. Sievers*

#### Student Article

Public Lands Grazing Fee Reform: Welfare Cowboys and Rolex Ranchers Wrangling with New West  
*Michelle M. Campana ('02)*

### Volume 11, Number 1 (2002)

#### Colloquium Articles

Regulatory Takings: The International Law Perspective  
*Barry Appleton*

Does an International “Regulatory Takings” Doctrine Make Sense?  
*Vicki Been*

Indirect Expropriations: New Developments?  
*Rudolf Dolzer*

Regulatory Expropriations in International Law: Lessons from the Multilateral Agreement on Investment  
*Rainer Geiger*

Incomplete Compensation for Takings  
*Thomas W. Merrill*

Regulatory Expropriations in Europe: The Approach of the European Court of Human Rights  
*Helen Mountfield*

The Approach Taken by the European Court of Human Rights to the Assessment of Compensation for “Regulatory Expropriations” of the Property of Foreign Investors  
*Hélène Ruiz Fabri*

Could Principles of Fifth Amendment Takings Jurisprudence Be Helpful in Analyzing Regulatory Expropriation Claims Under International Law?  
*Ethan Shenkman*

Searching for Balance: Concluding Remarks  
*Philippe Sands*

#### Student Article

In the Cold Shadow of Metalclad: The Potential for Change to NAFTA’s Chapter Eleven  
*Lauren E. Godshall ('03)*

### Volume 11, Number 2 (2003)

#### Articles

Government Tax and Financial Incentives in Brownfields Redevelopment: Inside the Developer’s Pro Forma  
*Scott Sherman*

The International Conservation Mandate of the United States Government  
*Ian A. Bowles and Cyril F. Kormos*

The Devil Is in the Details: Increasing International Law’s Influence on Domestic Environmental Performance  
*Dorit Talitman, Alon Tal, and Shmuel Brenner*

Water, Conflict, and Regional Security in Central Asia Revisited  
*Dinara Kemelova and Gennady Zhalkubaev*

#### Student Article

Sustainable Development and the Selfish Gene: A Rational Paradigm for Achieving Intergenerational Equity  
*Shorge Sato ('02)*

### Volume 11, Number 3 (2003)

#### Articles

A Pound of Cause for a Penny of Proof: The Failed Economy of an Eroded Causation Standard in Toxic Tort Cases  
*Jonathan C. Mosher*

Not So Fast: The Sealed Air Asbestos Settlement and Methods of Risk Management in the Acquisition of Companies with Asbestos Liabilities  
*Kenneth S. Rivlin and Jamaica D. Potts*

Beyond Compliance: Regulatory Incentives to Implement Environmental Management Systems  
*Allison F. Gardner ('01)*

The Disappointing History of the National Marine Sanctuaries Act  
*Dave Owen*

#### Student Articles

If the Shoe Fits, [Don’t] Wear It: Preacquisition Notice and Stepping into the Shoes of Prior Owners in Takings Cases After *Palazzolo v. Rhode Island*  
*Eric D. Albert ('02)*

When Political Muscle Is Enough: The Case for Limited Judicial Review of Long Distance Transfers of Development Rights  
*Matthew P. Garvey ('02)*

#### Book Review

Developing Regionalism: A Review of *The Regional City: Planning for the End of Sprawl* (by Peter Calthorpe and William Fulton)  
*Ashley S. Miller ('04)*

Connaughton discussed ways to improve and update NEPA. "A lot of NEPA work is still done on pen and paper or old computers," he explained. "We must dramatically bring to the fore the tools we have in front of us." He also encouraged adaptive management. "NEPA is not a project, it's a mindset. We should constantly rethink and revisit the situation. Environmental review should never end."

During the first panel, "Environmental Review at the Federal Level: The Vitality of NEPA in the 21st Century," Sharon Buccino, a senior attorney for the Natural Resources Defense Council, argued that the Bush administration's proposals were taking NEPA in the wrong direction. She encouraged continued monitoring of projects for which environmental impact reviews were performed: "We need to make NEPA a living process."

Professor Bradley Karkkainen from Columbia University proposed that the government pressure agencies to produce accurate predictions of environmental impact.

Michael Gerrard ('78), an environmental partner at Arnold & Porter, suggested that the government require environmental impact statements (EISs) to be submitted on the Internet. "EISs were born in 1970 and still look like the Sears catalog," he lamented. "They're so huge that people are afraid to open them up and look through them. In fact, a senator even threw out her back and required hospitalization from lifting one." Putting the EISs on the Internet would be enormously cheaper and faster, allow for better distribution, make them immediately searchable, and avoid the endlessly redundant technical appendices.

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The second panel, "Environmental Review at the State and Local Level: The Reconstruction of Lower Manhattan," was perhaps the most timely discussion of the day. James Tripp, general counsel for Environmental Defense, encouraged comprehensive environmental review during all stages of the World Trade Center reconstruction process.

Sandy Hornic, deputy executive director of strategic planning for the New York City Department of City Planning, laughed, "As the only non-attorney of the day, I have a slightly different perspective." Using both hands, Hornic hauled out an enormous EIS for the Second Avenue subway and thumped it on the table. He explained that the subway was contemplated in the 1950s, started in the '70s, and then stopped in a fiscal crisis. In 1995, the city's transit authority agreed to revive the construction, but has spent the subsequent years only on the production of the EIS.

"I find it appalling that they went through the strongest growth of the city's economy in 50 years, and instead of building the subway, they had to study it." He hoisted up the

EIS for the audience. "Shouldn't we simplify the process?"

Hornic then turned to the redevelopment of Lower Manhattan. "Lower Manhattan is a valuable resource," he explained, "but it's hemorrhaging. We need a transportation system soon to bring people back, keep businesses in the area, and prevent sprawl." He implored the audience: "Do we really need such extensive environmental review?"

Professor William Buzbee from Emory University School of Law answered with a resounding "Yes." While admitting that the process could be managed more efficiently, he explained that environmental review provides important benefits. "Even with largely 'benign' projects," he clarified, "there are still trade-offs and choices, which need good consideration. Furthermore, EISs enhance political accountability and encourage the public to accept legal decisions since they have a say in the process."

Evan Van Hook, assistant commissioner for the New Jersey Department of Environmental Protection, emphasized the need for a process to determine who the stakeholders are and to allow them to be involved in decision-making. He pointed out the diversity of stakeholders in the rebuilding of the World Trade Center: international participants; property owners; victims' friends and families; business owners; and many others.

During the question period, Law School students, including many living in Tribeca, challenged the speakers and stressed the need for community involvement.

The final panel, "Environmental Review in the Global Arena," focused on international environmental impact assessment. Panelists included Richard Smardon, professor at SUNY College of Environmental Science and Forestry; Professor Nicholas Robinson from Pace University School of Law; Carl Bruch from the Environmental Law Institute; Jake Werksman, the environmental institutions and governance adviser to the U.N. Development Programme and an adjunct professor at the Law School; and Professor John Knox from Pennsylvania State University.



Dean Richard Revesz (left), U.S. Council on Environmental Quality Chairman James Connaughton (center), and Professor Richard Stewart at the *Environmental Law Journal's* Symposium on New Approaches to Environmental Review. Connaughton delivered the keynote address on the National Environmental Policy Act.



## Water quality and availability may well be the foremost concern of environmental and land use law over the next century as clean freshwater resources have grown increasingly scarce.

Charles Di Leva, lead counsel for the World Bank, stressed the importance of recognizing cultural differences. “When considering environmental review in developing countries,” he also noted, “we must think about poverty issues. At the Johannesburg Summit, there was a push-back against much of the environmental agenda because so many basic services weren’t being met.”

Even as the colloquium came to a close, the debates continued. Students, attorneys, and professors gathered in groups to discuss the role of environmental review in the 21st century. Panelists stayed late to clarify their proposals, and community members stressed the need for more public participation.

### **NYU Environmental Law Journal's Fall 2003 Colloquium: Governing Transboundary Water Allocation in the 21st Century**

Water quality and availability may well be the foremost concern of environmental and land use law over the next century as clean freshwater resources have grown increasingly scarce. The Third World Water Forum, held in Kyoto, Japan, during March 2003, brought together thousands of experts and on-the-ground practitioners to address the problems of providing safe drinking water and sanitation systems, improving and protecting water quality, and preserving river and ocean ecosystems in the developing world. Debates over water privatization pervaded the World Summit on Sustainable Development in Johannesburg in August 2002, as did discussions of transboundary water management.

Controversies over allocation of water among states and between cities and agricultural uses in the United States have exploded in recent years.

This fall, the *NYU Environmental Law Journal* will sponsor a colloquium to explore strategies for managing and allocating water resources. The colloquium’s first panel will feature a debate over the comparative advantages of three competing strategies for governing water resources. Proponents of the United Nations model envision a continuing role for treaty and customary law in resolving interstate disputes and creating norms to guide resource allocation. Advocates of regional-level initiatives among states to manage water resources at the ecosystem level, such as the Mekong River Delta Commission, argue that such initiatives respond to the failure of traditional international law to encourage comprehensive ecosystem management. Practitioners in large international organizations and scholars of global governance increasingly advocate global public policy networks, such as the Global Water Partnership, as a means of sharing knowledge and formulating comprehensive policy frameworks for the use of global public goods.



The second panel will address the legal and policy issues raised by cross-border sales of water. Using Canada’s recent ban on the export of water, and the ensuing legal challenges under the North American Free Trade Agreement, as a case study, the panel will debate whether bulk water should be treated as a “good” under the General Agreement on Tariffs and Trade, and if so, whether states should be able to employ trade restrictions to protect water as an “exhaustible natural resource.” The third panel will explore controversies over various options for the allocation of water within the United States. Discussion will focus on new models for interstate water compacts, the wisdom of Congressional pre-emption of state regulation and federal allocation of water rights, and the appropriate role for the judiciary in the allocation of water rights.

Drawing on the expertise of a diverse group of academics, policy-makers, and practitioners in international, environmental, and land use law, the colloquium promises to make headway on the daunting problems of how to allocate one of our world’s most precious assets fairly and efficiently.

## JILP Symposium

### **Oil and International Law**

“Our goal here is not only to train students to do well in their first jobs, but also to be leaders of the profession and society 20 years into their careers,” said Dean Revesz. This goal, he explained, is achieved in a variety of ways: hiring top-notch faculty; recruiting a diverse body of the ablest J.D. and graduate students; and organizing conferences on such crucial and timely issues as the geopolitical influence of oil, the focus of the most recent *Journal of International Law and Politics* (JILP) Symposium.

The event, titled “Oil and International Law: The Geopolitical Significance of Petroleum Corporations,” although long planned, was held just weeks before the war in Iraq began. The symposium combined case studies that had been intensively researched by JILP members with presentations by leading academics and practitioners from the interna-



(from left): Professor Benedict Kingsbury, Professor Stephen Kobrin, Dr. Simon Chesterman, Professor Michael Klare, and Christina Bost ('04) all shared their expertise as panelists at the JILP Symposium, which discussed the geopolitical significance of petroleum corporations.

tional oil industry and non-governmental organizations to explore the multiple dimensions of this issue.

JILP symposium editor Bridget Kurtt ('03) introduced the topic, thanking NYU School of Law Professor Kingsbury for suggesting it. Kingsbury in turn congratulated Kurtt and the whole team of student organizers and case study presenters for their creativity and dedication.

Christina Bost ('04) provided a case-study background for the first panel on the "Social and Political Economy of Oil" by analyzing the historical background of the political and legal battle over oil production in the Caspian Sea region. "Depending on whether it's a lake or a sea, the surrounding countries would have different legal rights," Bost said. Based on a temporary agreement between the countries in the region, the floor of the Caspian is currently considered a sea and the waters above it are considered a lake. This gives all the countries a shared ownership with inherent rights to oil exploration, without giving up navigation rights. Bost also described other legal and political issues involved with the division and shipping of oil in the Caspian Sea region.

Michael Klare, professor of peace and world security studies at Hampshire College, responded with an analysis of the coming war with Iraq. Klare provided a background on the Middle East conflict, the Carter Doctrine, and the goals and potential outcomes of a war in Iraq. Professor Stephen Kobrin, the William H. Wurster Professor of Multinational Management at the Wharton School of the University of Pennsylvania, then spoke on the changing dynamics of corporate involvement in Third World countries. He focused on the activity of Canada's Talisman Oil Company in

" While these NGOs found pressuring businesses to be an effective strategy, success was only achieved when pressure was simultaneously applied across a wide spectrum of channels, including private actors; local, state, and federal governments; and the courts."

**ROBERT DELONIS ('04), SPEAKING ON PROTESTING PETROLEUM FIRM OPERATIONS IN BURMA**

Sudan, which has been in the midst of a brutal civil war since 1984.

Talisman, which left Sudan despite an otherwise successful production campaign, was forced out by some of the company's investors, who were concerned with human rights violations in that country. "You have a whole slew of actors involved," said Kobrin. "Very importantly, NGOs. This is very new." He concluded with a layered question: How far should this new dynamic be pushed, and to what extent can private organizations like non-governmental organizations and corporations be expected to act as a vehicle of public policy?

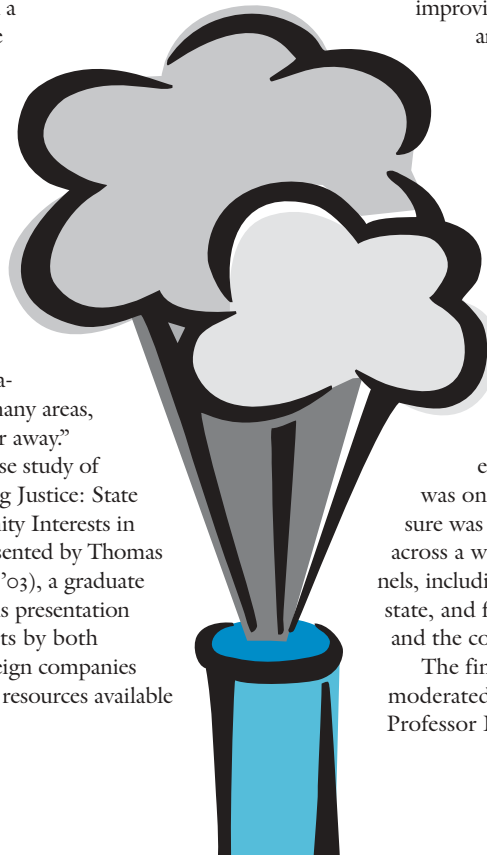
Dr. Simon Chesterman, a research associate at International Peace Academy and the panel's self-ascribed "token lawyer," addressed a question from the audience on the movement towards global government. "Global governance does not imply world government," he said. "It implies a harmony of nations' legal rules, internationally. And in many areas, we are not that far away."

The second case study of the day, "Accessing Justice: State and Oil Community Interests in Nigeria," was presented by Thomas Obidairo (LL.M. '03), a graduate editor of JILP. His presentation described attempts by both domestic and foreign companies to tap the natural resources available in Nigeria.

The panel, which focused on how nations can take advantage of their natural resources, rather than having them exploited by international corporations, included Venezuelan Ambassador Bernardo Alvarez Herrera; Dr. Bernard Mommer, adviser of the president of Petr leos de Venezuela (PDV); Professor Hurst Groves, director of the Center for Energy, Marine Transportation, and Public Policy at Columbia University; and Judith Kimerling, associate professor of law and policy at CUNY School of Law and Queens College. The dialogue emphasized issues in Venezuela. Venezuelan LL.M. students leapt at the opportunity to question important leaders in the public and private sectors on key decisions about stabilizing and improving their home economy and political situation.

The final case study was given by Robert Delonis ('04), who spoke about "Methods of Dissent: Protesting the Operations of Petroleum Firms in Burma." Delonis explained the important role of NGOs, but noted: "While these NGOs found pressuring businesses to be an effective strategy, success was only achieved when pressure was simultaneously applied across a wide spectrum of channels, including private actors; local, state, and federal governments; and the courts."

The final panel of the day was moderated by NYU School of Law Professor Philip Alston. The first





speaker was Gavin Power, director of public affairs and communications of the U.N. Global Compact, who spoke about, among other things, his organization's efforts to develop strategies to deal with companies that ignore the principles of the compact. "The compact needs to be judged on its ability to produce substantive change in company behavior," he said.

Professor Cynthia Williams ('89), associate professor of law at the University of Illinois, spoke about ways companies have been forced to improve their social consciousness, offering words of inspiration and validation to the students in attendance. "I think we have to remember that the anti-sweatshop movement in the United States was led by students," Williams said. In the post-Enron era, Williams said that stakeholder dialogue and initiatives have begun to play a larger role in improving the social, economic, and environmental behavior of corporations.

Richard Herz, the litigation director of EarthRights International, praised the organizers for conducting the symposium. Herz spoke about global compacts and the Alien Tort Claims Act. He said that creating voluntary corporate responsibility requirements is like asking for "the fox's idea of how to guard the chicken coop." He concluded the panel by arguing that parties with conflicts of interest are not the best monitors of corporations, of resources, or any combination of the two.

## Environmental Law Society

NYU School of Law's Environmental Law Society (ELS) is the foundation of the community of law students interested in environmental and land use issues, and provides avenues for students' interests in academics, activism, and career development. While ELS works closely with the Law School's environmental and land use law faculty, it is an entirely student-run organization. A committed group of students organizes and participates in a range of activities, including seminars, career panels, legal projects, and environmental advocacy.

In the past few years, ELS has hiked and camped in the Catskills, toured a waste management facility, reviewed the president's nominees for the federal bench, and overseen a University-wide campaign to transform NYU into a more environmentally efficient institution. Law students participate from their first day of orientation, when ELS co-hosts an incoming student happy hour with the International Law

Society. Second-year students provide the core leadership for the program, and 3Ls continue to participate by providing advice and counsel to 1Ls about their experiences in the environmental field at career panels and other events.

ELS will kick off its 2003-04 programs by co-hosting an environmental justice panel discussion with BALSAs (the African-American student group) and local professors and activists who are involved in the environmental justice movement. The group also is planning a series of environmental brown-bag lunches as the monthly anchor events for ELS. It will invite professors, local practitioners, and student note-writers to share their wisdom and engage in discussion with a regular lunch bunch. ELS also will bring back some of the most popular activities from years past: an overnight ELS-sponsored camping trip; a regional ELS happy hour (last year, ELS brought together students from Columbia, Cardozo, and Brooklyn law schools and hopes to have Pace Law School attend this year); tulip planting in the Vanderbilt Hall garden; and career and student internship panels.

### Wyman Discusses Fishery Regulations

An ELS dinner discussion with Professor Wyman, NYU School of Law's newest member of the Environmental Law and Property faculty, drew about 30 students. They dined on Chinese takeout in the student lounge as Wyman gave an introduction to her current research in fisheries regulation, which draws on her previous studies about why government regulators turn to property rights and

markets to regulate environmental and natural resources.

Wyman is currently examining why some jurisdictions have moved faster than others to implement individual transferable fishing quotas. These quotas, a controversial instrument for regulating fisheries promoted by economists for roughly three decades, are not used widely in the United States. Several important fisheries in Alaska, however, are governed by individual transferable quotas and functionally similar regulatory instruments. Internationally, individual transferable quotas are used in countries such as New Zealand and Iceland, and to a lesser extent Australia and Canada.

The discussion among Wyman and the diverse group of students was animated. When Wyman mentioned, for example, that she planned to travel to Alaska to further study her theories, a student quipped, "And will you be bringing your research assistant?" Participants ranged from first-year students to international LL.M.s interested in market-based approaches abroad.

The dinner, sponsored by ELS, was organized by Angela Kleine ('05) to provide a casual forum for discussing a current environmental issue, and to bring together students and faculty with a common set of interests and diversity of perspectives. ELS plans to sponsor more get-togethers with students, faculty, and alumni in fall 2003.



## Property, Poverty, and Race NYU School of Law Hosts Roundtable Discussion with Justice Clarence Thomas

NYU School of Law was proud to sponsor a roundtable discussion in July 2003 at Villa La Pietra in Florence, Italy, that brought together a distinguished group of academics, students, and leaders of the bar to tackle the problem of the relationship between property law and poverty and race. Modeled on the highly successful Aspen Institute for Justice summer seminars, the Law School's roundtable was led by U.S. Supreme Court Justice Clarence Thomas and Professor Richard Pildes. Under their guidance, the group debated the issues posed by the role property law has played in the experience of African Americans and other people of color in the United States.

The group's first discussion, titled "Forty Acres and a Mule: Property-Based Approaches to Race and Poverty," focused on how the law could move beyond the anti-discrimination model to address disparities between the races in property holdings. The topics of the discussion included both the acquisition of property and wealth by low-income and minority communities and obstacles to deriving the full benefits from ownership. The conversation addressed the role of inheritance laws in leading to fractured ownership of agricultural land in the South, and the resulting underuse and inability to leverage the property; the role of barriers to entry that entrepreneurs face in certain areas and the relative costs and benefits of operating businesses informally; and the potential of different government interventions and programs, including individual development accounts, to remedy persistent disparities in wealth and assets. The discussion concluded with an assessment of the relative merits of targeting policies in a way that is based on race versus class.

The second day centered around a discussion of Hernando de Soto's book *The*



Peter Sudler ('73) and Eileen Sudler ('74) participated on a panel exploring the relationship between property law and poverty and race.



Since 1994, NYU has used Villa La Pietra as an academic center for students. In addition, Villa La Pietra is used by the University for meetings, conferences, and special events, such as the Law School's roundtable discussion titled, "Property, Poverty, and Race."

" The seminar on race, poverty, and property was just outstanding. The discussion included a diversity of views and opinions. They were also spirited, informative, and constructive."

### U.S. SUPREME COURT JUSTICE CLARENCE THOMAS

*Other Path.* De Soto's research was based on many interviews with individuals who live and work outside of the formal economy in Peru, and documented the obstacles that exist to joining the formal economy. He concluded that defining and enforcing property rights is the key to integrating the poor into the formal economy and generating wealth. While de Soto's work focused on Peru, there were some important parallels to the United States. Professor Stephen Holmes supplied both a critical perspective and a framework for understanding de Soto's work in the context of other countries' experiences. The discussion addressed the potential attractiveness and limitations of solutions that are based exclusively on changes in the legal system.

Focus then shifted back to the United States and the effect current trends in land use regulation, such as the "smart growth" movement, might have on the property holdings of people of color and the poor. Professor Been's introduction highlighted the need to define carefully what is meant by sprawl, the concerns that motivate efforts to regulate it, and the goals of regulation to address sprawl. Sprawl is viewed as problematic for a number of reasons including that it

is an inefficient type of development that results in greater infrastructure costs; the cost of housing in the suburbs does not fully reflect the cost of suburban development due to the presence of subsidies and externalities; and the negative environmental effects of sprawl on air quality and green space. On the other hand, smart growth policies may be problematic because they privilege established homeowners relative to newcomers to the suburbs, who increasingly include many families of color; they may also prevent owners of agricultural property — including African Americans who managed to hold on to their land in the Southeast — from realizing the profits available from development.

The conference's hosts and participants agreed that the conference was a success. Thomas asserted, "The seminar on race, poverty, and property was just outstanding. The discussion included a diversity of views and opinions. They were also spirited, informative, and constructive. I would love participating in future seminars or discussions structured and conducted in a similar way."

Eileen Sudler ('74) commented, "It has been a rare privilege to participate in the Property, Poverty, and Race Seminar in the beautiful setting of La Pietra. The subject

matter was compelling and very well presented. The active involvement of Justice Thomas led to deep and earnest discussion which I hope will continue long after the close of these proceedings.” Manuel Klausner ('62, LL.M. '63) added, “This was a memorable chapter for NYU School of Law — no less auspicious than the inauguration of the Madison Lectures by Hugo Black! The setting was magnificent. The participants were knowledgeable, articulate, and genuinely diverse. The discussion was robust. And Justice Thomas was masterful in guiding the discussion. An extraordinary experience!”

Participants in the roundtable included Professors Been, Schill, and Wyman, Dean Revesz and Professor Deborah Malamud from NYU School of Law, and Professors Nicole and Richard Garnett, who teach at Notre Dame Law School. Several students and recent graduates interested in the issues of property and race participated as well: Kristina Daugirdas ('05); Theano Evangelis ('03), law clerk to Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit; Sheridan England ('04); Troy McKenzie ('00), law clerk to Justice John Paul Stevens; and Leila Thompson ('05). Others who participated in the debate included Alfred Engelberg ('65), trustee of the Engelberg Foundation, an expert in intellectual property law, and trustee of NYU School of Law; Gail Engelberg, trustee of the Engelberg



U.S. Supreme Court Justice Clarence Thomas (left) and NYU School of Law Professor Richard Pildes lead a roundtable on property, poverty, and race in Florence, Italy.

Foundation; Jay Furman ('71), principal, RD Management Corporation, a major real estate development firm, and trustee of the University and NYU School of Law, accompanied by Victoria Moran; Manuel Klausner ('62, LL.M. '63), a leading practitioner in the areas of constitutional and election law; Willette Klausner, president, Edgework Productions; Lester Pollack ('57), managing partner, Centre Partners, chairman of NYU School of Law Foundation, and University trustee, accompanied by his wife, Geri Pollack; Barry Slotnick ('61), of Slotnick, Shapiro & Crocker, LLP, a leading criminal

defense firm; Donna Slotnik, realtor, Julia B. Fee Real Estate; Eileen Sudler ('74) and Peter Sudler, ('73), general counsel and president, respectively, of The Sudler Company, a major real estate development firm; Virginia Thomas, director of executive branch relations, the Heritage Foundation; Brenda Thompson, clinical/school psychologist and smart growth community activist; Anthony Welters ('77), chairman and chief executive officer, AmeriChoice Corporation, University trustee and NYU School of Law trustee; and Beatrice Welters, founder of the An-Bryce Foundation.



Villa La Pietra, Florence, Italy. Sir Harold Acton, an historian, author, and aesthete, bequeathed the villa to New York University on his death in 1994.



Professor Ross Sandler ('65) (left) discusses domestic environmental policy on a Reunion panel that included Professor Katrina Wyman, moderator (center), Hal Candee ('83) (back), and Michael Gerrard ('83) (right).

## Reunion Panel Delves into Environmental Policy

Felicia Marcus ('83) brought her experience; Michael Gerrard ('78) brought his advice; Hal Candee ('83) brought his inspiration; and Ross Sandler ('65) brought a decades-old letter from a young girl.

Candee, Gerrard, Marcus, and Sandler were panelists in a 2003 Reunion Weekend presentation on "Domestic Environmental Policy" at NYU School of Law. Moderated by Professors Stewart and Wyman, the panel attracted both Law School alumni and current students.

Sandler recalled the evolution of the field of environmental law that began in the 1970s. He was a senior attorney for the Natural Resources Defense Council (NRDC), a partner at Jones, Day, Reavis & Pogue, and the commissioner of transportation for New York City, before joining New York Law School as a professor of law and director of the Center for New York City Law. Sandler emphasized the importance of citizen action, sharing a letter that he received many years ago when he was an assistant U.S. attorney in Manhattan. He keeps the letter, written by a grade school student who urged Sandler to prosecute a firm that was polluting near her home, as a reminder of the importance of his work.

Candee served as a legislative assistant in the U.S. Senate before studying at NYU School of Law. After graduating, he clerked for a federal judge, then became a senior staff attorney in NRDC's San Francisco office, where he is the director of the Western Water Project. Candee focused on his efforts to reform state and federal water policies, and the

frustrations and successes that he has experienced in his career. Candee was named as one of California's "Lawyers of the Year" by *California Lawyer* magazine in 1999 for that work.

Gerrard, a partner at Arnold & Porter and an adjunct professor at Columbia Law School, has written several books and articles discussing the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Gerrard discussed risk prioritization, arguing that the risks associated with many Superfund sites do not justify the extensive costs associated with remediation. He called for a reassessment of environmental risks (such as radon) and a realignment of regulatory attention to focus on more dangerous, unattended hazards.

Marcus, who was regional administrator for the Environmental Protection Agency (EPA) in San Francisco under President Clinton, is now the executive vice president and chief operating officer for

" Sometimes when I think about the grief that I gave EPA folks when I was working in the community, and then I think about my subsequent experiences working for the EPA, it's like my karma ran over my dogma."

FELICIA MARCUS ('83)

the Trust for Public Land. Marcus also practiced extensively as a public interest lawyer and served as president of the Board of Public Works for Los Angeles. She spoke about the tensions between environmental advocates and the federal agencies charged with the administration of environmental statutes and described the difficulties that both face when trying to promote public welfare.

"Sometimes," Marcus said, "when I think about the grief that I gave EPA folks when I was working in the community, and then I think about my subsequent experiences working for the EPA, it's like my karma ran over my dogma."



Dean Richard Revez asks environmental law practitioners a question at the domestic environmental law panel.

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Been began by asking the panelists how, if at all, the redevelopment of the WTC site would impact the greater metropolitan area. The panelists agreed that the unprecedented level of interest from the general public in how to develop the WTC site would influence all of New York City and potentially all urban areas.

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## Envisioning the Next New York

More than a year ago, a *New York Times* op-ed article proclaimed the American city dead. The editorial prompted an NYU School of Law student, Anika Singh (’04), and two friends, Adam Gordon and Seth Brown, to launch a new magazine, *The Next American City*. To celebrate the publication’s debut, the Law School’s Center on Environmental and Land Use Law and the Furman Center for Real Estate and Urban Policy hosted a panel discussion titled “The Future of the City: Envisioning the Next New York.”

The magazine’s editor, Adam Gordon, welcomed hundreds of guests, including leaders in urban planning, architecture, development, and the environment. He described the new magazine as a forum for the exchange of ideas about the wide range of fields that combine to shape our cities’ futures.

The distinguished panelists were Alexander Garvin, then head of the agency redeveloping the World Trade Center (WTC) site; Paul Goldberg, well-known *New Yorker* architecture critic; Hugh Hardy, a renowned architect who reviews the WTC plans on behalf of New York New Visions, a civic advocacy group; and Joseph Rose, former New York City planning commissioner. Professor Been, a member of the magazine’s advisory board, moderated.

Been began by asking the panelists how, if at all, the redevelopment of the WTC site would impact the greater metropolitan area. The panelists agreed that the unprecedented level of interest from the general public in how to develop the WTC site would influence all of New York City and potentially all urban areas. Hardy pointed to Mayor Bloomberg’s plan, which calls for new public spaces. Goldberg noted that if urbanists can harness the

public’s interest in improving the downtown area, “this process will have a deep, broad meaning that goes beyond lower Manhattan.”

Been asked how such intense civic engagement impacts the balance of power between the stakeholders in the development process and the citizens. Garvin responded that community activism in New York is nothing new. “Planning boards began here, so this is fairly normal,” he said. But, the Lower Manhattan Development Corporation Web site has had 6 million visits — certainly not “normal.” As Goldberg said, the “balance of power is shifting all the time.” Government and the developers are figuring out how to listen to the public: public hearings are dead, and “what’s alive is the Web, the exhibits, and the Javits Center forum last summer,” Goldberg said.

Been followed up by asking whether government regulation, such as zoning, needed to be changed and whether the public hearing should be abolished. Hardy noted that

Albany controls so many aspects of New York City that major changes would be unlikely. Garvin said that, historically, every development problem has been answered with regulation — incentives and bonuses to do certain things. He doubts they have worked. Regulatory incentives have created 80 acres of public space in midtown Manhattan, among the most valuable land in the world, but these areas fail as public spaces, he argued, because they are not inviting or user-friendly. To compound matters, these 80 acres represent a fortune in foregone development.

Hardy questioned the value of design guidelines, which have led to many New York skyscrapers, including Battery Park City. Goldberg felt guidelines prevent both “creativity and disaster — they force structure to the banal middle.” The speakers agreed that New Yorkers are more willing to experiment with creative and bold structures, and that the redevelopment of lower Manhattan could herald the city’s aesthetic future.

The evening ended with a spirited question-and-answer session. Guests and panelists lingered long after the session ended, both to continue the debate and to celebrate the magazine’s first issue.

## Dean’s Roundtables

Each year, Dean Revesz invites several NYU School of Law alumni and a few select guests to share their work experiences with students at the “Dean’s Roundtable Luncheons.” (See p. 143 for other roundtable guests.) One of the most popular programs among students, the roundtables are a unique chance for students to learn about alternatives to traditional career paths. Four roundtables this year focused on environmental and real estate issues.



Panelists from the launch of *The Next American City* (from right): Joseph Rose, former commissioner of the New York City Planning Commission; Paul Goldberg, architecture critic for the *New Yorker*; Hugh Hardy, noted national architect; Professor Vicki Been (’83), member of the magazine’s advisory board; Adam Gordon, editor-in-chief, *The Next American City*; Alexander Garvin, former head of the agency redeveloping the World Trade Center site; and Seth Brown, publisher, *The Next American City*.



One of the most popular programs among students, the roundtables are a unique chance for students to learn about alternatives to traditional career paths.

**Robert Rohdie ('65)** is president and chief executive officer of Tarragon Development Corporation, a subsidiary of Tarragon Realty Investors, Inc. Tarragon is a public real estate development, acquisition, and management company. The company controls approximately 20,000 apartment units and almost 2.5 million square feet of commercial space located throughout the continental United States. Rohdie is responsible for all of Tarragon's development and construction activities. Since 1988, he has been president and chief executive officer of Rohdhouse Investments, Inc., his wholly owned real estate development company, which acted as Tarragon's joint venture partner in new construction and development projects from 1997 through 2000. He has more than 35 years of real estate development experience. He has also served as an adjunct professor in business law at Montclair State University.

**Peter ('73) and Eileen ('74) Sudler** are president and general counsel, respectively, of The Sudler Company, a privately held construction, development, and management organization, which started as a small contracting firm in 1907. The Sudler Company has since grown into a major developer and owns and manages more than 10 million square feet of office buildings, warehouses, and shopping centers in New Jersey and across the United States. Peter Sudler was an assistant U.S. attorney for the Southern District of New York, and served as the lead prosecutor in the income tax evasion case against Studio 54 owners Steve Rubell and Ian Schrager. He is a director of Independence Community Bank and the New Jersey Sports and Exposition Authority. Eileen Sudler began her career as a criminal defense attorney with Legal Aid Society in the Bronx. In 1976, she was appointed as assistant U.S. attorney for the Southern District of New York, where she served first in the civil divi-

sion, then in the bankruptcy unit, becoming chief of that unit in 1978. She was a name partner in the law firm of Sudler & Barth and of counsel to Courter, Kobert, Laufer, Purcell, and Cohen.

**Steven Swerdlow ('75)** is president of Global Corporate Services for CB Richard Ellis, a global real estate brokerage and management company headquartered in Los Angeles with over 250 offices in 47 countries. As president of Global Corporate Services, he is responsible for all global business units including global outsourcing, advisory, and transaction services. He is also responsible for strategic occupancy planning, facilities management, financial consulting, and lease administration. Swerdlow joined CB Richard Ellis in 1990 as managing director of the New York City office. He then served as president of the Eastern Division, managing 46 local offices and responsible for \$400 million in annual revenue. Swerdlow began his professional career at the New York law firm of Barrett Smith Schapiro Simon and Armstrong. He has also served as senior vice president and general counsel at the international advertising agency Kenyon & Eckhardt (now Bozell, Jacobs, Kenyon & Eckhardt), and as a development officer for Gerald D. Hines Interests, a major real estate development company. He serves on the board of governors for the Real Estate Board of New York and on the Realty Foundation Board of Directors. He is a member of the Business Council for Lincoln Center and chairman of the CB Richard Ellis 9/11 Disaster Relief Effort, a corporate cause dedicated to raising funds and awareness for the events of September 11.

**Geoffrey Wharton ('67)** is chief executive officer of Insignia Douglas Elliman, the residential real estate brokerage subsidiary of Insignia Financial Group, Inc. Insignia Douglas Elliman is one of the largest providers of

residential sales and rental brokerage in the New York City market. Wharton oversees more than 950 employees, including 830 brokers, in nine offices in New York City and three offices on Long Island. Insignia Douglas Elliman completed in excess of \$2.4 billion of residential sales and rentals in 2001, and the company arranged \$1.5 billion of transactions in the first half of 2002. Wharton joined Insignia Douglas Elliman in September 2002 from Silverstein Properties, where he served as managing director of the World Trade Center Re-Development Program. From 1982 to 2000, Wharton was a senior executive at Tishman-Speyer, where he led the redevelopment and management of Rockefeller Center and the Chrysler Building, two iconic New York City landmarks. Wharton has also held positions with Edward S. Gordon Company, now part of Insignia Financial, and Weil, Gotshal & Manges.

## Rose on Green Development Real Estate and Urban Policy Forum Hosts Renowned Developer

The Real Estate and Urban Policy Forum hosted noted "green" developer Jonathan Rose and his general counsel, Jonathan Vogel ('96), to speak to students about the issues surrounding sustainable development. (See p. 49 for more on the Forum's Segal Real Estate Roundtables.)

Rose is president of a limited liability company that works with a variety of organizations to coordinate, plan, and develop environmentally sound and socially responsible housing and urban projects in conjunction with municipal governments. The firm's objective is to create "vibrant, diverse cultural centers with a balance of jobs, housing, open land, and mass transit."

Rose spoke at length about the five guiding principles of his development projects: impermanence; diversity (including affordability); environmental friendliness; interdependence; and community participation.

Following his presentation, Professor Schill, the Forum's faculty adviser, challenged Rose with questions about options for affordable housing. Playing devil's advocate, Schill proposed that it might be better to spend money on affordable housing outside of Manhattan, in a "less pricey" borough where more good could be done.

"Let's take downtown Manhattan," Schill said. "Why specifically does it require a mix of income in order to make downtown

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“ Why specifically does it require a mix of income in order to make downtown Manhattan a thriving community? If I could get two or three units for every one in Brooklyn, it seems like a real tradeoff, a hard one. I love the idea of mixed income communities, but when it’s that stark, it’s hard to justify.”

PROFESSOR MICHAEL SCHILL

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Jonathan Rose plans and develops environmentally sound and socially responsible housing and urban projects with municipal governments. He spoke to a group of NYU School of Law students at a Real Estate and Urban Policy Forum.

Manhattan a thriving community? If I could get two or three units for every one in Brooklyn, it seems like a real tradeoff, a hard one. I love the idea of mixed income communities, but when it’s that stark, it’s hard to justify.”

Rose based his answer on the principle that diversity really matters. “Lower Manhattan, in particular, the World Trade Center redevelopment plan, is going to be the defining urbanistic vision for the next century,

like Rockefeller Center was for the last,” he said. “We have to model the kind of place we want to live in.”

On a practical point, he added, “Security cuts two ways: One is the fear of getting blown up. The other is the convenience of the city itself. I think there are serious questions being asked about cities. We have to make the most compelling case for what a quality urban life can be. The eyes of the whole world are seeing how we can do this.”

Forum co-chair Nick Kujawa (’04) asked Vogel and Rose to describe the career trajectory they would recommend for an aspiring green developer. “Call up Professor Schill and say you don’t like what you do, and ask him where to work,” Vogel answered.

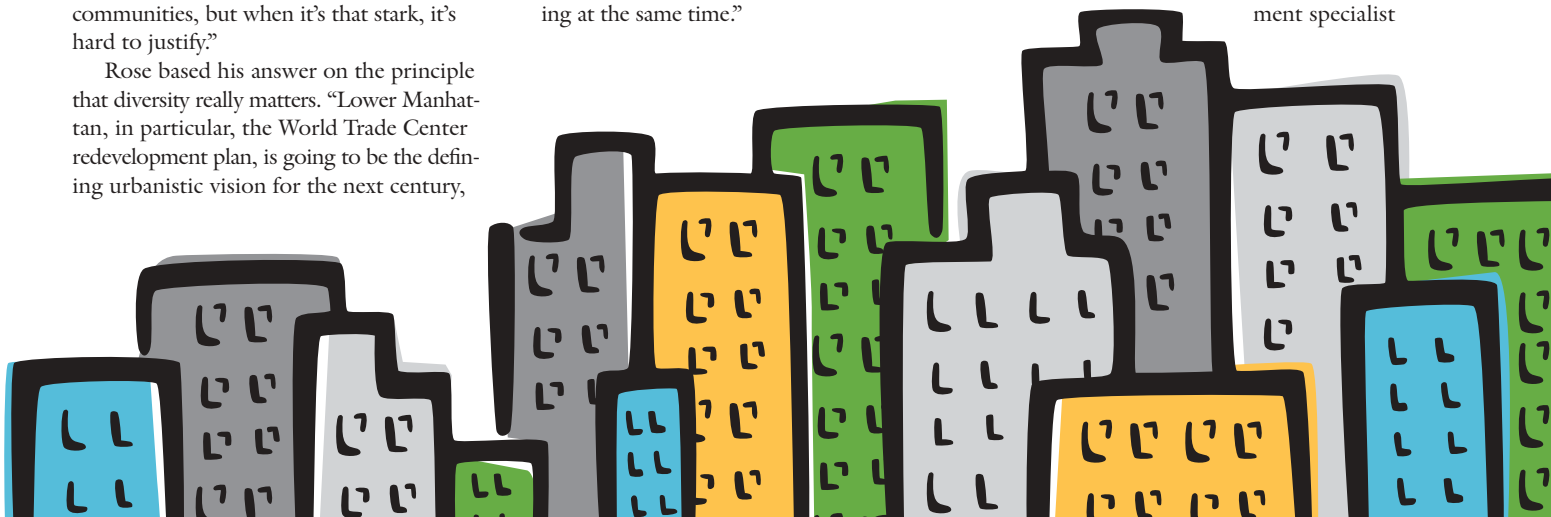
Although his reply was humorously intended, Vogel was loosely referencing his own biography. After his call to Professor Schill, Vogel began working with the New York City Housing Partnership and continued his involvement with affordable housing from there.

Rose said that he agreed with Vogel that it was best to get started working for nonprofits. “I got into affordable housing at the ground level and worked my way up from that,” he said. “It’s a way of giving and learning at the same time.”

## The Travails of the Brazilian Panará Tribe

NYU School of Law’s Institute for International Law and Justice (IILJ), the *Environmental Law Journal*, and the Rainforest Foundation hosted a remarkable public meeting on the experiences of the Panará, an indigenous people of the Brazilian Amazon. The Panará lived largely in isolation until a government road project through their territory brought them in contact with the outside world in 1973. The encounter proved almost fatal — diseases brought by road workers led the tribe to dwindle to 79 people. In an emergency remedy, they were airlifted to the Xingu Park many miles away. Unable to find an ecologically suitable environment for their ways of living in Xingu, they decided to return home. Their 20-year struggle resulted in two landmark decisions: They won the title to their land in a government administrative process in 1996, and an unprecedented court order of compensation for material and moral damages in 2001, payable by the end of 2003. From near oblivion, the Panará are rebuilding their community and are engaged actively in managing and protecting their rainforest.

The panel was opened by Patiká Panará, a leader of the Panará community, who discussed the struggles faced by the Panará peoples during the period of contact and relocation, as well as their continuing struggles to subsist. Stephan Schwartzmann, an anthropologist with Environmental Defense who has worked closely with the Panará people for two decades, translated the dialogue and also provided background information on the decision to undertake the road project and relocate the Panará. Ana Valéria Araújo, executive director of the Rainforest Foundation and a lawyer in the Panará case, commented on the legal challenges and the public interest lawyering strategies used in presenting the claims of the Panará to the Brazilian government and the courts. André Villas-Bóas, a community development specialist





Participants in a meeting on the Panará people of Brazil: (front row, from left) six members of the Panará community, including Patika Panará (fourth from left), a leader of the Panará community; Cynthia Liebman ('03), *Environmental Law Journal*; (back row, from left) Erik Bluemel ('04), *Environmental Law Journal*; Andre Villas-Boas, community development specialist with Instituto Socio-Ambiental in Brazil; Steven Schwartzmann, an anthropologist affiliated with Environmental Defense, who worked with the Panará for 20 years; Ana Valéria Araújo, executive director, Rainforest Foundation and a lead lawyer in the Panará case; and Professor Benedict Kingsbury, director, Institute for International Law and Justice.

with the Instituto Socio-Ambiental in Brazil, outlined the current strategies of the Panará to attain self-sufficiency and to prevent encroachment on their lands, and the future challenges they face in these efforts. The panel was moderated by Professor Kingsbury, director of the Institute for International Law and Justice at NYU School of Law.

Attended by more than 100 Law School students and members of the public, the panel presented a unique opportunity to hear from Panará representatives and others involved in their struggles. Many of the stu-

dents attending had extensive experience as public interest lawyers or non-governmental organization interns on indigenous people's land issues in Latin America, the Philippines, Indonesia, Australia, and elsewhere, enabling a stimulating discussion of ways in which the Panará experiences and their legal victories might be significant for other indigenous peoples. A detailed report of the discussions, and an English translation of key aspects of the compensation decision by the Brazilian courts, are available on the IILJ's Web site at [www.nyuilj.org](http://www.nyuilj.org). ■

## Korein Foundation Environmental Program

In the fall of 2002, NYU School of Law launched the Korein Foundation Environmental Program, supported by a major three-year grant from the Korein Foundation, the family foundation of alumna Elysa Kleinhans ('88). The Program will strengthen the Law School's environmental and land use programs by funding public interest summer placements to allow students to work on environmental and land use policy initiatives and litigation in their first and second summers; by supporting student participation in the International Environmental Law Clinic; and by supporting an annual conference on a major issue in environmental and land use law and policy.

The Korein Program started well with the selection of 10 outstanding students who served as the 2002-03 Korein Fellows. The 10 fellows spent the past summer working for environmental and land use organizations and government agencies in the United States and abroad. This fall, the fellows will participate in a special seminar on environmental and land use public interest practice.

### The 2002-03 Korein Fellows

**Nathan Alley ('04)** interned this past summer at Environmental Defense (ED) in New York. Alley's work focused on analyzing policy options for addressing New York City's commercial waste problems. ED and the Natural Resources Defense Council (NRDC) are jointly providing legal and policy input to the city as it works to improve commercial waste management. Alley had begun to tackle commercial waste management in the city while enrolled in the NRDC Environmental Law Clinic (see p. 37) during his second year, so he was already well-versed on the issue when he began his Korein internship. This summer, Alley also co-authored an article

with James Tripp, ED's general counsel, recommending options for streamlining the environmental review process under the National Environmental Policy Act without making legislative changes. The article will be published later this academic year in the Law School's *Environmental Law Journal*, of which Alley is co-editor-in-chief. Alley's policy work at ED complemented the litigation and direct action experiences he had in the summer of 2002 at Forest Guardians, a regional environmental NGO in Santa Fe, New Mexico.

**Warren Braunig ('05)** served his Korein internship at the Sierra Club Environmental Law Program in San Francisco. Braunig wanted to work at the Sierra Club because of the way it integrates litigation into broad public interest campaigns, using litigation as one tool in the political arsenal rather than treating it as an end in itself. Over the summer, Braunig provided research support for two cases in which the Sierra Club is challenging Forest Service initiatives that promote logging in national forests, in one instance through a timber sale, and in the other case by granting a permit that allows a power company to run a transmission line through 11 miles of national forest. In addition, he drafted an amicus brief for litigation challenging pollution generated by factory farms in the Midwest. Braunig is co-chair of the Law School's Environmental Law Society in 2003-04, and is committed to fighting toxic pollution and to hastening the transition to alternative energy sources.

**Sam Brooke ('06)**, who is simultaneously pursuing a J.D. at NYU School of Law and an M.A. in Law and Diplomacy at the Fletcher School at Tufts University, spent the summer at the Instituto de Derecho y Economía Ambiental (IDEA, the Institute of Economic and Environmental Rights) in Asunción, Paraguay. Brooke worked on a project to assess the environmental impact that the proposed Free Trade Area of the Americas Agreement (FTAA) could have on Paraguay. He looked at both how the FTAA might threaten the environment, and at what sort of legislation might be used to guard against the expected threats. The project is part of a broader regional project to determine what provisions should be included in the FTAA to protect the environment in Latin American countries. Brooke, who traces his interest in environmental issues to his childhood on a grain farm in North Dakota, opted to spend the summer at IDEA because he wanted to work in Latin America on land use and development issues.



**Geoff Davenport ('06)**, who is pursuing both a J.D. at NYU School of Law and an M.B.A. at NYU's Stern School of Business, worked over the summer with New York Lawyers for the Public Interest (NYLPI). Davenport's interest in environmental law is related to his commitment to community development work. Before coming to the Law School, he worked for five years at an organization in northern California that helps severely abused and neglected children. Attracted to NYLPI's commitment to community lawyering and by its reputation for investing in its interns, his summer included researching the environmental justice implications of several proposed governmental initiatives. For example, he reviewed an environmental impact study of the effects of spraying pesticides to address the West Nile virus that was prepared by New York State's Department of Environmental Conservation. In addition, Davenport analyzed New York State data on the location of permitted facilities in low-income neighborhoods and communities of color.

**Dallas DeLuca ('05)** spent his internship at the Office of the City Attorney of San Francisco. He worked in the Land Use and Environment group, researching and helping to draft briefs and legal memoranda for cases in which city land use ordinances and decisions are being challenged as regulatory takings. In addition, DeLuca provided legal research that was used in drafting land use planning commission approvals. Before attending NYU School of Law, he was employed in the private sector, and in the U.S. and Foreign Commercial Service of the U.S. Department of Commerce, where he worked exclusively with pollution control and environmental technologies for two years. DeLuca, who is interested in pursuing a career in government working on environmental law, opted to spend the summer at the Office of the City Attorney because it is one of the most active local government offices in the land use field, working to defend many zoning and regulatory takings cases.

**Kris Genovese ('04)** worked over the summer in Earthjustice's International Program in Oakland, California. She contributed to court briefs by researching legal issues and conducted case investigations. One of the cases Genovese worked on concerns two Mexican power plants near California's border, which Earthjustice's client, the Border Power Plant Working Group, argues will cause increased air and water pollution on both sides of the border. Earthjustice won the merits phase of the case, in which a district court judge held that an environmental assessment conducted by the

U.S. Department of Energy had failed to consider the impact of ammonia emissions from the plants. For the remedies phase of the trial, Genovese researched whether the court had to find irreparable harm before issuing an injunction, or whether federal legislation required that the permits the federal government issued authorizing transmission of power from the two plants had to be set aside and the transmission of power over the lines enjoined. After graduating next spring, she wants to work at a non-profit international environmental law organization, and she chose Earthjustice's program because of the innovative work that it is doing in international environmental law. In addition, she had met the lead attorney in the international program, Martin Wagner, while she was working at the Center for Internation-

Escalera Náutica project in Baja, which entails building or enhancing 24 marinas along the Baja coast and the Sea of Cortés; constructing hotels, golf courses, condos, and various services at each marina; and building a "land bridge" across Baja for boat hauling. She chose to intern at CEMDA because she wanted experience working in environmental law outside the United States, and she had heard great things about CEMDA from Kris Genovese, who had worked there in the summer of 2002. At CEMDA, Knight worked mostly in Spanish, which did wonders for her language skills.

**Sam Lutz ('05)** interned at the Northwest Environmental Defense Center in Portland, Oregon. Lutz was interested in working at NEDC because it is one of the leading legal

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## In the fall of 2002, NYU School of Law launched the Korein Foundation Environmental Program, supported by a major three-year grant from the Korein Foundation, the family foundation of alumna Elysabeth Kleinhans ('88).

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al Environmental Law before coming to law school. During her previous summer, Genovese interned at the Centro Mexicano de Derecho Ambiental (the Mexican Center for Environmental Law) in Mexico City, where Alexandra Knight ('05), another Korein-funded intern, worked this summer.

**Stephanie Hogan ('05)** served her internship at the U.S. Department of Justice in Washington D.C. She worked in the Wildlife and Marine Resources Section of the Environment and Natural Resources Division, providing research assistance for cases arising under various federal wildlife and fisheries statutes. Hogan opted to work at the Department of Justice in order to gain valuable insights into environmental law from a government perspective, and her particular interest in fisheries issues.

**Alexandra Knight ('05)** worked at the Centro Mexicano de Derecho Ambiental (CEMDA, the Mexican Center for Environmental Law) in Mexico City. She was a member of the litigation team, which counsels NGOs and individuals seeking to pursue violations of Mexican environmental legislation. Knight's responsibilities included evaluating the environmental impact statement for the

advocates for the environment in the Pacific Northwest, and he wanted to get involved in on-the-ground litigation. His summer experiences exceeded his expectations. He did the legal groundwork for a potentially precedent-setting appeal concerning the permitting process used for general permits under the Clean Water Act. Depending on the outcome, the case may result in significant changes in the way that permits are issued, and provide the environmental community with a new avenue for overseeing the permitting process. Lutz had the opportunity to shape the center's litigation and post-litigation strategies, and to draft important legal documents for the case.

**Karen Spiegel ('05)** worked at Earthjustice in Washington, D.C. Before coming to NYU School of Law, Spiegel interned at a number of government agencies and at a non-profit group working on environmental and land use issues. She wanted to work for the summer at Earthjustice to learn more about environmental law and policy from the NGO perspective. As an intern, she researched issues arising in Earthjustice's Clean Water Act litigation, and attended legislative subcommittee hearings on environmental issues. A native of Long Island, she is very interested in the potential for land use regulation to address urban sprawl. ■

## PIC Grants Fund Many Students to Work in Environmental and Land Use Law

In addition to the Korein Fellows, many of the 221 NYU School of Law students who received Public Interest Committee (PIC) grants for work this past summer in the United States served in internships with non-profit organizations and government agencies working on environmental and land use issues. For example, students armed with PIC grants worked at such organizations as:

- > Brooklyn Bridge Park Coalition: Michele Antis ('05)
- > Earthjustice's International Program: Cynthia Liebman ('04)
- > Local Institutes Support Corporation: Adam Giuliano ('05)
- > New York Environmental Law and Justice Project: Annie Fox ('04)
- > Northwest Indian Fisheries: John Levy ('05)
- > RiverKeeper, Inc.: Elizabeth Vicens ('05)
- > Santa Barbara ChannelKeeper: Ben Lippert ('04)
- > United Nations Development Programme: Andre Verani ('05)
- > Urban Justice Center: Community Development Project / Workers' Rights Project: Kati Griffith ('04)
- > U.S. Environmental Protection Agency: Jeffrey Roberson ('04)
- > U.S. Environmental Protection Agency's Region 9 Office: Andrew Wong ('05)

Another 60 Law School students used PIC grants to undertake internships in other countries for the summer of 2003. Several worked on environmental projects. Keil Mueller ('05), for example, interned at the U.N. International Law Commission (ILC) under the supervision of the distinguished international environmental lawyer and diplomat Bill Mansfield. Mueller's work focused on strengthening transnational institutions in monitoring and controlling use of transboundary freshwater resources such as international rivers and aquifers. Similarly, Cade Mosley ('05), a junior fellow of the Institute for International Law and Justice pursuing a combined J.D.-LL.M. in International Law, interned at the U.N. International Law Commission. Supervised by Global Law Professor and ILC member Martti Koskenniemi, Mosley wrote a major paper on the social insurance function of international law liability regimes for transboundary damage caused by privately-owned facilities such as power plants. ■



### Public Interest Committee Grants A Student's Perspective

Ben Lippert ('04)

The NYU School of Law Public Interest Committee (PIC) grants provided the opportunity for me to work at environmental non-profit organizations following my first and second years of Law School. My positions as an intern at San Diego BayKeeper and Santa Barbara ChannelKeeper have provided me with diverse environmental experience. I have helped develop presentations to the San Diego Regional Water Quality Control Board, commented on the Storm Water Management Plans of the cities of Santa Barbara and Goleta, and researched case law for litigation with staff attorneys. The exposure to both policy and legal assignments has been very important to me, and I don't think that a position at a law firm would have provided the same opportunities to work at close-knit organizations with committed individuals who have also become good friends.

I hope to pursue a career in environmental policy in Southern California, and with the grants I have been able to spend my summers at the jobs I wanted most. I had the freedom to apply for positions that provided environmental policy experience and the opportunity to establish professional contacts in California. BayKeeper and ChannelKeeper are local public interest organizations dedicated to protecting Southern California's water resources, and do not have the funding to pay summer interns. Without the grants, I wouldn't have been able to afford the cost of moving to and working on the West Coast.



## Post-Graduate Fellowships Prepare Scholars for Academic Careers

Responding to the needs of alumni interested in pursuing teaching careers in environmental and land use law, the Center on Environmental and Land Use Law at NYU School of Law began several years ago to offer post-graduate research fellowships to help promising young scholars embark on academic and public service careers. Under close faculty supervision, academic fellows work on research projects that culminate in law review articles, and thereby develop a credential essential to land teaching positions in law schools today. The Law School is proud of the achievements of its four fellows.

The Center's first fellow, **Jonathan Nash**, graduated *magna cum laude* from NYU School of Law in 1992, then clerked for (then) Chief Magistrate (now Judge) Nina Gershon of the U.S. District Court for the Southern District of New York, and for Judge Donald Russell of the U.S. Court of Appeals for the Fourth Circuit. After several years in private practice, Nash earned an LL.M. at Harvard Law School, then returned to NYU School of Law as the Center's 2000 fellow. During his several months at the Center, Nash worked with Professor (now Dean) Revesz on an article that was later published as "Markets and Geography: Designing Marketable Permit Schemes to Control Local and Regional Pollutants," *Ecology Law Quarterly* (2001). Nash also used the fellowship to write "Too Much Market? Conflict Between Tradable Pollution Allowances and the 'Polluter Pays' Principle," *Harvard Environmental Law Review* (2000).

After his fellowship, Nash served as a Bigelow Fellow at the University of Chicago Law School where he taught a seminar on international environmental law, as well as courses in legal research and writing. He then joined the faculty of Tulane Law School, where he now teaches Environmental Law; Property; and Law and Economics. He has been a prolific scholar, and has two articles about to be published: "Examining the Power of Federal Courts to Certify Questions of State Law," *Cornell Law Review* (forthcoming 2003), and "A Context-Sensi-

tive Voting Protocol Paradigm for Multi-member Courts,” *Stanford Law Review* (forthcoming 2003).

**Samuel J. Rascoff**, a 2001 graduate of the Yale Law School, spent fall 2001 at the Center. During his fellowship, Rascoff and Dean Revesz co-authored “The Biases of Risk Tradeoff Analysis: Towards Parity in Environmental and Health-and-Safety Regulation,” *University of Chicago Law Review* (2002). After his fellowship, Rascoff clerked for Judge Pierre Leval of the U.S. Court of Appeals for the Second Circuit. Fluent in Arabic and Farsi, Rascoff was then tapped to serve as a special assistant to L. Paul Bremer, presidential envoy and civil administrator of the Coalition Provisional Authority in Iraq. Important as that work was, Rascoff left Iraq over the summer to take up his current post as law clerk to U.S. Supreme Court Justice David Souter.

**Joel C. Beauvais**, a *magna cum laude* graduate of NYU School of Law in 2002, was a fellow at the Center for academic year 2002-03. During his fellowship, Beauvais and Professor Been co-authored “The Global Fifth Amendment? NAFTA’s Investment Protections and the Misguided Quest for an International ‘Regulatory Takings’ Doctrine,” *New York University Law Review* (2003). He and Been also are in the midst of another project exploring the ramifications of the increasing convergence of environmental and land use law. This fall, Beauvais will serve as a law clerk to Judge Harry Edwards on the U.S. Court of Appeals for the D.C. Circuit.

**Laura Tesser**, the Center’s 2003-04 fellow, graduated *magna cum laude* from NYU School of Law in 2000. She returns to the Law School after several years in private practice, and will be working with Dean Revesz on an article examining the various methodologies that have been employed in the cost-benefit analyses of environmental regulation. The article will seek to shed some critical light on a few key assumptions used by various regulatory agencies that systematically undervalue human lives and, thereby, underestimate the air pollution-related benefits that flow from reductions in premature mortality risk.

### Jacqueline Peel to Serve as Hauser Global Research Fellow

**Jacqueline Peel (LL.M. '00)** is returning from Australia to NYU School of Law this fall as a Hauser Global Research Fellow. Her research project will take an interdisciplinary approach to examining the role of scientific knowledge in WTO decision-making on health and environmental threats, arguing that non-science-based knowledge sources have a role to play in these decisions, especially in circumstances of scientific uncertainty. Her research at the Law School will contribute to a book she is currently writing titled *Environmental Decision-making in Circumstances of Scientific Uncertainty: The Precautionary Principle in Practice*. She will also be participating in the Project on International GMO Regulatory Conflicts headed by Professor Stewart (see p. 40).



Peel is currently lecturer on law at the University of Melbourne, where she teaches in the graduate and undergraduate environmental law program. Prior to taking up an academic career in September 2000, she earned her LL.M. at NYU School of Law as an Australian Fulbright Scholar. Her master’s studies focused on international environmental law and its linkages with other areas of international law, including trade law and human rights. As part of her master’s degree, she undertook an International Environmental Law Clinic project on the requirements for ensuring appropriate verification, reporting, and compliance under a global emissions trading program to reduce greenhouse gas emissions.

Following her Law School graduation, Peel received a scholarship to undertake an internship at the U.N. International Law Commission in Geneva, where she assisted the special rapporteur on state responsibility, Professor James Crawford of Cambridge University, in drafting commentaries to the commission’s Articles on the Responsibility of States for Internationally Wrongful Acts.

Peel’s major area of research interest is environmental law, particularly the international dimension of environmental regulation, although she has also published in the field of domestic environmental law. Her interdisciplinary research interest in environmental regulation goes back to her time as an undergraduate student at the University of Queensland, Australia, where she undertook a joint bachelor of science/ bachelor of laws course, focusing on environmental science and biotechnology in her science studies. After graduating in 1996 with first class honors and a University Medal in law, Peel worked as a solicitor in the planning and environmental division of the Australian legal firm of Allen, Allen, and Hemsley Solicitors. ■

### Dagan’s Dissertation to Explore Israeli Emissions Trading System

Ruth Beltzer Dagan (LL.M. '00) is a J.S.D. candidate researching market-based instruments for pollution control, particularly emissions trading systems, with a focus on the application of such systems to control air pollution in Israel.

An Israeli citizen, Dagan is an attorney with eight years of experience in corporate practice and commercial litigation in Israel and in New York. She first became interested in environmental law while working on a major environmental litigation in Israel and decided to pursue a graduate degree in the field in the United States. After completing an M.S. degree in environmental management at NYU’s Robert F. Wagner Graduate School of Public Service, she joined the LL.M. program at the Law School, concentrating her studies in environmental law and policy. She researched such topics as environmental risk management by financial institutions and economic instruments for the control of pollution from transportation. Following the award of her LL.M., she was admitted to the Law School’s J.S.D. program.

Her dissertation, supervised by Professor Stewart, aims to advance understanding regarding the design and practical implementation of an emissions trading system for air pollution control in Israel. In addition to examining theories of trading systems design, her research draws on practical experience with implementation of trading mechanisms in the United States and other countries. The goal of the dissertation is to determine, based on worldwide experience in emissions trading, the feasibility of emissions trading in Israel. With her research, Dagan hopes to contribute to the growing base of international knowledge on the practical aspects of emissions trading, as well as provide additional tools for the design of Israeli domestic policy on pollution control.

# Public Interest

## Yesterday and Today

NYU School of Law's accomplishments in public interest law are marked at one end by the founding of the Root-Tilden Scholarship Program in the 1950s and on the other end by the past year's notable developments, including the funding of summer public interest internships for all J.D. students.



Below: The first class of Root-Tilden Scholars, who started at the Law School in 1951. Portraits of the Program's namesakes, Elihu Root and Samuel Tilden, hang on the wall behind the scholars.

# Tracing Our Roots



## The Root-Tilden-Kern Scholarship Program Celebrates 50 Years of Inventive Legal Education

BY JESSICA O'BRIEN

**I**t was 1951. Dean Emeritus Arthur Vanderbilt had nurtured a vision for New York University School of Law during his tenure as dean, and was seeing it come alive. Vanderbilt had successfully moved the Law School, then known as the Law Center, from three floors of a factory building in Washington Square to a Georgian structure named Vanderbilt Hall. The dedication ceremony, held that September, was attended by “internationally famous jurists, lawyers, educators, and laymen,” and received press attention from the *New York Times*, *Post*, and *Newsweek*.

In the same month, “20 top-flight students, fresh from the campuses of as many American universities” arrived at NYU School of Law and graduated in 1954, the first of more than 800 Root-Tilden Scholars who have graduated to date.

Vanderbilt, who was dean from 1943 to 1948 and then chief justice of New Jersey, conceived of the Root-Tilden Scholarship Program in the 1940s, setting into motion the transformation of the Law School from a neighborhood law school to a nationally and internationally esteemed institution. Vanderbilt was troubled that some of the best students and lawyers had become more concerned with making a living than they were with participating in American democracy. He feared that students were no longer receiving the proper encouragement and guidance to become “unselfish and competent public leaders,” and to serve as leaders of the bar.

In creating the Root-Tilden Scholarship Program, Vanderbilt put NYU School of Law on course to its top-tier level, and laid the groundwork for a model of public service legal education and scholarship that has influenced law schools nationwide. He named the Program for two alumni, Elihu Root and Samuel Tilden, who exemplified his ideal lawyer.

Elihu Root, who graduated in 1867, was a U.S. attorney in New York, a leading member of the American bar, secretary of war under President McKinley, and secretary of state under President Theodore Roosevelt. In 1912, he received the Nobel Prize for his contributions to international law. Samuel Tilden, a graduate of the class of 1841 and a renowned prosecutor, was a popular New York governor who ran for president in 1876 against Republican Rutherford B. Hayes. The results of this election were so close and hotly contested that a few news outlets even pronounced Tilden the winner in a Bush/Gore story of yore.

Interestingly, both Root and Tilden had played leading, and opposite, roles in the prosecution of the powerful New York City “Boss” Tweed in 1873, epitomizing the different forms public service can take. Tilden led the Citizens Committee of Seventy that combated the notorious Tweed Ring. Root, at 28, was a junior member of a distinguished defense team representing Tweed.

## Program Architecture

The original structure of the Root-Tilden Program, which celebrates the 50th anniversary of the graduation of its first class in 2004, has largely remained intact, although it has evolved to fit contemporary needs and culture. Vanderbilt designed the Program as a multipronged effort to build the reputation of the Law School, while also resolving what he saw as the “major shortcomings” of legal and pre-legal education: inadequate instruction in procedure, judicial administration, and public law and an insufficient undergraduate education.

To enhance legal education, Vanderbilt’s Program required scholars to take special courses in the humanities, social sciences, history, and natural sciences. In the early decades, they were also required to live together and to share mealtimes, for lunch and dinner, five days a week. To instill Vanderbilt’s values of public service, scholars regularly met with leaders in government, industry, and finance, just as the scholars do today through events like the Monday Night Speakers Series.

The Program was first funded by a \$360,000 check from the Avalon Foundation. It was described as a five-year “experiment” in a lengthy letter from the foundation’s trustees that outlined the terms of their financial support.

“The whole purpose of this project is to attempt to determine whether it is possible to train promising young men so as to help attain again for the American bar the high position which it once held as the reservoir of altruistic and competent public leadership,” they wrote.



Dean Arthur Vanderbilt (center), creator of the Root-Tilden Program, stands before Samuel Tilden’s portrait and welcomes two Root scholars, Clifford Starrett (’54) and Benjamin Crane (’54). To Vanderbilt, Tilden and Elihu Root were model lawyers.

Twenty scholars were selected for the first class, two from each of the country’s then 10 judicial circuits. They were all, by requirement, unmarried men, under the age of 28, who each received \$2100 a year to cover full tuition, books, and living expenses. Their success following graduation convinced the trustees at the Avalon Foundation that Vanderbilt’s Program had achievable goals, and they extended the Program with a gift of \$875,000, which was matched by the Law Center Foundation and the University.

“The original idea was to bring in people who would have the highest respect for the laws of the country, and who would

uphold them in the most ethical manner,” says Thomas Brome (’67), a Root alumnus. “These men would live together and dine together, forming a community of scholars who were infused with interests beyond the mechanical practice of law.”

Additionally, the Program’s promise of a debt-free legal education attracted students who might otherwise choose what were then more prestigious national schools.

“It was clear from my father’s comments that I would be crazy to choose Yale or Harvard when NYU offered what it did,” says David Washburn (’55), a Root-Tilden alumnus who had these three options. “We were a poor family from a small town in Vermont.”



Elihu Root



Samuel Tilden

## Root-Tilden-Kern Scholarship Program Celebrates 50 Years

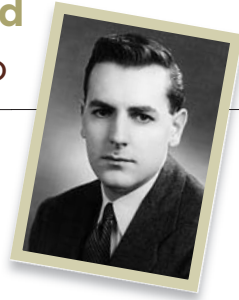
The Root-Tilden Scholarship Program, conceived by Arthur Vanderbilt while he was dean, is created with a donation of \$360,000 given by the Avalon Foundation

First Root-Tilden Scholars begin classes; Assistant Dean Ralph Bischoff oversees the Program

1950

1951

**“It was clear from my father’s comments that I would be crazy to choose Yale or Harvard when NYU offered what it did.”** DAVID WASHBURN (’55)



### Traditional Public Service

Like many of the Root alumni from the ’30s and ’60s, Washburn and Brome went on to work for prestigious firms in the private sector. Throughout their careers, both of them have been leaders in public service and also have given back to the Law School as substantial contributors, donating money and time.

Brome has been an instrumental force in bringing Roots together around the country for discussions about the Program’s financial issues and future framework, and to encourage active alumni support of the Program. An intern at the Legal Aid Society while a student at the Law School, Brome later served as Legal Aid’s board president while working as a partner at Cravath, Swaine & Moore. According to Professor Anthony Thompson, who served as faculty director of the Program for four years beginning in 1999, Brome is emblematic of Root alumni of his generation.

“The earliest generation was charged with the task of being successful in both the public and the private sector,” Thompson says.

Thompson notes that the definition of public service law has been through several iterations, shaped by social and economic changes. However, he believes that certain core values and a commitment to upholding the highest standards of the law are preserved, and regardless of the generation, Root Scholars all share an “incredibly strong allegiance” to the Program.

## The Life of a Great Lawyer: Five Phases

by Arthur Vanderbilt

Be a great advocate

Be a wise counselor

Be a leader in the activities of the organized bar

Be a public servant, in some public office

Be recognized as a leader of public opinion

### A Case in Point

Former New Jersey Supreme Court Justice Stewart Pollock (’37), for one, felt that it was his duty to go into public service if tapped for it, which he was — literally.

Pollock, who like Brome is a Law School trustee, worked in private practice for the better part of his early career, first for a firm that was a successor to Arthur Vanderbilt’s own firm, and then joining Clifford Starrett (’54), also a Root graduate, at Schenck, Price, Smith & King in Morristown, New Jersey.

“I was with Schenck, trying a case before our assignment judge who (after rendering a decision against me) resigned from the bench to run for governor,” says Pollock, referring to Judge Brendan Byrne.

Later that year, after Byrne won the New Jersey governor’s seat, Pollock went to file papers to appeal Byrne’s judgment and bumped into a friend who was soon to be sworn in as the New Jersey commissioner of human services. She invited Pollock to attend her swearing-in ceremony, and during the ceremony Pollock was tapped on the shoulder by a state trooper and invited to speak with Governor Byrne.

“There was a huge energy shortage at this time due to the oil embargo, and the New Jersey legislature responded by making the Board of Public Utilities full time and bipartisan,” Pollock says. “The [Democratic] governor told me he needed a Republican lawyer, someone he could trust, to serve full time on this board.”

The salary for this position was about a third what Pollock was making in private practice, and his oldest child was about to start college with three siblings lined up behind her. Pollock recalls losing 15 pounds in a week over the anxiety this decision caused.

“What kept bugging me was that I had accepted a public interest scholarship, and one of Vanderbilt’s tenets was that you should accept public service when offered,” he says. After conferring with his wife, he committed to two years in the position.



New York University Law Center Bulletin, November 1951, announces the arrival of the first Root-Tilden Scholars.

Avalon Foundation donates \$875,000 to the Law School to endow the Program permanently, and the Law Center Foundation and the University match the donation

1956

Arthur Curtiss James Foundation makes a grant of \$105,000 to support additional costs of the Program

1957



A 1960s Root-Tilden class visits the Supreme Court in Washington, D.C. Meeting with leaders in government and business is still instrumental in the education of today's Root Scholars.

**Without Vanderbilt's mission to revive the role of lawyers as unselfish public leaders, Stewart Pollock's legacy — and that of others to come — might have been quite different.**

Two years later, Pollock returned to private practice, but it was only a short while before he was tapped again.

When Byrne was reelected, he called on Pollock to serve as his chief counsel. Again, Pollock assumed that he would return to a private firm upon completing his term. Yet, two years later Byrne appointed him to the Supreme Court of New Jersey, and the Honorable Stewart Pollock served on the bench for the next 20 years.

"I saw Byrne recently and told him, 'I wonder what would've happened if I won that case!'" says Pollock, laughing. "I wouldn't have been down there filing those papers, but life is like that — serendipity rules."

In reality, serendipity would have played an entirely different role if not for the impact of the Root-Tilden Scholarship. Pollock may not have set forth on the path that led to the New Jersey Supreme Court, and from there to his seat on the board at the Law School's Institute of Judicial Administration and a teaching post in the Institute's appellate judges program. His sense of public service inspired his law clerks to make a gift in his name to the Law School's public interest programs after he retired from the Supreme Court in 1999 and reentered private practice with Riker, Danzig, Scherer, Hyland & Perretti. Without Vanderbilt's mission to revive the role of lawyers as unselfish public leaders, Stewart Pollock's legacy — and that of others to come — might have been quite different.

**Women Rally for Admission**

In the years that have elapsed since the earliest classes of scholars graduated, the law has undergone radical changes, as in 1963 when the U.S. Supreme Court decided in favor of Clarence Earl Gideon. In validating the right to free counsel in criminal cases, this decision created public defender offices across the country. *Gideon* broadened the scope of public service/public interest law, as did developments such as Ford Foundation funding for law reform organizations and the emergence of legal services offices. These advances, combined with the Vietnam War abroad and civil rights battles at home, ushered in a new era, during which the absence of women Roots became a frontline issue at the Law School.

That the inclusion of women was overdue was evidenced by the fact that some women just assumed they were eligible candidates and applied to the Program. In fact,

one woman applicant had an ambiguous name and was inadvertently selected to be interviewed for the Program. Consideration was revoked when she arrived on campus and the administration saw that she was, quite plainly, not a man. Though most people were in favor of admitting women Roots, it was not until the end of the '60s that this change occurred.

According to Janice Goodman ('71), it took power in numbers to lead a campaign for the inclusion of women into the Program, and in this respect the campaign had direct ties to the Vietnam War.

"I was part of the entering class of 1968, which was between 30 and 35 percent female," she says. "The class before mine was about 10 percent women, but our numbers grew significantly because the government was no longer giving draft deferments for men in law school, so they were going elsewhere."

The increasing number of women led to the formation of the Women's Rights Committee, and as a member, Goodman rallied for the inclusion of women Roots. The administration had long operated by the misconception that allowing women into the Program would violate the terms of a trust agreement. In fact, when the matter was explored further with the Avalon Foundation, its representatives said that including women was not prohibited. The Women's Rights Committee built its case and took it to the administration, which was overwhelmingly on their side. The scholarship began accepting women in 1969.

Erica Steinberger McLean ('72) was one of three women Root Scholars admitted that year, and while the "odd woman out" when it came to having a Root roommate in the dorms, she did not feel on the outs in any other respect. It was a natural progression to have women in the Program, not a radical change. The Program was made stronger for having advanced and adapted along with social and economic changes.

**"It is the sense of the faculty that women be admitted to the Root-Tilden Program in the first year, on the same basis as men...."** Letter to Janice Goodman ('71), a member of the Women's Rights Committee, from Professor Daniel Collins, quoting a faculty resolution (October 8, 1968)

Professor Norman Dorsen chairs a new committee to review Program, and the Dorsen Report essentially becomes the governing document for the Program

The Root-Tilden Program begins accepting women

Public service internship requirement added to Program

Special review committee, appointed by Dean Norman Redlich, evaluates the Program

**1969**

**1970**

**1978**

**1980**



Women in the '60s sought to apply to the Root Program and were first accepted in 1969. The Root-Tilden Class of 1979, pictured, reflects the changing makeup of Root classes 10 years later.



## Days of Struggles

In the 1970s, a hotly politicized era, it became commonplace for law students to use their education to advocate for change within the Law School as well as on matters of domestic and international policies. This atmosphere of reform led to a period that is often described as the Program's "mid-life crisis." Students and members of the administration began to question the structure and value of the Root-Tilden Program as it was originally conceived, and often clashed in their opinions of how it should move forward.

Part of the "problem" was that Vanderbilt's dreams had been realized. NYU School of Law had established itself as a national law school in no small part because the Root Program had attracted the "best of the best" students from every region of the country,

tions. This question spoke to the Program's philosophical core, as well as a changing financial reality.

"In 1967, a Root-Tilden Scholarship, which paid for full tuition, room and board, books, and a monthly allowance, was worth about \$10,000," Thomas Brome says. "The average salary to work for a firm was about \$7500 a year and a legal aid salary was about \$6500."

By 1970, economic conditions in the country had changed. The income gap between many public and private sector positions began to increase dramatically, and tuition costs shot up. Financial support

demanding that new sacrifices be made by lawyers who took public service jobs, and many top students nationwide were frustrated by what often seemed like a choice between earning a decent living and doing the work they believed to be important. These changes placed great pressure on the Root Program, as people began to question the validity of a program that funded the entire education of someone who might end up taking a high-paying job with a private firm. How could this be justified to loan-strapped alumni who weren't in the Root-Tilden Program, but who worked in low-paying public sector jobs after graduation? And yet, how could the Program mandate an absolute definition of what was, and was not, a job that served the public interest?

## Retooling for the Future

This crisis of the early '70s inspired then-Dean Norman Redlich to appoint a special review committee in 1978 to evaluate the Program. This committee recommended that the dean appoint an administrator to reform the Root-Tilden Program. Another committee was formed in 1980, chaired by Professor Norman Dorsen. Its review of the Program was presented in the Dorsen Report, which has become the governing document for today's Root Program. The report began by reaffirming the four major premises that Vanderbilt set forth:

- The scholarship should not be used as a general scholarship based solely on academic record.
- The scholarships should be awarded nationally, divided as equally as possible among the judicial circuits.
- The scholarships should be awarded by selection committees that include non-academics, such as federal judges and public service practitioners.
- The scholarships should promote a curriculum beyond what is normally required by the Law School and foster a sense of public responsibility.

**Vanderbilt's dreams had been realized. NYU School of Law had established itself as a national law school in no small part because the Root Program had attracted the "best of the best" students from every region of the country, elevating the caliber and expanding the geographic composition of the entire Law School.**

elevating the caliber and expanding the geographic composition of the entire Law School. It was no longer necessary to waive tuition to attract top students, and the Law School had less need to recruit from the judicial circuits to achieve geographic diversity.

Most challenging, however, was the question of whether Roots should be obligated to take jobs in the public sector, be they with government agencies or nonprofit organiza-

for Root Scholars was reduced to the cost of tuition with no additional stipend.

In hindsight, this moment in history is marked by unfortunate irony. Just as opportunities for lawyers to serve the public interest multiplied and broadened in scope, rising tuition costs made public service/public interest scholarship programs harder for law schools to sustain, and debts harder for graduates to pay. The widening income gap



Because of the Program's increasing expenses, the scholarship must be reduced to cover two-thirds of tuition for students

1984

Steven Kelban (center) becomes Program's first full-time executive director, bringing greater stability to the Program and serving until 1999

1987

NYU School of Law selected as laboratory to conduct an Innovative Financial Aid Study, which examines the impact of debt on student career choices

1994

Today's Root Scholars, such as the Class of 2004 pictured, are now integrated into the substantial public interest community at the Law School. The Roots share living spaces and attend special lectures and events with other Law School students interested in public interest law.



The committee then offered several recommendations. It stated that Root applications should filter first through the Law School admissions process and then through several additional screenings, with attention to a student's geographic location, academic achievements, and commitment to public service/public interest work.

In another recommendation, the committee addressed recruitment based on the judicial circuits. While the Program's reputation drew applicants from around the country, the committee continued to support the judicial circuit model to continue to ensure a broad geographic distribution in the Program.

The committee also saw it as essential for the Program's survival that it live within its financial means, and to that end, the

perspectives," which could mean entering the private sector despite having enrolled with different intentions. Further, the committee was not convinced that working outside the private sector necessarily meant working for the public interest, saying:

"Would an ardent environmentalist regard a lawyer for a construction union who argues for Westway or a lawyer for the Mountain States Legal Foundation who urges fewer restraints on strip mining as public interest lawyers?"

The Dorsen Report did not attempt to simplify this extremely loaded issue, but to ease tensions it suggested that an explicit

the Root-Tilden-Kern Program, as the pioneer in public service scholarship programs, has worked through its growing pains and matured, allowing it to remain relevant and respected today.

"We have the widest range of public interest programming of any law school in America, and a central part of that is the visibility that the Root Program has received in the last 50 years," Professor Thompson says.

Because NYU School of Law is so well known for its extraordinary program in public interest law, the Root Scholars have now become completely integrated into the extensive public interest community at the Law School. The activities sponsored by the Program, like the Monday Night Speaker Series, are open to all Law School students. Additionally, Thompson points out that tuition funding is available for the general population of students who enter public sector positions.

"What we are able to do with Roots on the front end, we are able to do for other public interest students on the back end, with loan repayment," he says.

### Continuing the Success

Currently, the Law School is involved in a financial campaign initiated by Jerome Kern ('60), whose name was added to the Program's title in 1999. Kern, along with NYU Board of Trustees Chair and former Law School Board Chair Martin Lipton

## "We have the widest range of public interest programming of any law school in America, and a central part of that is the visibility that the Root Program has received in the last 50 years."

**PROFESSOR ANTHONY THOMPSON**

committee recommended that scholarship amounts be reduced to two-thirds tuition; the change was implemented in 1984.

While the committee addressed the question of whether students who went through the Program could, in good conscience, take jobs in the private sector, it was not able to entirely resolve it. In exploring the philosophical side of this issue, the Dorsen Committee asked: Is it morally justifiable, in the modern age, for recipients of a merit-based scholarship to accept high-paying jobs in the private sector?

First, the committee acknowledged that "young people develop and alter their

payback system be instituted, so that a Root who made enough money was morally obligated to repay the scholarship as if it were a loan. This suggestion paved the way for the income-based loan repayment assistance programs that were developed later for non-Roots. In recent years, the debate over Root career choices has been addressed by an explicit moral obligation stating that Root graduates who earn a salary above the prevailing public interest salary should repay their scholarships.

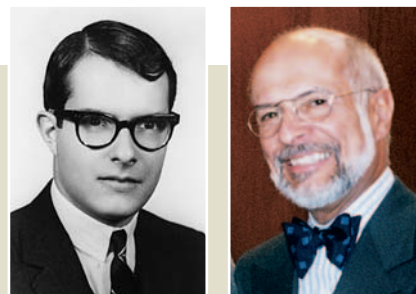
The question of what defines public service and public interest, however, remains open, and perhaps always will be. However,

Because of funding for the Financial Aid Study, Root-Tilden Scholars who begin Law School between 1995 and 1998 increase in number from 10 to 22 per year

**1995**

Root-Tilden alumnus Jerome Kern ('60) contributes \$5 million to the Program's endowment, doubling the existing endowment, and the Program is renamed the Root-Tilden-Kern Scholarship Program

**1998**



Jerome Kern, yesterday (1960) and today.

## Root-Tilden-Kern Leadership

### Faculty Directors and Year of Appointment

1970	Professor William Hutton
1977	Professor Daniel Collins
1978	Professor John Delaney
1979	Professor Eleanor Fox
1982	Professor Stephen Gillers
1985	Professor John Sexton
1988	Professor Oscar Chase
1990	Professor Paulette Caldwell
1993	Professor Holly Maguigan
1996	Professor Ronald Noble
1999	Professor Anthony Thompson
2003	Professor Vicki Been ('83)

### Program Directors and Year of Appointment

1987	Steven Kelban
1999	Monica de la Torre (interim)
2000	Victoria Eastus
2003	Deborah Ellis ('82)

('54) and Herbert Wachtell ('54), both Root graduates, and Leonard Rosen ('54) and the late George Katz ('54) founded Wachtell, Lipton, Rosen, Katz & Kern in 1963. Kern is now a Law School trustee and chief executive officer of Kern Consulting. He donated \$5 million to the Program, and jump-started the campaign to raise \$25 million more to ensure the future and continued renown of the Program.

Kern is among others who would like the Program to be able to again offer full-tuition scholarships to 20 students each year. The Root-Tilden-Kern endowment campaign is well under way and, based on the positive progress so far, those involved in the campaign expect to meet the \$30 million goal.

Kern's support and continued involvement with the Program is, he says, inspired by the caliber of the candidates.

"I served on a selection panel four years ago and I was amazed by the quality of the people who were applying for it, forget about those who won it," he says.

Today's Root-Tilden-Kern Scholars graduate from a top law school with an honor that has been celebrated for five decades. Three recent Root alumni, Alex Reinert ('99),

Andy Siegel ('99), and Monica Washington Rothbaum ('99), clerked for U.S. Supreme Court justices and the list of prestigious public interest fellowships that Root and non-Root students at the Law School receive annually is, in a nutshell, very, very long.

"The Program enhances NYU School of Law's reputation among the top law schools in the country, but it also provides a great public service," Kern says. "It would be greatly satisfying to see it get more support from the universe at large."

## On Course for Another 50 Years

Stewart Pollock also sees the future of the Program through a wide lens.

"The horizons of the law, and therefore NYU School of Law, have expanded over the past half-century, and hence the public interest that graduates can serve has also expanded," he says, explaining that he would accept a categorization of his own career in public service as provincial. "NYU School of Law students generally, and Roots in particular, now have the opportunity to serve on a much larger stage, in this country and other countries."

Pollock admires the late Supreme Court Justice William Brennan's philosophy about interpreting the U.S. Constitution as a living document, and he believes that the constitution of the Root-Tilden-Kern Program should be interpreted in kind — as relevant to the time in which we live. "The next generation will be fulfilling their obligation as 21st-century lawyers," Pollock says.

True to Vanderbilt's ideals, the Root-Tilden-Kern Scholarship Program continues to foster a great tradition of public service within the legal profession. As the Program celebrates the 50th anniversary of its first graduating class in 2004, it is fitting that a new Program director, Deborah Ellis ('82), and a new faculty director, Professor Vicki Been ('83), both Root graduates, have taken the helm (see p. 80), setting the Program on course for a centennial celebration. ■

# Root-Tilden-Kern 50th Anniversary Program

FRIDAY, APRIL 16, 2004

12:00 – 2:00 p.m.  
Luncheon  
*With keynote speaker*

2:15 – 3:15 p.m.  
Plenary Session I\*

Title: My Best Innovation for Public Service (1 CLE credit)

3:45 – 4:45 p.m.  
Plenary Session II\*

Title: Going Global with Public Service Law (1 CLE credit)

7:00 – 11:00 p.m.  
Gala Dinner

2004 REUNION PROGRAM  
SATURDAY, APRIL 17, 2004

8:45 – 10:30 a.m.  
Two concurrent academic panels\*  
(2 CLE credits)

11:00 a.m. – 12:45 p.m.  
Two concurrent academic panels\*  
(2 CLE credits offered)

1:15 – 2:45 p.m.  
Law Alumni Association Awards Luncheon

7:00 – 9:00 p.m.  
Class receptions and dinners

9:00 p.m. – Midnight  
All Reunion Dance

\* Each plenary session and academic panel will feature faculty and alumni experts in that field.

For more information, contact the Office of Alumni Relations at (212) 998-6401 or [law.reunion@nyu.edu](mailto:law.reunion@nyu.edu).

Dean Revesz welcomes panelists who help select the incoming class of Root-Tilden-Kern Scholars during Root Selection Day 2003.



Root-Tilden-Kern Scholarship Program celebrates the 50th anniversary of the graduation of its first class of scholars

2004



# Profiles in Service

BY JESSICA O'BRIEN

Like many NYU School of Law alumni, the five decades of Root-Tilden graduates are an impressive group. From improving neighborhood schools to advancing international human rights, Root alumni exude the Program's values of public service in their everyday lives. The profiles that follow, while reflecting only an inkling of the accomplishments of the Program's many esteemed former students, provide a taste of the breadth and depth of the commitment of these alumni to public service.

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## Donald Elliott ('57)

On February 19, 1973, an editorial in *The New York Times* announced that Donald Elliott would be concluding his term as the chairman of the City Planning Commission under former Mayor John Lindsay.

"Mr. Elliott brought to New York some of the brightest planning talent in the country," the *Times* wrote. "The planning job has been done with integrity, vision, and skill."

As one of the earliest Root-Tilden Scholars, now a recognized leader in land use regulation, Elliott was a product of the same era that prompted former Dean Arthur Vanderbilt to create a public service scholarship. The fond farewell from the *Times* signified that

## 1950s

Elliott was, early in his career, poised to achieve everything that Van-

derbilt had desired for his scholars, becoming a political leader and demonstrating the growing reputation of NYU School of Law.

From his end, Elliott credits the Root Program in many ways with determining his career. "It was an extraordinary experience for me and led to all the things I've done since."

Elliott accepted his first job with Webster & Sheffield because the firm's partners epitomized his interests in public service. One of these partners was John Lindsay, who had just retired as executive assistant to the U.S. attorney general. When Lindsay was elected mayor of New York City in 1966, he asked Elliott to join his administration as counsel, and months later Elliott was appointed chairman of the planning commission.

As chairman, Elliott was a leader in exploiting the planning potential of transferable development rights to support important projects in New York City. He was a major figure behind the creation of the city's South Street Seaport, convincing several banks to release their multimillion-dollar mortgages on the historic properties of South Street. In exchange, they were granted development rights that could only be sold to

developers of designated development sites in the vicinity of the Seaport.

Elliott was also instrumental in the creation of the Trust for Cultural Resources, a public benefit corporation that allowed non-profit institutions to borrow money at triple tax-exempt rates, which was fairly unique to its time. The trust was a pivotal resource in financing major expansions of the Museum of Modern Art in 1980 and 2001.

“We’ve floated well over a billion dollars in bonds for cultural institutions, including the Museum of Natural History, WNET/Channel 13, and the botanical gardens in the Bronx,” says Elliott, who continues to represent the trust.

In these efforts, as in many others, he sought to foster developments that were desirable from an investor’s standpoint, but also protected the long-term interests of the public. His success in this is evident throughout New York City, from Manhattan to the outer boroughs, artist’s communities to industrial parks, Carnegie Hall to Grand Central Station.

Elliott has also served a great number of companies and organizations as a board member, including the New York City Health and Hospitals Corporation; the New York Metropolitan Transit Authority; the New York Urban Coalition; WNET/Channel 13; and Keyspan Energy. He currently serves on the boards of the Independence

Community Bank, Long Island University, the Brooklyn Philharmonic, and the Isamu Noguchi Foundation, and is involved with a city-sponsored effort to add seven-million square feet of new office space and



**“In every instance, I thought I was playing a useful public role and adding to the quality of life in the city.” DONALD ELLIOTT ('57)**

thousands of new apartments in downtown Brooklyn. His involvement in the project bodes well for its success. During Elliott’s six years as chairman of the planning commission from 1967 to 1973, 69-million square feet of office space were built in New York City compared with

about six-million square feet that has been built in the past decade.

Elliott says that the projects he has been involved with over the years are not as varied as they might seem, at least in terms of the role he played and the reasons behind his involvement. “In every instance, I thought I was playing a useful public role and adding to the quality of life in the city,” he says.

Whether working in the private or public sector, Elliott’s greatest talent is as a lawyer-cum-diplomat: He can identify and merge the land use needs of people from diverse — even opposing — vantage points, and ably serve their mutual interests.

### **Thomas Buergenthal ('60)**

As a member of the International Court of Justice (ICJ), the principal judicial organ of the United Nations, Judge Thomas Buergenthal has spent the past few years living in Europe. His judicial seat is in The Hague, many miles northwest of Lubochna, Slovakia, where he was born, and worlds away from Auschwitz, where he witnessed firsthand some of the worst human rights abuses of the modern age. Since those times, he has seen tremendous progress made in the field of human rights.

“Today there are many more democratic countries, the Soviet Empire is gone, there is no more apartheid, and Eastern Europe is free,” he says.

In March 2000, Buergenthal made history when 19 nations, in addition to the United States, nominated him as their candidate for election to the International Court of Justice. These elections take place in the U.N. Security Council and the U.N. General Assembly. Only one nomination is needed, and while it is customary for countries to give a candidate additional nominations as a nod of support, this showing was unprecedented. The countries nominating Buergenthal were so vastly different from one another that he may be among their few points of agreement.

Buergenthal was extremely gratified by the international community’s overwhelming favor of his appointment, and says that he could have hoped for little more when he began his legal studies in 1957.

He came to NYU School of Law from Bethany College in West Virginia, after a childhood hard to fathom. Born in Slovakia in 1934, Buergenthal was in Poland at the age of five when Germany invaded during World War II. With the outbreak of war, he and his family were unable to leave



Poland and eventually were forced into the Kielce ghetto, then the Auschwitz concentration camp, and later the Sachsenhausen camp. Following the Soviet liberation of Sachsenhausen in April

1945, Buergenthal was placed in an orphanage. He later reunited with his mother, who had also survived, and emigrated to the United States in 1951.

After graduating from college, the young immigrant sought financial assistance to pursue a graduate degree. In being awarded a Root-Tilden Scholarship, his tuition and room and board were covered and he was even left with money to spare.

“We were given \$72 a month for books

**“You have to believe you’re doing something that will have beneficial consequences.”**

**THOMAS BUERGENTHAL ('60)**

and spending money, which was the most I ever had,” he says.

After receiving his J.D. from NYU School of Law in 1960, Buergenthal received his LL.M., and later his J.S.D. in international law, at Harvard Law School. He found a niche in academia, which he says afforded him great freedom to write and think. He has since authored more than a dozen books and a large body of articles on the subjects of international and comparative law and human rights.

## **1960s**

Buergenthal launched his professorial career at the University of Pennsylvania Law School, later becoming a faculty member at SUNY Buffalo, then at the University of Texas. From there, he moved quickly from one prestigious academic post to the next, serving as the dean at American University’s Washington College of Law; director of Emory University’s Carter Center Human Rights Program; and director of George Washington University’s International Rule of Law Center.

Buergenthal’s first diplomatic assignment was to represent the United States at UNESCO on human rights issues, primarily

as a negotiator on the development of rules dealing with human rights complaints. In 1979, he was elected to the Inter-American Court of Human Rights, based in Costa Rica, first as a judge, and then as its vice president and president. He was suited for this task because the court was modeled after the European systems for the protection of human rights, and he had an intimate knowledge of those systems. He served the court for 12 years, the maximum time afforded by its two-term limit.

After leaving the court, Buergenthal was named to the U.N. Truth Commission for El Salvador, during which time he investigated the large-scale violations that had been committed during the 11-year civil war, from 1979 to 1991. In its report, the commission was successful in uncovering the truth about many of the murders that were committed on both sides, and the report's findings were unchallenged by any of the accused.

"You have to make sure you retain your credibility when you prepare a report because if you lose that, you damage the whole effort to protect human rights," Buergenthal says.

In 1995, Buergenthal was brought in as the first American member of the U.N. Human Rights Committee, which reviews how states comply with their obligations under the U.N.'s principal human rights treaty. In his four years with the committee, he saw gradual progress made with countries that had terrible human rights records. Through this experience, he relearned the importance of having "a great deal of patience, and a lot of hope."

"It's a very slow process to get governments to treat their people better," Buergenthal says, "so you have to believe you're doing something that will have beneficial consequences."

As one of the youngest survivors of Auschwitz and now an ICJ judge, Buergenthal has not learned this lesson from afar. He is himself a symbol of the advances that have been made in the field of human rights since World War II, and a powerful force behind these advances.

## 1970s **Mindy Farber ('77)**

When Mindy Farber applied for the supposed "Ruth Tilden Scholarship for Women" at NYU School of Law at the recommendation of her undergraduate advisor, she was pretty confident about her chances. As a member of the first co-ed class at Johns Hopkins University, she had been very active in the campus effort to raise awareness and promote the interests of the women's movement. A

## "The Root Program was very instrumental in my building a private practice with a real conscience." MINDY FARBER ('77)



*summa cum laude* graduate, Farber founded the women's center, which became a prominent organization on the Johns Hopkins campus, and she recruited celebrity figures like Jane

Fonda and Anne Sexton to visit the school and give lectures.

"After I wrote, NYU sent me an application, and I found out that it was the Root-Tilden Scholarship, for men *and* women," Farber says, laughing. "I thought, 'Oh, well, that takes in a whole other half of the population.' But it turned out I got the Ruth Tilden — I mean, Root-Tilden — anyway."

Like most of her peers in the Program, Farber spent her Law School summers doing public interest work, and after graduation she went on to work for the federal government in the Department of Labor's Office of Civil Rights. She then moved into private practice, and made partner at Paley, Rothman, Goldstein, Rosenberg & Cooper. Twelve years ago, she made one of the hardest decisions of her career and started her own firm, Farber Taylor LLC, which is now the largest labor and employment law practice in the Maryland suburbs. As her own boss, Farber is better able to balance her legal work with her responsibilities as a mother.

"When my kids had daytime recitals — you know, the type where they sing about planets — it was easy for me to run out to see them," Farber says.

Despite the fact that her own kids have grown past the traditional planet-singing age, she maintains a family-oriented firm, where attorneys are given generous vacation time and are expected to work reasonable hours over a five-day week. In the past two years, four babies were born, and their parents — mothers and fathers — were equally encouraged to take the time needed with them.

Farber says she runs Farber Taylor like a democracy, including everyone's input on large decisions. She encourages all the attorneys to become involved with public interest activities, and the firm at-large devotes a good amount of time to pro bono work for a variety of organizations.

"The Root Program was very instrumental in my building a private practice with a real conscience," she says, noting that she keeps in close contact with her peers from the Root-Tilden Program. These former scholars are spread around the country, involved in widely diverse activities, but according to Farber they all share a sense of conscience that will never disappear.

Among Farber's many community positions are commissioner of the Montgomery County Office of Human Rights; member of the Montgomery County Commission for Women; chair of the Montgomery County ACLU; and president of the Women's Bar Association. Farber is actively involved with her alma maters, Johns Hopkins University, where her daughter is currently enrolled, and NYU School of Law, where she is a member of the prestigious donor group, the Weinfeld Associates. Farber serves on the advisory board of the Center for Labor and Employment Law at the Law School, and has participated in Law School speaking engagements.

Farber's résumé reveals enormous breadth and energy, making one curious about how she achieves what she does over the course of a working day. She is the founder of a successful law firm, a leading community activist, a mother, and author of countless articles, including pieces for *The New York Times* and *The Washington Post*, and of the book, *How to Build and Manage an Employment Law Practice*.



"The Root Program certainly made a difference for me," Farber says. "The Program forever gave me the balance between the work I do for my living and the things I do for my community."

## **Elaine Fink ('80)**

Elaine Fink was not a stranger to the courtroom when she began at NYU School of Law. After graduating from the University of Michigan, she moved to Chicago and worked as a community organizer, representing the interests of low-income tenants and homeowners on urban housing issues. Her persuasive tactics as an organizer were, however, distinctly

# ROOT - TILDEN ALUMNI NEWS

Summer 1980

New York University School of Law



CLASS OF 1980

CHRISTOPHER AIDUN received the Edmund Cahn Law Review Award this year. This year he was elected to the Board of Directors of the Law School Association.

## CLASS OF 1980

(front, l. to r.) Debra Chestnut, Amelia McIntyre, Elaine Fink, Sharon Hom, Matt Foreman, Bev Groulx, Susan Rogers. (second, l. to r.) Eleanor Fox (Dr.), Chris Aidun, Marisa Ghosh, Janice Husock, Heidi Noun, Annie Wong, Mike Collins. (back, l. to r.) Charlie Hey, Carlos Chen, Bev Laitrope (R-T Admin. Aide), Doug Phillips, Dave McDonald, Tim Lindon, Tom Eisenberg, Karen Freedman.

J. MATTHEW FOREMAN, who served as SBA President during his third year in Law School, received the Vanderbilt Medal at Convocation, in recognition of his outstanding service to the Law School. Matt will join the West Virginia Department of Corrections.

... FREEDMAN will be a pro-... office of the ... U.S.

Elaine Fink (front row, third from left) and her classmates from the Root-Tilden Class of 1980 are featured in a 1980 newsletter for Root-Tilden alumni.

in high-poverty districts.

“Like other urban districts, this one was getting \$18 to \$20 million, targeted to low-income, low-achieving youth, and they had very little to show for what they did with it,” she says. “The district agreed that they were not effectively using the money, so I created a Title I advocacy group from around the community.”

This community group included representatives from a number of organizations, and among them Fink was the only lawyer.

She was charged with the task of educating herself

about the rules governing Title I funding and conveying what she learned to the group.

“We ended up in a project to reform what they were doing with their \$20 million,” Fink says. “We worked with parents and teachers in different schools to brainstorm and figure out how they could more effectively use this money.”

One of the group’s key findings was that individual schools needed formal training in money management, so that they could be trusted to have more discretion about how funds were used, instead of relying on the often ill-informed instructions from the district office. Fink’s advocacy led the way for this reform as well. The school district leadership was so impressed by the strategic reform plan initiated by Fink’s advocacy group that they later used it as a blueprint for a district-wide school reform effort.

“What works with Title I funds works for all students,” Fink used to say.

She remains involved with urban school reform as part of her ongoing advocacy work, which she sees as enormously important, especially as part of a larger picture. Fink says that what underlies her 23 years as an attorney is not the specific nature of the projects she has been involved with, but rather a belief in and commitment to the potential to improve the lives of the poor through civil legal advocacy.

In defining the lasting impact that she hopes to have, Fink says, “I would prioritize the need for full funding of civil legal services to all low-income individuals and families, so that poor people can access our justice system as readily as people with the funds to hire attorneys.”

Each day she works to that end-goal. These days her bugs stay locked in the jar, but the spirit that set them free is still at large.

# 1980s

**“The Program was my foundation in Law School. It gave me a small group of people who had chosen law school for reasons that overlapped my own.” ELAINE FINK ('80)**

different than those that she employs as a lawyer.

“I was trying to convince a judge to force a landlord to keep his building in compliance, and I set a jar full of cockroaches free in the courtroom,” she says. “Live cockroaches.”

While the judge was less than pleased, Fink’s skin-crawling strategy likely had a great impact, and she looks back at the event with distanced amusement, more justified than sheepish. “That’s what an organizer does,” she says. “You do whatever you can do that’s not illegal to try and persuade action.”

Through her work as an organizer, Fink found that she greatly admired the lawyers she worked with from the Legal Assistance Foundation of Chicago, despite the fact that they were so busy she could barely get in line to meet with them. She decided to apply to law school, vying for a Root-Tilden Scholarship from the Seventh Circuit.

“I thought legal skills would add a level of effectiveness to my advocacy that I didn’t have as an organizer,” Fink says. She was thrilled to participate in the Root Program for reasons that went beyond its financial support.

“The Program was my foundation in Law School,” she says. “It gave me a small group of people who had chosen law school for reasons that overlapped my own.”

In her first job as an attorney, with South Brooklyn Legal Services, Fink was able to do

housing advocacy and represent people on some of the same issues she had observed as an organizer, which she found enormously satisfying. Because many of her clients were Haitian and Latin American, she was also able to use her French and Spanish language skills. She worked there for four years before moving on to work for the Legal Aid Society of Greater Cincinnati, where she has remained for 19 years.

Fink has become an active member of her community in Cincinnati, serving on the board of trustees at FreeStore/FoodBank and as former president and current member of Cincinnatians Active to Support Education (CASE). As a senior attorney with Legal Aid, she manages education, mental health, and juvenile advocacy. She jokes that she transitioned from “one ‘e-word’ to the next” in moving from housing to educational advocacy. “I used to keep people from being evicted, now I keep kids from being expelled,” says Fink, who is concerned about expulsion as a mass disciplinary tactic.

In doing education advocacy for kids with special needs and discipline problems, Fink has combined her background as a community organizer with her skills as a lawyer. In the early 1990s, she spearheaded a landmark project to encourage officials in a large urban school district to make better use of Title I funding, which at that time was federal money to improve student achievement

## Derwyn Bunton ('98)

Like many of his high school peers in southern California, Derwyn Bunton's goals mirrored the careers of his heroes. However, probably unlike most of his fellow students, his heroes were lawyers, like Thurgood Marshall, the first African-American Supreme

**"I want to...keep giving people a voice when they need one."**

DERWYN BUNTON ('98)

Court justice, and Charles Houston, the NAACP attorney who is popularly known as the man who killed Jim Crow.

"We didn't have a lot of money growing up, and it was real easy for folks to ignore us," Bunton says. "It always seemed to me like it was really hard to ignore a lawyer."

After graduating with a degree in political science

# 1990s

from San Diego State University in 1995, Bunton won a Root-Tilden Scholarship and went directly to NYU School of Law. During law school, he focused his energies on becoming a public defender, but decided to change gears after he had an on-campus interview with David Utter, who directs the Juvenile Justice Project of

Louisiana (JJPL). In April 1998, Bunton accepted a position with the project, where he remains as a senior staff attorney.

Bunton took the job, he says, because he was impressed that the organization was "reform-oriented, very ambitious, and wanted to attack the problem of juvenile justice in Louisiana from a number of fronts."

The JJPL provides direct representation to juveniles, from pre-trial hearings to Supreme Court arguments, and they also do impact litigation and community organizing and provide assistance to the state legislature on reform efforts. In 1998, the JJPL sued the state of Louisiana over the conditions of some of its juvenile incarceration facilities, and is now monitoring the settlement agreement.

When Bunton arrived at the JJPL, one of its community groups, Families and Friends of Louisiana's Incarcerated Children, was in the nascent stages of development. To garner attention and support for the group, as well as for the project's mission, a mock jazz funeral was organized to mourn "the departed dreams of Louisiana's incarcerated youth." (The jazz funeral is a New Orleans tradition, normally used to celebrate the passing of a loved one.)

"We had a judge, a legislator, and over 100 people walking in the rain behind a horse-drawn carriage that was pulling a casket to symbolize the dead and departed dreams," says Bunton, adding that the event was leading news in all the local media outlets. "The parents felt so good and empowered, like folks are going to have to listen to them sometimes, and I felt like the things we do matter more than ever."

In addition to his work with the JJPL, Bunton sits on the advisory board for the American Bar Association's Southern Juve-

nile Defender Center, and is a member of the Louisiana Supreme Court Juvenile Court Rules Committee. He acts as a mentor for the Public Interest Law Center at NYU School of Law, and is a former Northeast regional director of the National Black Law Students Association. The JJPL is also an organization where current Law School students have found summer opportunities. A current Root Scholar, Adrienne Austin ('05), interned in summer 2003 for the JJPL.

Looking ahead, Bunton describes his primary career goals as being money driven,

## Root-Tilden-Kern Scholars

### Class of 2004

Sarah Bray, *Starr Foundation Scholar*  
Liyah Brown, *Soros Justice Scholar*  
Calvin Christopher  
Alina Das  
Alexander Fong  
Kati Griffith  
Kathleen Guneratne, *Sullivan & Cromwell Scholar*  
Mary Kathryn Harcombe  
Joshua Kagan, *Jacobson Family Foundation Scholar*  
Rebecca Kiley, *Hale & Dorr Scholar*  
Brandon Lofton  
Sonja Shield, *Sinsheimer Service Scholar*  
Anika Singh  
Anna VanCleave

### Class of 2005

Zabrina Aleguire  
Adrienne Austin  
Gaylynn Burroughs, *Jacobson Family Foundation Scholar*  
Lurie Daniel, *Hale & Dorr Scholar*  
Ivan Espinoza-Madriral, *Sinsheimer Service Scholar*  
Matthew Ginsburg  
Elizabeth Green, *Sullivan & Cromwell Scholar*  
Miranda Johnson, *William and Mary Sterling Scholar*  
Angelica Jongco  
Mina Kim

Nicolas King  
Ikenna-Phillip Odunze  
Rashida Ogletree, *Starr Foundation Scholar*

### Class of 2006

Arlen Benjamin-Gomez  
Brandon Buskey  
Jared Bybee  
Surabhi Chopra  
Gabriel Freiman, *Sinsheimer Service Scholar*  
Adam Heintz, *Sullivan & Cromwell Scholar*  
Shannon Kahle, *Lindemann Family Public Service Scholar*  
Anne Lai, *Starr Foundation Scholar*  
Lais Washington, *Hale & Dorr Scholar*



Derwyn Bunton (top row, fourth from right) and his 1998 classmates at their orientation in August 1995.





NYU School of Law's current leaders in public interest: Deborah Ellis ('82), assistant dean for public interest law and director of the Root-Tilden-Kern Scholarship Program; Dean Richard Revesz; Professor Anthony Thompson, past faculty director of the Root Program and professor of clinical law; and Professor Vicki Been ('83), new faculty director of the Root Program.

# Dean's Initiatives in Public Interest

During the last year, Dean Richard Revesz has undertaken several initiatives to expand and enhance NYU School of Law's historic mission as the leading law school for public interest law.

## Commitment to LRAP

The longstanding Loan Repayment Assistance Program (LRAP), which was significantly expanded by an anonymous donor to assist the classes of 1998 through 2001, will now continue in its strengthened form as an established part of the Law School's institutional commitment. Under this Program, students who work in public, community, and government service positions following

graduation receive assistance from the Law School in paying their Law School loans, up to the full amount.

NYU School of Law has been an innovative force in its approach to public service. LRAP began providing benefits to graduates who completed their degrees in 1984. The class of 2003 will be the 20th class to benefit from this Program and the Law School's longstanding commitment to public service.

Currently, 257 participants in the Program serve underprivileged and underserved populations all over the world.

"A commitment of this magnitude is extremely expensive," Revesz says. "But the needs of millions of people who have no access to justice in our nation are so great that I've decided to make this commitment without waiting for the external fundraising that we will need to fully finance the Program."

Since summer 2002, approximately \$6 million has been raised to ensure the commitment.

## PIC Grants Expanded

Revesz also significantly increased the Law School's support for students who choose to do public service work in their first and second summers by broadening its program of Public Interest Committee (PIC) grants.

## Helping Students Pursue Their Dreams

### Dean's Expansion of PIC Grants Gives Student Her First-Choice Internship

Naomi Sunshine ('05) wanted to spend the summer after her first year at NYU School of Law expanding on the type of work she had done before law school with Housing Works, an AIDS service group. After her undergraduate education, Sunshine spent seven years working for various public service agencies, and these experiences shaped the distinct goals that she has as a Law School student, and as a future public interest lawyer.

"I am interested in doing impact litigation after I graduate," she says. "Housing Works does impact litigation that affects every person with HIV in New York who needs to deal with health care, and that is what really inspired me to go to law school."

Sunshine hopes to use her law degree as a tool in effecting large-scale social change. "I see a lot of problems in the world and want to make my own tiny dent in working to change them," she says.

When she began researching her summer opportunities, Sunshine decided she could achieve her goals best by taking an internship with the American Civil Liberties Union. There was, at that time, a hurdle in her desired path. She was advised that she was unlikely to receive funding in the PIC lottery for first-year summer internships. The lottery was particularly competitive for the class of 2005. While disappointed, she also saw the positive side.

"An unprecedented number of students applied for the lottery," she says, "which speaks to the Law School's ability to attract people who are interested in working outside the private sector."

Because internships at the ACLU are generally uncompensated and more funding is available for environmental law positions, Sunshine started exploring internship opportunities in the environmental field. There were connections to be made between the two, but she was admittedly stretching her interests.

When Dean Revesz announced that the PIC grants would fund all first-year summer internships, including those for summer 2003, Sunshine was relieved and thrilled. She accepted an internship working with the ACLU's Lesbian and Gay Rights and AIDS Project, her unequivocal top choice.

While she says that she was delighted that this funding enabled her to pursue her own interests, she is most excited about what the dean's initiative says about NYU School of Law on a larger scale. She believes the additional funding will further secure the Law School's reputation among top-tier schools as the best place to study public interest law.

"The Law School is really pulling its weight to staff public service organizations with great students," she says, with an outlook as bright as her surname.



Flashback: Deborah Ellis (middle) reconnects with fellow scholars Roberta Koenigsberg ('82) and Scott Rosenberg ('82). Ellis ('82) was appointed this year as the Law School's first assistant dean for public interest law.

**“As an NYU alumna myself, I have always been proud of NYU’s motto, ‘the private university in the public service.’ My goal is for all graduates to incorporate public service into their careers.” DEBORAH ELLIS ('82)**

For many years, NYU School of Law guaranteed PIC funding for second-year students and also devoted substantial resources to fund first-year students. However, because the number of public interest students at the Law School has been steadily growing, many first-year students who wanted to do public service internships this past summer received low numbers in the lottery and, despite the Law School’s generous funding of summer internships, it seemed that they might not receive funding. In February 2003, the dean announced that he would guarantee summer funding for all J.D. students, an announcement that was received by the students with relief and gratitude. (For just one example, see “Helping Students Pursue Their Dreams,” on p. 79.) In summer 2003, more than 300 students performed public service across the nation and around the world.

Moreover, to ease the financial pressure on students working in public service jobs over the summer, the Law School also increased the amount of the grants. First-year students now receive \$4,000 and second-year students receive \$5,000.

“With the significant expansions that we are now adopting, we further strengthen our institutional commitment as ‘a private university in the public service,’” Revesz says.

The expanded PIC program is supported in part by grants for environmental work by the Korein Foundation, the family foundation of alumna Elysabeth Kleinhans ('88); grants for students interested in international public interest placements established by Root-Tilden alumnus Eric Koenig ('84); and funds raised by the student-run annual Public Service Auction.

### More International and Government Placements

Revesz plans to expand the Public Interest Law Center’s (PILC) capabilities. As an example, Revesz and new PILC Director Deborah Ellis ('82) want to increase PILC’s international and government job placements, which will capitalize on the Law School’s

leadership in both public interest law and international and global programs. The Public Interest Law Center, created in 1992 at the Law School, is a national model for the promotion of public service and one of the largest programs of its kind in the nation.

### New Directors Named

This year, Dean Revesz appointed Deborah Ellis as assistant dean for public interest law, a newly created position. NYU President John Sexton also appointed Professor Vicki Been ('83) as the new faculty director of the Root-Tilden-Kern Program. For the first time in the Program’s history, both its director and faculty director are graduates of the Root Program. The appointments signal the Law School’s dedication to strengthening its commitment to public service and developing new public service initiatives.

#### Deborah Ellis ('82)

Ellis, as the assistant dean for public interest law, will direct both the Public Interest Law Center and the Root-Tilden-Kern Scholarship



Program. Since 2001, Ellis has been an acting assistant professor in the Lawyering Program and also taught Sex Discrimination Law.

“The appointment of Deb Ellis is a critical part of our initiatives to extend NYU’s historic mission as the leading law school for public interest law,” Revesz says. “Deb’s passion, experience, and dedication will undoubtedly help launch a whole new generation of lawyers into public interest law.”

Prior to joining the Lawyering faculty, Ellis had a distinguished public interest career, including four years as legal director of the NOW Legal Defense and Education Fund. She also served as legal director of the ACLU of New Jersey, and as a staff

## Five Students Awarded Skadden Fellowships

The Skadden Fellowship Foundation, described as “a legal Peace Corps” by *The Los Angeles Times*, was established in 1988 as an affirmation of a commitment to public interest law by the law firm Skadden, Arps, Slate, Meagher & Flom. The foundation awards 25 fellowships per year to graduating law students and outgoing judicial clerks. Fellows have the freedom to pursue their individual interests in public interest law. They have provided legal services to the poor, elderly, homeless, and disabled, as well as those deprived of their human rights or civil rights.

This year, five of the 25 Skadden Fellows are alumni of NYU School of Law. These outstanding individuals are listed below with the organization with which they will be working.

#### Oliver Chase ('03)

The Legal Aid Society Community Law Offices  
New York, NY

#### Claudia Flores ('02)

Main Street Legal Services  
Flushing, NY

#### Salvatore Gogliormella ('02)

Lawyers Alliance for New York  
New York, NY

#### Sandra Park ('02)

The Legal Aid Society,  
Bronx Neighborhood Office  
Bronx, New York

#### Claudia Wilner ('02)

Urban Justice Center  
New York, NY

attorney at the ACLU Women’s Rights Project and at the Southern Poverty Law Center. She has previously taught at Rutgers and Yale College.

“I believe NYU School of Law has the No. 1 public interest program in the country, with our committed students, dedicated faculty, generous financial support, and extensive alumni network,” Ellis says. “I’m excited to build on this superb foundation and take the Law School to the next level in public service.”

“As an NYU alumna myself, I have always been proud of NYU’s motto, ‘the private university in the public service.’ My goal is for all graduates to incorporate public service into their careers.”

To do this, Ellis believes that PILC should promote an expansive paradigm of public service. She notes that there are a multitude of opportunities for lawyers who want to do public service, including direct

legal services; impact organizations; international human rights organizations; public defender offices; prosecutorial agencies; national, state, and local governments; foundations; community-based organizations; mediation services; “low bono” firms (representing clients who are middle income); and labor unions. Ellis acknowledges that there may be critics of this expansive view. For example, some of her public defender friends are not comfortable with calling prosecutors public interest lawyers. But to Ellis, the criminal justice system will work best if we have excellent lawyers on “both sides of the cases.”

“The network of Law School alumni doing public service is unparalleled,” observes Ellis. “In my own class alone (1982), many of my classmates are running significant public interest organizations throughout the country.”

In her new position, Ellis hopes to increase the connections between current students and alumni. For example, she is encouraging all alumni doing public service to join the PILC email alumni network, so that current students may contact them for career advice. Interested alumni can sign up for this network at [www.law.nyu.edu/depts/publicinterest/career/network/register.html](http://www.law.nyu.edu/depts/publicinterest/career/network/register.html).

#### Vicki Been ('83)

Been, a Root graduate and professor at NYU School of Law, was named faculty director of the Root-Tilden-Kern Program this year. In accepting this appointment, Been continues to demonstrate her commitment and dedication to the success of the Program and to its many students and alumni.

“The appointment of Vicki Been as faculty chair of the Root-Tilden-Kern Scholarship Program is a critical step forward in our plans to further strengthen our historic role as the nation’s first law school to establish a scholarship program for training lawyers for public and community service,” states NYU President John Sexton, who announced Been’s appointment. “Professor Been has been at the cutting edge of legal scholarship in environmental and land use law for more than a decade.”

Been graduated from NYU School of Law in 1983 and clerked for Judge Edward Weinfeld of the U.S. District Court for the Southern District of New York and for Justice Harry Blackmun of the U.S. Supreme Court.

Been, who joined the Law School’s faculty in 1990, teaches Property; Land Use Regulation; State and Local Government; and seminars on topics ranging from

environmental justice to the Fifth Amendment’s Takings Clause. She co-teaches the Colloquium on the Law, Economics, and Politics of Urban Affairs.

Been writes extensively about land use regulation. Her recent work has explored the effect investor protections in the North American Free Trade Agreement and a growing number of other bilateral and multilateral investment agreements may have on environmental and land use regulations. Been also is a leading authority on environmental justice: She authored one of the first major articles on the distributional fairness of environmental and land use policies, “What’s Fairness Got to Do with It: Environmental Justice and the Siting of Locally Undesirable Land Uses.” She also documented the extent and nature of environmental



discrimination in a nationwide longitudinal study of the demographic characteristics of communities asked to host undesirable land uses.

Been also writes about the Fifth Amendment prohibition against the taking of property without just compensation, often serving pro bono to advise nonprofit environmental and land use groups faced with takings challenges to environmental protections. She is the co-author of the leading land use casebook, *Land Use Controls*, with Robert Ellickson. ■

**“Vicki Been is an outstanding role model for our students, and I know that her experience, enthusiasm, and commitment will beget a whole new generation of public and community service lawyers.”**

**NYU PRESIDENT JOHN SEXTON**



Professor Vicki Been has taught property and land use law at the Law School since 1990, and this year was named faculty director of the Root-Tilden-Kern Program.

# Clinics in the Spotlight

**A** recent article about clinical legal education in a Yale Law School magazine graphically demonstrates the degree to which the clinics at NYU School of Law are setting the standard for pedagogical excellence and innovation in the field of clinical legal education. The magazine, *Legal Affairs*, launched by Yale Law School in March 2002 to examine legal issues in the context of politics, culture, and society, featured an article on clinical legal education in its November/December 2002 issue. Strikingly, the article, from beginning to end, focuses heavily on the courses and faculty of the clinical program at NYU School of Law.

The article, by Daphne Eviatar, is titled “Clinical Anxiety: Rebellious Lawyers are Shaking Up Law School Clinics.” The title is derived from the writings and teaching of NYU School of Law Professor Gerald López. As the article explains:

If the [clinical legal education movement’s] visionary of old was Harvard’s Gary Bellow, today’s prophet is Gerald López. In 1992, while teaching at Stanford, López wrote *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice*.

López argued that the traditional legal-services model does a disservice to the very groups it is trying to help by squelching community activism. By assuming the roles of “preminent problem-solver” and “political hero,” lawyers exclude clients from shaping solutions to their problems and narrow those solutions to what courts can provide. Widely recognized, the book has inspired a body of scholarship building on López’s theories and an annual student-run “Rebellious Lawyering” conference at Yale Law School.

The article describes the community outreach and organizing clinic that López currently teaches at NYU School of Law and also the community research project in which he is currently engaged:

López’s view of good training is expansive. This summer, about 80 volunteers, mostly college students, worked for him for free, conducting a telephone survey of 2,000 people in low-income

communities, asking them about their problems and how they’re trying to solve them. He sends his law students into inner-city neighborhoods to interview social service organizations to find out what they’re doing to help. “As activists, we should have been doing this all along,” he said, claiming that studies like his are essential for lawyers who work with poor people. “This is second nature to management and business schools.”

López’s clinic is not the only clinic at NYU School of Law profiled in the article. The article begins with a detailed description of the work of NYU School of Law Professor Michael Wishnie in the Immigrant Rights Clinic, which Wishnie created with NYU School of Law Professor Nancy Morawetz:

When Mike Wishnie, a New York University law professor, heard that immigrants seriously injured in factory jobs were waiting up to ten years for their workers’ compensation benefits, he considered how he could help. He and the students in his immigrants’ rights clinic could represent each worker individually, but that wouldn’t solve the underlying problem. They could represent a group of workers against the state in federal court, but that would mean long and complicated litigation. They could lobby to change the law (which some students eventually did), but that might not help workers who’d already been hurt.

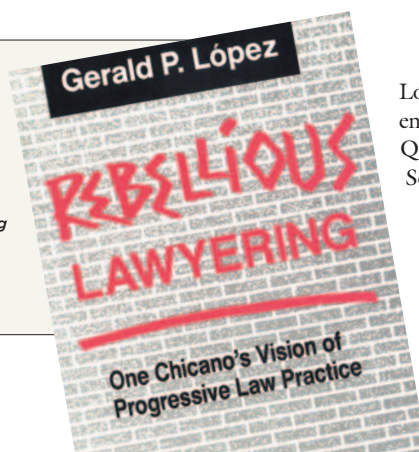
Then Wishnie hit upon another idea: Under a little-used side agreement to the North American Free Trade Agreement, the clinic could file a claim against New York for failing to enforce its labor laws. Although a NAFTA petition would take far longer than one to a local court, it would be the first such claim against a U.S. state — a good way to call attention to the case and boost organizing efforts by local community groups.

Last fall, a teaching fellow from the clinic flew to Mexico City along with two workers and representatives of four different community groups. They filed a petition and held a press conference on the steps of the National Administrative Office of Mexico. Back in New York, the community groups followed with a boisterous demonstration, spawning a flurry of newspaper articles about their novel claim.

As the article explains, the NYU School of Law clinics taught by López, Morawetz, and Wishnie reflect a new vision of lawyering that embraces a broad definition of the mission and role of the lawyer. Quoting Randy Hertz, director of the clinical program at NYU School of Law, the article explains:

“Our definition of lawyering skills has broadened,” said Randy Hertz. “Now, to be an effective public-interest lawyer, you need to have legislative drafting and organizing skills and know how to use the media.” Though Hertz admits that most public

Gerald López, author of *Rebellious Lawyering*, has been among the country’s leading on-the-ground practitioners of and advocates for comprehensive and coordinated legal and non-legal problem solving in low-income, of color, and immigrant communities. *Rebellious Lawyering* is perhaps the most influential book ever written about progressive law practice and community problem solving.





Simulated trials are an important part of the instruction in the clinics. Shown here are Charles Hart ('03) and Kate Hooker ('03), Juvenile Rights Clinic students, playing the role of prosecutors in a simulated criminal trial. They confer during a break with Professor Randy Hertz, in the role of judge. In the background are clinic students Darshan Khalsa ('03) and Priyamvada Sinha ('03), acting as defense counsel.

interest lawyers outside the academy still don't approach their work in that way, he hopes recent graduates will take what they've learned into the field.

"In some places, that's happening," the article explains. The example it gives is the program "Make the Road by Walking," a community organization in Bushwick which, as the article explains, was started by NYU School of Law alumni "Oona Chatterjee and Andrew Friedman ... when they were students in NYU's public policy clinic," largely due to the inspiration of "books like [López's] *Rebellious Lawyering*."

The article also traces the current vision of clinical legal education to a 1992 ABA Report by the Task Force on Law Schools and "Profession: Narrowing the Gap" (commonly known as the "MacCrate Report," after task force chair Robert MacCrate), which had as its centerpiece a comprehensive model of lawyering skills and professional values developed by Hertz and Anthony Amsterdam, NYU School of Law professor and former clinic director.

Education Association to create the *Clinical Law Review*, a journal "edited by clinical professors," for which Hertz serves as editor-in-chief. As the article explains, "[t]he *Clinical Law Review* has dramatically increased the amount of clinic-generated scholarship."

The accomplishments identified in the Yale Law School magazine article are representative, but certainly not a full picture, of the many ways in which NYU School of Law clinical faculty are influencing the field of clinical legal education and the legal profession itself. Working in close collaboration with the teachers of the first-year Lawyering Program, the clinical faculty strives to improve what is already the country's most dynamic interdisciplinary approach to training lawyers as problem solvers. Together they aim — through their teaching, research, and the work they do with clients and in communities — to illuminate what lawyers do and how they might do it better. Their field of interest encompasses the ever-evolving world of legal problem-solving. Across civil and criminal boundaries, clinical faculty are involved with such diverse matters as litigation, legislative advocacy, policy-making,

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## Working in close collaboration with the teachers of the first-year Lawyering Program, the NYU School of Law clinical faculty strives to improve what is already the country's most dynamic interdisciplinary approach to training lawyers as problem solvers.

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The article discusses how changes in clinical teaching have paralleled changes in the professional background of clinical teachers. Using Wishnie as a prototypical example, the article explains:

Wishnie is part of a new breed [of clinical teacher]. He was hired a few years out of law school following a Supreme Court clerkship and two prestigious fellowships, and he and others like him are blurring the old distinctions between "academic" faculty who write and teach about the theory of law and "clinicians" who devote themselves to its practice. Increasingly, clinical professors, after years of lobbying for equal status in the legal academy, are joining the tenure track. That means that in addition to supervising students and their cases, they're expected to publish academic articles. Wishnie has devoted himself to exploring theories of immigrants' constitutional rights. Others have created a new genre of academic writing focused on clinical pedagogy and lawyer-client relationships.

The article recognizes the contribution that NYU School of Law made to the enterprise of clinical scholarship in 1994 by joining with the Association of American Law Schools and the Clinical Legal

business transactions, community education campaigns, institutional and programmatic evaluations, systems design, and management.

Clinicians at NYU School of Law have taken an active role in national organizations concerned with legal education. For example, Paula Galowitz serves on the board of directors of the Clinical Legal Education Association; Randy Hertz serves on the Council of the American Bar Association's Section of Legal Education and Admissions to the Bar; and Holly Maguigan is the co-president of the Society of American Law Teachers (SALT). Law School clinicians have similarly assumed leadership positions in public interest law organizations. For example, Claudia Angelos serves as the president of the board of the New York Civil Liberties Union.

The successes of clinicians at NYU School of Law in the fields of clinical legal education and public interest have resulted in many awards. Most recently, SALT recognized Professor Bryan Stevenson's great achievements in the capital punishment field by giving him the organization's Human Rights Award, and the American Bar Association's Section of Legal Education and Admissions to the Bar in August 2002 gave Professor Anthony Amsterdam the Robert J. Kutak Award for the most significant contributions to bringing together the legal academy and the practicing bar. ■

# Public Interest Activities

## Students Meet Public Interest Lawyers

Each week, 75 to 100 students attend the Monday Night Speaker Series at NYU School of Law to learn about careers in various public interest fields. Kicked off each year by the annual Melvyn and Barbara Weiss Public Interest Law Forum, the series brings attorneys from around the country to discuss public interest issues and practices. Esteemed guest speakers have included Daniel Greenberg, president and attorney-in-chief of the Legal Aid Society. Some speakers have become welcome traditions – Professor Bryan Stevenson’s engrossing accounts of representing death-row inmates in Alabama inspires overflowing audiences each year.

Here are highlights from several of the last year’s events.

### Root-Tilden-Kern Colloquium Evening

#### Filling in the Gaps: Lawyers and Entrepreneurship in the Public Interest

This evening colloquium focused on the preliminary tasks that are required to do the substantive work that many students at NYU School of Law are interested in pursuing.

The first panel consisted of Joan Magoolaghan, founder of Koob & Magoolaghan, a private practice civil rights law firm; Robin Steinberg (’82), founder and executive director of Bronx Defenders; and Jennifer Gordon, founder of The Workplace Project. Each



(from left): Jennifer Gordon, founder, The Workplace Project; Robin Steinberg (’82), founder, Bronx Defenders; and Joan Magoolaghan, founder and partner, Koob and Magoolaghan share funding ideas for public interest legal practice.

panelist spoke at length about strategies for developing and maintaining funding for areas of public interest legal practice that do not tend to be particularly lucrative.

Steinberg suggested a creative approach for dealing with funding problems: “I knew that I was always going to go into public interest work.... What I didn’t understand was that someday, I would probably need to be able to talk to people who didn’t just do public interest work.”

When Gordon finished Harvard Law in 1992, she made a point of visiting the people that had made large donations to the school’s funding drive and explaining her idea for a project to help the working conditions of immigrants. Gordon explained the importance of developing personal relationships with potential donors and making sure these relationships stay with the organization after the individuals move on to different projects.

The second panel was titled “Supporting Local Entrepreneurs: Lawyers Assisting Development of Non-Profits and Small Businesses in Underserved Communities,” and included Ray Brescia, director of the Community Development Project at the Urban Justice Center; Molly Armstrong, coordinator of demonstration projects at the Vera Institute; and Raun Rasmussen, director of litigation at South Brooklyn Legal Services.

Armstrong described to the audience the precise nature of a “demonstration project” and the unique partnerships that her organization develops with government agencies. “The government might come to you and say, ‘I have this problem and I really want to solve it.’ We plan projects that will last between three and five years.”

The last panel, called “Alternative Perspectives Workshop: NGO Development in Foreign Countries,” featured Francelyn Begonia, Legal Rights and Natural Resources in the Philippines; Michelle Burrell, Kingsford Legal Center of the University of New South Wales, Australia; Jamil Dakwar, Legal Center for Arab Minority Rights, Israel; and Roopa Madhav, founder of the Alternative Law Forum, India.

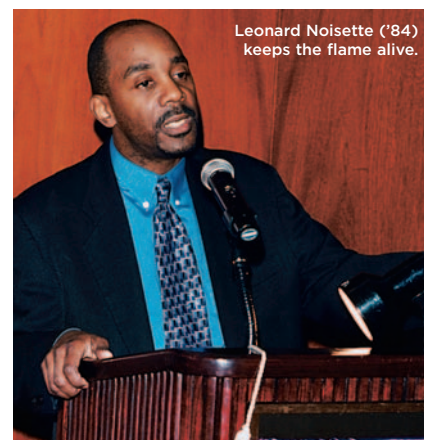
### Leonard Noisette

Some lawyers work closely with individual clients. Some help underprivileged communities. Some try to improve the criminal justice system. Not many get to do all three, but one who does is Leonard Noisette (’84),

director of the Neighborhood Defender Service of Harlem.

Noisette gave a speech titled “Keeping the Flame Alive,” dealing with his experiences in neighborhood defense. He encouraged students to consider going into public defense work.

The Neighborhood Defender Service takes a holistic approach to public service, including work with the community, youth programs, and a civil unit in addition to the usual criminal defense work. At the Neighborhood Defender Service there are multiple attorneys on each case, creating shared



Leonard Noisette (’84) keeps the flame alive.

responsibility and making client contact more efficient. In addition, the lawyers involve paralegals and administrators to a much more significant degree than most defender’s offices.

### Mayra Peters-Quintero

Mayra Peters-Quintero (’99) returned to campus to discuss her work at the Puerto Rican Legal Defense and Education Fund (PRLDEF), a civil rights organization based in New York. At PRLDEF, Peters-Quintero organizes and defends the legal rights of immigrant workers.

To explain her job to students, Peters-Quintero gave them a case study of her attempts to organize immigrant workers at a Tuv Taam plant. She encountered an unexpected stumbling block: “I confronted the reality of limitations of the legal field. There’s no law on books requiring that workers be treated with dignity.”

The day after the settlement with the plant, the Supreme Court handed down *Hoffman Plastic Compounds, Inc. v. NLRB*, which held that an employer owed no back pay to illegal immigrants after employment disputes.

Although this decision did not technically affect her case because her case settled before the decision, it “rocked” the labor law field for immigrant workers, and tilted the playing field back toward employers. Since the settlement, the workers have not seen any

back pay from their employer, nor have any other of the ameliorative and punitive steps mandated by the settlement been taken.

Despite the disappointing outcome, she spoke of the upside — personal relationships she made, as well as the feeling of empowerment she facilitated among the workers by helping them stand up for their rights. Her work continues with Jared Bybee ('06), with whom she is organizing and protecting the legal rights of other immigrant workers in similar situations as those at Tuv Taam.

## Lynn Paltrow

"I often ask myself why I do what I do. What I tell other people is that if it is what you want to do, it will work out," said Lynn Paltrow ('83), executive director of National Advocates for Pregnant Women.

Paltrow started working at the American Civil Liberties Union on a variety of abortion issues. She also worked at the National Abortion Rights Action League, where she was the first attorney on staff. Paltrow also mentioned how important it is to treat support staff with respect, pointing out how helpful they have been in her career.

"Every case is a team," she said. "It takes many people to do it right. I don't do it alone. The good thing is that if you lose, you still have a whole lot of people to work with next time."

After returning to the ACLU, Paltrow organized an event for reproductive rights, taking on an activism role. "Increasingly, if you don't see yourself as an activist, there is not a whole lot you can do," she said. "We

are in big, big trouble if we rely exclusively on the courts. You have to be prepared to know that there are all sorts of other ways to make change happen, because the backlash every time is very strong."

## Radhika Coomaraswamy

Radhika Coomaraswamy, global law professor at the Law School and special rapporteur to the United Nations on violence against women, provided Law School students with an understanding of current world issues related to violence against women. As rapporteur, she visits various countries and reports each year on the state of the world regarding violence against women.

She first discussed the historical resistance to broaching subjects of violence against women. The early work for the U.N. on women's rights focused on health issues, family law, and employment discrimination. The issue of violence against women was not addressed until the '90s, when refugees and victims of armed conflict brought the issue to the table.

Women's rights was not seen to fall into the category of human rights because human rights traditionally encompassed actions by state bodies. However, feminists have successfully argued that the violence does not merely affect individuals — people act violently because they have no fear of prosecution, and impunity is an international human rights issue. Coomaraswamy's post within the Human Rights Commission was created in response to these issues coming to the forefront of the U.N.'s consciousness. ■

# Public Service Auction

The ninth annual Public Service Auction drew excited crowds of faculty, staff, students, alumni, and friends of NYU School of Law.

The auction raised more than \$85,000 to fund public interest summer internships for first- and second-year law students. The event was the culmination of months of dedicated work by students and highlighted the generosity of the entire Law School community.

The evening featured both a live and silent auction. Silent auction items varied from handmade jewelry to dinner for two at Rain to swimming lessons by a former professional swim instructor and current Law



Guest auctioneer Professor Helen Scott challenged bidders to dig deeper at the Public Service Auction.

## Liberty v. Security

### Romero is Featured Guest of Weiss Public Interest Law Forum

We need to rethink the concept of liberty, the executive director of the American Civil Liberties Union (ACLU) asserted. "Liberty is not a fixed or static thing," Anthony Romero said. "It is not some object captured for eternity in the Bill of Rights — unchanging, unwavering, unvarying. In the real world in which we live, it does indeed change. And it changes precisely in relationship to other essential values, such as security, especially in times of national crisis."

With these words, Romero challenged an overflowing crowd to examine how the United States is balancing the need for increased security with the need to preserve civil liberties. Romero spoke at the Melvyn and Barbara Weiss Public Interest Law Forum, held annually at NYU School of Law.

While liberty is fluid, Romero cautioned that those on the political right wing will attempt to use any emergency as an opportunity to reverse hard-fought gains in civil liberties. He cited the USA Patriot Act, the proposed Terrorism Information and Prevention System (TIPS), and the use of secret deportation hearings for immigrants as just a few examples of opportunistic misuses of power in the wake of September 11.

Even as the challenges to civil liberties intensify, this is a time for optimism, Romero stressed. "Any serious shift to the right will create pressure for movement in the opposite direction," he said.

Romero noted that many liberal and conservative judges in the federal courts have expressed concern and skepticism about the

Bush administration's tactics in the war on terrorism. In a case argued by ACLU lawyer Lee Gelernt in the U.S. Court of Appeals for the Sixth Circuit, Judge Damon Keith ruled that secret deportation hearings were unlawful and admonished the current administration. "A government operating in the shadow of secrecy stands in complete opposition to the society envisioned by the framers of our Constitution," said Keith.

Similarly, Romero pointed to growing concern in the legislative branch. He highlighted the efforts of Senator Patrick Leahy (D-VT) and House Judiciary Committee Chairman James Sensenbrenner (R-WI) to force the U.S. Department of Justice to report to Congress on its use of the newly bestowed investigatory powers included in the USA Patriot Act. The department, however, has not complied satisfactorily. "This stonewalling has succeeded only in raising suspicions that Justice has abused its new powers," commented Romero.

The balancing act then continues, and Romero called on students at the Weiss Forum to help create a more powerful balance between liberty and security. The stakes are high, but democracy is "a demanding enterprise requiring our constant attention and dedicated effort," he emphasized. Claiming that we are the first modern people to confront the full challenge of democracy, Romero closed with the charge, "Get to work."

Law School students responded eagerly to Romero's call to action, and many have since volunteered at the ACLU. Romero visited with students after his address, answering questions about limits on civil liberties; U.S. policy in Vieques, Puerto Rico; and the role lawyers play in redefining democratic principles in times of challenges to national security.

School student. The many items available for bid kept auction-goers busy, many stooping to examine the bid sheets, hoping that their own bids were still the highest.

Along with the items donated to the auction, the mounds of food and drink that auction-goers enjoyed were also contributed by supporters of public service at the Law School. From fresh sushi to decadent homemade brownies, the crowd was definitely well fed. Lucy Eagling ('04), co-chair of the Auction Committee and major force behind the auction, recounted how the benevolence of the New York City community shone on auction day. A Brooklyn man wanted to donate pastries for the auction, and when Eagling went to his van to help unload the pastries she saw it "overflowing, everywhere you looked there were croissants!" Indeed, 6000 croissants were among the many indulgences that helped make the entire night both a charitable and gastronomic success.

The culmination of the entire evening was, of course, the live auction, and it proved to be as exciting as promised. Professor Helen Scott, one of the auctioneers, managed to raise almost \$1400 for a champagne brunch with Professor Vicki Been and Dean Richard Revesz at their home. Other notable winning bids included \$4000 for a week at the Ritz-Carlton Golf and Spa Resort in Rose Hall, Jamaica, and \$3200 for two tickets to Super Bowl XXXVIII including an invitation to the commissioner's party, which was donated by Paul Tagliabue ('65), NFL commissioner.

"The money is key to public interest. The auction is key to generating the money and does it by getting the entire community involved in the process," said Mary Katherine Harcombe ('04), summing up the evening. With the auction's success, many students will be able to give back through their summer public interest work and continue a long and admirable tradition at NYU School of Law. ■

## Public Interest Career Symposium



Employers and students explore career opportunities at the Public Interest/Public Service Legal Career Symposium. Students from 21 law schools participated in this event.

## Protecting Citizen Rights

### Robert Abrams Public Service Forum Hosts Eliot Spitzer

At the Robert Abrams Public Service Forum, former New York State Attorney General Bob Abrams ('63) welcomed his friend, successor, and former intern, Eliot Spitzer. Students, alumni, judges, and even actor Alec Baldwin listened as Spitzer gave a spirited talk, describing the active role he has taken in pursuing the public good as attorney general.

In his welcoming speech, Abrams said that under Spitzer's "smart, tough, and creative leadership" the New York attorney general's office has been rapidly advancing legal protections for consumers, workers, investors, and the environment. Fondly recalling his own experience "repairing the world" as state attorney general, Abrams exhorted NYU School of Law students to follow his successor's lead as an energetic public servant.



Robert Abrams ('63) talks with Attorney General Eliot Spitzer, the featured speaker at the Abrams Public Service Forum.

As attorney general, Spitzer has challenged national environmental deregulation and filed bold and innovative suits against the Microsoft Corporation, tobacco companies, Wall Street firms, exploitative employers, and polluters. In

describing his process of becoming a public interest litigator for the state, Spitzer said as a liberal law student, he believed that the growth of a national regulatory apparatus was essential to protect the environment and vulnerable members of society. He deplored the "new federalism" of the 1980s and '90s, which sought to devolve this power to the states. His feelings changed as his career progressed, from a clerkship to jobs with prominent law firms to a successful run for the attorney general position.

As the elected state attorney general, Spitzer came to think that the new federalism was "a wonderful thing."

"We got more and more excited as we realized, 'We can do this — we can bring this case,'" he said.

Spitzer also discussed what he characterized as the "law-and-economics approach" to social welfare, associated with the Chicago School of Economics. He challenged what he sees as an ascendant notion in the legal academy and increasingly among judges that the market, if unconstrained, can solve all social problems. In his view, private markets are incapable of promoting common social goods and crucial non-economic values of fairness, equality, and human dignity. Much of Spitzer's work as attorney general has been to counteract the failure of the market with regard to civil rights, environmental protection, and corporate governance.

Spitzer said that his office's efforts to enforce minimum wage and overtime protections were particularly vital; in seeking and winning millions of dollars in back-pay awards to exploited immigrant workers, he says that the state has sent the clear message that every citizen's rights are protected.

"That, more than anything, represents the kind of society I think we all want to live in," he said. Many of the Law School students likely agree — 100 of them applied for internships with his office.



The Arthur Garfield Hays Civil Liberties Program was founded at NYU School of Law in 1958 in honor of a prominent New York lawyer who had been general counsel of the American Civil Liberties Union (ACLU) for many years. The current faculty directors of the Program are Professors Norman Dorsen (since 1961), Sylvia Law (since 1978), Helen Hershkoff (since 2000), and Michael Wishnie, who became a director this year.

In May 2003, the Hays Program held its 45th reunion. More than 100 former Hays Fellows — spanning the years from 1959-1960 to 2003-2004 — and their guests attended for a day of conversation, good food, and conviviality. Dinner speakers Anthony Romero, ACLU executive director, and Katha Pollitt, author and columnist for *The Nation*, both focused on civil liberties in the aftermath of September 11, and agreed that the challenge ahead is to keep the United States both “safe and free.”

Romero recounted the efforts of the ACLU to combat the Patriot Act and the Justice Department’s aggressive restrictions on free expression, privacy, and freedom of movement for both immigrants and U.S. citizens. Among other examples, Romero pointed to the deportation of immigrants and the incarceration of many people without a hearing and without consultation with a lawyer.

After concurring with Romero on the central civil liberties problem of the era, Pollitt spoke more broadly about the social and political effects of current strains on the Constitution. She stressed the frequent inaccuracy of information disseminated by the government and the failure of the press and media to challenge these statements.

In the afternoon, two panels of former Hays Fellows opened a wide-ranging discussion. The first panel discussed “the civil liberties issue on which my views have changed most since law school.” Professor Helen Hershkoff moderated, and the panelists were Ronald Pollack (’68), Dennis Riordan (’74), Lee Michaelson (’83), and Andrew Dwyer (’90). The second panel of former Hays Fellows covered “the matter I have worked on that has had the biggest effect on my civil liberties or political views.” Professor Michael Wishnie moderated, and the panelists were David Rudovsky (’67), Marcia Lowry (’69), Eric Lieberman (’72 LL.M.), and Kim Barry (’98).

All panelists concurred that the threats to civil liberties are more severe today than in recent decades, and perhaps in this century, but they expressed different views on the nature of the underlying problems and whether public interest lawyers can do much about them. One view was that the core of the difficulty lay in politics, and accordingly litigation and related “lawyer’s” techniques would be ineffectual. Another panelist suggested that,

# 45th Reunion of the Hays Civil Liberties Program

often for political reasons, many judges are not open to well-crafted legal arguments, but are instead swept along by external pressures or personal inclination to reject almost automatically attempts to protect individual rights.

A contrasting view also emerged. While agreeing that civil liberties are endangered and that judges are often unreceptive to meritorious claims, several former Hays Fellows nevertheless thought that incremental gains for individual rights are possible in certain situations. They acknowledged that this required lawyering of a very high quality and results often depended on the nature of the issue and the particular judge. Even so, it is often necessary to surmount disappointments and rebuffs to obtain a modest victory.

The Hays Program is the first and leading program of its kind in the United States. Among its founders was Roger Baldwin, principal organizer of the ACLU in 1920 and its executive director for three decades. The directors and fellows of the Hays Program engage in extensive research on civil liberties issues, participate in litigation and legislative work dedicated to individual rights, and undertake special projects and conferences on topical constitutional issues. The Program has trained almost 250 NYU School of Law graduates for service in the public interest.

The Hays Program’s directors have published approximately 20 books and scores of articles on civil liberties issues. Since the early 1970s, Professors Law and Hershkoff and many former Hays Fellows, working with Professor Dorsen as editor, have contributed volumes to the ACLU’s “rights series,” which describe and analyze the rights of more than 40 groups in American society, including women, poor people, prisoners, young people, lesbians and gay men, employees and union members, police officers, and crime victims and families.

The Hays Program has seven endowed fellowships. The fellowships are named after Harriet Pilpel, the only person to be both Planned Parenthood general counsel and ACLU general counsel; Robert Marshall, a leading civil libertarian and environmentalist in the 1930s and 1940s; Roger Baldwin; Palmer Weber, a Southerner who was a leader

of the civil rights movement for several decades; Leonard Boudin, a towering civil liberties lawyer from the early 1950s until his death in 1992; Tom Stoddard (’77), a former Hays Fellow and one of the most influential advocates of the rights of lesbians and gay men until he died of AIDS in 1997; and Deborah Rachel Linfield (’78), who was developing a notable career as a First Amendment lawyer when she was struck down by

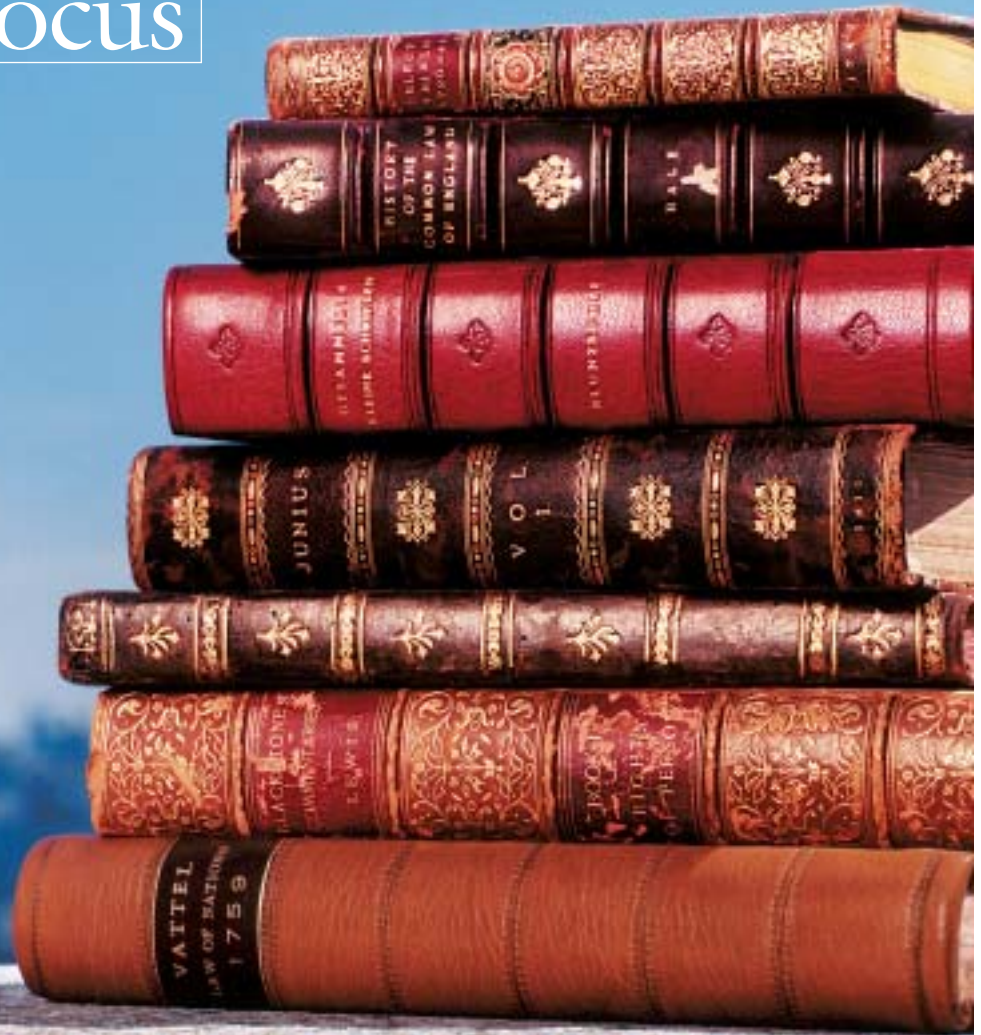


Hays Fellows Gerald Sobel (’63) (left) and Alvin Goldman (’62) enjoy discussion and refreshments at the 45th reunion celebration of the Hays Civil Liberties Program.

cancer at 38. The Leo and Elsie Adolph Fund helps support the research and case-related expenses of Hays Fellows.

An effort is under way by former Hays Fellows and others to endow an eighth Hays fellowship, in honor of Norman Dorsen, Frederick I. and Grace A. Stokes Professor of Law and counselor to the NYU president. At the reunion dinner, Law, Hershkoff, and Wishnie organized a surprise tribute to Dorsen, their admired colleague. A video included accolades to Dorsen from U.S. Supreme Court Justices Ruth Bader Ginsburg and Stephen Breyer; U.S. Court of Appeals Judges James Oakes of the Second Circuit and Stephen Reinhardt of the Ninth Circuit; ACLU leaders Ira Glasser and Ramona Ripston; and Professor Dieter Grimm, a former member of the German Constitutional Court and a member of the Law School’s global law faculty, of which Dorsen was the first director and chair. NYU School of Law Professor Thomas Franck also lauded Dorsen’s achievements. ■

# Faculty Focus



In 2002-03, NYU School of Law had a spectacular faculty hiring year, bringing to the Law School three leading tenured academics. The Law School is also tremendously enriched by the distinguished array of visiting faculty, faculty in residence, and global faculty.

## New Faculty

### Henry B. Hansmann

Henry Hansmann is the leading scholar in the law of organization, focusing not only on corporations, but also on not-for-profits, and other forms of association. He has remarkably broad academic interests; his scholarship includes articles on corporate governance, organizational law and property, economic history of law and institutions, comparative corporate law, and the economics of law generally. Before joining NYU School of Law, Hansmann was a tenured member of the Yale Law School faculty since 1983, serving most recently as the Sam Harris Professor of Law. He was associate professor of law, economics, and public policy at the University of Pennsylvania from 1981 to 1983, and was assis-



tant professor there from 1975 to 1981. Hansmann visited NYU School of Law in 1996-97, and again in the spring of 2000.

Hansmann's book *The Ownership of Enterprise* (The Belknap Press of Harvard University Press, 1996) uses economic analysis to explain why organizations adopt different

ownership and control structures. Hansmann examines not just conventional investor-owned firms, but also worker-owned, customer-owned, nonprofit, and mutual firms, offering a systematic analysis of the reasons why these different forms of ownership arise in different industries, such as worker-owned firms in the service professions, supplier-owned firms in agriculture, customer-owned

firms in wholesaling and housing, nonprofits in health and education, and mutuals in banking and insurance. Among his strongest and most surprising conclusions is that problems of collective governance play a dominant role in determining the forms of ownership that are viable in any given setting.

“The Essential Role of Organizational Law,” *Yale Law Journal* (2000) (with Reinier Kraakman) is a fundamental reconceptualization of the role of organizational law in promoting economic activity. Hansmann and Kraakman argue that the essential role of all forms of organizational law lies not in its contract-like elements but in its property-like elements, and more particularly in its partitioning of assets between those available to creditors of the business and those available to the creditors of the owners or managers of the business. Further, the critical element of corporate law in this respect lies not, as is often suggested, in providing for limited liability, which shields the owners’ assets from business creditors, but in the reverse doctrine, largely ignored in contemporary literature, which shields the assets of the business from the personal and other business creditors of its owners and managers.

A related but broader economic analysis of the role of law in structuring property and contract rights is offered in “Property, Contract, and Verification: The *Numerus Clausus* Problem and the Divisibility of Rights,” *Journal of Legal Studies* (2002). In that essay, Hansmann and Kraakman argue that the law’s relatively rigid restrictions on the forms permitted for property rights — restrictions that are not imposed on contract rights — play a crucial role in verifying the ownership of rights offered for conveyance. The authors offer an efficiency analysis of the appropriate degree of flexibility for property rights in different settings, and use that analysis to explore the structure of property rights in real property, intellectual property, secured interests, and legal entities.

Hansmann also has done path-breaking work on the issue of limited liability for corporate shareholders. In “Toward Unlimited Shareholder Liability for Corporate Torts,” *Yale Law Journal* (1991), he and Kraakman reexamine the validity of the long accepted rule granting corporate shareholders protection against personal liability for corporate torts. This article is widely recognized as one of the most important analyses of this issue and sparked an ongoing debate between leading legal scholars in both corporate law and civil procedure. Hansmann and Kraakman argue that, while limited liability offers great efficiencies when applied to contractual creditors, it is inefficient when applied to involuntary creditors. A rule of unlimited pro rata shareholder liability for corporate torts would not only provide far better incentives but, contrary to conventional

wisdom, need not interfere with smoothly functioning markets for corporate securities.

Among other professional activities, Hansmann is secretary-treasurer of the American Law and Economics Association, and will become its president in 2004. He is also a past chair of the Corporate Law Section of the Association of American Law Schools.

Hansmann received his B.A. in mathematics from Brown University, his J.D. from Yale Law School, and his Ph.D. in economics from Yale University.

### Deborah Malamud

Deborah Malamud is a leader among legal academics who study issues of class and public policy, as well as an expert on labor and employment law. She teaches in the fields of labor and employment law, constitutional law, and class and the law. She anticipates also teaching in NYU School of Law’s new first-year class, The Administrative and Regulatory State.



Malamud was on the faculty at the University of Michigan Law School from 1992 to 2003, where she was the James E. and Sarah A. Degan Professor of Law since 2001. Before embarking on her academic career, Malamud was a law clerk to Judge Louis Pollak, U.S. District Court for the Eastern District of Pennsylvania, and Justice Harry Blackmun of the U.S. Supreme Court, and a lawyer at

nation of the development and public defense of labor and welfare policies that drew boundaries between different types of workers. By looking at how and why government officials decided, for example, that white-collar workers ought to receive special treatment in federal relief programs, or that certain kinds of white-collar workers ought not be paid overtime because to treat them like “clock-punchers” would offend their dignity, she demonstrates that the law played an active role in defining class boundaries and in protecting them against erosion during the Great Depression.

Malamud has also explored related issues in contemporary settings, including the increasingly important debates about whether affirmative action policies should be restructured along lines of class rather than race, and what the complexities and consequences of such a restructuring would be. Rather than analyzing legal doctrines concerning employment, race, and class as internal matters of legal reasoning alone, Malamud has contributed to understanding the dynamic relationships between law and the social, political, and cultural contexts that it both reflects and helps to create. Representative publications include “Engineering the Middle Classes: Class Line-Drawing in New Deal Hours Legislation,” *Michigan Law Review* (1998); “Affirmative Action, Diversity, and the Black Middle Class,” *Colorado Law Review* (1997); and “Class-Based Affirmative Action: Lessons and Caveats,” *Texas Law Review* (1996).

Malamud received her B.A. from Wesleyan University and her J.D. from the Uni-

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**Malamud’s visiting semester convinced her that the rich diversity and high energy of New York are perfectly echoed in the student body and faculty of NYU School of Law. She looks forward to pursuing her existing interests ... through teaching and faculty colloquia.**

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Bredhoff & Kaiser, a leading union-side labor law firm, located in Washington, D.C. Malamud was a visiting professor at NYU School of Law in Spring 2002.

Her contributions to the study of class and the law focus on how the law reflects and helps to shape our understanding of what it means to be a member of the middle class in the United States. Her work on the New Deal illuminates the interaction between class and the law through close exami-

nation of the development and public defense of labor and welfare policies that drew boundaries between different types of workers. By looking at how and why government officials decided, for example, that white-collar workers ought to receive special treatment in federal relief programs, or that certain kinds of white-collar workers ought not be paid overtime because to treat them like “clock-punchers” would offend their dignity, she demonstrates that the law played an active role in defining class boundaries and in protecting them against erosion during the Great Depression.

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Malamud received her B.A. from Wesleyan University and her J.D. from the Uni-

the student body and faculty of NYU School of Law. She looks forward to pursuing her existing interests in legal history, labor law, and social policy through teaching and faculty colloquia. Perhaps most of all, she is excited by the unknown. New York offers myriad ways to confront significant issues in contemporary American society and culture. She cannot wait to see which of its many paths she will choose to explore.

### Stephen R. Perry

An acclaimed legal philosopher and legal theorist, Stephen Perry will join NYU School of Law as a permanent faculty member this year. Previously the John J. O'Brien Professor of Law and Professor of Philosophy and the director of the Institute for Law and Philosophy at the University of Pennsylvania, and an associate professor of law at McGill University, Perry has taught courses on torts, tort theory, philosophy of law, theories of responsibility, and political philosophy.



He was a visiting professor at NYU School of Law in 1999-2000.

Perry has published numerous highly regarded articles on general jurisprudence, political philosophy, and theoretical aspects of the law of torts. He is particularly interested in the methodology of jurisprudence, the role of corrective justice in tort law, and the relationship between moral and legal responsibility.

Perhaps Perry's most influential contribution to general jurisprudence has been his work on methodology in legal philosophy. At a time when it had become unclear whether different schools of thought about the nature of law were interested in the same questions, Perry wrote a series of essays, including "Interpretation and Methodology in Legal Theory," in *Law and Interpretation* (Andrei Marmor, ed. 1995) and "Hart's Methodological Positivism," *Legal Theory* (1998), that stepped back to discuss what the fundamental common questions must be and to defend a particular methodology for resolving them. These articles are in good part responsible for a contemporary revival of philosophical debates about the nature of law. The methodology for thinking about the nature of law that Perry recommends connects to his interest in the relation between moral and legal obligation, for in his view the key philosophical question about the nature of law concerns the way in which law affects people's reasons for action.

Equally significant is Perry's contribution to tort theory, in which field he is one of the leading proponents of a corrective justice approach. In this connection, he has explored in depth the idea of responsibility for outcomes and the relationship between this form of responsibility and other forms. As part of this inquiry he has produced important and influential analyses of the roles of risk and causation in the foundations of tort liability, such as "Risk, Harm and Responsibility" in *Philosophical Foundations of Tort Law* (David Owen, ed. 1995) and "Responsibility for Outcomes, Risk, and the Law of Torts," in *Philosophy and the Law of Torts* (Gerald Postema, ed. 2001).

Perry is a sought-after lecturer and panelist. In March 2002, he delivered the first annual Leon Green Lecture in Jurisprudence at the University of Texas Law School on the topic "The Normativity of Law." He has pre-

**"This law school is one of the leading institutions in the world in legal philosophy and legal theory, and I feel honored to have been asked to join its faculty."**

#### PROFESSOR STEPHEN PERRY

sented papers in many different venues, including in recent years the Colloquium on Legal and Political Philosophy at University College, London, and the Stanford Research Group on the Nature and Limits of Moral Responsibility.

Perry received his B.A. in philosophy from the University of Toronto and his B. Phil. in philosophy from Oxford University. He then received his LL.B. from the University of Toronto Faculty of Law, and received a doctorate in philosophy from Oxford University. He is a member of the American Law Institute and the Advisory Board of Legal Theory.

Perry is delighted by his move to NYU School of Law: "This law school is one of the leading institutions in the world in legal philosophy and legal theory, and I feel honored to have been asked to join its faculty. I very much look forward to teaching here and to working with my new colleagues." ■

## Visiting Faculty

### Richard Abel

A widely respected scholar and teacher, Richard Abel is the Connell Professor of Law at UCLA School of Law. His most recent book, *English Lawyers Between Market and State: The Politics of Professionalism* (Oxford University Press, 2003), uses the extraordinary transformation of the English legal profession under Prime Ministers Thatcher, Major, and Blair as an arena to explore the ways in which lawyers, consumers, competitors, and the state negotiate professionalism.

Abel has written extensively on the legal professions of many countries (*English Lawyers Between Market and State: The Politics of Professionalism*, Oxford University Press, 2003; *Lawyers in Society*, volumes one



through four, University of California Press, 1989-1994); law and social change (*Politics by Other Means: Law in the Struggle Against Apartheid 1980-1994*, Routledge, 1995); the harms of speech (*Speaking Respect, Respecting Speech*,

University of Chicago Press, 1997); sociology of law (*The Law & Society Reader*, NYU Press, 1995); and torts ("Questioning the Counter-Majoritarian Thesis: The Case of Torts," *DePaul Law Review*, 2000; Judges Write the Darndest Things: Judicial Mystification of Limitations on Tort Liability" *Texas Law Review*, 2002).

Abel's scholarship takes a critical perspective and asks whether the law truly serves the welfare of society at large. His work on the sociology of lawyers explores the role of lawyers in representing all segments of society.

A visiting scholar at NYU School of Law in 1991 and a visiting professor in 2001, Abel has taught torts and professional responsibility at the Law School. He received his B.A. from Harvard University, an LL.B. from Columbia University, a Ph.D. from the University of London, and an LL.D. (honorary) from University of Westminster.

Abel spent two years after law school reading African law and legal anthropology in London, and then a year of fieldwork in Kenya studying the ways in which primary courts staffed by and serving the African population had preserved indigenous notions of law and procedure within European institutions. Over the years, he has been president of the Law and Society Association; editor of *African Law Studies*, the

*Law & Society Review*, and the *Journal of Legal Pluralism*; and a member of the editorial boards of other journals in the law and society field in the United States, Europe, and Australia. He was a founding member of Critical Legal Studies and the UCLA Program in Public Interest Law and Policy.

### Kevin E. Davis

Kevin Davis comes to NYU School of Law for the 2003-04 academic year from the University of Toronto, where he is a tenured associate professor in the Faculty of Law. His areas of teaching and research include contracts, commercial law, law and development, and white-collar crime.

Davis applies a law and economics methodology to each of these areas. He has, for instance, analyzed anti-bribery statutes and has found modest support for the counterintuitive proposition that states deter payment of bribes to developing nations primarily out of economic self-interest, rather than out of moral sentiments.

Prior to joining the University of Toronto Faculty of Law in 1996, he served as a law clerk to the late Justice John Sopinka, Supreme Court of Canada, and as an associate lawyer with Torys, a Toronto law firm.

His publications include "Self-Interest and Altruism in the Deterrence of Transnational Bribery," *American Law and Economics Review* (2002); "Ethnically Homogeneous Commercial Elites in Developing Countries," *Law and*

*Policy in International Business* (2001) (with M. Trebilcock and B. Heys); and "Legal Reforms and Development," *Third World Quarterly* (2001) (with M. Trebilcock).

Davis received his B.A. in economics from McGill University, his LL.B. from Faculty of

Law, University of Toronto, and his LL.M. from Columbia University.

On his upcoming year at the Law School, Davis said: "I am looking forward to spending the next year at a great law school in a great city."

### John C.P. Goldberg ('91)

Recognized as a leading torts scholar, John Goldberg joined the faculty of Vanderbilt University Law School in 1995 after clerking for U.S. Supreme Court Justice Byron White and U.S. District Court Judge Jack Weinstein, and practicing at the Boston firm of Hill & Barlow. A 1991 graduate of NYU School of Law, he will return this fall as a visiting professor.

Goldberg described his analysis of torts: "Typically in a tort suit, an injury victim

seeks compensation from a person or business for having injured her or him. However, most modern tort scholars argue that the tort law's significance does not reside in permitting individuals to seek compensation for having been mistreated. Rather, for them, tort cases are important because they present an occasion on which judges and juries can function as self-appointed regulatory agencies and criminal prosecutors." Rejecting these accounts, Goldberg



offers a theory that takes tort at face-value, as a body of law that articulates, and empowers citizens to enforce against each other, basic civil obligations.

Goldberg's articles and essays on tort law and intellectual history have appeared in the *Columbia*, *Michigan*, *Pennsylvania*, *Stanford*, *Vanderbilt*, and *Virginia* law reviews. He has also authored the chapter on torts for *The Oxford Handbook of Legal Studies* (P. Cane, M. Tushnet, eds., Oxford University Press, forthcoming 2003). He is currently working on several articles and co-authoring a casebook titled *Torts: Responsibilities and Redress* (with Anthony J. Sebok and Benjamin Zipursky ('91)).

"It's an honor to be invited to teach at NYU School of Law," Goldberg said. "As a student, I was awe-struck by the professors. I am grateful to have the opportunity to join them as a visiting colleague."

He added: "Most of my scholarship derives from problems that I encountered, and methods I learned, at the Law School. In that sense, I've never really stopped being a student at NYU School of Law. I look forward to returning to the Law School and its classrooms this fall."

At Vanderbilt, Goldberg has been an innovative and popular teacher. In eight years of teaching, he has won a teaching award in three different first-year classes: civil procedure, contracts, and torts. This past year, he helped develop and organize a three-day conference for the Association of American Law Schools Torts Section, which took place in New York in June 2003. In the fall of 2000, he organized a landmark conference on the Third Restatement of Torts at Vanderbilt.

Goldberg received his B.A. from Wesleyan University, his M. Phil in politics from St. Antony's College, Oxford University, and his M.A. in politics from Princeton University. He lives in Nashville with his wife, Julie, and their two sons, Alex and Matthew.

### Jack Rakove

The W.R. Coe Professor of History and American Studies and professor of political science at Stanford University (where he has taught since 1980), Jack Rakove will visit NYU School of Law this fall. Before coming to Stanford, he taught at Colgate University from 1975 to 1980. He received his B.A. in history from Haverford College and his Ph.D. in history at Harvard University.

"After visiting NYU School of Law for brief stints of two and three weeks in recent years, I am delighted finally to be able to teach two seminars as a visiting professor," Rakove said. "I've always found the excitement of being at the Law School and in New York infectious, contagious, and highly stimulating."

At Stanford, Rakove teaches courses in early American history and the origins and interpretation of the Constitution. As the leading historian of the founding period in America, he has written four



books: *The Beginnings of National Politics: An Interpretive History of the Continental Congress* (Alfred Knopf, 1979); *James Madison and the Creation of the American Republic* (revised edition, Addison, Wesley, Longman,

2001); *Original Meanings: Politics and Ideas in the Making of the Constitution* (Alfred Knopf, 1996), which won the 1997 Pulitzer Prize in History; and *Declaring Rights: A Brief History with Documents* (Bedford Books, 1997).

Although Rakove is a historian, his work has been extraordinarily influential among legal scholars interested in the intentions and beliefs of the Founding Fathers.

Rakove is also the editor of *Interpreting the Constitution: The Debate Over Original Intent* (Northeastern University Press, 1990); *James Madison: Writings* (Library of America, September 1999); and a collection of scholarly essays called *The Unfinished Election of 2000* (Basic Books, 2001).

In November 1998, he testified before the Judiciary Committee of the U.S. House of Representatives on the background and history of impeachment. He has served as a consultant and expert witness in several cases involving Indian land claims in New York state dating to the 1780s, as well as the recent litigation over the use of sampling procedures in the decennial federal census. He has also been involved with various media projects,

including “Dateline ’87,” a 14-episode radio program on the Constitutional Convention, and “Liberty’s Kids,” a 40-episode animated cartoon history of the American Revolution produced by DIC Entertainment of Burbank, California, and appearing on PBS. He is the current president of the Society for the History of the Early American Republic.

### Daniel L. Rubinfeld

Daniel Rubinfeld, who will make his third visit to NYU School of Law this fall, is the Robert L. Bridges Professor of Law and Economics at the University of California at Berkeley School of Law. A leading economist whose interests range from antitrust policy to the economics of legal process to federalism, he has served as director of the Program in Law, Economics,

and Institutions at Berkeley. Rubinfeld was chair of the Jurisprudence and Social Policy (J.S.P.) program from 1987 to 1990 and was the associate dean and chair of the J.S.P. program from 1998 to 1999. He taught economics and law at the University of Michigan before joining the Berkeley faculty in 1983. He was a visiting professor at NYU School of Law in Spring 1999 and Fall 2000.

## Mapping the Future From the Past: Stone on U.S. Civil Liberties and Crisis

Professor Geoffrey Stone began the sixth annual Lewis Rudin lecture by recounting an apocryphal tale about Justice Oliver Wendell Holmes. Holmes is riding a train and cannot find his ticket. The conductor assures Holmes that his credit is good and he need not worry over the missing ticket. “I don’t give a damn about your railroad,” Holmes replies. “I just want to know where the hell I’m supposed to be going!” Since September 11, Stone said, when it comes to civil liberties, we’re all like Justice Holmes.

“How much freedom should we surrender in order to protect our security?”

**“This is a seductive, but dangerous argument,” Stone said. “It is necessary for soldiers to risk their lives, but it is not necessarily ‘necessary’ for others to surrender their freedoms. That necessity must be convincingly demonstrated, not merely presumed.”**

Stone asked the faculty, alumni, and students who packed a Law School lounge to listen to Stone discuss “Free Speech in Wartime.” Stone, a visiting professor, is currently authoring a book on the topic.

Dean Richard Revesz opened the event with a brief history of the lecture’s namesake, Lewis Rudin, and the event donor, his brother Jack Rudin. Calling the Rudins legendary figures in the development of New York, Revesz highlighted some of the contributions they made in the real estate practice and as charitable donors. Lewis Rudin, who recently passed away, was known as “Mr. New York.” The annual lecture series, Revesz said, is a befitting way to honor him. When introducing Stone, Revesz noted that Stone just “regained his freedom” after serving for six years as dean of the University of Chicago School of Law and nine years as provost.

To fully understand the tradeoff between security and civil liberties, Stone explained, it is important to look to how our nation has handled similar situations in the past. He recounted six periods when the U.S. government restricted civil liberties to preserve security.

In the late 18th century, for example, the French Revolution brought to light the different allegiances that these parties had to the English and French forms of gov-

ernment, respectively. In response to intense public criticism from Republican sympathizers, Federalist President John Adams and a complicit Congress passed the Alien and Sedition Acts. The Sedition Act was, according to Stone, “vigorously enforced, but only against supporters of the Republican party.”

Other critical periods Stone discussed were the Civil War; World War I and the enactment of the Espionage Act of 1917; the Japanese internment of World War II, endorsed by the Supreme Court in *Korematsu v. United States* (1944); the Cold

War and the Communist Control Act; and the Vietnam War.

Stone drew seven observations from this historical survey. First, the “Constitution applies in times of war, but the special demands of war may affect the application of the Constitution.” Second, the United States has a “long and unfortunate history” of overreacting to perceived threats to national security in times of war. Third, Stone said that he does not see the sacrifices that soldiers make in time of war as justification for the idea that citizens must also sacrifice.

“This is a seductive, but dangerous argument,” Stone said. “It is necessary for soldiers

to risk their lives, but it is not necessarily ‘necessary’ for others to surrender their freedoms. That necessity must be convincingly demonstrated, not merely presumed.”

Stone’s fourth observation was, simply, “The Supreme Court matters.” Presidents and members of Congress have hindered civil liberties in periods of instability, but they have never attempted to rise above a settled Supreme Court precedent. In his fifth, related observation, Stone said that despite assumptions to the contrary, the Supreme Court does make decisions that overturn government acts, even in crisis periods. On an optimistic note, Stone argued that his historical survey demonstrates real progress over time in the protection of civil liberties during wartime and peacetime in the United States.

In his final observation, Stone gave “high marks [to Bush’s] almost letter-perfect response to the risk of hostile public reactions against Muslims and Muslim-Americans.” Still, he said there remain several problems with some of the administration’s troubling policies.

“We can already discern disturbing, and all-too-familiar, patterns in some of our government’s reactions,” said Stone.

The students in attendance spoke highly of Stone’s lecture. “He gave an impressive overview of the United States’ historical tendency to restrict civil liberties during wartime,” said Elizabeth Murray (’04).

A dinner followed for faculty, guests, and students from Stone’s course. Stone held an informal Q&A at the close of this dinner, during which he commented more extensively about the policies of the Bush administration.

“What disturbs me about the current administration is that there doesn’t appear to be a voice from within speaking out for the defense of civil liberties,” said Stone. “Even President Wilson had a series of attorneys general who spoke against the

restrictions that administration approved.”

A highlight of the evening was a dialogue between Stone and Law School Professor Larry Kramer about the role and ability of the Supreme Court to act in defense of civil liberties. “The Q&A at dinner was probably the most interesting part of the night,” said Jason Husgen (’04).

NYU School of Law Trustee Bernard Petrie (left); Jeannie Forrest, assistant dean of development and alumni relations; and Visiting Professor Geoffrey Stone chat before the annual Lewis Rudin Lecture.



From 1997 through the end of 1998, Rubinfeld was on leave from Berkeley, serving as the deputy assistant attorney general and chief economist of the Antitrust Division of the U.S. Department of Justice. In that role, he was at the center of several high-profile antitrust cases, including the Microsoft case. He has been actively involved in government policy debates over the years, having served as



a staff economist for the President's Council of Economic Advisers, and in consulting roles for the Harvard-M.I.T. Joint Center for Urban Studies, the Urban Institute, the National Academy of Sciences (NAS) Committee on the Costs of Automobile Emission Control,

the NAS Panel on Statistical Assessments as Evidence in the Courts, the NAS Panel on Taxpayer Compliance, the Consumer Product Safety Commission, and the World Bank.

Rubinfeld is a prolific scholar. He has published (with Robert S. Pindyck) two leading textbooks: *Econometric Models and Economic Forecasts* (McGraw Hill College Division, 4th edition, 1998) and *Microeconomics* (Prentice Hall, 5th edition, 2000). His edited books include *Essays on the Law and Economics of Local Governments* (Urban Institute, 1979) and *American Domestic Priorities* (University of California Press, 1985) (with John Quigley).

He has published scores of articles, both in the legal and the economics literatures. The articles are a mix of theoretical, empirical, and doctrinal analyses of a wide variety of legal issues, including federalism, antitrust, discovery rules, sanctions for frivolous litigation, contingent fees, voting rights, regulatory takings, exclusionary zoning, school finance, comparative negligence, tax limitation, the efficiency and distributional implications of environmental controls, and the political economy of the European Monetary Union. Several of his articles, such as "A Compensation for Takings: An Economic Analysis," *California Law Review* (1984) (with Lawrence Blume) and "Econometrics in the Courtroom," *Columbia Law Review* (1985), have become standards in their fields.

He is co-editor of the *International Review of Law and Economics* and is currently writing a book on the political economy of federalism with Robert Inman from the Wharton School of Business at the University of Pennsylvania.

From 1992 to 1993, Rubinfeld was a fellow at the Center for Advanced Study in the Behavioral Sciences, and in 1994 he received a Guggenheim Foundation Fellowship. He

was elected to the American Academy of Arts and Sciences in 2001. He received his B.A. at Princeton University, and his M.S. and Ph.D. at the Massachusetts Institute of Technology.

### Geoffrey Stone

Geoffrey Stone, the Harry Kalven Jr. Distinguished Service Professor of Law at the University of Chicago Law School, looks forward to another semester at NYU School of Law this fall.

"NYU School of Law has an exciting faculty, wonderful students, and a unique commitment to public service," Stone said. "I thoroughly enjoyed my visit last year, and I am delighted to have this opportunity to visit again."

Stone has taught numerous courses in constitutional law, as well as civil procedure, evidence, criminal procedure, contracts, and regulation of the competitive process. His research has focused on such subjects as the freedoms of speech, press, and religion; the constitutionality of police use of informants; the privilege against compelled self-incrimination; the Supreme Court; and the FBI. Stone's current research focuses on civil liberties in wartime.

Stone is one of the nation's preeminent scholars on the First Amendment. He is the author or co-author of numerous books, including *Constitutional Law* (Aspen Publishers, 4th ed. 2001), *The First Amendment* (Aspen Publishers, 2d ed. 2003), *Eternally Vigilant: Free Speech in the Modern Era* (University of Chicago Press, 2002), and *The Bill of Rights in the Modern State* (University of Chicago Press, 1992), and he has served as co-editor of *The Supreme Court Review* since 1991.



Among recent articles are "Lincoln's First Amendment," *NYU Law Review* (2003); "Judge Learned Hand and the Espionage Act of 1917: A Mystery Unraveled," *University of Chicago Law Review* (2003); and "The Origins of the 'Bad Tendency Test': Free Speech in Wartime," *Supreme Court Review* (2002). He is currently working on the book *Free Speech in Wartime* (Norton), which will be published in 2004.

After receiving his undergraduate degree from the Wharton School of the University of Pennsylvania, and his law degree from the University of Chicago Law School, Stone served as law clerk to Judge J. Skelly Wright, U.S. Court of Appeals for the District of Columbia Circuit, and Justice William J. Brennan Jr. of the U.S. Supreme Court. He joined the faculty of the Univer-

## Furman Graduate Fellow Kim Barry ('98)

As part of its efforts to train legal academics, the newly created Furman Academic Program (see p. 126), named for Jay Furman ('71), a prominent alumnus and trustee of the Law School, will include a graduate fellowship program. The fellowship program provides promising scholars an opportunity to work on their research



in the intellectual environment of the Law School while preparing for the entry-level academic job market.

Kim Barry ('98), formerly the Katz Fellow and associate counsel at the Brennan Center for Justice at NYU School of

Law, has been named the first Furman Fellow at NYU School of Law. Prior to that, Barry was an associate at Perkins Coie LLP, in Seattle, and served as a law clerk to Judge Betty Fletcher on the U.S. Court of Appeals for the Ninth Circuit.

Barry received her J.D. *magna cum laude* from NYU School of Law and was elected to the Order of the Coif. She was an articles editor of *NYU Law Review*, a Dean's Scholar, and an Arthur Garfield Hays Civil Liberties Fellow. She holds a certificate in international studies from the Graduate Institute of International Studies in Geneva, Switzerland. She received her M.A. from the Fletcher School of Law and Diplomacy and her B.Sc. from Georgetown University School of Foreign Service.

sity of Chicago Law School in 1973, and from 1987 to 1993 he served as dean of its law school. From 1993 to 2002, he was the provost of the University of Chicago.

### Mark V. Tushnet

The Carmack Waterhouse Professor of Constitutional Law at Georgetown University Law Center, Mark Tushnet will visit NYU School of Law in the Spring semester. Courses he has taught include Constitutional Law, Comparative Constitutional Law, and Federal Courts.

He is the co-author of three casebooks: *Federal Courts in the 21st Century: Cases and Materials* (LexisNexis, 2nd ed. 2002); *Constitutional Law* (Aspen Publishers, 4th ed. 2001); and *Comparative Constitutional Law* (Foundation Press, 1999). His other recent writings include *The NAACP's Legal Strategy Against Segregated Education 1925-1950* (University of North Carolina Press, 1987); *Red, White and Blue: A Critical Analysis of Constitutional Law* (Harvard University



Press, 1988); *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961* (Oxford University Press, 1994); *Making Constitutional Law: Thurgood Marshall and the Supreme Court, 1961-1991* (Oxford University Press, 1997); *Taking*

*the Constitution Away from the Courts* (Princeton University Press, 1999); and *The New Constitutional Order* (Princeton University Press, 2003).

Tushnet is one of the scholars who developed Critical Legal Studies in the 1970s and 1980s, serving as secretary of the Conference on Critical Legal Studies from 1976 to 1985. He regards much of the scholarship he continues to do as part of the Critical Legal Studies tradition. In the 1990s, he expanded his interests to include comparative constitutional law, producing, with his colleague Vicki Jackson, the first casebook in the field in a generation. He believes that the competition now provided by NYU School of Law Professor Norman Dorsen's casebook (with co-authors associated with the Hauser Global Law School Program) will further deepen student and scholarly interest in the field.

After receiving his B.A. from Harvard, and his M.A. and J.D. from Yale, Tushnet served as a clerk to U.S. Supreme Court Justice Thurgood Marshall from 1972 to 1973. He then was a member of the law faculty of the University of Wisconsin at Madison until joining the Law Center faculty of Georgetown in 1981. Tushnet is

the 2003 president of the Association of American Law Schools.

"I look forward to interacting with the Law School's distinguished public law faculty, taking advantage of New York City's cultural assets, and spending time with my daughter Rebecca, a professor on the faculty, and my son-in-law Zach," Tushnet said. ■

## Faculty in Residence

### William N. Eskridge Jr.

In residence this coming spring, William Eskridge Jr. hails from Yale Law School, where he is John A. Garver Professor of Jurisprudence. Eskridge's main areas of expertise are legislation; sexuality, gender, and the law; civil procedure; and constitutional law. Eskridge clerked with Judge Edward Weinfeld of the U.S. District Court for the Southern District of New York and served as an associate at Shea & Gardner before joining the University of Virginia Law School as an assistant professor in 1982. He was an associate professor from 1988 to 1990 and a professor from 1990 to 1998 at Georgetown University Law Center. Eskridge visited NYU School of Law in 1993, Harvard in 1994, and Stanford and Yale Law School in 1995. He has been a professor at Yale since 1998.

His publications include *Legislation: Statutes and the Creation of Public Policy* (West Wadsworth, 3rd ed., 2001) (with P.P. Frickey and E. Garrett); *Cases and Materials on Constitutional Law: Themes for the Constitution's Third Century* (Thomson/West Group, 3rd ed., 2003) (with D.A.



Farber and P.P. Frickey); *Dynamic Statutory Interpretation* (Harvard University Press, 1994); *The Legal Process* (Foundation Press, 1994) (ed. with P.P. Frickey); *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized*

*Commitment* (Free Press, 1996); *Sexuality, Gender, and the Law* (Foundation Press, 1997) (with N.D. Hunter); *Constitutional Stupidities, Constitutional Tragedies* (New York University Press, 1998) (ed. with S. Levinson); *Gaylaw: Challenging the Apartheid of the Closet* (Harvard University Press, 1999); *Equality Practice: Civil Unions and the Future of Gay Rights* (Routledge, 2002).

Eskridge has also served as a long-time faculty member of the Institute for Judicial Administration at NYU School of Law, and lectures regularly at law schools around the country and in Canada. He received his B.A. from Davidson College, his M.A. from Harvard, and his J.D. from Yale Law School.

### Kenji Yoshino

A professor of law at Yale Law School, Kenji Yoshino will be in residence at NYU School of Law in Spring 2004. His areas of expertise include constitutional law,



anti-discrimination law, law and literature, and Japanese law and society. He is currently working on a book (to be published by Random House) on the relationship between assimilation and discrimination, investigating

the ways in which assimilation can simultaneously be an escape from and an effect of discrimination across a wide variety of contexts, including race, sex, sexual orientation, and religion. His articles include "Covering," *Yale Law Journal* (2002), "The Epistemic Contract of Bisexual Erasure," *Stanford Law Review* (2000), and "Assimilationist Bias in Equal Protection," *Yale Law Journal* (1998).

Yoshino received his B.A. from Harvard, his M. Sc. as a Rhodes Scholar from Oxford, and his J.D. from Yale Law School, where he served as an articles editor on the *Yale Law Journal*. He clerked for Judge Guido Calabresi on the U.S. Court of Appeals for the Second Circuit before returning to teach at Yale in 1997. ■

## Prominent English Legal Historian, Recently Knighted, Named Senior Golieb Fellow



Sir John Baker, G.C., LL.D., F.B.A.

Sir John Baker, the Downing Professor of the Laws of England at Cambridge University and one of the world's leading authorities on the development of English legal institutions, will be guest lecturing in Professor William Nelson's class, Professional Responsibility: History of the Legal Profession, at NYU School of Law for the first several weeks of Fall 2003. Recently awarded a knighthood in The Queen's Birthday Honours in June 2003 for his outstanding contribution to English legal history, Sir Baker was a member of the Global Law Faculty at the Law School and has been named a Senior Golieb Fellow.

Among other appointments, Sir John was appointed a fellow of the British Academy in 1984 and a fellow of St. Catharine's College, Cambridge University, in 1971. Baker received an honorary LL.D. from the University of Chicago and the Ames Prize from Harvard

Law School. He has held numerous visiting academic positions including visits to NYU School of Law, Yale Law School, Harvard Law School, Huntington Library, University of Oxford, and European University Institute in Florence, Italy. Baker is also the general editor of the *Oxford History of the Laws of England* and general editor of the *Cambridge Studies in English Legal History*. He has published more than 25 books and over 100 articles.



# Hauser Global Law School Faculty: 2003-04



Thomas Dreier



Werner Ebke



Richard Goldstone



Moshe Halbertal



Christian Joerges

Each year, top academics from around the globe come to NYU School of Law to complement the permanent faculty engaged in international and comparative work. Through the global faculty, NYU School of Law has integrated non-U.S. teachers and courses into the curriculum covering a variety of subjects unparalleled by any peer schools.

## Eyal Benvenisti

Eyal Benvenisti is professor of law and director of the Cegla Center for Interdisciplinary Research at Tel Aviv University Faculty of Law in Israel. Previously, he served as Hersch Lauterpacht Professor of International Law and director of the Minerva Center for Human Rights at the Hebrew University of Jerusalem. A former law clerk to Justice M. Ben-Porat of the Supreme Court of Israel, Benvenisti received his legal training at the Hebrew University of Jerusalem and Yale Law School. He has been a visiting professor at leading law schools in the United States, and a visiting fellow at the Max-Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany. He has published two books and several articles in prominent journals. He is the founding co-editor of *Theoretical Inquiries in Law*, a forum for the interdisciplinary study of the law; chairperson of the Association for Civil Rights in Israel; and a member of the International Law Association's Committee on International Law in National Courts.

## Thomas Dreier

Thomas Dreier is a professor of law at the University of Karlsruhe, Germany. Previously, he was senior researcher at the Max-Planck Institute for Foreign and International Patent, Copyright, and Competition Law in Munich. Since 1996, he has also taught international and European intellectual property harmonization at the Institute for European Law, University of St. Gallen, Switzerland. He has published and lectured

extensively on a variety of intellectual property issues, including copyright and digital technology, and legal protection of computer software and integrated circuits. He advised the government prior to the reunification of Germany on how to deal with trademarks that were separately owned in the East and the West, and he has been consultant to the Commission of the European Communities on copyright questions of cable and satellite.

## Werner Ebke

Werner Ebke occupies the chair of business and tax law at one of Germany's leading law schools, the University of Konstanz. Previously, he was dean of the law school. He was educated in the United States and Germany and has written extensively in both English and German. His article "Controlling the Modern Corporation: A Comparative View of Corporate Power in the United States and Europe," *American Journal of Comparative Law* (1978) (with Bernhard Grossfeld) is generally acknowledged to be a path-breaking piece on comparative company law and it anticipates by many years the recent work of leading American writers. He was assistant professor of law at Southern Methodist University before returning to Konstanz.

## Richard Goldstone

Richard Goldstone is a judge in South Africa's Constitutional Court and chancellor of the University of Witwatersrand, South Africa. From 1994 to 1996, Goldstone was chief prosecutor for the International Criminal Tribunal for the former Yugoslavia and Rwanda. He has also served as co-chairman of the Independent International Commission on Kosovo, chairman of the Commission of Inquiry Regarding Public Violence and Intimidation, and president of the National Institute for Crime Prevention and the Rehabilitation of Offenders. Goldstone has received many human rights awards and has lectured on human rights and South African constitutional issues at universities around the world.

## Moshe Halbertal

An ordained rabbi, Moshe Halbertal teaches Talmud at the Hartmann Institute of Advanced Jewish Studies in Jerusalem. His scholarship focuses on hermeneutics, the interpretation of Jewish law. Halbertal has received the Bruna Award in Israel, and his books have been published to critical acclaim both in Israel and the United States. He has also served as Gruss Professor at Harvard and University of Pennsylvania law schools.

## Christian Joerges

Christian Joerges is professor of economic law at the European University Institute in Florence, Italy. Previously, he was professor of civil law, private international law, and international economic law at Bremen University, Germany, and co-director of the Center for European Law and Politics there. A prolific scholar with wide-ranging interests, his work has been translated into several languages. In recent years, his work has focused on the process of Europeanization and its impact on private law regimes. He is co-editor of the *European Law Journal* and *International Studies on Private Law Theory*.

## Ratna Kapur

Ratna Kapur, India's leading feminist scholar and activist, is director of the Center of Feminist Legal Research in New Delhi, India. She has taught at a number of law schools in India, Canada, and the United States and has been training coordinator for the Asia-Pacific Forum on Women, Law, and Development. She holds undergraduate and graduate law degrees from Cambridge University and a graduate degree from Harvard Law School, and she has been a visiting scholar at both these institutions. She has co-authored two books; published numerous articles, reviews, and reports; and presented at many international seminars and conferences. She brings to the Law School feminist ideas from a non-Western perspective.

## Catherine Kessedjian

Catherine Kessedjian is professor of law at the University of Paris II (Pantheon-Assas), France. Previously, she taught at the University of Bourgogne. From 1996 to 2000, she served as deputy secretary-general of the Hague Conference on Private International Law in The Hague, Netherlands, with responsibility for numerous projects, including a proposed worldwide convention on jurisdiction and judgments, and background reports for a study on international Internet and e-commerce regulation. She has published more than a dozen books as well as many chapters and articles. She was a practicing lawyer in Paris for many years, has been active in the International Bar Association, and is one of the few foreign members of the American Law Institute (ALI).



Ratna Kapur



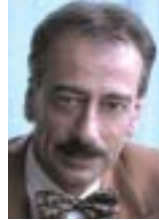
Nicola Lacey



Ziba Mir-Hosseini



Andras Sajo



Kees Van Raad

### Nicola Lacey

Nicola Lacey holds a chair in criminal law at the London School of Economics. Previously, she was a professor in the School of Law at Birkbeck College, University of London, and a fellow and tutor in law at New College, Oxford. Her interdisciplinary scholarship draws on several fields — criminal law doctrine, criminology and criminal justice studies, feminist theory, and political philosophy. She has published several books and many articles and reviews, and she has been a fellow at the Institute of Advanced Study in Berlin, Germany.

### Ziba Mir-Hosseini

Ziba Mir-Hosseini, who is Iranian, holds an honorary research position at Cambridge University, United Kingdom, and also freelances as a filmmaker, researcher, and consultant. An anthropologist by training, her interests are in law, religion, and gender. She is the author of two well-received books that deal with Islamic law and culture. In particular, she has analyzed current debates in Iranian family law among fundamentalist traditionalists, Western liberal critics, and reformers who seek to modernize Islamic law while retaining its core values and commitments. She is also the writer and co-director of the documentary, “Divorce Iranian Style,” which was filmed in Teheran. Her appointment to the Global Law Faculty, along with that of Mohammed Arkoun, who was most recently in residence in Spring 2003 as the Mamdouha Bobst Professor, will serve to bring an Islamic perspective to core elements of teaching and research at the NYU School of Law.

### Andras Sajo

Andras Sajo is professor of law and chair of the Constitutional Law Institute at the Central European University in Budapest, where he was the founding dean of legal studies. In addition to his stature as a prominent constitutionalist, he also is distinguished in market economy fields, including media regulation. Fluent in six languages, Sajo has been deeply involved in the drafting of constitutions throughout Eastern Europe. His honors include the

Hungarian Academy Book Prize in 1986 and serving as the Blackstone Lecturer at Oxford University. He has served as counsel to the president of the Republic of Hungary, chair of the Media Codification Committee of the Hungarian Government, and deputy chair of the National Deregulation Board of Hungary. He also was the principal draftsman of the Environment Code for the Hungarian Parliament, as well as the founder and speaker of the Hungarian League for the Abolition of the Death Penalty.

### Kees Van Raad

Kees Van Raad is one of a handful of leading academics in the international tax area. He is professor of law at Leiden University in the Netherlands, chairman of Leiden’s International Tax Center, and director of the LL.M. Program in International Taxation in Leiden University’s Law School. He has held high-level governmental office in the Dutch Ministry of Finance and Revenue Service, and has been of counsel to the tax law firm of Loyens & Volkmaars. Van Raad has written widely and in multiple languages.

### Vincenzo Varano

Vincenzo Varano, professor and former dean of the Faculty of Law of the University of Florence, is one of Europe’s leading authorities on comparative law. For more than 30 years, he has conducted research in English law at the Institute of Advanced Legal Studies and the British Institute of International and Comparative Law in London. He was twice awarded the Italian Ministry of Education’s Fellowship to promote the training of young law graduates and twice received the University of Florence Prize for research. He has been a visiting professor at several law schools in the United States and at All Souls College of Oxford University. His publications include a book on the civil justice system of the United Kingdom, as well as more than three dozen articles in English and Italian. Varano’s other academic activities include the board of directors of the Italian Association of Comparative Law and the editorial board of the *Rivista di Diritto Civile*. ■

## Faculty Retirements

### John Phillip Reid

RUSSELL D. NILES PROFESSOR  
OF LAW EMERITUS

Tribute by Professor William Nelson

*Following is an excerpt from a talk given by Professor William Nelson on the occasion of the retirement of John Phillip Reid, the Russell D. Niles Professor of Law:*

Tonight we celebrate the extraordinary 43-year-long relationship with New York University School of Law of John Reid, one of the premier American historians of his generation. So far, Reid has published a total



of 19 books on topics ranging from the legal history of New Hampshire, Native-American legal practices, law in the trans-Mississippi West, and the constitutional history of the American Revolution. Two more books are in

press. I cannot do justice to all his work within my limited time, so I will talk about just one segment of that work — the American Revolution.

It all began with Reid’s review of Bernard Bailyn’s 1965 *Pamphlets of the American Revolution*, the introduction to which later became the prize-winning *Ideological Origins of the American Revolution* (Harvard University Press, 1967). The introduction transformed historical thinking about the roots of American independence: Bailyn claimed that the colonists revolted because of their ideas about freedom and liberty, not to promote their economic interests. Reid agreed that the Revolution was not about economics, but disagreed about the Revolutionaries’ ideas. American independence, according to Reid, was not about ideas, but about law or, at least, about legal ideas.

When Reid’s review was published, I had already been a student of Reid and was then a graduate student working under Bailyn. I was in the middle. Bailyn was sure that Reid had misunderstood his book — law was merely one more idea, like the other ideas on which *Pamphlets* had focused, and thus that Reid’s insight only strengthened his, Bailyn’s, argument. Reid was equally sure that Bailyn had misunderstood his review — law is more than an idea, it is a vehicle of action.

As intermediary, I tried to broker a compromise and get Bailyn and Reid to understand each other's position. But Reid would not compromise. Those who know John Reid recognize his curmudgeon-like qualities; they know that he possesses a scholarly integrity that does not permit him to abandon an idea he finds worthy. Thus, no one was surprised when Reid set out to prove to the world that he was right and Bailyn, wrong. Thirty-five years ago, however, few other than Reid himself expected him to succeed.

Eight books later, Reid has accomplished his goal. His magisterial *Constitutional History of the American Revolution* (University of Wisconsin Press, 1986), together with three subsidiary volumes, establish that the conflict leading up to independence was about law and that each side in that conflict was advancing forensic legal arguments. Both sides understood that, if they lost, the political and constitutional world they always had known would crumble around them. No one today can read Bailyn's *Ideological Origins* without reading the *Constitutional History* alongside. Bailyn may have established what the American Revolution was not about, but John Reid has shown historians what it was about.

I am delighted that John will continue to teach at the Law School as the Russell D. Niles Professor of Law Emeritus.

## George Sorter

UNIVERSITY PROFESSOR EMERITUS  
AND VINCENT C. ROSS PROFESSOR  
OF ACCOUNTING EMERITUS

Tribute by Professor John Slain

Shortly after I came to the NYU School of Law in 1976, the late Homer Kripke, who was *primus* among the corporate faculty, walked me over to the Stern School of Business to meet the chairman of the Accounting Department, George Sorter. On the way, Homer ran through George's honors and accomplishments, none more impressive than Homer's description of him: To be called a polymath by Homer Kripke was roughly comparable to being called one helluva ball player by DiMaggio. Homer had taken dead aim on luring George onto the Law School faculty as a joint appointee, an effort in which he was eventually successful. The compliment of Homer's admiration did not depend, as I initially supposed, on agreement with Homer's thought-out and well-developed accounting conceptualism. George's own developed and thought-out conceptualism was different from — indeed, almost exactly opposite — Homer's. Until Homer's death, George and Homer carried on a colloquy in a variety of venues — memorably the several major accounting conferences that George (and Abe

Stanger) organized at the Law School. Because some of my youth was misspent getting a CPA, I was a front-row spectator at all of this. It is not a valedictory compliment to admired colleagues, it is but a simple statement of fact that I was introduced to accounting breadth and depth whose existence nothing in my prior training had led me to imagine.

The large issues between Homer and George are too complex, and in application, too serious, for discussion (or description) here. Both men developed their ideas exten-

Sorter would call attention to the small clues you had missed and, using them as keys, unlock the undiscussed. While I understood the Conan Doyle comparison, it missed the important point that George deals with things in the real world; at day's end, you can test the solution objectively. We could, and we did, and we found George consistently proved right. I thought one student, who had some relevant professional experience in a prior life, got it right when she described George as breaking codes.

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**“I was constantly amazed at the apparently bottomless wells of patience, courtesy, and good humor on which George Sorter drew to reach the last struggling straggler. Co-teaching with George, I learned a lot about accounting and even more about teaching. He is a master.”** PROFESSOR JOHN SLAIN

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sively in speeches and articles and the implications of their respective positions are still being played out in practice, in regulatory



fora, and in standard setting in Norwalk and London. What is clear at this interim point is that George is entitled to look on the end of the 1990s debacle — and very specifically at the wreckage of Enron — and to say “I told you so.” He did.

Out of his teaching repertory, which runs from elementary through post-doctoral, George has regularly taught two courses at the Law School, Accounting for Lawyers and Advanced Analysis of Accounting Information. Accounting for Lawyers attracts many students who are there because they are responding to a forceful hint from a prospective employer and often display stereotypical law student innumeracy. Advanced Analysis on is for quantitative Marines, up for long marches and hard bivouacs.

George's ability to fit his teaching to the very different needs of these groups is extraordinary. I took the financial analysis course once with sweat pouring down my brow; the demands were an order of magnitude beyond routine. A comparison commonly made by students was to Conan Doyle's Sherlock Holmes stories: After you have puzzled for a week over deeply opaque financials, Holmes/

At the opposite end of the sophistication continuum were Accounting for Lawyers students, typically starting from scratch with the debit-credit dialectic. George and I co-taught this course occasionally, so I saw him in action. Many people, including some very smart people, have great difficulty with the initial accounting course; they simply don't get it. Since George's most obvious characteristic is that he thinks faster than almost anybody else and requires only nanoseconds to absorb and analyze information at almost unimaginable levels of complexity, your intuitive sense is that he would be a poor fit for such a group. On the contrary, I was constantly amazed at the apparently bottomless wells of patience, courtesy, and good humor on which he drew to reach the last struggling straggler. Co-teaching with George, I learned a lot about accounting and even more about teaching. He is a master.

George has enriched us. First, and most obviously, he has given a generation of our graduates an important comparative advantage in practice. Second, originally with Homer Kripke and, then, together with Abe Stanger, Stan Siegel, and Werner Ebke, he has made the Law School a place where accounting issues are taught, thought about, talked about, and written about. Lastly, George is a wonderful colleague and a good friend. Although he has decided to lighten his load by retirement from the full-time faculty, we and our students can hope to continue to enjoy many more years of close association. ■



## In Memoriam

# Dorothy Nelkin

(1933-2003)

The community at NYU School of Law mourns the death in May of Dorothy Nelkin, University Professor, professor of sociology, and a member of the Law School faculty since 1990. Her scholarship, focusing on science, technology, risk, and public values and perceptions, won international recognition and renown. A prolific author, she published 26 books and well over 200 articles on a wide range of subjects in the social study of science, including genetics, creationism, nuclear power, occupational safety, AIDS, body tissue controversies, and other issues in science and technology policy. Shortly before her death, she completed a book on DNA art titled *The Molecular Gaze* and a revised edition of *The DNA Mystique*. Fluent in French, she lectured widely in Europe and other parts of the world on contemporary issues and controversies relating to science. She explained her quest as trying to “understand how people understand science.”

At the Law School, Nelkin taught courses on Law and Science and Law, New Technologies, and Risk. A number of these offerings were co-taught with other faculty, including Professors Rochelle Dreyfuss and Richard Stewart and Global Visiting Professor Upendra Baxi of India. The courses dealt with controversies over the social and legal implications of the revolution in microbiology and biotechnology, including themes of privacy and property; risk, regulation, and human rights; informed consent and conflict of interest; and the policy implications of different assumptions regarding genetic determinism. She was admired by students and colleagues for her wide-ranging intellectual curiosity, her interest in and deep respect for facts, her irreverent attitude toward established pieties, and her insistence of the importance of public values and attitudes in science and technology policy. She was an inspiration to many students with interests in the intersections among science, law, and public policy.

Deeply committed to interdisciplinary research, Nelkin was concerned about the subversion or misuse of science for political or profit-making ends. She was worried about the civil liberties implications of assembling DNA databases for crime-fighting, and was skeptical of efforts to link behavior, especially criminal behavior, to heredity. She was also concerned about loss of independence of scientific researchers and the infiltration of corporate

### **Nelkin was worried about the civil liberties implications of assembling DNA databases for crime-fighting, and was skeptical of efforts to link behavior, especially criminal behavior, to heredity.**

influences and commercial motives in university-based science. Nelkin also opposed technological fixes for what she regarded as fundamentally value or social problems.

At the time of her death, Nelkin was closely involved in a major research project with Professor Stewart and Global Law Professor Philippe Sands on international regulatory conflicts over genetically modified (GMO) foods and crops. Her elements of the project dealt with issues regarding public attitudes towards GMO technologies, participation in regulatory decision-making, and public trust in science and government. She was emphatic that controversies over technological risks and their regulation could not be resolved by science, and that assessment and regulatory management of risks must explicitly take into account public values and perceptions. Stewart and Sands will carry on the project in her memory.

As part of her effort to “understand the dynamics of behavior with respect to genetic ideas,” Nelkin recently collaborated with an artist, Suzanne Anker, in a project on the use of DNA images and themes by artists. They assembled an exhibit of DNA art held at the New York Academy of Sciences this past spring. Their book, *The Molecular Gaze*, will be published this fall. Nelkin completed her edits on the page proofs days before her death. Her fortitude and commitment to the scholarly enterprise were never more evident than in her final days.

Nelkin was raised in Brookline, Massachusetts, and received her bachelor’s degree in 1954 from Cornell, where she taught for nearly 20 years before coming to NYU School of Law in 1990. Although she never earned an advanced degree, she achieved the highest levels of distinction and recognition, including memberships and directorship in a wide variety of scientific and scholarly academies and learned societies and the receipt of many grants and awards. The Society for the Social Study of Science awarded her the Bernal Prize in recognition of her founding role in establishing the field of the social study of science and her lifetime contribution to it. She served on numerous scholarly editorial boards and on many governmental and non-governmental advisory boards addressing questions of science, medicine, and public policy.

Nelkin is survived by her husband of 50 years, Mark Nelkin, emeritus professor of applied physics at Cornell; a daughter and granddaughter; and a sister. A memorial service was held September 10 at the Law School.

## Newly Tenured Faculty

### **Bryan A. Stevenson** Professor of Clinical Law

Professor Bryan Stevenson is nationally and internationally renowned for his work in the capital punishment field. He has won numerous awards, including the Olaf Palme Prize for International Human Rights and the MacArthur Foundation Fellowship Prize. In June 1999, he addressed members of the Russian Parliament as a part of a program



that resulted in the commutation of all 800 death sentences in Russia by then-President Boris Yeltsin. For the past four years, he has been working with lawyers in the Caribbean on legal strategies aimed at restricting executions

in that region. Recently, he has been instrumental in winning a legal ruling against mandatory death sentences that has the potential to result in the commutation of sentences for many condemned prisoners.

Stevenson is currently on the board of the European Roma Rights Center and is working with advocates in Eastern Europe on litigation strategies to protect the Roma, who are frequently targeted as the victims of hate crimes, subjected to segregation, and victimized by legally enforced, state-sanctioned racism. Closer to home, he has been asked to testify before or give evidence to Congress on three occasions in the last two years on reform efforts in the area of criminal justice.

When Stevenson came to the Law School in 1998, he created the Capital Defender Clinic, a semester-long clinic in which students work on Alabama capital cases and travel to Alabama with Stevenson to work with death row inmates, track down mitigation evidence, draft pleadings, and prepare witnesses’ testimony. Professor Anthony Amsterdam, who teaches with Stevenson in the clinic, has commented that Stevenson’s gifted instruction “helps students to work through the particular, immediate — often urgent — issues presented by their fieldwork and to see connections between them and a range of issues beyond death penalty litigation or even criminal justice.”

In his writing, Stevenson has drawn on his wealth of experience in the capital punishment field to raise and thoroughly examine critical issues in the field. For example, in an article on the statutes that

govern federal habeas corpus review in capital punishment cases, Stevenson demonstrated that the changes that Congress made in habeas corpus laws in 1996 have had the unintended and impermissible effect of virtually precluding postconviction relief for an entire class of prisoners in capital cases. In another article, Stevenson illustrated that a recent Supreme Court decision on capital sentencing has far broader implications than had previously been recognized by the courts or other scholars. Professor Charles Ogletree of Harvard Law School has said that Stevenson's scholarship is a "powerful and persuasive" guide for "future legal, legislative, and public policy" decision-making in the capital punishment field.

Stevenson is a 1985 graduate of Harvard, with both a master's in public policy from the Kennedy School of Government and a J.D. from its law school. He has also received honorary degrees from the University of Pennsylvania School of Law and Georgetown University Law School. He was a staff attorney with the Southern Center for Human Rights in Atlanta, Georgia, and since 1989, he has been the executive director

of the Equal Justice Initiative in Montgomery, Alabama, a non-profit organization that defends the legal rights of the poor and people of color in Alabama. He has been recognized by several national publications and organizations as one of the nation's top public interest lawyers.

### Michael J. Wishnie

Professor of Clinical Law

Professor Michael Wishnie, who joined the clinical faculty at NYU School of Law in 1998, co-created and co-teaches the Law School's Immigrants Rights Clinic, a clinic in which students use litigation and non-litigative forms of advocacy to represent individuals and groups. Wishnie has helped to shape the law and thinking in his field not only with academic scholarship but also with highly influential briefs. For example, he co-authored an amicus curiae brief on behalf of 21 prominent legal histo-



rians in a recent U.S. Supreme Court case that resolved the issue of whether the federal courts have the authority to review a statutory retroactivity claim on habeas corpus. Professor David Martin of the University of Virginia School of Law has commented that the brief was "unmistakably influential" because both the majority and dissenting opinions in the closely divided decision "make it clear that historical inquiry played a key role in the outcome."

As Professor Sarah Cleveland of the University of Texas School of Law has observed, Wishnie is "one of the very few academics in the country whose work spans the divide between labor and immigration law." Referring to Wishnie's groundbreaking article on promoting the labor rights of immigrant workers by advancing international labor norms, Cleveland commented that the article "will remain a foundational piece for academics and practitioners alike."

The fieldwork done in the clinics that Wishnie teaches provides fertile ground for an exploration of a range of lawyering roles and for a comparative examination of different forms of representation. Students complement their litigation on behalf of immigrants with media work, legislative advocacy, community education, and other legal assistance on behalf of immigrant organizations. They explore the theory underlying these advocacy strategies, as well as their practical application in the context of the cases handled by the clinic.

Wishnie came to NYU School of Law after working at the Legal Aid Society and the American Civil Liberties Union (ACLU) Immigrants' Rights Project. At the ACLU, Wishnie concentrated on the problems of low-wage immigrant workers, representing New York City taxi drivers and garment, construction, restaurant, and domestic workers in their efforts to vindicate basic

## Alexander Fellow Cristina M. Rodriguez

Cristina Rodriguez has been awarded the Alexander Fellowship at NYU School of Law. Alexander Fellowships, named after Fritz Alexander, the distinguished African-American New York Court of Appeals judge, are designed to prepare recent law school graduates for academic careers. During the two-year fellowship, fellows draft a substantial paper that serves as the basis for a presentation on the teaching job market, teach one or two courses, and participate in several of the Law School's scholarly colloquia.

Rodriguez is presently working on an essay titled "Language Rights: Four Fundamental Questions," which explores the primary theoretical questions that should guide the formulation of language law and policy around the world. She will teach a course called Language Rights in Spring 2004.

Rodriguez received her J.D. from Yale Law School, where she participated in labor law and human rights law clinics and was an articles editor of the *Yale Law Journal*. As research assistant to Professor Jack Balkin, she researched the history of desegregation and civil rights law and assisted in revision of substantive due process and equal protection portions of a constitutional law casebook. She also worked with the South America Linkage Project, where she was assistant to Professor Owen Fiss, coordinated legal and academic programs for Argentinean and Chilean law students, and translated papers on privacy and equality issues from and into Spanish for international conferences held in Argentina and Chile.

She received her master of letters in modern history from Oxford University, where she was a Rhodes Scholar, and received her B.A. from Yale College. Her publications include "Accommodating Linguistic Difference: Toward a Comprehensive Theory of Language Rights in the United States," *Harvard Law Review* (2001) and "Clearing the Smoke-Filled Room: Women Jurors and the Disruption of an Old Boys' Network in Nineteenth-Century America," *Yale Law Journal* (1999).

labor and employment rights. He also participated in developing and implementing national litigation strategies to challenge the harsh immigration and welfare laws enacted in 1996. Previously, he was a law clerk to Judge H. Lee Sarokin of the U.S. District Court for the District of New Jersey and U.S. Court of Appeals for the Third Circuit, and for U.S. Supreme Court Justices Harry Blackmun and Stephen Breyer. Before earning his J.D. from Yale Law School in 1993, Wishnie spent two years teaching in the People's Republic of China. ■

## Weiler Delivers First Straus Lecture



Professor Joseph Weiler, the first Joseph Straus Professor of Law, interpreted the fall of Adam and Eve in the inaugural Straus Lecture.

Professor of Law, Professor Joseph Weiler is University Professor and holds the European Union Jean Monnet Chair. Weiler directs the Hauser Global Law School Program and the Jean Monnet Center for International and Regional Economic Law and Justice.

A world-renowned scholar in the law of the European Union and international economic law, Weiler came to the Law School from Harvard University, where he was the Manley Hudson Professor of Law and also held the Jean Monnet Chair. In addition to his scholarly work, Weiler serves as an international arbitrator in the framework of the World Trade Organization and the North American Free Trade Agreement. He is a board member of numerous academic institutions and learned journals and was appointed most recently to the Council of the Association for Hebraic Studies. His latest book is titled *Un'Europa Cristiana* (Alba: Palermo; 2003).

Dean Revesz thanked Daniel Straus and his family for their extraordinary support of the Law School. Straus then introduced Weiler, who delivered an hour-long lecture titled "God's Serpent: On Culpability, Responsibility, and Autonomy in the Story of Eve and Adam" to more than 150 guests of the Law School and the Straus and Weiler families.

Weiler's speech was, by his own admission, only tangentially related to his legal studies. At the end of his speech, he explained that the motivation for his biblical studies was his own personal battle for a meaningful academic life, and that as a teacher and educator he decided to give this "particular exegesis." After describing his approach to the study of the Bible and the relationship between Genesis I and II, he moved on to Genesis III and reviewed the description of the fall of Adam and Eve and questioned the appropriateness of their punishment.

"They lack the knowledge of good and bad which, in all our legal and moral systems, is a condition for culpable behavior," Weiler said. "If they could not tell the difference between good and bad, why such fierce, uncompromising, and eternal punishment for their transgression? Where was their *mens rea*?"

Weiler argued that the purpose of God's making Adam and Eve in his image was not actually fulfilled until Eve engaged the Serpent (her inner self) and chose to eat the apple and gain wisdom. This act, then, was not a "fall," but a realization of God's will.

"On this reading, it is only upon and through transgression, when God in Genesis III:22 says, 'Behold, the man is become as one of us, to know good and evil,' that potentiality becomes reality and creation of man in the image of God is realized," Weiler said.

Despite its label as the "transgression" or "fall" that prompts God to expel Adam and Eve from the Garden, it is only then that they have truly become human. Weiler contended that the autonomy that comes from the knowledge from the fruit, the ability to know good and evil, is what allows man to truly be in God's image.

Following the lecture, the dean, colleagues, family members, and friends of the Straus and Weiler families enjoyed a dinner honoring the Straus family. The dinner was a true family affair. Revesz, Professor Vicki Been ('83), Joseph and Ruth Weiler, and Daniel and Joyce Straus were joined by their children and the Straus extended family. The evening was graced by the presence of Daniel's mother, Gwendolyn Straus, who, sadly, later passed away in the spring of 2003. To read the full text of the lecture, visit [www.jeanmonnetprogram.org](http://www.jeanmonnetprogram.org).

NYU School of Law celebrated the creation of the Joseph Straus Professorship in Law by holding an inaugural lecture and dinner. The Straus Professorship was endowed by Daniel Straus ('81), a second-generation Law School alumnus and trustee, to honor his late father, Joseph, who received an LL.B. in 1937 and an LL.M. in 1943. After graduating from the Law School, Daniel Straus spent a few years as an associate at Paul, Weiss, Rifkind, Wharton & Garrison, and then began managing nursing home facilities through The Multicare Companies Inc., which he and his brother Moshael formed in 1984.

In addition to being the Joseph Straus Pro-

## Six New Professorships Established

NYU School of Law welcomes six new names to its roster of prestigious chaired professorships this fall. Thanks to the support of six very generous alumni, four of whom serve on the Law School's Board of Trustees, NYU School of Law has the following new chaired professorships: **Alan Fuchsberg ('79)** established the Jacob D. Fuchsberg Professorship of Law; **George Lowy ('55)** established the George T. Lowy Professorship of Law; **Norma Paige ('46)** established the Norma Z. Paige Professorship of Law; **Wayne Perry (LL.M. '76)** established the Wayne Perry Professorship of Tax; **Anthony Welters ('77)** established the An-Bryce Professorship of Law; and **Leonard Wilf (LL.M. '77)** established the Leonard Wilf Professorship of Property Law.

On this milestone in Law School history — six new chairs in a single year — Dean Revesz said, "I am delighted that Alan, George, Norma, Wayne, Tony, and Lenny have chosen to support the Law School in this very special way. A chaired professorship is one of the most meaningful gifts that a donor can make. It is a wonderful way to establish a family legacy and ensure that the tradition of excellence will be carried on for years to come. Chaired professorships are also crucial in our effort to recruit and retain the finest faculty in legal academia. These distinguished alumni have found a wonderful way to give back to the community that is so proud of their achievements."

Judge Jacob Fuchsberg ('35) was a prominent trial lawyer and judge who served on the New York State Court of Appeals from 1975 to 1983. Before becoming a judge, he was a partner at Fuchsberg & Fuchsberg, the firm he started with his two brothers. He litigated several notable cases, including *Ergas v. Barricini*, which in 1963 resulted in the first million-dollar tort award, and the "Baby Lenore" case, which helped liberalize abortion laws. He was a trustee of NYU School of Law, an honorary director of the Law Alumni Association, and president of the *Law Review* Alumni Association. In 1977, he received the Arthur T. Vanderbilt Medal. Alan Fuchsberg is the managing partner of The Jacob D. Fuchsberg Law Firm, where his practice focuses on personal injury and civil rights matters. He is the former chair of the employment rights committee of the Association of Trial Lawyers of America



## University Professors

Three professors on the NYU School of Law faculty have been named University Professors. The highest honor bestowed on a faculty member, a University Professorship recognizes both outstanding scholarship and teaching.

**Thomas Nagel**, the Fiorello La Guardia Professor of Law, is widely regarded as the leading moral philosopher in the United States.

**Richard Stewart**, the John Edward Sexton Professor of Law and director of the Center on Environmental and Land Use Law at NYU School of Law, is recognized as one of the world's leading scholars in environmental and administrative law.

**Joseph H.H. Weiler** is the Joseph Straus Professor of Law, European Union Jean Monnet Professor, and director of the Hauser Global Law School Program. He heads the newly established Jean Monnet Center for International and Regional Economic Law and Justice and is a member of the faculty executive committee of the Institute of International Law and Justice. Weiler is nationally and internationally acclaimed for his work on the European Union and on international trade.

(2000); a former member of the medical malpractice committee (1993-1997) and the committee on professional and judicial ethics of the Association of the Bar of the City of New York; and a director of the New York State Trial Lawyers association since 1993. He is also affiliated with the 9-11 Pro Bono Program of the Association of the Bar of the City of New York. He and his sister, Rosalind Fuchsberg Kaufman ('77), also served as Reunion chairs.

Lowy received a B.A. from NYU Washington Square College in 1953. As a student at NYU School of Law, he was an editor of the *Law Review* and a member of the Moot Court Board. After finishing law school and serving two years in the U.S. Army, Lowy joined the law firm of Cravath, Swaine &

director of Kearfott Guidance & Navigation Corporation after Astronautics acquired the company in 1988 until her retirement in 2000. Paige has been a Law School trustee since 1994. In 1991, she was given the Law Alumni Association's Alumni Achievement Award, and in 1996 she was given the Judge Edward Weinfeld Award during her 50th class reunion. She has funded the Norma Z. Paige Scholarships since the 1980s.

Perry started his legal career as an associate at a large Seattle law firm. After finishing his LL.M. in tax at NYU School of Law, he joined McCaw Cellular, a major wireless company, and served as executive vice president and general counsel (1976-1985), as president (1985-1989), and as vice chairman (1989-1994). In 1994, he helped

**“These distinguished alumni have found a wonderful way to give back to the community.”** DEAN RICHARD REVESZ

Moore in 1957, became a partner in 1965, and has remained with the firm ever since. From 1983 to 1988, he taught at the Law School as an adjunct professor, and in 1991, he was awarded the Vanderbilt Medal. He was a member of the Council on the Future of the Law School, and served as a Reunion co-chair in 1995 and 2000. He is a member of the board of advisors of the NYU Center for Law and Business. Lowy has been a trustee of the Law School since 1991. He also funds the George Lowy Scholarship Fund at NYU School of Law.

After receiving a J.D. from NYU School of Law, Paige started a law practice in Lower Manhattan with her husband, Samuel Paige (LL.M. '51), in 1948. She later founded the Astronautics Corporation of America with her brother, Nathaniel Zelazo, in 1959. Paige served as an executive, board member, and chairman of the company for 41 years. She also served as an executive vice president and

negotiate the acquisition of McCaw Cellular by AT&T Wireless Services, Inc., and then served as vice chairman of AT&T Wireless from 1994 to 1997. He then joined Nextlink Communications, a new fiber optic communications company, and served as its chief executive officer from 1997 to 1999. In 2000, he became chief executive officer of Edge Wireless LLC, an affiliate of AT&T Wireless Services Inc. that operates in parts of the western United States. He joined the Advisory Board of the Graduate Tax Program at NYU School of Law in 1998, and is a member of the board's technology committee.

Welters began his career as an attorney with the Securities and Exchange Commission. In 1979, he became the executive assistant to Senator Jacob Javits. In 1981, he was appointed director of federal affairs for Amtrak and shortly thereafter was promoted to assistant vice president of corpo-

rate development. In 1983, he joined the Reagan Administration as associate deputy secretary at the U.S. Department of Transportation. Welters is currently president and chief executive officer of AmeriChoice, a health care firm he founded, which provides health care services for state Medicaid programs. He has been a Law School trustee since 1997. He was the 2002 recipient of the Law Alumni Association's Alumni Achievement Award, served as co-chair of his class Reunion committee in 2002, and is an honorary member of the NYU chapter of the Order of the Coif. Welters, together with his wife Beatrice, funds the An-Bryce Scholarship Program at NYU School of Law.

Wilf received a J.D. from Georgetown University in 1972 and a B.A. from Boston University. He is currently president of Garden Homes Inc., a construction and real estate development company in New Jersey, which was founded in the 1950s by his father and his uncle, and which today is one of that state's largest residential and commercial builders. In 1997, he was appointed by President Bill Clinton to serve a five-year term on the U.S. Holocaust Memorial Council. Wilf has been a trustee of the Law School since September 2001. He also serves on the Tax Law Advisory Board and funds the Wilf Family Graduate Tax Scholarship at NYU School of Law. ■

## Meron Elected President of International Criminal Tribunal

Theodor Meron, Charles L. Denison Professor of Law, was elected president of the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY), effective March 11, 2003. As part of



his responsibilities, Meron will preside over the Appeals Chambers of the ICTY and the International Criminal Tribunal for Rwanda (ICTR). Meron was appointed as a judge on the ICTY in March 2001.

The ICTY, located in The Hague, Netherlands, was established by the U.N. Security Council in 1993 in the face of serious violations of international humanitarian law committed in the former Yugoslavia beginning in 1991, and in response to the threat to international peace and security posed by these violations.

"We congratulate Ted Meron on this momentous achievement," said Dean Revesz. "Ted's scholarship, passion for justice, and knowledge of international human rights and humanitarian law have profoundly enriched the life of our institu-

tion during the last 26 years. Ted also exemplifies the Law School's tradition of unprecedented leadership on international courts and tribunals."

Born in Poland, Meron moved to Palestine and received his first legal training at the University of Jerusalem. Later, he attended Harvard Law School, earning his LL.M. and J.S.D., and Cambridge University, where he held the prestigious Humanitarian Trust Fellowship in International Law.

After Cambridge, Meron joined the Israeli foreign ministry. He was counselor to the mission to the United Nations in New York, legal adviser to the Ministry, ambassador to Canada, and permanent representative to the United Nations in Geneva. He resigned from the Israeli Foreign Service in 1977 and immediately joined NYU School of Law. Since then, he has become a naturalized U.S. citizen and served as a public member of the U.S. delegation to the Conference for Security and Cooperation in Europe and Conference on Human Dimension in Copenhagen. He was counselor on international law in the U.S. Department of State in 2000-01. Between 1991 and 1995, he also held a professorship of international law at the Graduate Institute of International Studies in Geneva. ■



## Dean's Article Selected for *Land Use and Environment Law Review*

An environmental law article written by Dean Richard Revesz, Lawrence King Professor of Law, was chosen from more than 400 articles as one of the 10 best articles on environmental and land use law published in 2001. The article, which appeared in *Harvard Law Review*, will be published in this fall's *Land Use and Environment Law Review*.

Titled "Federalism and Environmental Regulation: A Public Choice Analysis," the article challenges the influential claim that primary responsibility for environmental regulation should be assigned to the federal government because public choice pathologies cause systematic underrepresentation of environmental interests at the state level.

In a congratulatory letter to Revesz, co-editors A. Dan Tarlock and David Callies wrote: "[T]he article was evaluated by many experts, and compared with other high-quality articles. The collective judgment of this process is that your article is one of the best articles published in the last year."

Articles were evaluated by two review boards, each made up of law professors and practicing attorneys with expertise in land use and/or environmental law. The first board of 50 people chose 30 articles from the more than 400 originally identified for possible inclusion. The second 10-member review board then chose the final 10 articles for the publication. ■

## Holmes Named 2003 Carnegie Scholar

The Carnegie Corporation of New York selected Professor Stephen Holmes as a 2003 Carnegie Scholar. Holmes, who joins 12 other leading scholars, will receive up to \$100,000 over the next two years to write a book on Russian legal reform.



"The naming of Stephen Holmes as one of the Carnegie Corporation's 2003 scholars honors one of our most distinguished authors, educators, and scholars," said Dean Revesz. "The award also honors our Law School by recog-

nizing the critical and creative intellectual role our faculty plays in reflecting on the significant issues of our time."

Holmes' research centers on the history of European liberalism and the disappoint-

ments of democracy and economic liberalization after communism. In 1984, he published *Benjamin Constant and the Making of Modern Liberalism* (Yale University Press). Since then, he has published articles on democratic and constitutional theory as well as on the theoretical origins of the welfare state.

In 1988, he was awarded a Guggenheim Fellowship to complete a study of the theoretical foundations of liberal democracy. He was a member of the Wissenschaftskolleg in Berlin during the 1991 academic year. His *Anatomy of Antiliberalism* (Harvard University Press) appeared in 1993 and, in 1995, he published *Passions and Constraint: The Theory of Liberal Democracy* (University of Chicago Press); in this work, Holmes presents a spirited vindication of classical liberalism and its notions of constitutional government. He also co-authored, with Cass Sunstein, a book on *The Cost of Rights* (W.W. Norton, 1999). ■



## Allen and Kahan Author Three of Top 10 Corporate and Securities Articles

The *Corporate Practice Commentator* named three articles written by two NYU School of Law professors among its top 10 corporate and securities articles of 2002.

Professor William Allen, Nusbaum Professor of Law and Business and director of the Center for Law and Business, was recognized for “Function Over Form: A Reassessment of Standards of Review in Delaware Corporation Law,” co-authored with Jack Jacobs and Leo Strine Jr. and published in the *Delaware Journal of Corporation Law* and in *Business Law*.

Professor Marcel Kahan was honored for two articles: “How I Learned to Stop Worrying and Love the Pill: Adaptive Responses to Takeover Law,” written with Edward Rock and published in the *University of Chicago Law Review*, and “Rethinking Corporate



William Allen



Marcel Kahan

Bonds: The Trade-off Between Individual and Collective Rights,” published in the *NYU Law Review*.

Academics in corporate and securities law selected the articles. ■

## Weiler Presents Lecture on International Governance at Pontifical Academy

The Pontifical Academy of Social Sciences was founded in January 1994 by Pope John Paul II with the aim of promoting the study and progress of social, economic, political, and legal sciences. The Academy chose to tackle globalization in its ninth plenary session held in May 2003, and devoted a session to the point of view of jurists. Joseph Weiler, Jean Monnet Professor at NYU School of Law, examined the dilemma posed by international

governance, which can be summed up as undoubtedly beneficial, but lacking in democratic legitimacy. Weiler explained how, in his opinion, we can rethink democracy within this new context. At NYU School of Law, Weiler is also the Joseph Straus Professor of Law; director of the Jean Monnet Center for International and Regional Economic Law and Justice; and director of the Hauser Global Law School Program. ■



On the occasion of the ninth Plenary Session of the Pontifical Academy in Rome to which Professor Joseph Weiler presented a study on issues of democracy and globalization in May 2003, he and his family had an audience with the Pope.

## Hertz Awarded 2003 Distinguished Teaching Medal

New York University selected Randy Hertz, professor of clinical law and director of clinical and advocacy programs, as one of five recipients of the 2003 Distinguished Teaching Medal.

Hertz has taught capital defense, juvenile rights, criminal litigation, and other courses since 1985 at the Law School. A graduate of Stanford Law School, he is renowned for a dynamic teaching style that combines complete mastery of a subject with a manner that encourages students to discover the answers themselves; for the lengths to which he will go, in and out of the classroom, to help students; for the guidance and mentorship he provides in classes and clinics; and for personally attracting so many students to the Law School.



Professor Randy Hertz, here acting as judge during moot court exercises, is renowned for his dynamic teaching style.

Students are amazed at his approachability and accessibility, in light of his busy schedule. “His teaching load would crush the average teacher,” said one colleague, “yet year after year Randy’s students report that his tireless commitment to them and their development as critical thinkers has enabled them to become better problem-solvers, better students, and better lawyers.” Another colleague said: “Professor Hertz is an inspirational teacher — inspiring to his students, inspiring to his colleagues, the truly rare teacher who inspires the teaching profession itself by setting a new standard for just how good it is possible for a teacher to be.” His students agree: “Sitting in a lecture by Randy Hertz should be a requirement for every NYU School of Law student,” one wrote. “It is truly an unforgettable experience.”

Each teaching award consists of a specially designed medal and a grant of \$5000. The awards are presented annually to outstanding full-time faculty members in recognition that, along with research, teaching of the highest quality is critical to the success of New York University. ■

## John Sexton Takes Reins as NYU President

During a ceremony highlighted by a proclamation from the mayor of New York City, John Sexton, former dean of NYU School of Law, was installed as president of New York University on September 26, 2002. The notable crowd included hundreds of NYU students, staff, faculty, and alumni as well as university leaders from both the United States and abroad.

The installation ceremony began with an opening pronouncement by S. Andrew Schaffer, senior vice president, general counsel, and secretary of the University, after which Mayor Michael Bloomberg delivered remarks and read a mayoral proclamation declaring September 26 to be "John Sexton Day" in New York City.

"I salute the leaders of New York University in selecting John Sexton as their new president," said Mayor Bloomberg. "His intellect and vitality are essential to the vitality of the city." The mayor added that while New York is known as the leading city for finance and culture, it is also the center of higher education.

The mayor read from his proclamation: "From the performing arts to international finance, from public school classrooms to biomedical labs, NYU is intricately linked

to every aspect of what is important and exciting in the life of this city. The ideas and information, the creative and intellectual capital generated here at the Washington Square campus and at the NYU Medical Center make NYU one of the city's greatest assets."

NYU Board of Trustees Chair Martin Lipton ('54) officiated at the formal installation of Sexton as the University's president. Paying tribute to Sexton's three immediate predecessors, James Hester, John Brademas, and L. Jay Oliva, all in attendance, Lipton said, "In large measure their service is what has made this University great ... We have no doubt that we will move NYU along its upward trajectory. We are blessed with the right man at the right time."

In his own address, Sexton focused on the environment of change in higher education and the nature of a leadership university for the 21st century.

The ceremony was part of a week-long set of events marking the formal launch of a new NYU leadership team. Other events included receptions for students and administrators, a dinner for newly inducted trustees, a set of academic panels exploring subjects ranging from religion to neural science, and a day-long conference of some 20 university leaders



from around the world whose institutions are members of the League of World Universities.

John Sexton, the Benjamin Butler Professor of Law, was named NYU's president-designate in May 2001. He was dean of NYU School of Law for 14 years. Before coming to NYU, he served as law clerk to Chief Justice Warren Burger, U.S. Supreme Court; Judge David Bazelon, U.S. Court of Appeals; and Judge Harold Leventhal, U.S. Court of Appeals. Sexton received a B.A., M.A., and Ph.D. from Fordham University, and earned his J.D. *magna cum laude* from Harvard Law School. ■

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## Kornhauser Named Director of the Institute for Law and Society

Lewis Kornhauser, the Alfred B. and Gail Engelberg Professor of Law, was named director of the Institute for Law and Society, effective in Summer 2003. The Institute, a joint venture between NYU School of Law and the Faculty of Arts and Science (FAS), was designed to examine law and legal institutions from a transdisciplinary perspective.

The coming years promise to be exciting ones for the Institute, which just celebrated its 10th anniversary. Dean Revesz said that

"Kornhauser is the ideal person to be director during this period." The program's offices will be moving into Law School space close to Washington Square, providing the Institute with much-needed space, as well as an opportunity to become more involved in the Law School's day-to-day life. In addition, NYU Faculty of Arts and Science and the Law School plan to initiate an aggressive plan for building the Institute's faculty. ■

## Franck Honored with Medal and Honorary Degree

Thomas Franck, Murry and Ida Becker Professor of Law Emeritus, was awarded the Manley O. Hudson Medal by the American Society of International Law at its annual dinner in April 2003 in Washington, D.C. The award is made for preeminent scholarship and achievement in international law and in the promotion of the establishment and maintenance of international relations on the basis of law and justice. Recent recipients of the award include Louis Henkin (1995),

Louis Sohn (1996), John Stevenson (1997), Rosalyn Higgins (1998), Shabtai Rosenne (1999), and Stephen Schwebel (2000).

An honorary doctor of humane letters was bestowed on Franck at the 2003 commencement ceremonies of the Monterey Institute of International Studies in recognition of his extensive and distinguished work in international law and international relations. Franck was the featured speaker at the event. ■

## Davis Invited to Center for Advanced Studies



Peggy Cooper Davis has been invited to join the renowned Center for Advanced Studies in the Behavioral Sciences as a fellow in 2004-05.

The center, at Stanford University, was established in 1954 by the Ford Foundation as part of a plan to increase "knowledge of the principles that govern human behavior." The center provides the mechanism by which distinguished scholars can further their path-breaking work. It awards up to 50 residential fellowships each year to scientists and scholars from this country and abroad who show exceptional accomplishment or promise in their respective fields. ■

# Allen and Franck Elected to the American Academy of Arts and Sciences

Two NYU School of Law professors, William Allen and Thomas Franck, were elected fellows of the American Academy of Arts and Sciences. This highly prestigious honors society recognizes those who have achieved great distinction in their fields.

Allen, the Nusbaum Professor of Law and Business and director of the Center for Law and Business, came to NYU in 1997, following 12 years as chancellor of the Court of Chancery in Delaware, widely considered the leading U.S. trial court for questions of business and corporation law. At the University, Allen is on the Law School faculty and a clinical professor of business in the Finance Department of the Stern School of Business.

Franck, the Murry and Ida Becker Professor of Law Emeritus, is a leader in the field of international law and formerly the director of the Center for International Studies. Franck has acted as legal advisor or counsel to many foreign governments, including Kenya, El Salvador, and Bosnia and Herzegovina. As an advocate before the International Court of Justice, he has successfully represented Chad and is currently representing Bosnia in a suit brought against Serbia under the Genocide Convention. From 1986 to 1993, he served on the U.S. Department of State Advisory Committee on International Law. He is the author of more than 20 books, most recently *The Empowered Self: Law and Society in the Age of Individualism*

(Oxford University Press, 1999), and is a two-time Guggenheim Fellowship winner.

“Election to the American Academy is an honor that acknowledges the best of all scholarly fields and professions. Newly elected fellows are selected through a highly competitive process that recognizes those who have made preeminent contributions to their disciplines,” said Academy President Patricia Meyer Spacks.

Allen and Franck join several Law School faculty who have been elected to the academy over the years: Anthony Amsterdam; Jerome Bruner; Jerome Cohen; Norman Dorsen; Ronald Dworkin; Stephen Holmes; Thomas Nagel; Burt Neuborne; John Reid; John Sexton; Richard Stewart; and Joseph Weiler.

The academy was founded in 1780 by John Adams, James Bowdoin, John Hancock, and other scholar-patriots “to cultivate every art and science which may tend to advance the interest, honor, dignity, and happiness of a free, independent, and virtuous people.” The academy has elected as fellows the finest minds and most influential leaders from each generation, including George Washington and Ben Franklin in the 18th century, Daniel Webster and Ralph Waldo Emerson in the 19th, and Albert Einstein and Winston Churchill in the 20th. The current membership includes more than 150 Nobel laureates and 50 Pulitzer Prize winners. ■

# Islam’s Champion

By Joan M. Dim and Nicole Pezold

Noah Feldman breathes deeply as he remembers September 11, a glorious Indian summer day that offered no hint of doom. Early that morning, he had boarded a Boston shuttle bound for New York City. He recalls the moment when he heard over the plane’s intercom news of the terrorist attacks. He recalls that he instantly understood that September 11 would touch not only the victims and their families, but also America and its tenuous relations with the Muslim world. He also understood that as a specialist in Islamic thought and as an American Jew, he was uniquely positioned to help Americans



better understand Islam and the Muslim world.

Now, almost two years later, Feldman, a 33-year-old assistant professor at New York University School of Law, leans back in the leather sofa in his sunlit NYU office and casually runs a hand, in what seems a natural gesture, through auburn curls. He looks more like Hugh Grant than Mr. Chips.

“The terrorist attack crystallized a series of ideas that had been percolating in my mind for sometime,” he says. “I saw the attack not as the beginning of a new cold war against Islamic fascism — as so many perceived it — but as the last, desperate gasps of a violent jihad.”

The core of his thinking, detailed in his recent book, *After Jihad: America and the Struggle for Islamic Democracy* (Farrar, Straus, and Giroux, April 2003), is that Islam is the key to democracy in the Middle East, not the barrier. And he makes a persuasive argument that all through the Muslim world a hunger for Islamic democracy is growing. Given this, Feldman exhorts America to develop strategies to help these emerging democracies. It is a view that heralds the arrival of a more sanguine approach and one that promises peaceful resolution rather than continually wounding conflicts. It is also a view he may actually be able to personally do something about since shortly after this interview was conducted, the Bush administration named Feldman as the senior adviser for constitutional law in the Office of Reconstruction and Humanitarian Assistance for Post-War Iraq.

“Most Americans don’t realize today that there is a deep aspiration for democracy in the

## Bruner Elected Corresponding Fellow of the British Academy



Jerome Bruner, University Professor, was elected this year as a corresponding fellow of the British Academy. The title is awarded by the British Academy to persons who are not British and who have “attained high international standing in any of the branches of study that the Academy promotes.” The British Academy is the counterpart in the humanities and social sciences to the Royal Society.

Bruner was professor of psychology at Harvard and then Watts Professor at Oxford. He has been at the forefront of

what became, in the 1960s, the much heralded Cognitive Revolution that today dominates psychology around the world. In 1991, Bruner came to the NYU School of Law as Meyer Visiting Professor to collaborate with Anthony Amsterdam, Peggy Cooper Davis, and David Richards in founding and teaching the Colloquium on the Theory of Legal Practice — an effort to study how law is practiced and how its practice can be understood by using tools developed in anthropology, psychology, linguistics, and literary theory. He has remained as a research professor, spending a major portion of his time as an adjunct professor at the Law School exploring the interaction of cultural and legal practice and co-teaching the Lawyering Theory Colloquium. ■

Muslim world,” he says. “After September 11, I realized that I could take the ideas I was working on in a rarefied academic way and write a popular book for a broader audience.”

*After Jihad* is especially unusual because it comes from a scholar

who was raised in an Orthodox Jewish family. One could rightly ask the question: How does a yeshiva boy from Boston — raised as he likes to say “Joe Lieberman Orthodox” — become one of the nation’s most respected scholars on Islam and the Middle East?

The beginning of his intellectual thought began as a confrontation of religious and secular life during his 12 years as a yeshiva student in the Maimonides School in Brookline, Mass.

“I knew from an early age the tensions between these ways of seeing the world didn’t all tie into a perfect, magical bow,” he remembers.

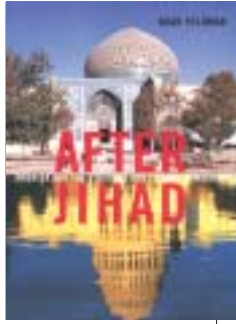
However, it wasn’t long until he realized that Judaism and Islam were intertwined, not only in their respect of mutual prophets, but also in their approach to the most important secular ideas in history.

From the Maimonides School, he went on to Harvard, Oxford, and Yale. Described as a “genius” by colleagues, Feldman, within one decade, graduated with degrees from three of the world’s most prestigious universities.

In 1992, he graduated *summa cum laude* from Harvard, majoring in Near Eastern studies and languages. In 1994, as a Rhodes Scholar at Oxford, he completed a doctorate on Islamic thought, and in 1997, he received a J.D. from Yale.

From Yale, he clerked for Chief Judge Harry T. Edwards of the U.S. Court of Appeals and U.S. Supreme Court Justice David H. Souter. Recruited by NYU School of Law Dean John Sexton (now NYU president), Feldman joined the Law School faculty in Fall 2001, where he is co-director of the Center on Law and Security. In addition, Feldman is a key player in the University’s Center for Catastrophe Preparedness and Response (CCPR), where he spearheads a program that seeks to launch a national policy debate over such issues as the legal dimensions of anti-terrorism detention and punishment, U.S. involvement in multilateral initiatives, and Islam and the transition to democracy. NYU was chosen by Congress last year to be the location for this Center, the only one so designated in New York.

In addition, Feldman maintains a special practice litigating constitutional cases before the federal courts. He is also a member of the coordinating committee of the Yale Mid-



dle East Legal Studies Seminar, which meets annually in the Middle East and brings together participants from the major Arab countries, as well as Iran, Turkey, and Israel. And if all these accomplishments weren’t enough, add to them fluency in Hebrew, Arabic, and French, and a smattering of Korean.

“At Oxford,” Feldman says, “I learned how to think about contemporary problems based on how issues were debated in antiquity.”

Although a superstar in the classroom, Feldman distilled many of his ideas on religion after class, sipping single-malt whiskey and talking late into the night with friends such as Nader Mousavizadeh, his roommate at Oxford and now second officer, Executive Office of the Secretary-General of the United Nations.

Mousavizadeh characterizes Feldman as a de facto ambassador across monotheistic faiths. Feldman, he says, is often better versed in these traditions than many believers. In fact, Feldman is so steeped in Islamic tradi-

tionally met Feldman’s goals. “NYU is on the move,” he explains, “I wanted to be a part of the transformation.”

Richard Revesz, dean of NYU School of Law, says, “Noah Feldman is one of a new and exceptional generation of faculty to come to our Law School. He exemplifies what makes a great teacher and scholar by combining clarity, humanity, and originality with a deep knowledge of the law, a rich background in political history, and a compassionate understanding of culture and religious thought. We are extraordinarily fortunate to have him in our community.”

Larry Kramer, associate dean for research and academics, a colleague and another important faculty addition to the Law School, succinctly offered his estimate of Feldman: “We don’t say too many people are brilliant, but Noah Feldman is the exception.”

Clearly, Feldman enjoys teaching. “You prod, poke, and urge students to make realizations on their own,” he says about the quasi-Socratic method he uses. Teaching law

“I love that you can espouse a theory in class or in an academic article, and the next day you can go to court and argue before a judge.... [Y]ou try out your ideas in real life.” PROFESSOR NOAH FELDMAN

tion that Saudis have asked why he hasn’t become a Muslim, and Pentecostals have asked him, in light of his knowledge of Christianity, why he hasn’t become a Christian.

Although Feldman no longer identifies himself as Orthodox, he quickly credits Judaism’s spiritual richness and the fact that he was raised in this tradition with having a powerful hold upon him.

“I am Jewish,” he says. “I identify as a Jew, and I cannot imagine not doing so.” Feldman stresses that his scholarly forays into other religions have only increased his appreciation of Judaism’s diverse thought and practice.

Why did Feldman, who could have had a job in any law school in the nation, choose NYU School of Law? The fundamental attraction, he says, was the common sense of excitement and action among a relatively young faculty to build a first-class school. The word was out that the Law School was building the foremost global program in the world — that it was transforming legal education and moving beyond the traditional curriculum of comparative international law into a systemic examination of transnational issues. The institution’s direction and ambitions per-

also connects to the immediacy of his daily life, and he likens his work to that of a scientist who physically tests different hypotheses.

“I love that you can espouse a theory in class or in an academic article, and the next day you can go to court and argue before a judge,” he says. “You may win. You may lose. But you try out your ideas in real life.”

He also appreciates the sanctuary of thought that a great educational institution provides — the flexible schedule and the freedom to write and think. In fact, the Law School gave him a semester off from teaching to write *After Jihad*.

One highpoint of his career at the Law School occurred in January 2002, when he led the Law School’s efforts to hold an all-day conference on “Islam and America in the Global World.” In mounting the conference, Feldman worked with President Bill Clinton and members of The William Jefferson Clinton Foundation. Coming so soon after September 11, the conference boldly and sometimes heatedly examined the relationships between the United States and the Islamic world and touched on many issues that Feldman expanded upon in *After Jihad*.

Feldman's acknowledgements in *After Jihad* to family, friends, and mentors testify to his gratitude. Among those whom he thanks are his parents, Drs. Penny H. Feldman and Roy E. Feldman of Cambridge, Mass., who he writes, "raised him in a world of multiple and complicated ideas." His mother is a vice president of the Visiting Nurse Service of New York and the director of its Center for Home Care Policy and Research. His father is the president of Behavior Analysis Inc., a social policy consulting company in Cambridge.

Although Feldman's ideas on Islamic democracy are rooted in his upbringing, Jewish studies, and the study of antiquity, he credits many of the applications of these ideas to his wife, Jeannie Suk, 30, whose "far more brilliant book," *Postcolonial Paradoxes in French Caribbean Writing: Césaire, Condé, Glissant*, explores the Creolization of cultural values.

They met when they were both at Yale. She was finishing her undergraduate degree, and he was beginning his J.D. They were married August 15, 1999, at the Harvard Club in Manhattan. A teacher, mentor, and close friend, Harold Hongju Koh, former U.S. assistant secretary of state, presided at the ceremony. The couple now alternates between apartments in New York City and Washington, D.C., where Jeannie currently clerks for Judge Harry T. Edwards. In August 2003, she will begin clerking for Justice David H. Souter.

"We had only a small window of opportunity to meet each other," he says with a smile as he proudly pulls a copy of her book off the shelf. "We went to all the same schools, but never at the same time." Feldman writes a touching paean to her in *After Jihad's* acknowledgements: "... I have had the unmatched intellectual engagement of my wife, Jeannie Suk, in every imaginable aspect of the book. Her ideas and arguments pervade it. My gratitude for that, though deep, cannot begin to approach the happiness that I found in being with her."

At 33, Feldman has experienced more than his 15 minutes of fame. Indeed, his phone rings incessantly these days. Requests to appear with such media notables as Charlie Rose, Aaron Brown, and Chris Matthews and others reflect his capacity to deliver timely insights.

Certainly, he will continue to write, teach, lecture, and litigate. Certainly, he will continue to discuss some of the most difficult questions of the 21st century. Is Islamic democracy possible? What specific steps must America take to make democracy work in Islamic countries? How should America proceed in Iraq? In Turkey? In Iran? And in the world's 53 other Muslim nations?

One reality is clear: Whether one agrees or disagrees with Feldman's idea that Islam is compatible with democracy, no one can sanely deny its relevance. ■

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## López Finds the Center for the Practice & Study of Community Problem Solving



Gerald López

In 2003, Clinical Law Professor Gerald López founded the Center for the Practice & Study of Community Problem Solving. With a \$750,000 three-year start-up grant from the JEHT Foundation, and with three prestigious post-graduate fellows

(one funded by Kirkland & Ellis and two by Equal Justice Works), the Center aims to improve the quality of problem solving — legal and non-legal — available to low-income, of color, and immigrant communities. Collaborating closely with residents, service providers, and researchers, the Center provides problem-solving services, coordinates the efforts of diverse problem solvers, studies the effectiveness of alternative problem-solving approaches, and promotes flexible adaptation to what this research reveals. In this comprehensive and systematic approach, savvy street problem solving and sophisticated interdisciplinary research routinely inform one another, both engaging and learning from low-income, of color, and immigrant communities.

Community Economic Development Project, Helping Immigrants 'Make It' in the U.S. Project, Public Health Project, Problem-Solving Training Institute, and Consumer Survey of Legal Problem-Solving Resources. Sketches of two major projects provide glimpses of the Center's approach:

### The Neighborhood Legal Needs and Resources Project (NLN&RP)

is a sweeping study (in English, Spanish, Mandarin, and Cantonese) of the problems faced by and resources available to residents of East Harlem, Harlem, Chinatown, the Lower East Side, Bushwick, and Bed-Stuy. In partnership with the Center for Urban Epidemiologic Studies, the Project relies on a sophisticated telephone survey of 2000 neighborhood residents and extensive in-person interviews of hundreds of diverse service providers to examine the nature and frequency of problems residents face (in areas like health, housing, language, employment, credit, immigration, environmental justice), to document actions residents and service providers take in dealing with these problems, and to measure client perceptions of the quality of available problem solving.

The NLN&RP — perhaps the most comprehensive study of its sort ever under-

Ultimately, the NLN&RP will provide neighborhood residents, service providers, and all those who work at and with the Center with a detailed inventory and roadmap of problems, available resources, and issues around which to mobilize.

"Otherwise," insisted López, "the chronically scarce resources available to these communities are inevitably (if only inadvertently) squandered — a situation we can no longer tolerate."

Center staff, interdisciplinary collaborators, graduate and undergraduate interns, and students in López' highly acclaimed year-long clinics (the Community Economic Development Clinic and the Community Outreach, Education, and Organizing Clinic) work on an agenda that includes the

taken — reflects an extraordinary collaboration. Rockefeller Foundation provided seed money. Over 225 students serve as volunteer interns (from more than 20 universities, including 130 NYU students). Administrators, staff, and faculty from across NYU supply valuable in-kind contributions. A national network of legal and non-legal problem solvers and diverse researchers offer expert guidance. And community residents and service providers bigheartedly share hard-earned knowledge of these

neighborhoods. Ultimately, the NLN&RP will provide neighborhood residents, service providers, and all those who work at and with the Center with a detailed inventory and roadmap of problems, available resources, and issues around which to mobilize. At the same time, the NLN&RP will serve as a model — here and abroad — of how to design and administer such studies and how to make them part of “business as usual” in structuring ever-more effective problem-solving delivery systems.

### The Ex-Offender Reentry Initiative

— to commence in September 2003 — aims to help ex-offenders and their families deal with a range of economic, health, social, and political problems; shape reentry policies and practices; and persuade everyone of the need for coordinated reentry services. In launching this initiative, the Center responds to a desperate mismatch between needs and resources. In 2001, for example, 7500 ex-offenders returned to Harlem and East Harlem from jail or prison. They return with many of the same substance abuse, mental and physical health, housing, and employability issues that contributed to their being originally locked up. Worse still, with a felony record, they face not-always-obvious barriers erected by laws and customs, interfering with their search for housing, jobs, family reunification, and democratic participation. All the while, they find themselves uncommonly scrutinized, expected to never “slip up.” To shoulder such demands at all well, ex-offenders need a sophisticated and coordinated system of help. But prisons on average do a miserable job of preparing inmates for what they face upon release. And ex-offenders return to their communities to find precious few problem solvers equipped to deal with all that they face. East Harlem is no exception — and neither is New York City.

Focusing initially on East Harlem, the Center will develop community education programs, cultivate a consortium of reentry service providers and researchers, provide consultation to (and recruit pro bono advocates to help represent) ex-offenders and their families, and undertake empirical studies to generate knowledge of effective reentry policies and practices. The Center will team up with service providers such as STEPS and the Urban Research Center’s Community Action Board, research centers such as the New York Academy of Medicine and Montefiore Medical Center, government-funded agencies such as Edwin Gould Services For Children, and philanthropic foundations such as JEHT. Together they will go all-out to help ex-offenders and the communities in which they live flourish. ■

## Furman Center Receives Grant for Housing and Neighborhood Information Project

In a local Community Development Corporation in Flatbush, Brooklyn, Brenda sits in her office thinking about how the once traditionally English-speaking Caribbean population in Flatbush is now being replaced by an influx of Mexicans, Dominicans, and non-English speaking Haitians. She desperately wants to obtain funding for new initiatives such as multilingual outreach efforts or culturally targeted programs. Unfortunately, without the documentation of the language change and hard data to back up her claims, local funders will likely not support her initiatives.

Elsewhere in Brooklyn, Mark tries to think how his own neighborhood of Bushwick has experienced a sharp decline in housing quality with very little intervention from local organizations. He believes that if only

sary calculations. Other data sets are available only on reel tapes written in mainframe EBCIC format and require substantial processing. In effect, vast information resources are gathering dust rather than being put to use to aid low-income and minority communities because no one has taken the time to assemble, process, and make them available to the groups that need them.

Over the past nine years, the Furman Center for Real Estate and Urban Policy, a joint research center within NYU School of Law and the Robert F. Wagner School of Public Service, has amassed enormous amounts of data in connection with a series of research projects on housing abandonment, municipal taxation, and the relationship between housing investments and property values. Due to repeated requests

for public access to these valuable data, the Center decided to make its large collection of relevant data more accessible. To fund this project, the Center applied for and received a \$457,000 matching grant from the Technology Opportunities Program (TOP) at the U.S. Department of Commerce. Through a partnership with the New York City Department of Housing Preservation and Development (HPD), the city’s housing agency, several



Professor Michael Schill directs the Furman Center for Real Estate and Urban Policy, which is developing the New York City Housing and Neighborhood Information System.

the local housing groups were aware of the quality problems early on, they could have stopped the decline in its tracks, by making requests for more effective code enforcement, landlord counseling programs, maintenance training programs, or tenant organizing.

Brenda and Mark are not alone. Many local organizations through New York City have problems funding needed programs and planning for future initiatives that would better serve their local communities. Many of these problems stem from the fact that the organizations do not have access to the appropriate data that would help them with their endeavors.

Ironically, there is actually a large body of useful data that is regularly collected by various agencies. The problem is that this data is not accessible. While much of this data is technically available to the public, some data sets require that one have the time and abilities to read raw ASCII data files, interpret technical codebooks, aggregate records to the neighborhood level, and perform the neces-

banks and foundations, and Bowne Management Systems, Inc., a company specializing in information technology and Geographic Information System solutions, the Furman Center will create the New York City Housing and Neighborhood Information System (NYCHANIS). NYCHANIS will provide housing organizations and community development corporations, as well as the general public, with the data they need to monitor neighborhood conditions, plan programs that will improve their housing and neighborhoods, and obtain funding for these programs from competitive private and public sources.

The NYCHANIS project will go beyond simply publishing tabulations of data, which the Center already has done in its *State of New York City’s Housing and Neighborhoods* reports. NYCHANIS will make data easily accessible to end-users by creating a searchable Web-based database. This Web site will provide customized, on-demand access to the specific information that users require,

and will provide the data in formats that end-users most often need, including pre-formatted tables and spreadsheet files for further analysis. In addition, NYCHANIS will provide Web-enabled mapping functions, from which users can create interactive maps showing conditions in their neighborhood or in the entire city. They will be able to map any data elements available in the NYCHANIS system, query maps interactively, and create printable maps.

## This type of partnership between a city agency and a university ... is unprecedented in New York City.

In addition to the online data and interactive mapping features, the Furman Center will work together with HPD to create the Housing and Neighborhood Information Exchange. The Information Exchange will provide end users with two kinds of opportunities for meaningful interaction with housing experts from HPD. First, the Information Exchange will incorporate several issue-specific discussion forums where users can post questions and comments and receive responses from HPD as well as other users. Second, the Web site will host periodic real-time chat sessions with HPD officials dealing with programs and policies of interest to end-users. These interactions will provide opportunities for members of the New York City housing community to ask questions about HPD programs and policies and to provide comments and feedback about housing issues. This type of partnership between a city agency and a university, working together to assist community groups, is unprecedented in New York City.

NYCHANIS is scheduled to be released to the public during September 2003, at which time it will be fully operational. The TOP grant will continue to fund the project for a full year after its initial public release. During the grant period, NYCHANIS will also include a one-year update of all available data within the NYCHANIS database. The funding will help produce two additional years of the hard-copy version of the Web site, which is the annual report called *The State of New York City's Housing and Neighborhoods*, published near the end of each calendar year. ■

## NYU School of Law Establishes Center on Law and Security

The Center on Law and Security, funded by a \$570,000 one-year grant from the U.S. Department of Justice, with the expectation of a renewal for a second year, will bring individuals from a variety of institutional backgrounds into collaborative working groups to address major policy issues related to the U.S. response to terrorism. Scant, if any, forum currently exists for sustained, focused discussion among individuals from the academic community, policy groups, and governmental agencies. The Center is designed to provide a forum for high-level discussion on the legal aspects of the country's current need to deter terrorism and terrorists and to support and build democracies abroad.

Through a series of ongoing working groups and a series of publications, the NYU School of Law envisions a Center that will contribute substantially to the contemporary policy debate over America's global and domestic strategic environment. Through policy briefings and yearly reports, the Center intends to provide analyses and policy recommendations to a wide range of academic and non-academic recipients, including law enforcement agencies, judicial organizations, and policy-making organizations.

The working groups, designed to cover a wide range of domestic and international topics, will make the Center a valuable asset to organizations such as the U.S. Department of Justice. The Center on Law and Security will be available to address specific issues from interested agencies and individuals for those issues that fall within the purview of the individual working groups.

Professors Noah Feldman, David Golove, Stephen Holmes, and Richard Pildes will be co-directors of the Center, and Karen Greenberg will be the Center's executive director.

The goal of the Center is to initiate a conversation, sustained over time, between representatives of government, law enforcement, policy groups, and universities to lay a foundation for new and creative approaches to policy in the area of law, national security, and civil liberties. Three topics will be the backbone for the Center's ensuing program of colloquia:

- The legal dimension of prevention, apprehension, and punishment;
- The international dimension: International institutions and multilateral action;
- Islam and the transition to democracy. ■

### HAVE YOU READ?

#### Ethical Ambition: Living a Life of Meaning and Worth

Derrick Bell

*Bloomsbury, 2002*

In the midst of the Depression, Derrick Bell's mother risked eviction by withholding rent on the family's Pittsburgh home until the landlord repaired the steps. Rather than oust the family, the owner fixed the steps and the steps of the other houses on the block as well, writes Bell in one of the anecdotes peppering his eighth book, *Ethical Ambition: Living a Life of Meaning and Worth*. Bell, author of the New York Times bestseller *Faces at the Bottom of the Well: The Permanence of Racism* (BasicBooks, 1992), offers advice and inspiration for those striving to succeed in the material world while remaining true to their principles.

Bell eloquently illustrates *Ethical Ambition* with personal stories, showing the costs as well as the benefits of risking everything for a cause. He famously gave up a tenured professorship at Harvard Law School in solidarity with students who were protesting the school's failure to hire a woman of color for the faculty. Although the world-renowned Bell did not lack for work, he suffered personally. His wife, dying of cancer, did not



Visiting Professor Derrick Bell (left) and Dean Revesz display Bell's eighth book, *Ethical Ambition*, about remaining true to one's own principles.

want him to leave Harvard. "Why does it always have to be you?" she asked; some friends, he writes, have never forgiven him for upsetting her at this time.

Still, in the end, Bell, a visiting professor at NYU School of Law, urges his readers to be true to their ideals. "It's a daily decision," he writes, "to wake up and try to do the right thing, no matter how big the reward or how great the fear."

**Constitutional Culture and Democratic Rule**

Edited by John Ferejohn, Jack N. Rakove, and Jonathan Riley  
 Cambridge University Press, 2001

This collection of 11 essays looking at constitutional government is edited by John



Ferejohn, a political science professor at Stanford University and visiting professor of law at NYU School of Law; Jack Rakove, a professor of history and American studies as well as political science at Stanford and a visiting professor at NYU School of Law; and

Jonathan Riley, a political science and political economy professor at Tulane.

They have assembled pieces from leading scholars throughout the country, including Professor Russell Hardin, a professor of politics at NYU, and NYU School of Law Global Visiting Professor Pasquale Pasquino.

The essays in the first part of the book deal with the birth of constitutions, focusing mainly on the origins of the U.S. Constitution of 1787. Those in the second portion of the book look at constitutional structure and design. Essays in the final segment look at constitutional change including the process of passing constitutional amendments.

The book should be relevant not only to lawyers, but also to political theorists, historians, philosophers, and anyone interested in government.

**Recourse to Force: State Action Against Threats and Armed Attacks**

Thomas M. Franck  
 Cambridge University Press, 2002

“Is peace more precious than justice? Is peace conscionable, or even possible, without justice?” asks Professor Thomas Franck in *Recourse to Force*, his book exploring whether the United Nations’ attempt to

eliminate war among nations is still workable almost 60 years after the end of World War II.

The U.N. Charter, drafted in 1945 and signed by nearly all nations, prohibits the use of force by states except in the event of an armed attack or when authorized by

the U.N. Security Council. This treaty, if followed, would have ended war as we know it. But the arrangement has only imperfectly



withstood the test of time. For one thing, the ink had barely dried when the cold war began, incapacitating the Security Council through the permanent members’ frequent recourse to the veto.

What’s more, self-defense has proven to be an ambiguous concept, capable of multiple interpretations in the last 60 years. If one country’s citizens are threatened abroad, may that country legitimately use force to protect them? Is it self-defense for one country to attack another one that sponsors terrorists? While those questions were asked long before September 11, 2001, they have taken on a new resonance in the last two years.

Franck, a prominent figure in international law who recently served as judge ad hoc in a case before the International Court of Justice, argues in *Recourse to Force* that the U.N. Charter can be interpreted flexibly enough to accommodate both new circumstances and changing public values.

Franck, the Murry and Ida Becker Professor of Law Emeritus at the Law School, was director of the Center for International Studies at NYU School of Law and a past president of the American Society of International Law.

**The Birth of Pleasure**  
 Carol Gilligan

A. A. Knopf, 2002

Carol Gilligan started an intellectual revolution two decades ago with her landmark book *In a Different Voice* (Harvard University Press, 1982), showing that theories of human psychology, based on studies of men, had

overlooked and distorted basic aspects of the human experience. Now, in her long-awaited new book *The Birth of Pleasure*, Gilligan once again breaks through tradition by showing how patriarchal values can undermine love, often leading to tragedy rather than pleasure.

Gilligan draws on accounts from both real life and literature, weaving together nonfiction anecdotes, ancient myths, and novels such as *The English Patient* and the autobiographical *Diary of Anne Frank* to make her case that love too often results in loss.

She argues that, although the liberation movements of the 20th century have challenged old patriarchal structures, the underlying patterns remain — the early channeling of boys into “masculinity,” the double consciousness of girls in adolescence, the silences between men and women, the split between our social and inner selves.

Gilligan makes the case that in love, as in democracy, people need to be free to express



themselves. “Without voice, there is no relationship,” she writes. “Without resonance, voice recedes into silence.”

Gilligan is a University Professor at NYU with a tenured appointment as professor of humanities and education at NYU School of Education and as an affiliated faculty member at NYU School of Law.

**The Myth of Ownership: Taxes and Justice**

Liam Murphy and Thomas Nagel  
 Oxford University Press, 2002

“To what extent should education be financed out of tax revenues, or health care, or mass transportation, or the arts?” ask

Professors Liam Murphy and Thomas Nagel in *The Myth of Ownership*, which focuses on taxes and economic justice. “Should taxation be used to redistribute resources from rich to poor, or at least to alleviate the condition of those who are unable to support themselves adequately

because of disability or unemployment or low earning capacity?”

These are some of the questions posed by Murphy and Nagel in this book examining taxes in the context of contemporary philosophy, which grew out of their experiences teaching a Law School seminar about justice and tax policy in 1998.

Murphy and Nagel argue that tax policy should be guided by notions of social justice and societal fairness, not simply tax equity. One of the conventional ideas they challenge is that people with the same pretax income must pay the same amount in taxes.

The authors also address some of today’s most controversial tax provisions, including the estate tax, the marriage penalty, tax cuts for the wealthy, and “negative income taxes” for the poor.

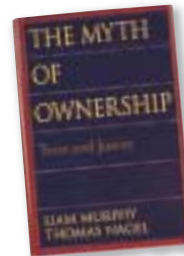
With a wide angle of vision from tax justice to social justice, the book addresses topics of importance to anyone who cares about how government decisions should be made.

Murphy is professor of law and professor of philosophy, and Nagel is professor of philosophy, University Professor, and Fiorello LaGuardia Professor of Law at NYU School of Law.

**Concealment and Exposure: And Other Essays**

Thomas Nagel  
 Oxford University Press, 2002

Thomas Nagel’s *Concealment and Exposure: And Other Essays* features 18 of the author’s lucid, sophisticated essays dealing with topics ranging from privacy to political theory to metaphysics and realism. The pieces in





*Concealment and Exposure*, Nagel's eighth book, were originally published between 1994 and 2002 in academic journals, books, and popular newspapers and magazines including *The New Republic* and the *Times Literary Supplement*.

Nagel devotes the first section of the book to essays about privacy and public life. The collection includes his 1998 work, "The Shredding of Public Privacy," published in *The New Republic* at the height of the "shameful farce" of the grand jury proceedings that ultimately led to the Clinton impeachment trial. Calling the proceedings the "culmination of a disastrous erosion" of personal privacy in the United States, Nagel argues, "If the president and Miss Lewinsky really had sex in the White House, the only decent thing for them to do if anybody asked was to deny it, as they initially did."

The remaining two sections of the book include essays addressing political theory, equality, democracy, and realism. One piece in this section, "The Sleep of Reason," also initially published in *The New Republic* in 1998, deals extensively with a hoax perpetrated by Alan Sokal, the NYU physics professor who submitted an entirely fictitious article to the journal *Social Text*. ■



## Faculty-Edited Journals

NYU School of Law's faculty edits several prominent journals including *Clinical Law Review* (Randy Hertz, editor); *East European Constitutional Review* (Stephen Holmes, editor); *European Journal of International Law* (Philip Alston, editor in chief; Joseph Weiler, co-editor); *I•CON: International Journal of Constitutional Law* (Norman Dorsen, editor); *Punishment and Society* (David Garland, editor); *Tax Law Review* (Deborah Schenk, editor); *Proceedings of NYU Annual Conference on Labor* (Samuel Estreicher, editor); *NYU Selected Essays on Labor and Employment Law* (Samuel Estreicher, editor); *The Authority* (Michael Schill, editor); *European Law Journal* (Joseph Weiler, co-editor); and *World Trade Review* (Joseph Weiler, co-editor).

# Publications

## Full-time, Global, Visiting, and Library Faculty

October 1, 2001–September 30, 2002. (Short pieces have been omitted.)

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#### Chase, Oscar G.

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#### Dorsen, Norman

Editor. *The Unpredictable Constitution*. New York: New York University Press, 2002.

#### Dworkin, Ronald

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#### Epstein, David

*Bankruptcy and Related Law in a Nutshell*. St. Paul: West, 2002.

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#### Estreicher, Samuel

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#### Franck, Thomas M.

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#### Fried, Barbara

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#### Friedman, Barry

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#### Harcourt, Bernard

*Illusion of Order: The False Promise of Broken Window Policing*. Cambridge: Harvard University Press, 2001.

#### Hertz, Randy

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#### Jacobs, James

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#### Kramer, Larry

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**Parsons, Inga L.**

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# Student Spotlight



## Uphill Both Ways

### Minority Issues in the Current Voting Climate

The future of the Voting Rights Act (VRA) in the changed circumstances of the new century was the topic of the 13th annual Black Allied Law Students Association (BALSA) symposium. When the VRA was enacted, in 1965, it presumed a different voting landscape than exists today, and while its purpose — to improve minority voting rights in the United States — is still necessary, the best means of achieving it has changed.

The first panel focused on the VRA, which was designed to give minority groups equal opportunity “to participate in the political process and to elect representatives

of their choice.” Professor Samuel Isaacharoff of Columbia Law School questioned the continued efficacy of the act.

Isaacharoff explained that the act requires redistricting in covered areas to ensure that minority groups can have a representative impact. At the time the VRA was passed, these areas (primarily the South) as a rule did not have any black elected officials, and they were not home to partisan political activity because of the dominance of the Democratic Party. Redistricting changed these conditions. The concentration of minority populations in voting districts allowed Republican players to have a greater presence in the newly created super-majority

districts, forcing the Democratic Party to be responsive to the black constituency.

Isaacharoff said that it is no longer effective to stack minorities in districts. For example, a recent redistricting movement in New Jersey created many districts that were approximately 40 percent black. This allocation was approved by both the Democratic and black leaders based on the understanding that large minority groups are powerful and can control elections, whereas a super-majority of minority groups will waste minority votes. A similar redistricting plan, however, was struck down in Georgia, a state covered under the VRA.

Rodolfo de la Garza, professor of political science at Columbia University, discussed the VRA as it relates to the voting rights of Latinos, who were included as a language group in a 1975 amendment. While concurring that the VRA no longer works effective-



Panelists: (from left) Rodolfo de la Garza, professor of political science, Columbia University; Carol Swain, professor of political science and professor of law, Vanderbilt University; Samuel Isaacharoff, professor of law, Columbia Law School; and moderator Professor Richard Pildes, NYU School of Law.

ly in the regions it was designed to impact, de la Garza said that some areas originally outside the act's scope could benefit from it today, including Massachusetts, which has recently experienced a large influx of Latinos. De la Garza agreed that the unbending regime of the VRA is problematic, but saw a continued need for interventions in the voting system to protect the rights of Latinos.

Carol Swain, professor of political science and professor of law at Vanderbilt University said that, according to poll data, "political party was more important than the race of the representative, and as long as blacks held the positions that they did, they were best represented by the Democrats."

The second panel addressed felony disenfranchisement and its effect on minority, particularly black, voting populations. The first speaker, Jamie Fellner, director of the Human Rights Watch, said that the United States is the only democracy in the world where ex-prisoners are denied the right to vote, which is the case in 12 states. Moreover, in 48 states, inmates are prohibited from voting. In contrast, inmates have the right to vote elsewhere in the Western world and some countries, like Germany, actively encourage them to do so.

As a result of the disenfranchisement laws, 3.9 million people in the United States currently do not have the right to vote, about one in 50 adults. There also are significant racial disparities; nationwide, 13 percent of African-American men cannot vote. The average disenfranchisement rate is five times higher for blacks than it is for whites.

Fellner asked, "Do the laws serve any purpose, do they work, and are they consistent with human rights?" "No, no, and no," he answered. These laws also contradict international human rights standards. Disenfranchisement laws do not make distinctions based on the type of crime that was committed, nor do they include any requirement that the crime be related to political activity.

Deborah Goldberg, who is now director of the Democracy Program at the Brennan Center for Justice and is engaged in litigation challenging disenfranchisement, discussed the specific actions taken by a national voting rights restoration campaign focusing on Alabama, Florida, Maryland, New York, and Texas. Because the laws regarding felony disenfranchisement differ by jurisdiction, each strategy must be crafted to address a particular situation taking into account whether a state disenfranchises felons permanently, for the duration of their sentence, or for some other period, and whether the law is statutory or embedded in the state's constitution.

A state constitutional provision could be amended, which would call for a public education campaign to garner support for an initiative or other amendment procedure. A federal challenge could be brought against state constitutional provisions. Litigation under federal law or a state constitution might be available to challenge a state disenfranchisement statute. Also, a legislative campaign could be mounted for amendment or repeal of the state statute. Although repeals are difficult, some recent progress has been made in this area. Wyoming recently repealed a blanket permanent disenfranchisement law and now permits non-violent offenders to apply for restoration of their voting rights five years after completing their sentence.

In closing, Jessie Allen, associate counsel at the Brennan Center, specifically discussed the Project's initiative in Florida, where a quarter of black men are disenfranchised, making it the state in greatest need of reform. The Brennan Center considered two alternate approaches in litigation. The first was to make an Equal Protection claim based on intentional discrimination; the second would challenge the laws through the VRA, arguing that when race plus this voting "qualification" are factored in, states end up with a prohibited inequality of opportunity. ■

## Family and Criminal Law Junction

### Taking New Directions in Domestic Violence Response

like jail," said Lt. Mark Wynn, of the Nashville Police Department, a participant in a symposium hosted by the Battered Women's Project at NYU School of Law. "I think jail is a very nice place for offenders."

The symposium, titled "Criminal Justice Responses to Domestic Violence," gathered local, national, and international experts on the subject. It was organized to highlight a problematic intersection between family and criminal law. In a discussion about alternative police responses to domestic violence, mandatory counseling for offenders was explored. Wynn stated that counseling is not a cure-all, stand-alone option, and Charlotte Watson, director of the New York State Office for the Prevention of Domestic Violence, said it could even be counterproductive. Watson said that brief counseling sessions have little effect on the offender and often give the victim false hopes that things have changed. "Counseling does not seem to help," she said. "It is an illusion."

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### The symposium ... highlight[ed] a problematic intersection between family and criminal law.

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Also contributing were Dr. Shamita Das Dasgupta, co-founder of Manavi; Dorchen Leidholdt ('88), director of the Center for Battered Women's Legal Services, Sanctuary for Families; and Wanda Lucibello, chief, Special Victims Unit, Kings County District Attorney's Office. Holly Maguigan, professor of clinical law and acting faculty director of the Global Public Service Law Project at the Law School, acted as the moderator. The panelists called certain police policies into question, particularly those that tend to hurt the victim, like the dual arrest of couples involved in domestic violence disputes.



NYU School of Law Professor Holly Maguigan moderated a panel on the pros and cons of addressing domestic violence in the criminal courts.

"My clients are often the ones who have suffered the most from police response," said Leidholdt. She also expressed special concern for minority and immigrant victims of abuse, which was the subject of the symposium's afternoon session.

Panelist Alisa Del Tufo, co-director of the Urban Justice Center Family Violence Project and the founder of Sanctuary for Families, argued that victim services are often unwisely limited. Many shelters are only open to women who are eligible to receive welfare, shutting out undocumented aliens and women in higher-income brackets.

Radhika Coomaraswamy, global visiting professor at the Law School and U.N. special rapporteur on violence against women, shared her experiences with domestic violence issues on the international level. "This issue has been totally invisible in the international sphere until the 1980s," Coomaraswamy said. She noted, however, that there have been improvements in the state treatment of domestic violence offenders and victims around the world.

Other panelists included Maria Arias ('84), CUNY Law School Battered Women's Rights Clinic; Dr. Gail Garfield, former director of the Institute on Violence; and Adam Heintz, HIV-related violence program coordinator, New York City Gay and Lesbian Anti-Violence Project. The panel was moderated by Vivian Huelgo, deputy director of the Courtroom Advocates Project, Sanctuary for Families.

Overall, symposium organizers and panelists stressed the need for a greater understanding and awareness by legal professionals of the process for dealing with domestic violence issues. The symposium co-chair, Liane Meerkatz ('04), said that her primary goal was to educate students about an important issue. "Regardless of what area of law you are in, sooner or later you will have a client who is going to present this as an issue to you," said Meerkatz. Watson concluded with a plea to lawyers. "Think about your pro bono options. We need all the legal representation we can get," she said. "It saves women's lives." ■

## REACH Extended Symposium Discusses NYC Homeless Policies

REACH — Research, Education, and Advocacy to Combat Homelessness — was inspired to return to the NYU School of Law symposium circuit after the Bloomberg administration appealed a two-year-old state court decision prohibiting the city from imposing temporary bans on shelter residents for "misconduct."

"I just don't see how failing to comply with public assistance requirements relates to safety in the shelter system," said Chris D'Angelo ('04), a member of the REACH steering committee, a student-run organization at the Law School that serves the needs of New York City's low-income population. "I understand the city's concern with respect to violent behavior, but I think the problem can be addressed without throwing people out onto the street to die."

D'Angelo represented one side of a heated debate on this subject, part of the symposium titled "Access to Public Housing in New York City," held to attract more attention to the need for public housing in New York City.

"A large percentage of our clients use the shelter system and practically all of them have been involved with the public housing system at some point," said Alyssa Arnold ('03), co-chair of the symposium committee. "New York's right to housing is essential to their lives, and any effort to alter that right could have serious consequences."

Panelists included advocates from welfare rights organizations, NYU professors, and members of the Bloomberg administration.

Larry Mead, NYU professor of political science, and Maryanne Schretzman, deputy

commissioner of policy and planning for the New York City Department of Homeless Services, debated Patrick Markee, an advocate from the Coalition for the Homeless. They disagreed over the merits of the city's plan, which would have modified an earlier court settlement, to impose sanctions on shelter residents for illegal behavior and failures to adhere to public assistance work requirements.

Both Mead and Schretzman insisted that the city's plan, if implemented, would make shelters safer for poor families. Markee argued that such a shift would result in more deaths like the ones that led up to the initial settlement. The audience seemed to side with the latter camp.

An earlier panel discussed New York City Housing Authority preference lists, which give priority to certain applications for the city's housing projects. The city maintains that giving priority to middle-income families for a designated number of public housing units is necessary to prevent the segregation of low-income families. Advocates are divided over whether the benefits of this system are outweighed by the burden it imposes on low-income families who are denied housing.

Another panel dealt with the differences between traditional "project" housing and the federally funded Section 8 voucher system. The "projects" provide clusters of low-cost housing units, while vouchers subsidize the cost of market housing for low-income individuals.

REACH maintains small advocacy clinics at local soup kitchens where students provide assistance to clients dependent on the New York City public benefits system. The organization also operates clinics throughout the school year at the St. Xavier Church on West 16th Street, the Hebrew Union College on West 4th Street, and the Catholic Center on Washington Square South. The St. Xavier Clinic is open during the summer as well. ■



One REACH panel discussed New York City Housing Authority preference lists. Panelists included (from left): Jennifer Levy, South Brooklyn Legal Services; Debbie Mukamal, Legal Action Center; Beth Shinn, NYU professor of psychology; Peter Cantillo, New York City Housing Authority; and Clinical Professor of Law Paula Galowitz, NYU School of Law.



# The Real World

## Students Tackle Supreme Court Immigrants' Rights Case

The U.S. Supreme Court considered an immigrants' rights case this year in which several NYU School of Law students participated, writing amicus briefs and assisting the lawyer who argued the case. While the Court ultimately decided in favor of the Immigration and Naturalization Service (INS) in the case, Law School students contributed to the case's success at the appellate level, and the Supreme Court extensively relied on a student-written brief in a dissenting opinion.

In 1996, Congress, in order to address perceived failings by the INS, enacted several laws to reform the immigration system. Some provisions of these laws have been criticized as harsh anti-immigrant measures and certain parts have been held unconstitutional. The specific statute at issue in *Demore v. Kim*, 8 U.S.C. §1226(c), compels the INS to detain immigrants who have been convicted of crimes that *may* prompt their ultimate removal from the United States.

Congress made a categorical determination that immigrants charged by the INS with being deportable should be subject to mandatory detention during the pendency of their removal proceedings. The U.S. Court of Appeals for the Ninth Circuit held this statute unconstitutional as applied to Hyung Joon Kim, a lawful permanent resident who has been living in the United States since he was six years old. At heart, this case pitted the fundamental liberty interests of an individual against the state's ability to make categorical determinations based on immigration policy.

Judy Rabinovitz ('85), senior staff attorney at the American Civil Liberties Union's Immigrants' Rights Project and NYU School of Law adjunct professor, argued the case on behalf of Kim. Rabinovitz has been involved with challenges to §1226(c) since it took effect in 1998, and has successfully argued the issue in *Kim* in three circuits. Each of the circuit courts held that due process requires an individualized bond determination assessing danger to the community and flight risk, and rejected the government's argument that its plenary power in immigration cases deserves latitude wide enough to enact such a categorical rule.

During oral argument Justices Sandra Day O'Connor and Anthony Kennedy had difficult questions for both sides, but seemed uncomfortable with the idea that due process requires more than is provided under §1226(c). To address these concerns, Rabinovitz directed the Court's attention to an amicus brief filed by a group of immigrants' rights associations.

This brief, prepared by NYU School of Law students Alexsa Alonso ('03), Kevin Lapp ('04), Christopher Le Mon ('03), and Isaac Wheeler ('03), under the direction of Law School Professor Nancy Morawetz, presented the harsh reality of §1226(c). The experiences of numerous immigrants with this statute demonstrate that immigrants held without possibility of bail for up to 17 months are later released when it turns out that the INS accusation that they are deportable was incorrect.

Ultimately, the Court ruled in April that mandatory detention of lawful permanent



Levin, helping to lead to the string of favorable circuit court opinions.

When the Supreme Court took the case, Alonso and Wheeler, assisted by Lapp and Le Mon, reworked the amicus brief to fit the specific issues anticipated to be important to the Supreme Court.

Justice David Souter's dissent (which was joined by Justices John Paul Stevens and Ruth Bader Ginsburg) refers to the brief by name four times to support four different points:

- Many immigrants facing mandatory detention have legal issues in their cases that will not be resolved until the conclusion of their proceedings.
- Many of these issues require research and evidence, so that immigrants are greatly disadvantaged by being forced to litigate their cases in remote detention centers far from witnesses and counsel.
- Many immigrants with these merits issues win their cases.
- Many immigrants suffer months or years of detention while they fight against their deportation.

Two other Law School alumni, Wanyong Austin ('83) and Christopher Meade ('96), were also actively involved in the case. As an ACLU contract attorney during 1999 and 2000, Austin worked closely with Rabinovitz on all aspects of the litigation strategy, and later helped to coordinate amicus briefs to the Supreme Court. Meade, a Root-Tilden-

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## Law School students contributed to the case's success at the appellate level, and the Supreme Court extensively relied on a student-written brief in a dissenting opinion.

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residents during their immigration proceedings is constitutional.

The Immigrant Rights Clinic at NYU School of Law started working on this issue in the clinic's first year of existence. Clinic students addressed the issue on behalf of Citizens and Immigrants for Equal Justice, a national coalition of family members of persons who face deportation and detention.

The circuit-level briefs, written by clinic students Tony Lu ('02), Rachel Rosenbloom ('02), Mike Shumway ('00), and Rhodri Williams ('00), were referenced at oral arguments by some circuit courts. The brief was subsequently updated and submitted to several courts by pro bono counsel at Kramer

Kern Scholar and an associate at Wilmer, Cutler & Pickering, devoted countless pro bono hours as co-counsel on the brief.

In addition, students Benita Jain ('03) and John Radice ('03) assisted Rabinovitz through the Law School's Hays Fellowship Program, which provides students with opportunities to work with top-notch practitioners in civil rights and civil liberties. Jain and Radice researched legislative history and immigration cases and edited the final brief. An earlier Hays fellow, Iris Bennett ('99), also developed legal arguments for the first challenge to the statute in November 1998, and subsequently assisted with the Ninth Circuit litigation. ■

## Law Women Host Speak-Out on Voice

Law Women, an organization that seeks to address the interests of women at NYU School of Law, held its symposium this year on the voice of women, in law school and in the legal profession, and the ways that more diverse voices have contributed to the law and to law schools. The symposium's three panels and interactive workshop examined voice in the classroom, academic institutions, and the legal profession.

"Voice in the Classroom" panelists discussed the impact of having women in the classroom, the problems they have faced participating as equals, and how feminist principles have influenced or could influence what is taught. The first presenters, Maryana Iskander and Sari Bashi, students at Yale Law School and project coordinators on a gender study of faculty-student relations at Yale, queried students and faculty about the role of gender at their law school, and monitored classroom dynamics to gather comparative data. Iskander and Bashi found that nearly two-thirds of student respondents believe that male students participate more in class than female students. Their classroom observation found that male students speak 38 percent more in class. This disparity



Left: Professor Carol Gilligan sets the tone for a day of exploration into the voices of women in the law. Right: Sharing stories of her breakthrough career as the first woman partner in a major New York law firm, Professor Eleanor Fox ('61) admits that it was not always easy going.

tique of the Socratic method, describing the method as it was used in Plato's writings and comparing the techniques used in contemporary law school classrooms. She gave special attention to the pedagogical effects of authentic questions (which are genuine in that there is no predetermined answer) and

inauthentic questions (which simply call for display of knowledge). "Do we prefer authentic or inauthentic questions?" she asked, concluding that although there is a time for each, adult learning is encouraged, and thoughtful learners participate more comfortably, when inquiries are genuine and respectful.

dominated by men, and women make up under 40 percent of Stern's MBA class. This difference might be partly attributed to the fact that women score about 34-38 points lower on the Graduate Management Aptitude Test, which is part of the MBA admissions process. However, Min maintained that the admissions

committee at Stern employs a "holistic" approach, factoring in employment experience, academics, and the ability to work in a team, which is central to business education.

Yvette Bravo-Weber, NYU School of Law's dean of student affairs, said that the appointment of faculty members like Jerome Bruner, Carol Gilligan, and Anna Deavere Smith was a direct response to the need to address voice in the law and at the Law School. However, she said that in many cases the students must "make noise about issues" like these to prompt the administration

to respond. Bravo-Weber also described other ways in which the Law School has responded to the issue of voice, including formation of the Diversity Committee, sponsorship of Women at NYU School of Law Reception, hosting of brown-bag lunches with women faculty, creation of the Fritz Alexander Fellowship, and, most importantly, increasing the number of women faculty members at the Law School.

Following an interactive voice workshop with Chase Hawkins, diversity education manager of JP Morgan Chase, the final panel talked about "Voice in the Legal Profession." Anne Weisberg, director of advisory services at Catalyst, a non-profit research and advisory organization devoted to the advancement of women in business and the professions, gave an overview of the diversity of voice in law firms.

Katrina Szakal ('01) shared her experiences as a young female associate at Debevoise & Plimpton. Szakal said it was necessary to maintain a professional, yet personal voice while working in the law.

Marilyn Go, magistrate judge in the Eastern District of New York, and Eleanor Fox ('61), Walter J. Derenberg Professor of Trade Regulation at NYU School of Law, recounted their experiences with the law at a time when few women were admitted to law school. They acknowledged the differences and similarities that women face in the law today, compared with when they entered the profession decades earlier. ■

**Male students speak 38 percent more in class. This disparity decreased by 24 percent in classes taught by female professors, but increased by 52 percent in classes with higher, more competitive participation.**

decreased by 24 percent in classes taught by female professors, but increased by 52 percent in classes with higher, more competitive participation.

Barry Friedman, professor of law at NYU School of Law, acknowledged that some people think the Socratic method influences gendered trends in participation. He explained that he thinks the Socratic method is important, and that it can be employed in a way that addresses these problems.

Peggy Cooper Davis, John S.R. Shad Professor of Lawyering and Ethics at NYU School of Law, offered a comprehensive cri-

"Voice in Academic Institutions" looked at the admissions policies of different professional schools, including NYU School of Law. Associate Dean of Admissions Charles Bardes, of Weill Medical College of Cornell University, discussed the similarities between medicine and the law and the differences in the admissions processes. For example, medical school candidates have mandatory interviews, whereas law school candidates are rarely given that option.

Julia Min, assistant dean for MBA admissions at NYU's Stern School of Business, said that unlike law and medicine, business is still

## Holsinger Named Best Oralist



One of the final argument judges greets the new Moot Court Executive Board for 2003-04 at a reception prior to the final argument: (from left) Judge Alex Kozinski, Amanda Nadel ('04), Emily Tannen ('04), and Vanessa Stich ('04).

As Melissa Holsinger ('04) made her argument in the annual Orison S. Marden Moot Court Competition, she was interrupted by one of the competition's distinguished judges, Alex Kozinski, of the U.S. Court of Appeals for the Ninth Circuit. He quizzed her about which precedent justified the plaintiff in challenging a school district. Although this question was not central to her argument, Holsinger was able to answer it effectively, and even held her own as the judges debated a topic among themselves. "May I jump in?" she asked. Judge John Koeltl of the U.S. District Court for the Southern District of New York responded affably: "Jump in any time."

The four competition finalists, Holsinger; Ion Hazzikostas ('04), who won the "Best Brief" award in the semifinals; Peter Lallas ('04); and Amnon Siegel ('04), the winner of the "Best Brief" award in the preliminary rounds, briefed and argued cases in preliminary rounds before advancing to a second round as semifinalists. The semifinals were held before local judges and attorneys. The top four students were then assigned a new side of the argument to be argued in the final round before Kozinski, Koeltl, and Judge Wilfred Feinberg of the U.S. Court of Appeals for the Second Circuit.

After rebuttals, the judges retired to chambers and emerged to pronounce the appellants victorious in the case, and to name Holsinger the best oralist. They praised all the finalists, calling for a round of applause in their honor.

Dean Richard Revesz presented Holsinger with the Marden Moot Court Award for Best Oralist. The competitors, which each year includes both second- and third-year students, joined the dean, judges, and members of the Moot Court Board to celebrate the competition and the accomplishments of the board. ■

## Law School Teams Make Finals in Moot Court Competitions

*NYU School of Law congratulates two moot court teams that distinguished themselves at the European Law Moot Court Competition and the Law of the World Trade Organization Moot Court Competition.*

### European Law Moot Court Competition

The team from NYU School of Law competed in a regional final of the European Law Moot Court Competition in Lisbon, Portugal, and was successful in obtaining a place in the All European Final in Luxembourg. The regional team members, Jose Feris (LL.M. '03), Karin Intermill (LL.M. '03), Florence Kramer (LL.M. '03), and Tzvika Nissel (LL.M. '03), accompanied by their coach, teaching assistant and Emile Noël Fellow Martina Kocjan, competed alongside nine other teams for the opportunity to advance to the final round. The skillful arguments of Kramer, acting as advocate general, secured the team a place in the All European Final, where Kramer argued again as advocate general. The European Law Moot Court Competition is the second largest international moot court competition in the world, and the largest and most prestigious in Europe. Supported and hosted by universities all over Europe, the competition is widely recognized as one of the most efficient ways for students to study and learn European law and legal practice in general.

Ten teams are sent to each regional heat to present their arguments to a panel of eight judges sitting as the European Court of Justice, but only one team and one advocate general proceed to the third stage, the All European Final in Luxembourg.

The showing by the NYU School of Law team was the best ever by a U.S. team in a European law competition.

### Moot Court Competition on the Law of the World Trade Organization

NYU School of Law students David Bennion ('04), Martin Molina (LL.M. '03), Delfin Rodriguez ('04), and Jared Wessel ('04) qualified for the final oral rounds of the 2003 Moot Court Competition on the Law of the World Trade Organization (WTO) in Geneva, Switzerland. The Law School team held the additional honor of being the only U.S. team admitted to the finals.

The competition, organized and co-sponsored by the European Law Students Association, centered around a hypothetical trade dispute arising from the imposition of an import ban on fish products by a large economic bloc on a country that allows the hunting of whales for scientific purposes in spite of a moratorium on commercial whaling.

In the final round, the team argued before a panel of distinguished scholars and practitioners in WTO law, many of whom were past panel and/or appellate body members. ■

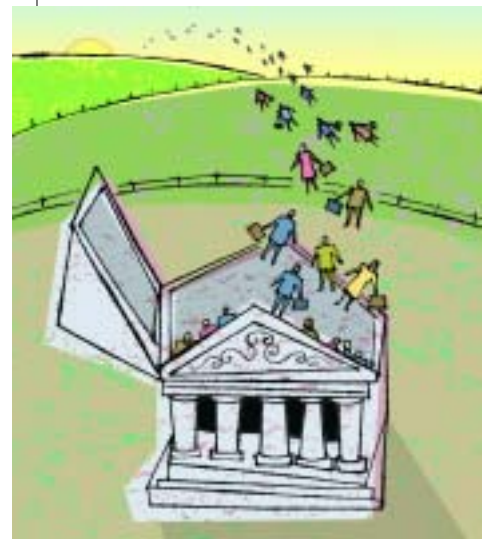
## Graduates Selected as Trainees on International Court of Justice

Four NYU School of Law graduates have been selected by the International Court of Justice for trainee positions in 2003-04:

- Jose Ricardo Feris (LL.M. '03)
- Christopher Le Mon ('03)
- Marko Divac Oberg (LL.M. '03)
- Sandesh Sivakumaran (LL.M. '03)

The International Court of Justice, the principal judicial organ of the United Nations, has a dual role: to settle, in accordance with international law, the legal disputes submitted to it by countries; and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies. The former Law School students will train under the court's 15 judges. Feris, Le Mon,

Oberg, and Sivakumaran competed with students from other prominent law schools in the United States and Europe. The new trainees begin their nine-month assignments in September in The Hague, Netherlands. ■



## Learning Between the Lines

Legislation Scholars Share Views  
on How Views Shape Teaching



Noted panelists discussed teaching legislation: (from left) Professor Richard Briffault, Professor William Eskridge, Professor Chai Feldblum, NYU School of Law Professor Richard Stewart, Professor Elizabeth Garrett, Scott Bulcao ('03), NYU School of Law Professor Richard Pildes, and Seth Gassman ('03).

At the *Journal of Legislation and Public Policy's* symposium, top public law scholars captivated an audience of students and faculty for a four-hour discussion titled "Teaching Legislation: The Impact of Differing Legislative Views on the Pedagogical Process."

The world-renowned scholars who participated were Richard Pildes, professor of law at NYU School of Law; Richard Stewart, University Professor and the John Edward Sexton Professor of Law at NYU School of Law; Professor Elizabeth Garrett of the University of Chicago Law School; Professor Richard Briffault of Columbia; Professor Chai Feldblum of Georgetown; and Professor William Eskridge of Yale. They discussed the most effective and creative ways for teaching law students about the legislative process and the implementation and interpretation of statutes.

The idea for the symposium was spawned when NYU School of Law recently decided to add a new required first-year course, *The Administrative and Regulatory State*. The course addresses public law institutions and procedures of the contemporary administrative regulatory state, examining the legislative process, the implementation of statutes by administrative agencies through rule-making and otherwise, and the role of courts in interpreting statutes and reviewing administrative action. According to Stewart, who taught an inaugural section of the course, the skills and knowledge that the new course provides are an essential foundation for future lawyers in almost any field of practice. He said that the course serves as an important balance to what is otherwise a strong focus on private law in the first-year curriculum. Pildes, who also

taught a section of the course, indicated that it is "designed to bring the first-year curriculum more into line with the kinds of legal institutions, legal materials, and legal issues that have dominated law and policy-making since legislation and administrative regulation began in the late 19th and 20th centuries to supplant the common law?"

The *Journal of Legislation and Public Policy*, NYU School of Law's youngest student-run legal journal, decided to focus on this topic as a means of engaging students and faculty members in a dialogue about how to best implement the new course. To best achieve this goal, the journal staff decided to focus on legislative pedagogy and its role in the legal academy. The first half of the afternoon was spent discussing the future of teaching legislation in law school, while the second half focused on the different approaches to teaching legislation.

The symposium was overwhelmingly marked by a light-hearted mood, but a few moments of tension arose when panel members clashed over the most successful approaches to the legislation itself, and the best means of training students to become successful legislative lawyers. One contentious matter involved debate over whether professors should focus on helping students find the "right" answer in tough legislative cases or studying the legislative and interpretative processes involved in crafting and adjudicating public law.

Holding true to the symposium's purpose, panelists skillfully wove together two ongoing debates: how courts should interpret statutes and regulations, and how legislative knowledge and skills are best taught. ■

## The Border Crossed Us

Colloquium on  
Immigrant Labor Issues

The economy has witnessed a shift in the last several decades from manufacturing to service jobs, and the traditional base of organized labor — white, American-born, unionized male workers — has changed dramatically. Recognizing the altered landscape and the particular difficulties the labor movement faces, NYU School of Law's *Review of Law and Social Change* presented a colloquium, "The Border Crossed Us: Current Issues in Immigrant Labor."

The new service sector face of labor is one that is increasingly foreign. According to Chicago-Kent School of Law Professor Peggy Smith, approximately 30 percent of new entrants to the U.S. workforce are immigrants. The labor force is also increasingly without recourse to union power; longtime labor organizer Omar Henriquez said that 13.2 percent of workers are currently unionized, as compared with the 1950s when 35 percent were union members.

The first panel examined the impact of the recent U.S. Supreme Court decision in *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, which held that federal immigration policy prevents the National Labor Relations Board (NLRB) from awarding back pay to an undocumented worker fired by his employer for engaging in union-organizing activities, where the employer was unaware of the worker's status when he was discharged. The panel was moderated by NYU School of Law Professor Michael Wishnie and included Anne-Marie O'Donovan ('04); Patricia Smith, director of the New York State Attorney General's Labor Bureau; and Henriquez. They examined the impact of *Hoffman* in the courts, organizing initiatives, and government efforts to enforce labor rights.

O'Donovan, analyzing the consequences of *Hoffman* for state workers' compensation schemes, concluded that *Hoffman* should not call into question the availability of medical benefits for all injured workers, regardless of immigration status. She noted, however, that the case has already prompted courts in Michigan and Pennsylvania to limit undocumented workers' eligibility for wage-loss benefits. Whether *Hoffman* should exempt from ordinary liability employers who knowingly employ an undocumented worker remains undecided.

Smith emphasized that the states have thus far interpreted *Hoffman* narrowly. The New York State Attorney General's Office, she said, has been "deliberately bringing cases that are different than *Hoffman* to establish the narrowness of *Hoffman*, such as cases where there is no document fraud or retaliation at issue." Many states have yet to even grapple with the decision. "Only about 10 states are seriously considering post-*Hoffman* implications. These are the states that have most of the immigrants," Smith said.

Henriquez and Wishnie both emphasized the "fear factor" at play for immigrant workers. Henriquez pointed out that "any organizing is often cowed by [the employer's] mention of the Immigration and Naturalization Service (INS)." Wishnie agreed stating, "Employee fears of retaliatory discharge, directly or by an employer call to the INS, should not be underestimated, particularly in light of the post-September 11 draconian attempts to intimidate, scare, and drive out immigrants across the country?"

The second panel "Organizing Immigrant Labor: Case Studies and Controversies," was moderated by Professor Smith, who emphasized the plight of private domestic workers, who are overwhelmingly female, minority, and foreign-born, and face special problems in organizing because they work in private homes. Smith encouraged advocates to develop skilled leaders within the domestic worker population and structure cooperatives that help workers secure jobs in a volatile industry. In addition, she said, advocates should press for laws that would recognize the rights of domestic workers to organize or that would provide a living wage for such workers.

Julie Rivchin ('04) began by discussing the role of "worker centers," dynamic grassroots labor organizations that have emerged in immigrant communities long ignored by

unions and government officials, in organizing workers and improving their employment conditions. Rivchin urged coalitions between unions and worker centers. "Their ultimate goals are the same," she said. "To organize workers, increase rights of workers, and transform power structures of industries in the balance of workers."

Panelist Bhairavi Desai, director of the New York Taxi Workers' Alliance, offered a glimpse into New York City's yellow taxi industry, one of the most dangerous professions in the city. Desai detailed the growing number of problems faced by the city's 45,000 drivers, the majority of whom are non-citizens. Desai said that the fundamen-

The final panel, "Immigrant Workers in the Context of Transnational Organizing: The Case of the U.S. and Mexico," was chaired by Professor Philip Alston of NYU School of Law. Panelists addressed developments relating to the Agreement on Labor Cooperation (NAALC) attached to the North America Free Trade Agreement (NAFTA). The NAALC has enabled activists and litigators to challenge working conditions in the United States, Mexico, and Canada.

Muzaffar Chishti, director of the Migration Policy Institute at the Law School, argued that the NAALC is a fundamentally flawed labor rights document, and that the challenge is to figure how best to use it.

## "Employee fears of retaliatory discharge ... should not be underestimated."

PROFESSOR MICHAEL WISHNIE

tal flaw of the workers rights movement is that it operates according to the belief that workers are victims. "Workers may not be in power, but they have power," she concluded. "Organizing must be done in order to challenge the basic economic relationship between capital and labor."

Charity Wilson, the senior official responsible for equity issues in the AFL-CIO Department of Public Policy, posited that unions must think more creatively in their organizing efforts. Wilson advocated the use of coalitions to develop support for labor and noted that faith-based or community groups were often successful. She argued that it is best to bring in groups early on, and include "historically discriminated groups in the community who might not be sitting at that table naturally."

Although offering inadequate protection for workers, the agreement does offer a context in which long-term changes and coalition-building could be realized. In suggesting alternative models for securing workers rights, Chishti highlighted the success of campaigns like the anti-sweatshop movement that brought non-governmental organizations, labor unions, and consumers together to mount high-profile and high-energy efforts against corporations.

Ranjana Natarajan, clinical fellow with the Immigrant Rights Clinic at the Law School, has litigated wage and hour cases in federal court for low-wage immigrant workers and provided advocacy support to community-based workers' groups. Natarajan viewed NAALC as offering a quasi-enforcement mechanism whereby people who believe

that their governments are not enforcing labor standards can approach one of the three national administrative agencies (NAOs) to complain about the other country. Natarajan described a matter she had before the Mexican NAO that challenged New York state workers' compensation laws. While the petition has not directly brought about legal change, it has raised the profile of the cause. She said that the decision to petition the Mexican NAO was intended to "flip the law on its... heels to showcase deficiencies in the United States."

In closing the day-long symposium, co-editor-in-chief Isaac Wheeler ('03) noted, "The panelists have made it clear that although in some contexts borders are increasingly irrelevant, for workers, borders are relevant in protecting their human rights and dignity." ■



A knowledgeable group participated in a colloquium on issues in immigrant labor: (front row, from left) Charity Wilson, Professor Peggy Smith, Aimee Solway ('03), Melinda Claybaugh ('03), Anne Marie O'Donovan ('04), Patricia Smith, Julie Rivchin ('04), Ben Davis, Jamila Wideman ('04), (back row, from left) Omar Henriquez, NYU School of Law Professor Michael Wishnie, and Avi Lipman ('04).

## Eminem Meets Zelman

### The Future of Education Symposium

At a symposium hosted by the *Annual Survey of American Law*, NYU School of Law Professor Samuel Estreicher surprised the audience by announcing that he is a big fan of controversial rap icon Eminem.

"I'm especially taken with his new song, 'Lose Yourself,'" Estreicher said, explaining that the song describes the plight of the poor to make better lives for themselves and their families. "The problem is that hip-hop as an

According to Hickok, while much is being done for education in America, there is still a great need for reform. "Instead of spending more, let's spend smart," he said.

The day's first panel addressed "New Paths in Public School Reform" and included Christopher Cerf of Edison Schools, Sol Stern of The Manhattan Institute, Professor Sandra Vergari of SUNY Albany, and Randi Weingarten of the United Federation of Teachers.

**"It's a conference that expresses what NYU School of Law is all about, which is the best in legal work and legal thinking, but also brigading legal work with policy analysis, and thus equipping tomorrow's lawyers for the challenges of the new century."** PROFESSOR SAMUEL ESTREICHER

avenue of upward social mobility is available for infinitesimally few Americans."

Estreicher grew up in poverty in a Bronx walkup and saw education as his way out. He helped the *Annual Survey* organize this day-long event titled "The Future of Public Education," planned in the aftermath of the U.S. Supreme Court's decision in the *Zelman* case, for which Estreicher authored an amicus brief on behalf of the Black Alliance for Educational Options. In *Zelman*, the Court ruled that Ohio was within its constitutional power to enact a school choice program for Cleveland youth.

Commenting on the symposium, Estreicher said, "It's a conference that expresses what NYU School of Law is all about, which is the best in legal work and legal thinking, but also brigading legal work with policy analysis, and thus equipping tomorrow's lawyers for the challenges of the new century."

Estreicher then introduced Eugene Hickok, the U.S. undersecretary of education, who spoke on the role of education in policy and politics today. Hickok oversees the implementation of the "No Child Left Behind Act," which he described as "easily the most complex and transformative piece of federal education legislation since the 1960s."

The second panel titled "School Choice: Does It Improve Performance?" included Professor Clive Belfield of Columbia Teachers' College, Krista Kafer of the Heritage Foundation, and Professor Joseph Viteritti of NYU's Wagner School of Public Service.

"School choice is *the* primary education reform strategy of this century," said Belfield. He discussed the many studies on school choice and the arguments for and against it.

Kafer highlighted some of the recent empirical work on school voucher experiments. "We have actually seen some research using random selection studies showing the benefits of vouchers, including the Peterson study," she said. The Peterson study found that after three years, voucher recipients in New York City were further along academically than their counterparts who remained in the public schools.

The final panel, called "Vouchers and the Post-*Zelman* Legal Frontier," included Marc Stern of the American Jewish Congress, Bert Gall of the Institute for Justice, President Frank Macchiarola of Saint Francis College, Elliot Minberg from People for the American Way, and Professors Denise Morgan of New York Law School and Peter Schuck of Yale Law School.

Stern spoke extensively on the litigation over the so-called "Blaine Amendments" — provisions in state constitutions that bar state aid to parochial schools. Stern described *Locke v. Davey*, in which the U.S. Court of Appeals for the Ninth Circuit reviewed whether such state law obstacles are consistent with the governmental neutrality toward religion required by the First Amendment's establishment clause. In May, the Supreme Court granted a writ of certiorari in *Locke*, setting the stage, if they affirm the decision, for what Stern argued six months earlier would be a "somer-sault" in the current paradigm of federal-state, church-state relations jurisprudence. ■



Contributors to an *Annual Survey of American Law* symposium exploring the future of education: (from left) Undersecretary Eugene Hickok (U.S. Department of Education), Carol Gersth (United Federation of Teachers), Professor Samuel Estreicher (NYU School of Law), Michael Kuh ('03) (symposium editor), and Sol Stern (The Manhattan Institute).

# Annual Survey Honors Sexton

John Sexton, NYU president, was recently presented with an award that has an impressive lineage — past honorees include U.S. Supreme Court Justices Harry Blackmun, William Brennan, Ruth Bader Ginsburg, Thurgood Marshall, Sandra Day O'Connor, and John Paul Stevens; former Attorney General Janet Reno; and Archbishop Desmond Tutu. As the honoree of the *Annual Survey of American Law's* spring issue, Sexton was the focus of one of the most prestigious occasions at NYU School of Law.

At the event, Professor Harold Koh of Yale; R. May Lee ('90), founder and chief executive officer of MarketBoy and a trustee of the Law School; Professor Arthur Miller of Harvard; NYU School of Law Professor William Nelson ('65); Judge Sonia Sotomayor of the U.S. Court of Appeals for the Second Circuit; Professor Susan Stabile of St. John's University; and, by video, Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit and Senator Hillary Rodham Clinton gave tributes to the guest of honor. The audience included notable professors, judges, lawyers, university trustees, and students.

Dean Richard Revesz gave a traditional welcome to Herbert Hirschhorn ('32), one of the Law School's oldest alumni, and introduced the *Annual Survey* editor-in-chief Rachel Chanin ('03). Each year, Chanin explained, the spring issue of the *Annual Survey* is dedicated to an outstanding figure in American law.

Stabile began what would become a comical hour-and-a-half by saying, "Most of the stories I can tell you, John could tell



NYU President John Sexton (left) was honored by the *Annual Survey of American Law*. Here, he talks with Lester Pollack ('57), chairman of the NYU School of Law Foundation.

He offered anecdotes suggesting that he and his former student have not always had such a harmonious relationship. In Miller's Civil Procedure class, Sexton was a live-wire of a student, right from day one. "[It was] cheek and jowl!" Miller said. "Hand-to-hand combat . . . *mano a mano*." Following this first class, Sexton went to Miller's office to make amends, "and then for the first time, but not the last time, I heard his immortal words," said Miller. "You're the greatest, you're the man."

Miller appointed Sexton to teach a segment of a course on supplemental jurisdic-

Sexton's capacities as a dean. "He helped us individually, and he demanded that we make a commitment to build an institution far greater than the sum of its individual parts," Nelson explained. Clinton focused on "John's vision and devotion to the public service."

Lee said that it was not until she met Sexton that she realized "law and lore were actually homonyms, which seems appropriate in John's lexicon." She also spoke about his sincerity. "You might tend to think that his gestures are excessive and ungentle, but it's not true," she said. "John's dreams are big enough for us all. When we share his dreams, we work a little harder, do a little better, and become a better person."

Sotomayor praised Sexton's dedication to the Root-Tilden-Kern Scholarship Program. Calabresi added that Sexton, as a dean who understood American history, has a deep capacity for legal scholarship and an evident love of people that is "more nearly unique than rare."

Last to speak was the event honoree himself, who modestly attributed his success as dean to mechanisms that were already in place at NYU School of Law. He referenced a conversation he once had with James Vorenberg, then dean of Harvard Law School, who called to congratulate him when he was first appointed.

"John, we're proud of you," Vorenberg said. "We want to assure you that not even a person of your formidable talent will be able to sink a ship as mighty as NYU School of Law." Sexton professed his belief that "the Law School will just get better from here." ■

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**"John's dreams are big enough for us all. When we share his dreams, we work a little harder, do a little better, and become a better person." R. MAY LEE ('90)**

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you better himself?" Stabile described her first meeting with a "young and at least relatively attractive" Sexton, who was then the coach of her high school debate team. She described him as "my friend, my mentor, and my second father."

The next tribute, from Miller, Sexton's teacher at Harvard, was uncharacteristically emotional and lined with humor. Miller said that his is a world of a small number of great friends. "I have very few friends, not like John," he said. "What I really think is that John is the brother I never had."

tion in his second and third years of law school. One of his first students was Koh.

"It was with great bemusement that we watched this bearded Paul Bunyan of a man teach Civil Procedure," said Koh, who found his young professor inspiring. "Your success was his success, your learning was his triumph."

He recalled when Sexton encouraged a tentative student by saying, "Let it out big fella. I know it's in there!" When the student finally blurted out his comment, Koh said, "John bear hugged him and we all cheered." Nelson shared some admiring words about

## SCHOLARSHIP NEWS

## Students and Scholarship Donors, Face to Face

Each year, NYU School of Law hosts the Student Scholarship and Donor Reception to allow students and their scholarship donors to meet, often for the first time. At last year's reception, 15 scholarship donors and nearly 100 student beneficiaries met and mingled. "NYU School of Law is fortunate to have more than 150 endowed scholarships, established through the generosity and commitment of donors who are interested in fostering the achievements and contributions of the next generation of law students," said Dean Richard Revesz. "These scholarships help to attract the best and the brightest students, raising the quality of the educational experience for all our students."

Revesz introduced Warren Sinsheimer ('57 LL.M.) as "one of the profession's true heroes." After retiring from private practice in 1996, Sinsheimer served as a full-time volunteer advocate for children with Westchester/Putnam Legal Services, and then founded Legal Services for Children, Inc., in 1999, an organization that provides comprehensive civil legal services for poor and underrepresented children. A member of the Law School Board of Trustees, Sinsheimer is a major donor and a benefactor of the Sinsheimer Scholarships, established in 1993,

### D'Agostino Scholarship Fund Created



Filomen D'Agostino ('20)

The Filomen M. D'Agostino Scholarship Fund provides three full scholarships each year to J.D. students of outstanding academic merit who demonstrate a strong commitment to issues of women's or children's rights and wish to pursue public service careers devoted to those issues. The

scholarships are named after Filomen D'Agostino ('20), a trailblazer known for her spunk and acumen, whose generosity helped transform NYU School of Law. David Malkin ('67) and Max D'Agostino head the foundation that facilitated this gift. First-year students selected to receive the D'Agostino Scholarship beginning in the 2003-04 academic year are Erin Dow ('06), Sarah MonPere ('06), and Jennifer Turner ('06).

which benefits students pursuing a career in public service.

Leila Kimberly Thompson ('05), an An-Bryce Scholarship recipient, was the featured student speaker. She thanked her donor, Anthony Welters ('77), whose support and encouragement had tremendous impact. Thompson said that she appreciates the "attitude of pervasive improvement and supportive rigor" that defines the Law School. Welters has been a Law School trustee since 1997 and an NYU trustee since 2002. President and chief executive officer of AmeriChoice Corporation, a division of UnitedHealth Group Inc., Welters started the An-Bryce Scholarship Fund to open doors to a legal education for remarkable young people who might not otherwise have had the opportunity. Welters not only personally interviews and selects An-Bryce Scholars, he also takes an active interest in the intellectual development of his scholars. He recently established the An-Bryce Professorship of Law at NYU School of Law, and gives generously, along with his wife, Beatrice, to many charitable organizations.

Other students who attended the event also expressed sincere gratitude. "The scholarship enabled me to do public defender work that I would not otherwise consider," said Liyah K. Brown ('04), a Soros Criminal Justice Fellow. "I wouldn't be here otherwise."

Root-Tilden-Kern Scholar Brandon Loftin ('04) said the event was a great opportunity for students to build fellowship with those who made their education possible.

Many donors cited the legacy of a loved one as the motivation behind their scholarship donations. Scholarship donor Herbert Hirschhorn ('32, J.S.D. '34) said that his wife, Rose, "never withheld her hand for giving" and was the main inspiration behind his support. Trudy Linfield supports the Linfield Fellowship in tribute to her daughter, Deborah Linfield ('78), a First Amendment attorney who passed away in 1992. Ethel Berl, the benefactor of the Alexander Berl ('27) Scholarship, said that she wanted a scholarship rather than a simple lump-sum payment to honor her husband's memory. Robert Slavitt ('52) said that he and his father are Law School alumni who feel that "the Law School did a great deal for the both of us, and we have an obligation to give back."

Scholarship support allows these donors to take the long view on legal education, influencing the world in a way that transcends any other kind of philanthropy. ■

## Furman Academic Program Launched

NYU School of Law inaugurates a new program in 2003-04 designed for students who show particular promise and interest in becoming legal academics. Legal education is currently structured mainly around training students to become practicing attorneys.



Jay Furman ('71)

Many schools have established programs and procedures to assist students who are interested in academic careers; indeed, NYU School of Law is already a leader in this respect. But no law school has offered training comparable to that received by students in other graduate programs — until now.

The new Furman Academic Program, conceived of and supported by Jay Furman ('71), a prominent alumnus and Law School and University trustee, in conjunction with key academics, will provide an educational program modeled on graduate school education in the arts and sciences. It is open to applicants for the three-year J.D. program, but additional Furman Scholars will be appointed after the first year. The Furman Scholarship includes a full-tuition scholarship, plus summer research funding, and the possibility of an extra year doing post-doctoral work as a Furman Fellow (see p. 93).

Students who complete the Program not only will earn a J.D. degree, but also will have received extraordinary support and training to prepare them for a career in teaching. The Furman Scholarship will, within broad guidelines, permit each student to construct a three-year program specially suited to match his or her needs and interests, including work with scholars in other disciplines. The Program will be constructed with a faculty sponsor, chosen in consultation with the Furman Scholar on the basis of shared intellectual interests.

The first year will include a series of lunches and seminars on legal scholarship and teaching. During the summer after the first year, NYU School of Law will provide funding for research. In the upper two years, each scholar will produce a major piece of original scholarship. During all three years, scholars attend faculty colloquia, workshops, conferences, and other intellectual events. ■



Law schools often focus on the scholarship of their faculty, but at NYU School of Law a vast quantity of high-quality scholarship is also produced by students. The Law School is enormously proud of this accomplishment, and the following pages showcase two examples of the important work being done by students.

## The Constitutionality of Compensating for Low Minority Voter Turnout in Districting

By Theano Evangelis ('03)

*The following is an excerpt from "The Constitutionality of Compensating for Low Minority Voter Turnout in Districting," NYU Law Review (2002). Working closely with Professor Richard Pildes, Evangelis authored this Note in conjunction with the Summer Seminar for Future Law Teachers. She was managing editor of the Law Review and received the Judge Rose L. and Herbert Rubin Law Review Prize for most outstanding Note written for the Law Review in international, commercial, or public law. She received her J.D., summa cum laude, in May 2003 and is currently serving as a law clerk to Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit. She will clerk for Justice Sandra Day O'Connor of the U.S. Supreme Court in 2004-05. (All footnotes have been omitted.)*

Every 10 years, states are required to redraw electoral districts based on new census data. That process involves navigating a confusing maze of legal limitations, both statutory — in the form of the Voting Rights Act (VRA) — and constitutional. The constitutional pitfalls of districting have increased considerably in the last 10 years with developments in the U.S. Supreme Court's equal protection jurisprudence, which severely constrain the use of race in that process. Tensions between the stringent demands of equal protection and the race-conscious statutory requirements of the VRA now place state legislatures in a difficult legal position when it comes time to carve out electoral districts.

Section 2 of the VRA requires states to draw electoral districts that ensure minorities an equal opportunity to "participate in the

political process and to elect representatives of their choice." In order to avoid liability under the act, states must draw "effective" majority-minority districts where racial bloc voting exists and the minority group is sufficiently large, geographically compact, and cohesive. Consequently, the issue with respect to VRA compliance is what "effective" means. Because minority voters tend to have lower rates of political participation, a simple edge in voting-age population may not result in election of the minority group's preferred candidate. As a result, courts and commentators have assumed that effective majority-minority districts require increases in minority population to compensate for low rates of minority participation.

Such an understanding of the VRA's statutory requirement of equal opportunity is constitutionally problematic on equal protection grounds. An understanding of the VRA as requiring compensation for low rates of participation, including low voter turnout, is troubling because nonremedial race-conscious placement of voters in districts may add up to excessive use of race in districting and thus trigger strict scrutiny under the Supreme Court's equal protection doctrine. Under strict scrutiny, the constitutionality of such race-conscious state action will turn on the cause of low turnout; if the problem of low turnout is not due to past discrimination, states may be barred constitutionally from using race-conscious means to address it.

Courts, voting-rights scholars, and political scientists historically have considered low minority voter turnout to be the result of

past discrimination without further inquiry, taking the causal connection between the two for granted. Over time, this assumption has been read into the VRA, and race-based placement of voters has been accepted as an appropriate means for achieving the "effective" electoral opportunity that the statute mandates. Equal opportunity for a group to affect the outcome of an election is what matters under the effects-based framework of section 2 of the VRA. A technically majority-minority district of 51 percent black voters may fail to satisfy this interpretation of the VRA due to low turnout. Under this view of the VRA, the state must augment the number of minority voters in a district to remedy low turnout rates, which are presumably caused by past discrimination.

Although it receives little attention, the cause of low minority voter turnout is critical to the constitutionality of districts drawn to account for that low turnout. This is especially true because evidence of minority voter behavior increasingly contradicts prevailing assumptions. For example, studies suggest that black voter turnout in some districts in the 1990s at times equaled or even surpassed turnout among white voters, indicating that subsequent low black voter turnout in those districts may be tied less to legacies of past discrimination than to traditional politics.

The factual basis of low turnout has constitutional implications. In cases such as *Shaw v. Reno* and its progeny, the Court has shown an increased willingness to subject race-based districting to strict scrutiny.

Under the Supreme Court's current equal protection doctrine, a districting plan will be subjected to strict scrutiny if race is found to have been a "predominant" or "excessive" factor motivating the legislature. It is therefore likely that districts with turnout-driven populations will be seen as excessively race-conscious and be subjected to exacting judicial review.

Once strict scrutiny is triggered, the prognosis for turnout-driven districts is dismal. The two-pronged strict scrutiny analysis requires: (1) a compelling government interest underlying the challenged action and (2) narrowly tailored means for achieving the purported end. Unless districts with turnout-driven populations were designed to remedy past discrimination, they likely will not be supported by a compelling government interest and thus will fail the test's first prong. States will need particularized, empirical findings demonstrating a close nexus between past discrimination and low minority voter turnout in order to establish a remedial purpose. Even if such a purpose can be shown, states must still satisfy the test's second prong. To do so, they must demonstrate that increasing the percentage of minority members within a district's population is a



Theano Evangelis ('03)

narrowly tailored means. The exacting demands of strict scrutiny place this interpretation of equal electoral opportunity, as mandated by the VRA, in constitutional jeopardy.

An interpretation of the VRA that understands effective minority districts to require compensation for low minority voter turnout is constitutionally problematic. Accordingly, this interpretation should be abandoned in favor of a reading that relies on voting-age population for calibrating the appropriate level of minority population.

\* \* \* \*

Historically, rates of participation among black voters have been disturbingly low in some states due to disenfranchisement policies. For example, in the 1952 presidential election, fewer than 1000 people voted in the black precincts of Birmingham, Alabama. In 1968, just three years after the passage of the VRA, that number rose to 10,000. Though the VRA has had a significant impact on improving the rate of minority political participation, courts still accept the assumption that lower levels of turnout are due to the lingering effects of past discrimination. Once minority voter turnout rises to levels equal to or surpassing white voter turnout in specific jurisdictions, the argument that subsequent drops in minority turnout in those jurisdictions are due to past discrimination, and thus require compensation, is questionable. Indeed, a survey of actual minority voter behavior in recent elections shows that minority voter turnout is increasing. Together with political science literature offering alternative explanations for low turnout, this evidence seriously undermines conventional assumptions about the causes of low minority voter turnout.

Some political scientists argue that differences in turnout rates may be explained best by reference to political factors such as mobilization and competition in politics. A study by Steven Rosenstone and John M. Hansen concludes that “the most important drag on African-American voter turnout [in the 1970s and 1980s] was the atrophy of instruments of mobilization.” Political mobilization also is cited as the reason for increases in turnout when they arise. For example, mobilization surrounding an affirmative action ballot initiative has been suggested as the reason for a dramatic 65 percent increase in black voter turnout in Florida in the 2000 presidential election. Thus, political mobilization — or the lack thereof — seems to account best for turnout.

Some studies even conclude that black voter mobilization is comparatively better than that of whites, finding that “once statistical controls are introduced for blacks’ lower [socioeconomic] backgrounds, they participate at higher rates than similarly sit-

uated whites.” For example, the black share of the vote in Nevada, Georgia, Michigan, and Illinois in 1998 — a midterm election year — was greater than the states’ black voting-age populations. In 2000, the black share of the vote exceeded black voting-age population in five states. Black voter turnout increased 50 percent in Florida and in Texas, from 10 percent in the presidential election of 1996 to 15 percent in 2000. In Missouri, it rose by a formidable 140 percent, from 5 percent in 1996 to 12 percent in 2000. This is especially impressive considering that blacks make up approximately 5 percent of Missouri’s population.

A thorough analysis of the empirics of racial turnout is often difficult because of the very limited public data available. The Census Bureau does not report race-based turnout data on a district-by-district basis. Therefore, it is at the discretion of states or other entities, such as private organizations or trial experts, to compile this data. Currently, only South Carolina regularly collects turnout data by race.

In 1994, three majority-black South Carolina state legislative districts were characterized by higher rates of black turnout than white turnout. In 1996, six out of 32 such

on grounds that the low turnout is due to past discrimination.

Tennessee may face similar constitutional constraints. In *Rural West Tennessee African-American Affairs Council, Inc. v. McWhorter*, the District Court found that “the State’s voter turnout figures show[ed] that black voter turnout in majority-black districts in west Tennessee is higher than white turnout.” Consequently, the court advised Tennessee that it would not have to increase the percentage of black voting-age population in majority-minority districts above 55 percent in order to compensate for low turnout and thereby render the districts effective under the VRA. These facts nicely frame the constitutional problem. If black voter turnout in those majority-minority districts drops in the future, and if the state decides to compensate for it by increasing the percentage of black population in those districts, strict scrutiny will demand it have a compelling remedial purpose for that use of race-conscious districting. Its history of high black turnout, however, will undermine its remedial justification.

The fact that black voters turned out at higher rates than white voters in these jurisdictions suggests the final elimination of the

[S]tudies suggest that black voter turnout in some districts in the 1990s at times equaled or even surpassed turnout among white voters, indicating that subsequent low black voter turnout in those districts may be tied less to legacies of past discrimination than to traditional politics.

districts had higher rates of black turnout, and in 1998, 13 out of 32 had higher rates of black turnout.

Brunswick County, Virginia, provides a striking example of black voter turnout exceeding that of whites. In *Smith v. Brunswick County*, the Fourth Circuit considered a section 2 challenge to a redistricting plan there. The court noted that “[t]he evidence at trial showed that throughout the period beginning in 1970 black voters have been actively involved in the election process in Brunswick County . . . [and] black voter turnout had consistently exceeded white voter turnout by 10 to 20%.” Against this factual backdrop, if black turnout were to fall below white turnout, the state would be hard-pressed to justify compensation for lower turnout through race-based districting

vestiges of past discrimination in this context; consequently, low turnout in subsequent elections may be tied more to lack of political mobilization or other political causes. If so, race-conscious increases in minority population may not survive strict scrutiny.

\* \* \* \*

Equal protection doctrine requires the state to direct the benefits of the program to the specific groups who are harmed by the effects of past discrimination. This prohibition on overinclusiveness poses serious problems in the districting context if a particular locality has no history of specific discrimination against the minority group in question by means of literacy tests, poll taxes, or other disenfranchising voting laws. Thus, a state’s ability to compensate for low voter turnout is

limited to those instances where the state can offer concrete evidence of past voting discrimination in that jurisdiction against the specific minority group benefiting from the districting plan's compensation. If a minority group is plagued by low turnout, but was not the object of past discrimination in the jurisdiction in question, equal protection appears to bar the state from increasing the group's population as compensation for that low turnout.

\* \* \* \*

Narrow tailoring requires the government to consider race-neutral means before it resorts to race-based districting in order to compensate for low turnout. Tackling this problem in a race-neutral manner would appear possible since low turnout pervades our society.

For example, working class voters may encounter greater difficulty finding the time to vote in elections typically held during the work week. To the extent that race correlates with socioeconomic class, conducting elections on weekends or holidays, or simply holding polls open later, may alleviate circumstances that might prevent minority voters from voting. Perhaps officials also could increase the overall number of polling places and distribute them evenly throughout the area. This could ensure that predominantly minority neighborhoods are not disadvantaged by a lack of nearby polling places, especially since socioeconomic disparities may make it more difficult for minority voters to find transportation to the polls. States also could explore new ways of liberalizing registration laws or allowing provisional voting in order to increase turnout.

\* \* \* \*

Changing voter behavior is not merely a matter of concern for political scientists. Rather, the reasons for that behavior can have normative, constitutional implications. Attributing low minority voter turnout to political factors rather than past discrimination fundamentally alters the constitutional calculus for state legislatures charged with the task of reapportionment. The constitutionality of state electoral districts drawn to compensate for disparate rates of participation may hinge upon the continued relevance and validity of old explanations for low minority voter turnout. An interpretation of the VRA that treats "equal electoral opportunity" as requiring minority populations in districts be based on voting age avoids this constitutional problem. If evidence continues to point towards politics and away from past discrimination as the culprit for low turnout, more searching judicial review is necessary to ensure that state districting decisions are based on solid empirics — not suspect assumptions. ■

## Adrift on a Sea of Uncertainty

By Larry D. Thompson Jr. ('03)

*The following is excerpted from an article titled "Adrift on a Sea of Uncertainty: Preserving Uniformity in Patent Law Post-Vornado Through Deference to the Federal Circuit," which will be published in Volume 92, Issue 2 (January 2004) of The Georgetown Law Journal. Thompson, who wrote this article under the supervision of Professor Barry Friedman, is currently law clerk to Judge J. Michael Luttig of the U.S. Court of Appeals for the Fourth Circuit. He will clerk for Justice Clarence Thomas of the U.S. Supreme Court in 2004-05. (All footnotes have been omitted.)*

Congress created the U.S. Court of Appeals for the Federal Circuit in 1982. In doing so, Congress granted that court exclusive, nationwide jurisdiction over all appeals from final decisions of federal district courts in cases where the jurisdiction of the district court was based, "in whole or in part," on "any civil action arising under any Act of Congress relating to patents." The primary Congressional goal in centralizing appeals from patent cases in a single appellate court was to ensure a more uniform patent jurisprudence, thereby producing a more consistent resolution of patent disputes and reducing forum shopping based on favorable patent law. In the eyes of many commentators, the Federal Circuit has done an admirable job in achieving those goals.

Relatively early in its existence, the Federal Circuit recognized that its exclusive appellate jurisdiction did not include cases containing only a patent issue, but not any patent claims (such as if a patent defense was raised to a nonpatent claim). In attempting to fulfill the Congressional goals for which it was created, however, the Federal Circuit interpreted its exclusive jurisdiction to include cases where the complaint did not allege a patent claim, but the answer contained a patent *counterclaim*. For over a decade this was considered established doctrine: The Federal Circuit asserted jurisdiction over an appeal regardless of whether patent claims had been raised in the complaint or in the answer (at least for compulsory patent counterclaims), and applied its own law to patent issues present in these cases.

But last year in *Holmes Group, Inc. v. Vornado Air Circulation Systems*, the U.S. Supreme Court concluded that in determining whether a patent-infringement counterclaim "arises under" federal patent law, the well-pleaded complaint rule defined the Federal Circuit's jurisdiction to the same extent that it did with general federal-question juris-

prudence. The *Vornado* court thus held that the Federal Circuit could not assert jurisdiction over an appeal solely based on a compulsory patent counterclaim raised in the answer.

*Vornado* opens the door for the Regional Circuit Courts of Appeals (RCCOAs) (e.g., the U.S. Court of Appeals for the Second Circuit) to hear appeals of cases where patent claims are presented only as counterclaims, while leaving unanswered the question of what law will govern these claims. But, generally, federal courts of appeals follow what can be called the "rule of no deference," which allows courts to treat the decisions of coordinate federal courts as persuasive, but prohibits deference to them. Application of this rule here would free RCCOAs to independently develop patent caselaw in appeals where patent claims are presented only as counterclaims.

This situation has several detrimental consequences. As a practical matter, the RCCOAs are inexperienced in deciding patent appeals, not having done so on a regular basis since the Federal Circuit's creation over 20 years ago. In addition, confusion may ensue in federal district courts as to whether the old RCCOA patent precedents or the newer Federal Circuit ones should govern a particular issue. But more important, by threatening the uniformity in patent jurisprudence produced

by the Federal Circuit and facilitating patent-based forum shopping, the application of the rule of no deference in this context potentially reintroduces the very problems the Federal Circuit was created to resolve. To borrow the words the Federal Circuit used when departing from the rule of no deference to avoid an anal-



Larry Thompson Jr. ('03)

ogous situation, blind adherence to that rule here would set the patent-litigating public "adrift on a sea of uncertainty."

The serious problems *Vornado* creates in this regard have been recognized by several commentators. But many proposals to resolve these problems appear predicated on the same assumption made by no less eminent a jurist than Justice John Paul Stevens: that post-*Vornado* other courts will of necessity independently develop patent case law when they adjudicate patent counterclaims. As such, industry groups and commentators have focused their analysis on approaches that attempt to preserve uniformity and prevent patent-based forum shopping by expanding the jurisdiction of the Federal Circuit to include some or all patent coun-

terclaims. No one yet has provided a detailed analysis of the merits and feasibility of deference to the Federal Circuit as a means of addressing the problems *Vornado* creates.

Deference to the Federal Circuit on patent issues produced by patent counterclaims is not only possible, but is the best way to address these problems. First, the traditional justifications for the rule of no deference are inapplicable in this context. Second, by preserving uniformity in patent law and reducing motivation for patent-based forum shopping, deference to the Federal Circuit would further the clear Congressional goals for which the Federal Circuit was created. Third, such deference is also supported under choice-of-law principles by analogy to other areas where federal courts of appeal have departed from the general rule of no deference and instead voluntarily deferred to the precedents of other federal appellate courts. Of particular interest is the Federal Circuit's policy to conclusively defer on nonpatent issues to the decisional law of the RCCOA for the circuit from which a case originated.

Furthermore, regardless of the merits of jurisdictional modifications as a long-term solution to these problems, until enacted these problems will continue to exist. Deference to the Federal Circuit is at minimum appropriate as a way to address these problems in the short-term. In particular, the level of deference this article recommends the Federal Circuit's patent precedents be given—conditional deference by RCCOAs and unconditional deference by district courts—could prevent almost all of the damage to the goal of uniformity in patent law potentially caused by *Vornado* while still allowing some room for independent development of patent law by RCCOAs where justified. And when implemented as a long-term solution, deference could achieve all of these goals while preserving the policies behind the well-pleaded complaint rule and retaining the plaintiff's traditional prerogative as “master of the claim.”

\* \* \* \*

There are, of course, two basic questions that come up in any case, and certainly in dealing with a patent claim: What is the appropriate forum for this claim, and what is the appropriate law to apply to it? *Vornado* addressed the first question. It set the jurisdictional rules courts are to apply in deciding which federal appellate court has jurisdiction over the appeal of a case containing a patent counterclaim....

*Vornado* did not, however, resolve anything as to the second question — what law RCCOAs should apply to patent claims. As noted earlier, the opinion for the Court simply did not address that issue....

Although *Vornado* does not answer the choice-of-law question, the rule of no defer-

ence potentially does.... While RCCOAs are unlikely to ignore the precedents of the Federal Circuit as a source of persuasive precedent, following the rule of no deference would prohibit them from deferring to it.

\* \* \* \*

This suggestion that deference is appropriate under choice-of-law principles finds support in other areas in which RCCOAs have voluntarily departed from the rule of no deference to apply some level of deference to decisions of another federal appellate court. Such comparison demonstrates that the reasons for deferring to the Federal Circuit are at least as strong as those justifying established exceptions to the rule of no deference.

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## To borrow the words the Federal Circuit used when departing from the rule of no deference to avoid an analogous situation, blind adherence to that rule here would set the patent-litigating public “adrift on a sea of uncertainty.”

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There is, of course, a long line of precedent as to the deference federal courts must give the decisions of the state supreme courts in determining issues of state law. Generally speaking, a federal court sitting in diversity will apply the law of that state to state-law issues; if the state's highest court has not yet conclusively resolved a question, the federal court will predict how that state court would currently decide it. On first impression, it might appear that such precedent would be instructive in determining reasons to depart from the rule of no deference here. But *Erie*-type deference arises from a statutory mandate — the Rules of Decision Act — and the body of precedent interpreting it post-*Erie*. So while the extent to and situations in which federal courts follow state law instead of independently reaching the “best” result has been resolved by judicial decision, the general thrust of the analysis was provided by Congress.

Accordingly, in determining the reasons why federal courts can and should voluntarily (i.e., in the absence of any explicit statutory mandate) apply or defer to the patent jurisprudence of the Federal Circuit, it is more useful to examine other situations where federal courts actually have *voluntarily* departed from the general rule of no deference. Such situations are, admittedly, infrequent; as shown above, the rule of no deference appears settled as a general princi-

ple. But it is not a universal one, as federal courts of appeals have, in a few areas, chosen to defer to the decisions of other federal courts of appellate jurisdiction.

RCCOAs have voluntarily departed from the general rule of no deference in at least three areas: the Federal Circuit's deference to the RCCOA from which the case originated on nonpatent issues; the “home circuit” rule, where some RCCOAs, in interpreting unsettled questions of state law, defer to the interpretation of the “local” RCCOA absent clear indications of misinterpretation; and the deference newly formed courts of appeals have chosen to give to the precedents of their predecessor courts unless sitting en banc. By comparing the reasons for deference to the

Federal Circuit with the reasons for deference in those situations, it becomes clear that the case for deference to the Federal Circuit is especially strong.

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Perhaps the most relevant area of comparison is the choice-of-law jurisprudence of the Federal Circuit itself. The Federal Circuit has been presented over the years with novel choice-of-law questions stemming from its unique jurisdictional status. While the appellate jurisdiction of RCCOAs is generally based on geography, the Federal Circuit's jurisdiction is exclusively based on subject matter — in particular (for present purposes), the presence of a claim “arising under” the patent laws. Because the Federal Circuit has jurisdiction over cases, and not just patent issues, it had to deal with the question of what law to apply to nonpatent issues in cases within its exclusive jurisdiction.

The Federal Circuit did not adopt its choice-of-law rules because of any statutory mandate, but because it found that doing so would best serve the Congressional reasons for creating it. This effort is reflected in the rules the court has chosen. As mentioned above, the Federal Circuit will apply its own law to substantive issues of patent law, and will “generally” apply the law of the circuit in which the district court sits to nonpatent issues. The deference the Federal Circuit applies to nonpatent

issues is conclusive; it will not challenge the merits of the RCCOA precedent. And for open questions, the Federal Circuit will attempt to predict how the RCCOA would have ruled, and will not exercise independent judgment to reach what it would independently view as the “best” answer.

The Court recognizes that the line between “patent issues” and “nonpatent issues” is not always obvious, so it has set guidelines for this determination. In particular, it has held that an issue

that is not itself a substantive patent law issue is nonetheless governed by Federal Circuit law if the issue pertains to patent law, if it bears an essential relationship to matters committed to [the] exclusive control [of the Federal Circuit] by statute, or if it clearly implicates the jurisprudential responsibilities of [the Federal Circuit] in a field within its exclusive jurisdiction.

As this is by no means a bright-line rule capable of easy reference, for ease of discussion a “nonpatent” issue for present purposes is one for which the Federal Circuit will not apply its own law.

Making the delineation of patent versus nonpatent issues even trickier is the Federal Circuit’s expansion, over time, of the scope of issues subject to its law well beyond the limits of substantive issues of patent law, and into areas “in which the disposition of nonpatent-law issues is affected by the special circumstances of the patent law setting in which those issues arise.” For example, the Federal Circuit has held that its law applies to

questions such as whether the district court has personal jurisdiction over the defendant in a patent suit; whether the plaintiff has established its right to a preliminary injunction in a patent case; whether there is a sufficient controversy between the parties to permit an accused infringer to bring an action seeking a declaratory judgment of patent noninfringement or invalidity; whether a patentee is entitled to have the issue of inequitable conduct tried in the jury trial that the patentee has demanded on the issue of infringement; and whether particular materials are relevant for purposes of discovery in a patent case under Fed. R. Civ. P. 26.

But even in extending its application of its own laws in this manner, the court professes to serve Congressional intent. In particular, the expressed purposes of the Federal Circuit’s choice-of-law rules reflect that court’s view of the role Congress intended

it to play in the federal system. For patent issues, the Federal Circuit will apply its own law to “serve one of the principal purposes for the creation of this court: to promote uniformity in the law with regard to subject matter within [its] exclusive appellate jurisdiction.” But for nonpatent issues, the court decided that applying the law of the appropriate regional circuit is proper for two main reasons. One reason was “to avoid the risk that district courts and litigants will be forced to select from two competing lines of authority based on which circuit may have jurisdiction over an appeal that may ultimately be taken.” A second reason was “to minimize the incentive for forum-shopping by parties who are in a position to determine, by their selection of claims, the court to which an appeal will go.” The Federal Circuit’s decision not to apply its own law to certain issues of federal law should be contrasted with what blindly following the rule-of-deference would have required: that the Federal Circuit independently decide (sub-

ject to Supreme Court precedents, of course) all federal issues in the case.

Perhaps unsurprisingly, the very same reasons underlying the Federal Circuit’s choice-of-law rules support RCCOA deference to the patent precedents of the Federal Circuit when adjudicating patent counterclaims. Just as the Federal Circuit’s choice-of-law rules strive to ensure that nonpatent claims are treated the same way they would be if the appropriate RCCOA heard their appeal, RCCOAs should strive to ensure that patent counterclaims will be adjudicated as they would if their appeal had been heard by the Federal Circuit. In doing so, deference to the Federal Circuit will serve the Congressional purposes for which that court was created — uniformity in patent jurisprudence and the prevention of forum shopping — just as the Federal Circuit’s choice-of-law rules attempt to do. Surely it cannot be said that RCCOAs should ignore the clear Congressional goals regarding patent law evident from the Federal Circuit’s enabling act and surrounding history. ■

## Save the Date! Reunion 2004 – April 17, 2004

*Bringing together the Golden Circle,  
all alumni with international degrees,  
and the classes of:*



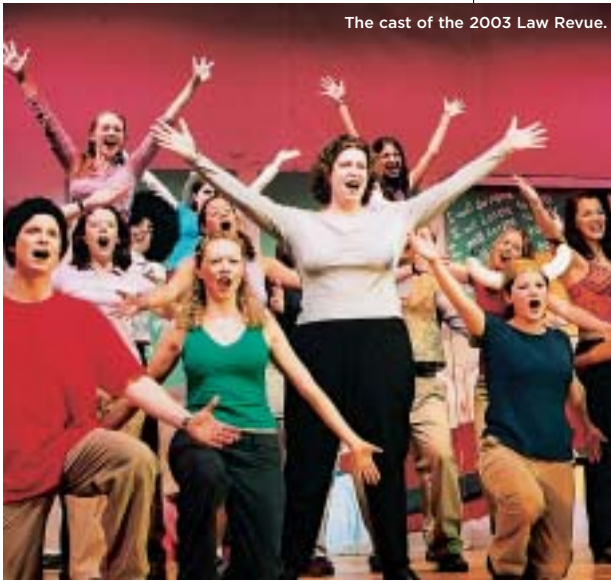
Join your friends and classmates to celebrate the anniversary of your Law School graduation. Look for your invitation in the mail or check the Web site at [www.law.nyu.edu/alumni](http://www.law.nyu.edu/alumni). We’re looking forward to having you join us! Any questions, call (212) 998-6470, or email [law.reunion@nyu.edu](mailto:law.reunion@nyu.edu).

**NYU**  **LAW**  
New York University School of Law

## EVENTS

## Law Revue 2003 Brings Down the House

Tishman Auditorium in Vanderbilt Hall does not exactly encourage theatrical productions. It has no stage-right entry, no set or prop storage space, no “green room” to hold performers between scenes, no dressing rooms, no stage lights, and no sound system. It is a stage clearly designed for a handful of speakers at a time, not a musical cast of 30.



The cast of the 2003 Law Revue.

Someone must have forgotten to tell this to the NYU School of Law student writers, producers, directors, cast, and crew of “Law Revue 2003: Not Another Dean Movie.” Narrator Emily Bushnell (’04) welcomed a full house to the “782nd annual Law Revue show,” which had an inordinate number of stage left entrances and minimalist sets. Performers waited between scenes in Room 110 and changed costumes in the custodian tunnel beneath the stage. The show must go on, even when the curtain breaks and cast members have to pull it open themselves.

Each fall, a group of students is chosen to draft a new script for the April Law Revue production, complete with musical parodies. This tradition has been carried on for a long time, although current students are not sure exactly how long.

“We have a mailing list including alums from back in the ’30s, but we have no idea if there actually was a Law

Revue show at that point,” said assistant director Caitlin Wheeler (’03).

With a new dean this past year, students decided on a love-story theme, based on the marriage of Dean Richard Revesz and his wife, Professor Vicki Been (’83). While the storyline was prone to hyperbole, mixing fact with fiction — Revesz and Been didn’t meet as law students, although they did both clerk the same year on the U.S. Supreme Court, Been for Justice Harry Blackmun and Revesz for Justice Thurgood Marshall — Revesz told several cast members that it was “striking how much Erica Alterwitz (’04), who played my wife, looks just like Vicki.” In the story, and one hopes in real life, Vicki and Ricky live happily ever after, Supreme Court clerkships in hand.

Because of space and resource limitations (Law Revue is entirely self-funded), cast members serve as directors, producers, make-up artists, and just about anything else needed. “I ended up learning a lot about my fellow cast-mates,” said Jill Siegelbaum (’03). “It’s not every day that you have seven men begging you to do their makeup.”

Despite its rewards, there is always a price to pay for fame, as Emily Costello (’03) learned when her classmate told Civil Procedure Professor Helen Hershkoff that she was lampooned in the show this year — played by Costello herself. To prove to Hershkoff that she was getting more out of her Advanced Civil Procedure class than just a gag performance, Costello said, “Now I’ve definitely got to do the reading for tomorrow.” ■

## Spring Fling Rocks Vanderbilt Hall

NYU School of Law students and their guests kicked up their heels at the last-chance-for-fun-before-studying celebration, Spring Fling, a perennial favorite of students. During the event, the generally sober and scholarly classrooms, hallways, and common spaces in Vanderbilt Hall were transformed into a haven of dance, song, and revelry.

This year’s Spring Fling, which began to the sounds of ’80s music and moved on to merengue after midnight, was lively. Couches and tables were pushed aside, the lights were dimmed, and ribbons decorated the columns. Many students danced under the watchful, solemn eyes of the portraits of former deans.

Other students waited in line to belt out popular songs on a karaoke system that replaced the professor’s podium in one of the classrooms, an activity that one student com-

mented was “better than Corporate Securities, which I also have in this room.”

Later, a group of singers operating with no machine accompaniment — the law student a capella group — took the stage in the faculty library. They performed some favorites, including “Time After Time,” “Secret Agent Man,” and “Faith.”

Golding Lounge was packed with eager gamblers, card tables, dealers, and a seemingly unlimited supply of fake money. Students cashed in their faux dollars for chips at the slot machines, craps tables, roulette wheels, and blackjack tables. Craps tables were set up for high rollers in the center of the room, and a smaller novice table was also set up on the side, for students who saw Vanderbilt Hall as a strictly educational place and wanted to learn the game. Most of them took home a lesson in how quickly a person can burn through money.

The third-floor hallways teemed with lines of students waiting to have

their caricatures drawn, their fortunes told, and their dream tattoos painted (with removable dyes).

Echoing the sentiments that reverberated around Vanderbilt Hall, Peter Rosen (’05) said he was delighted that the administration invests such effort into the event. “It is always such a stressful semester,” he said, “and it’s nice to have a big party before we have to get serious about studying for exams.” ■



Students enjoy dancing, karaoke, and more at Spring Fling.

## Days to Remember

### Law School Graduates Celebrate Commencement and Convocation



Washington Square Park was awash in purple. Among blossoming trees and bright flags, 5000 New York University students in violet robes entered the park for the University Commencement. Robert Rees carried the banner for NYU School of Law and led his excited classmates to their seats.

"We've come from the world over, conquered circumstances, and overcome obstacles as varied as this dear city," student speaker William Creeley proclaimed. Creeley graduated from the Gallatin School and will attend NYU School of Law in 2003-04. "Change the world," he told the J.D. candidates, "but wait for me."

NYU President John Sexton then presented honorary degrees to five outstanding New Yorkers, including Mayor Michael Bloomberg, who received an honorary doctor of laws degree. Bloomberg explained that his mother had graduated from the University in 1929, and his daughter was a freshman at the Gallatin School. "I went to school elsewhere," he laughed, "but they do say smarts skip a generation. As mayor, I appreciate how much we depend on this university. No stone gates separate the school from the city. New York City is NYU's campus."

Sexton echoed the sentiment. "I hope you regard this day not as a moment of departure, but as a redefinition of your relationship with the school."

The 2003 Commencement Choir sang "New York State of Mind," and a student from each school accepted a degree on behalf of his or her class. Dean Richard Revesz of NYU School of Law presented a doctoral degree to Fengchun Jin, LL.M., and Theano Evangelis accepted the juris doctor degree and waved to her cheering classmates.

The next day, three candidates for doctorates of juridical science, 534 candidates for master's of laws, and 443 candidates for juris doctorates celebrated Convocation at the Law School's ceremony at the Theater at Madison Square Garden. Revesz opened the ceremony with remarks on the present and future successes of the 2003 class. "You have achieved so much already," he commented, listing several accomplishments, including an amicus brief to the U.S. Supreme Court, cited by Justice David Souter (see p. 119); supervision of a legal needs and resources project; and assistance in drafting East Timor's Constitution. The dean called for the students to continue to be "a part of the solution," as the world encounters disruptions and scandal.

Lester Pollack (37), chairman of the NYU School of Law Foundation, congratulated the students, advised vigilance in meeting the challenges ahead, and encouraged their continued active involvement and participation in the NYU School of Law community.

Sexton, former dean of the Law School, praised Revesz's work with the Law School and congratulated him on a great first year. Sexton described his newfound appreciation for the University as a whole, and called on students to be the leaders of this century.

Patrizia Papaanni, representative of the LL.M. class, praised the ability of the students to bring diverse backgrounds to a common experience. She encouraged the students to strive for the goal "to work in law for a better world."

Travis Tu, speaking for the 2003 J.D. class, praised the graduates' abilities to make achievements in public service: "Rare is a student body more prepared to heed that call than this one." (To read his full speech, see p. 134.)

Described as "brilliant, dedicated, and selfless," Professor Randy Hertz, director of the Law School's clinical and advocacy programs, was recognized for being awarded a University Distinguished Teaching Award for his work with the Law School clinical program (see p. 103). Hertz congratulated students on the bright futures that lie ahead of them. "I look forward to hearing about the mountains you will move in the years to come," he said.

Larry Thompson, then deputy attorney general of the United States, gave the Convocation address. Thompson, whose son, Larry Thompson Jr., was graduating, praised both the students for having reason to be proud of their accomplishments and the families whose efforts were part of those successes. He encouraged the students to seek opportunities to reach beyond and take risks. He reminded the students that the law is a profession and that a lawyer must always remember who the client is and always give his or her "independent professional judgment." Thompson said that every lawyer will encounter invitations to abandon his or her principles, but encouraged the students to hold true to those principles and their professional judgments, and, finally, wished them good luck.

Candidates for doctorates of juridical science were hooded first, followed by the candidates for master's of law and candidates for juris doctorates. Revesz continued the tradition of inviting family members and loved ones who are alumni of the Law School to hood their graduates, and for the first time, started a new tradition of inviting alumni scholarship donors to hood their recipients (see p. 136). Revesz concluded the convocation with warm congratulations to the students. ■

# NYU School of Law Convocation Address

Travis J. Tu ('03)

FRIDAY, MAY 16, 2003  
MADISON SQUARE GARDEN

Over the last few weeks, as lawyers are prone to do, many of you have given me a good amount of advice on this speech. “Be funny,” someone said. “Be inspirational.”

Another well meaning person said, “Wear thick-soled shoes so you look taller.” But the best advice I heard was that all good convocation speeches have a good introduction and a good conclusion, and those two things should come very close together.

Convocation speeches are invariably about journeys that lie ahead, aspirations for our futures, and plans for our lives that have been in the making, or on hold, for the last three years. And this one, too, is about all those things. But to fully appreciate this day, and the magnitude of our collective accomplishment, I think it is worth looking back, and taking stock, of where we’ve been and what we have been through together.

Law school, even in the best of times, is no walk in the park.

It is just plain hard work. There are late nights. The books are heavy. The Socratic Method, whatever its pedagogical virtues, is downright scary and rude.

And the true cruelty of law school is that it is unrelenting. If it is not exams, it’s your clinic. If it’s not a clinic, it’s your journal. It’s moot court, or worse, that monkey on your back they call an A paper.

Nearly four years ago now, when I was deciding among schools to attend, I remember speaking to a co-worker who is an alumnus of this Law School. His advice was, “If you can, choose a law school that will sustain you.” Time and again over the last three years I have been reminded of the wisdom in this advice and the correctness of my choice of coming here — especially because these have been far from the best of times.

So much has happened since August of 2000 when our class first crossed the threshold of Vanderbilt Hall: President Sexton was merely a dean; a Democrat held the White House; there was anticipation of a resolution to the Israeli/Palestinian conflict; the stock market was bull-ish; and the Law School sat just beyond the shadow cast over downtown by the World Trade Center.

As seldom before, the events that have since unfolded outside our classrooms have far outdone any hypothetical concocted by a professor for the purposes of a law school exam.

During our first year of law school, the nation fractioned plumb right down the middle in a divisive presidential election, which ended in a prolonged saga of heroes and villains, hanging chads, and more legal fancy work than any 1L Civil Procedure student could possibly comprehend. And when the Supreme Court brought an abrupt end to the whole affair, it brought new meaning to the clichéd notion that even one vote can make all the difference. But, moreover, it tested everything we know, or thought we knew, about what are usually abstract Law School topics: separation of powers; judicial activism; and the role of the judges in American politics.

But we stuck it out and, after some months, even the Nader voters among us



“As we, the Class of 2003, head out into the working world, we do so with a unique combination of idealism and humility, enthusiasm and caution, thankfulness for being done and thankfulness for having been here for this time in our lives.”

TRAVIS TU ('03)

felt safe enough to speak up again. Our renewed sense that everything was going to be all right after all did not last long.

Every generation seemingly has a unifying question: “Where were you when the Japanese bombed Pearl Harbor?” “Where were you when JFK was shot?” And for years, it seemed like ours was going to forev-

er be, “Where were you when they caught O.J. in that white Bronco?” But now that question is most certainly, “Where were you on the morning of September 11th?”

We J.D.s have a common answer: We were in law school.

On the evening of September 10th, I stayed at school late, listening to Professor Neuborne lecture about how he and a global team of lawyers had successfully sued and achieved some measure of reparations for the survivors of the Holocaust. I left that night filled with that sense of purpose and possibility for change through the practice of law that led me, as it did many of you, to law school in the first place.

The next morning, I was standing in line to get a cup of coffee from a cart outside the clinic building just before 9 a.m. Everyone in line was squinting through the morning sun to look curiously at a trail of smoke from one of the Trade Center towers. And then the second plane hit and from somewhere down the block I heard what was then an uncommonly heard word — “terrorism.”

I then made what is surely the quickest journey ever made from the clinic building to Vanderbilt. Oblivious to what was going on outside, some classes were still going on. I ducked into the library and penned an email to my mom back in Nebraska: “All hell is breaking loose here, but I’m okay.” As I left the Law School for what turned out to be weeks, I ran into my dear friend and classmate Carrie Noteboom at the corner of Thompson and West 4th Street. For all my life, I will remember how we wept and watched in horror as one of the towers collapsed in on itself and all who were inside.

Almost two years, and now two wars, later, the dust still has not settled.

We are now seeing in our time something that was surely implicit in all of the historic cases we studied in law school: When things go very badly in our nation, people will look to lawyers to help sort everything out.



We, as new and ready lawyers, are entering into the profession when enormous and numerous challenges face our country. Yet, I share in an abiding optimism that these challenges are surmountable. The source of my optimism comes in large measure from having worked alongside and learned from all of you.

Over the past three years, we have proven time and again that we can persevere through adversity; we can make difficult tasks look easy; and we can do it all while at the same time bettering the lives and institutions around us.

A few weeks ago, in the truest sign that law school has ruined any hope I had of being hip, I was home on a Saturday night watching C-SPAN. In the lineup was a speech by Justice Breyer. In his remarks, he called on his audience to hear the tragic events of recent years as a renewed call to public service. Rare is a student body more prepared to heed that call than this one. And let me give you just a few reasons why I know this to be true.

Throughout my Law School career, I have taken constant inspiration and hope from the efforts that many of you have spearheaded to prevent our military from flouting our Law School's policy of not permitting employers who discriminate on the basis of sexual orientation from using our facilities. With any hope, the fact that our military just fought alongside British forces that allow gay men and lesbians to serve openly will encourage our government to revisit its demeaning policy of barring and expelling us from service.

As the Supreme Court is poised to redraw the constitutional boundaries of affirmative action, others of you have worked tirelessly

to make sure that this and other law schools remain true to the belief that in order to integrate our unimaginably diverse citizenry we absolutely must attract, admit, and educate fine lawyers from an array of races and backgrounds.

Even in recent weeks, amidst exams and the race to finish all our graduation requirements, others of you have rallied together because you believe with every fiber of your being that, even with all that has happened, this country must remain committed to the protection of civil liberties and a welcoming place of chance and opportunity for immigrants from around the world.

This public interest ethic that imbued this Law School will serve us and our profession well, whether we are going into government jobs, embarking on public interest careers, or headed, especially in light of Enron and its related scandals, into the private sector.

For all that we have been through, and for all that you have done, I commend and congratulate you.

But before I put this final period on my Law School career, I would just like to say one last and quite obvious thing: Not one of us could have imagined being here at this major milestone in our lives without the support, care, and love of friends and

family, many of whom (or at least six or fewer) are here with us today. Certainly this event in my life is less a testament to my own achievements than it is a reminder that I have been blessed far beyond what any one person could hope for by proud and patient parents, my younger and far cooler brother Andy (who also graduated this week), and by a loving partner, Andrew, whose parents I am so glad to have here today.

To them and to you, I extend all the thanks and admiration I have to give.

As we, the Class of 2003, head out into the working world, we do so with a unique combination of idealism and humility, enthusiasm and caution, thankfulness for being done and thankfulness for having been here for this time in our lives.

I wish you all the success and happiness that, without a doubt, you have coming to you.

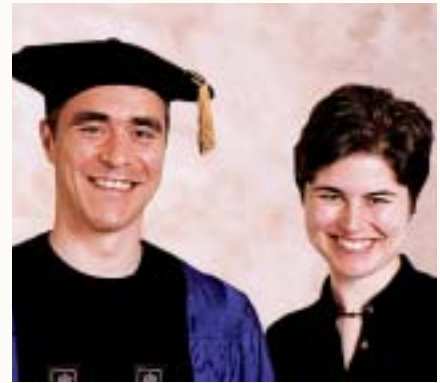
Good luck and goodbye. ■



Top: Commencement program and flowers. (first row, from left): Robert Rees carries the NYU School of Law banner; New York City Mayor Michael Bloomberg addresses the graduates; Fengchun Jin accepts a degree on behalf of LL.M. graduates. (second row, from left): Theano Evangelis accepts a degree on behalf of J.D. graduates; two students look on at the 2003 Commencement exercises; an aerial view of Washington Square Park. (third row, from left): Then U.S. Deputy Attorney General Larry Thompson, the Convocation keynote speaker, with Patrizia Papaiani, the LL.M. class speaker; Travis Tu, the J.D. class speaker; and Dean Richard Revesz; a student cheers at the 2003 Commencement ceremony.

## Family Album 2003

It is a tradition at Convocation for graduates to be hooded by relatives or significant others who are alumni or staff of NYU School of Law. This year, Dean Richard Revesz also invited alumni scholarship/fellowship donors to hood their recipients. Pictured below and on the following pages are members of the Class of 2003 and their family members, loved ones, or scholarship/fellowship sponsors.



**Left to right from top:**

Alan D. Schon with his father,  
Carlos Schon (M.C.J. '67)

Daniel M. Bono with his sister,  
Simone Eliane Bono (LL.M. '01)

Francisco Hernandez with his wife,  
Gladys Arellano Mayz (M.C.J. '93)

Michael Feinberg with his father,  
Kenneth R. Feinberg ('70)

Erin M. Randolph with her fiancé,  
Bernard A. Williams ('02)

Harlan G. Cohen with his mother,  
Hollace Topol Cohen ('72)





**Left to right from top:**

Rachel B. Zublatt with her father, Alan B. Zublatt ('67)

Michael M. Munoz with his father, Kenneth W. Munoz ('75)

Natalie Horowitz with her great aunt, Judge Pauline Newman ('58)

Allison B. Podell with her father, Herbert S. Podell ('58)

Adina H. Rosenbaum with her aunt, Merle D. Hyman ('76)

Eva L. Dietz with her father, John P. Dietz (LL.M. '72)

Oliver Chase with his brother, Arlo M. Chase ('99) (not pictured: Professor Oscar Chase)

Elizabeth Kennedy with her father, Thomas M. Kennedy ('74)





**Left to right from top:**

Aparna Ravi with her husband, Nuggehalli S. Nigam (LL.M. '99)

Gilad Kalter with his father, Albert Kalter (LL.M. '64), and sister, Dahlia Kalter ('96, LL.M. '97)

Allison Gruner with her uncle, Anthony Salese ('85)

Mimi K. Rupp with her partner, Jennifer B. Handler ('99)

Suzan Jo with her husband, Michael H. Jo ('00)

Melinda Anderson with her husband, Jonathan MacKenzie Anderson ('96)

Seth R. Gassman with his father, Barry K. Gassman (LL.M. '74)

Adam S. Tolin with his wife, Cheri R. Tolin ('01)



**Left to right from top:**

Monica Garcia with Law School Trustee and An-Bryce Scholarship sponsor Anthony Welters ('77)

Anna Kingsbury with her brother, Professor Benedict Kingsbury

Elisabeth Morse with her father, Adjunct Professor Stephen Morse

Larry Thompson Jr. with his father, then U.S. Deputy Attorney General Larry Thompson Sr., the Convocation keynote speaker

Jordan Rosenbaum, who was hooded by Law School Trustee Norma Paige ('46)



Priyamvada Sinha with Deborah L. Linfield ('78) Fellowship sponsor Trudy Linfield

Lauren Tese with her father, Law School Trustee Vincent Tese ('73)

Kanika Provost with then U.S. Deputy Attorney General Larry Thompson Sr.



# Around the Law School



## GLOBAL

### Dignitaries Debate the Future of Europe

A stellar cast of European officials shared insights and expertise during a seminar series called the Futures of Europe: Ideas, Ideals, and Those Who Make Them Happen, held at NYU School of Law. Bronislaw Geremek, the former minister for foreign affairs of the Republic of Poland, kicked off the series. Other dignitaries who participated were Mario Monti, member of the European Commission responsible for competition; Pascal Lamy, member of

the European Commission responsible for trade; and Poul Nyrup Rasmussen, former prime minister of Denmark.

Organized by the Law School's Jean Monnet Center for International and Regional Economic Law and Justice and NYU's Center for European Studies, the lecture series ran in conjunction with Professor Joseph Weiler's seminar on the Law of the European Union. It provided students, and the many others who participated, a unique opportunity to participate in a dynamic

exchange with the major players debating the issues currently under consideration by the European Constitutional Convention. Weiler, director of the Jean Monnet Center and the European Union Jean Monnet Professor of Law; Renee Haferkamp, Distinguished Emile Noël Fellow; and Professor Martin Schain, director of the Center for European Studies at NYU, acted as panel members for each event's informal question-and-answer format.

#### Bronislaw Geremek

Weiler introduced Geremek as a man of deep intellectual creativity who has made great contributions to politics and academia in Europe. A pivotal figure in Polish politics, Geremek helped lead Poland's solidarity movement, was a member of parliament, and served as minister of foreign affairs.

Geremek addressed many issues during his talk, including the challenges facing the European Union (E.U.) and prospects for candidate countries to join the E.U.



Much of the discussion centered on the E.U.'s enlargement from 15 to 25 member states. Geremek stated that such expansion will happen and could be made economically feasible through taxation. He suggested, however, that the more sensitive issue was political will, rather than fiscal details: "I am not sure that with enlargement such solidarity can be retained without a new package."

Geremek argued that constitutional and single-market matters were secondary to substantive issues such as the legitimacy of European Union institutions. "It's very difficult to define legitimacy outside the national framework," he noted. "Only the E.U. Parliament has gained legitimacy from democratically elected governments. It's difficult to determine the role of the European Commission and Council of the European Union, since neither has European legitimacy." To build institutional legitimacy, Geremek suggested that the European Union establish a capital and that the European Parliament elect both the Commission president and a representative for foreign policy.

### Mario Monti

The European Union's best-known commissioner, Monti was appointed to the European Commission by Italian Prime Minister Silvio Berlusconi in 1994 and reappointed in 1999. Monti set himself apart from his commissioner peers, saying that he is an atypical commissioner with an academic, rather than political, background.



Monti's lecture explored his perspective on the makeup and operations of the European Commission and the issue of the E.U. enlargement, in addition to more traditional antitrust questions.

Monti was optimistic about the E.U.'s ability to increase the number of its member states, despite the social and economic disparity that exists among the current and candidate states. To handle the increased burdens, he suggested that the European Council move from unanimity to qualified majority voting, that it

eschew weighted voting, and that it also adopt a six-month rotation system for the General Affairs Council to allow member states the opportunity to have high visibility externally as well as at home. He also suggested that the Council's president should serve a longer term, anywhere from one to two-and-a-half years, and that the president be a minister from the Council.

Monti supports giving more power to member states. "A larger union should be a thinner union in terms of things it does at the center. The antidote, so to speak, to the exponential increase of the number of decisions should be greater decentralization." An enlarged E.U. will increase the weight, if not the muscle, of Europe as a world player as long as the enlargement mechanisms are properly managed, Monti added. While a communitarian approach to foreign and security policy would be best, he concluded that pragmatism dictated a gradual approach toward that ideal.

### Pascal Lamy

The questions directed to Lamy followed the pattern of earlier lectures and elicited his thoughts on his trade portfolio, the composition of the European Commission, and the future expansion of the European Union. Lamy's comments emphasized the need to establish political accountability and to ensure that policies and goals are communicated efficiently and effectively to the public. Asked by Weiler about the influence of national governments on the Commission, Lamy spoke diplomatically of the oath that he and all commissioners take to serve the European Commission, rather than any particular national government. Lamy recognized that conflicts arise because he simultaneously serves as a European commissioner, a French representative, and an individual. As a commissioner, though, Europe is clearly where his allegiance is required.



Lamy spends a majority of his time dealing with his peers, other leaders, and various constituencies outside the European Union. He regularly corresponds with key U.S. Congressional leaders. Lamy contrasted his responsibilities with those of his predecessors, noting that prior commissioners spent a large amount of their time liaising with European states and did not have to deal with the same glare of the media, civil society, and numerous other constituencies concerned about trade.

Another issue Lamy addressed was whether the new World Trade Organization's binding third-party dispute settlement mechanisms have helped resolve trade disputes or merely increased litigation. While extolling the virtues of dispute settlement mechanisms, seeing them as a beacon of a necessary international governance system, Lamy also recognized the need to maintain balance within such a system. He advocated a more active role for legislation to resolve trade issues. The one reform in dispute resolution he would most like to see implemented would be the right for the prevailing party to choose the compliance method. Rather than the present system, which imposes a series of sanctions against the losing country, Lamy said a better course would be to force the losing country to open up, thus facilitating trade and reinforcing the global trade system.

### Poul Nyrup Rasmussen

The planned E.U. enlargement in 2004 will no doubt reinvigorate concerns regarding the balance of power among the large and small countries. Providing insight into this politically charged issue, Rasmussen discussed the art of balance in the relations

between large and small states by reflecting on his service as the president of the Council of Europe and as Denmark's prime minister. Rasmussen submitted that it will be possible to realize power with the right mindset and efforts to engage other leaders, and dispelled the notion that the cleavage between big states and small states is too wide.

Rasmussen strongly supports one representative per member state in the European Commission to ensure that it remains a

defender of smaller countries. The European Parliament should have a stronger role and greater influence not only with regard to the decision-making process, but also in its cooperation with the president, he said. Echoing the sentiments of prior speakers in the series, Rasmussen suggested that governing institutions improve transparency and narrow the currently criticized "democratic deficit."



Rasmussen concluded by proposing that the United States needs a strong Europe and that unilateralism is not the answer to all the world's needs. He sees the E.U. as the only region that can be a partner of some weight with the United States and stressed that the E.U. should assume the role of a global leader. ■

# A Transatlantic Dialogue

## The Constitutional Future of Europe

July 9-11, 2003, Villa La Pietra, Florence

*This colloquium was held under the auspices of the Hauser Global Law School Program and the Jean Monnet Center for International and Regional Economic Law and Justice at NYU School of Law.*

The Constitutional Future of Europe: A Transatlantic Dialogue” brought together judges from both sides of the Atlantic. The event featured five U.S. Supreme Court Justices: Stephen Breyer, Ruth Bader Ginsburg, Anthony Kennedy, Sandra Day O’Connor, and Clarence Thomas; judges and former judges of European member state constitutional courts (France: Olivier Dutheil de Lamothe; Germany: Bruno Otto Bryde, Dieter Grimm, and Gertrude Lhbbe-Wolff; Italy: Valerio Onida; Portugal: Rui Manuel Gens de Moura Ramos; Spain: Francisco Rubio Llorente; United Kingdom: Lord Scott of Foscote and Lord Justice Stephen Sedley); and members of the European Court of Justice (Judge Koenraad Lenaerts, Advocates General Francis Jacobs and Miguel Poyares Maduro). In addition, the colloquium included scholars in the fields of European and U.S. Constitutional Law (Rachel Barkow, Eleanor Fox (’61), David Golove, Stephen Holmes, Mattias Kumm, Lester Pollack (’57), all from NYU School of Law; Pasquale Pasquino, CNRS, Paris and Hauser Global Law School Program; Eric Stein, University of Michigan; Neil Walker, European University Institute, Florence; Marta Cartabia, Verona; and José M. de Areilza, Instituto de Empresa, Madrid). The colloquium was convened and moderated by Professor Joseph Weiler of NYU School of Law.

The subject matter of the colloquium was the recently released Draft European Constitution and the European Charter of Fundamental Rights. Weiler noted: “This was a colloquium in the true sense of the word. At least four conversations were taking place simultaneously. Like a good opera the result was constitutional music, rather than noise. One such conversation was that between the U.S. Supreme Court justices — a majority of the Court! — and some of their constitutional court counterparts from Europe. It was an occasion for the American judges to learn from a privileged set of interlocutors of these most momentous changes in the European constitutional landscape and to make their own contribution to that debate. No less important and certainly no

less interesting was the multilogue, at times passionate, of constitutional court judges from different European Union member states trying to gauge the significance and likely impact of the new draft constitution and charter on the Union and the legal orders of the member states.” [The conference took the form of an initial dialogue among Weiler, Lenaerts, and Jacobs on the key issues of the constitution and charter, which acted as a springboard for a general discussion among all participants.] “It also provoked yet another interesting conversation between the members of the European



Professor Joseph Weiler (center) moderated a colloquium that included many distinguished guests, including Judge Koenraad Lenaerts (left) and Advocate General Francis Jacobs, both members of the European Court of Justice.

Court of Justice and their national counterparts on issues that at times have been the subject of heated federal and constitutional tension. Finally, the colloquium was a meeting of academics and practitioners — courts and court-watchers with the interesting added twist that many of the judges were professors too. The colloquium was ‘off the record,’ facilitating both a relaxed and frank exchange.”

The themes for discussion were those considered most pertinent to the future European judiciary and European polity. In the preparatory documentation, the following themes were identified:

- An exploration of the “nature of the beast” — Is it a real constitution? A treaty masquerading as a constitution or, intriguingly a constitution masquerading as a treaty?
- Competences — Will the new Draft European Constitution, can the new draft, can any form of constitution impose some “limits to growth” on centralized power?

Define a jurisdictional balance consistent with the constitutional understanding of the member state legal orders? Balance the desire for well defined constitutional boundaries with the need for functional flexibility?

- Democracy, accountability, transparency — What, if anything, will the new draft do to the proverbial European democracy and political deficit — and has the judiciary any role to play in relation to this issue?
- The status, likely impact, and potential points of contention of the new charter.

Memorable expected and unexpected impressions from the colloquium:

- The heterogeneity of views, at times mutually exclusive, on the various issues held by the different European constitutional court judges in reflecting on the same document. Judicial discord is neither rare nor unwelcome. It was striking, however, to

observe that one of the most hallowed cleavages — that between European Court and member states courts — did not quite play out in the classically expected manner.

- The ease with which constitutionalists from different countries and, notably, judges from the United States and Europe could converse on the themes of the colloquium. There truly is a common vocabulary, even if expressed in different dialects.

- The importance of setting and context as a

means for fostering an atmosphere conducive to fruitful discussion. *Stillicidi casus lapidem cavat* (sometimes stated as “The soft drops of water pierce the hard marble”). The softness and beauty of the surroundings at La Pietra were the perfect setting to pierce the stone.

- The precariousness of stereotypes: One could not avoid certain expectations based on national stereotypes as to the projected positions that judges from different countries would adopt. The stereotypes were disproved as often as they were proved.
- The “judicial restraint” shown by the professors!

Defining moment: O’Connor at the closing press conference lifting the U.S. Constitution — a little booklet of 15 pages (7,671 words) — and saying, “We have been grappling with this for over 200 years.” Then lifting, with a smile, the 253 page (69,044 words) Draft European Constitution and stating, “You have some work to do...” ■



# War Crime Trials

## Milosevic Trial Judge Delivers Hauser Lecture

What is the purpose of putting a man like Slobodan Milosevic on trial? Is justice served by giving him a voice in the historical record of his crimes? Judge Richard May, of the International Criminal Tribunal for the former Yugoslavia (ICTY), home to the Milosevic trial, was invited to give the seventh annual Hauser Lecture to address these issues and discuss “Balancing Interests in War Crime Trials.”

Dean Richard Revesz welcomed the distinguished panel and audience. “I’m delighted that you’re all here for this very important event,” Revesz said. “It’s a key event in our institutional life.”

A goal of the Hauser Global Law School Program, Revesz explained, is to understand “how the United States’ legal regime fits in with the legal regimes of other countries and of the international community.” He praised the namesakes behind the Global Law School Program, Rita (’59) and Gustave (LL.M. ’57) Hauser, and said that the Program has made NYU School of Law the leading international law school. “Rita and Gus are two extraordinary individuals.”

Professor Theodor Meron, Charles L. Denison Professor of Law, who is on leave from the Law School to serve as the president of the ICTY, took the floor to speak about his colleague, Judge May.

“He has participated in more than half a dozen difficult and important war crime trials [that] would test the ability of any experi-

enced judge,” Meron said. He described May’s background as a top criminal proceduralist and expert on evidentiary rules in the United Kingdom.

In his lecture, May discussed the general purposes of an international war crimes trial. One purpose, he explained, is to create a historical record for posterity. To that end, these tribunals typically focus on the most visible parties to war crimes, an approach that concerns May. “There are cases,” he said, “when the crimes are so heinous that they should be tried by an international court, no matter how low-level the perpetrators.”

Another purpose is to promote peace and reconciliation, which makes it important for the tribunals to be visible in the geographical area where the crimes were committed. According to May, this purpose toes the line between “international justice” and “private revenge.” One ICTY report found that “revenge is the last resort of persons who are denied due process” and concluded, “Thus it is that international justice is to be preferred to private revenge.”

May also discussed the international standards for immunity, which were once thought to be clear, but have been evolving since the Nuremberg and Tokyo trials. Overall, however, May noted an admirable and “firmly established ... notion of personal responsibility.”

Finally, May spoke of the international tribunals themselves, which in his experience are contentious in unexpected ways. “Justice Jackson commented after the Nuremberg trial that the differences over procedure were more stubborn than those over substantive law,” he said, then explaining why there must be “liberal rules of evidence” in these trials.

“Where the lips of potential witnesses were sealed by violence,” May said, “[liberal] rules of evidence ... are as necessary for the defense as they are for the prosecution.” ■



(from left): Dean Richard Revesz, Gustave Hauser (LL.M. '57), Rita Hauser ('59), Radmila May, and Judge Richard May of the International Criminal Tribunal for the former Yugoslavia at the seventh annual Hauser Lecture on International Humanitarian Law.

## DEAN'S ROUNDTABLES

### Dean's Guests Discuss Careers

A longstanding tradition continued this year as Dean Richard Revesz invited NYU School of Law alumni and a few select guests to share their work experiences with students at the “Dean’s Roundtable Luncheons.” The popular roundtables are a unique chance for students to learn about career paths other than traditional practice in law firms, government, or not-for-profit organizations. The guests speak about their work experiences, sharing valuable advice and insight about how they found their alternative paths. Five of the guests — Robert Rohdie (’65), Peter (’73) and Eileen (’74) Sudler, Steven Swerdlow (’75), and Geoffrey Wharton (’67) — are featured in the environmental and land use law section of the magazine (see p. 59).

The highlights of the other guests’ careers follow. **Craig Balsam (’86)** co-founded Razor & Tie Entertainment in 1989, along with his business partner and Law School classmate, Cliff Chenfeld (’85). **Jodi Balsam (’86)** is of counsel to the NFL. **William Bernstein (’82)** was a founding partner of Kalkines, Arky, Zall & Bernstein, which merged with Manatt, Phelps & Phillips in January 2003. Former U.S. Senator **Rudy Boschwitz (’53)** represented Minnesota in the U.S. Senate from 1978 to 1990. **Karen Freedman (’80)** is the founder, executive director, and member of the board of directors of Lawyers For Children in New York City. **Martin Gross (’81)** is the founder, president, and owner of Sandalwood Securities. U.S. Congresswoman **Jane Harman**

represents California’s 36th Congressional District. **Craig Hunegs (’86)** is executive vice president of Warner Brothers Television. **Beth Jacobson (’87)** is executive vice president and general counsel of PDI, Inc. **Jerome Kern (’60)**, a Law School trustee, is the founder and chief executive officer of Kern Consulting LLC. **Eric Koenig (’84)** is a former senior attorney for the Microsoft Corporation. **R. May Lee (’90)**, a Law School trustee, is the founder and chief executive officer of MarketBoy, an online consumer electronics marketplace. **Timothy Mayopoulos (’84)** is managing director and general counsel of Deutsche Bank’s Corporate and Investment Bank, Americas. **Edgar Rios** serves the business unit of United-Health Group as executive vice president and general counsel. **Keith Williamson (’86)** is the president of the Capital Services Division at Pitney Bowes Inc. ■

## INTERNATIONAL

## IILJ Conference Celebrates Thomas Franck and “Tom-ness”

Murry and Ida Becker Professor Emeritus Thomas Franck’s scholarship, and his tremendous influence on international law and politics, were the subject of strong praise and lighthearted jabs at a conference titled “International Law and Justice in the 21st Century: The Enduring Contributions of Thomas M. Franck.” The conference fea-

ad hoc judge, and he has mentored countless students since his 1965 appointment as director of the Center for International Studies.

Gathering from around the world, attendees included Franck’s former students, academic colleagues, and a room full of celebrated figures in the field of international law. Anne-Marie Slaughter, dean of the Woodrow Wilson School of Public and International Affairs, president of the American Society of International Law (ASIL), and former professor of international law at Harvard Law School, said of her ASIL predecessor, “I do not know any scholar of international law who can draw such a wide array of friends.”

The conference’s academic dimensions were peppered with personal references. In her lecture, “Culture and Law in Self-Determination,” Professor Karen Knop of the

University of Toronto wondered whether the behavior of states reflected a commitment to the rule of international law and self-restraint regarding the use of force, a quality she called “Tom-ness.”

Subsequent speakers also made reference to “Tom-ness.” Bill Graham, Canadian minister of foreign affairs, referred to the influence of “Tom-ness” on the conduct of Canada’s foreign policy. Professor David Kennedy of Harvard Law School, in a lecture titled “Toujours Avant-Garde,” presented a sort of intellectual history of “Tom-ness,” noting changes and progressions in Franck’s tremendous body of work over the last 40 years. This lecture and the other academic papers were prepared for subsequent publication in a special symposium issue of the *Journal of International Law and Politics*.

Along with Professors Andreas Lowenfeld and Theodor Meron (now president of the International Criminal Tribunal for the former Yugoslavia; see p. 102), Franck is part of the trio credited for launching the Law School’s international law program into the top ranks, and attracting the next generation of scholars to the Law School. These scholars, dubbed “the dream team” by Franck, include the organizers of the conference, Pro-

fessors Philip Alston, David Golove, and Benedict Kingsbury; Joseph Straus Professor of Law Joseph Weiler; and Assistant Professors of Law Mattias Kumm and Katrina Wyman. Revesz stressed the benefits of having “two great generations of international law teachers working side by side.” The new international law faculty have together created the Institute for International Law and Justice (IILJ), which hosted the conference. The Institute continues and expands the student mentoring and research work that Franck began at the Law School’s Center for International Studies over the past 37 years, and he is involved in IILJ.

Franck was given the last word at the conference’s closing dinner. He took the opportunity to remark on his appreciation of NYU School of Law’s “terrific tradition of creating a whirlpool of ideas” and to thank the renowned individuals who had gathered in his honor. “What really matters is not the writing,” Franck said. “It’s you, my friends, who have filled my life with a penumbra of wonderful people.” ■



Professor Thomas Franck (right) was honored at a conference that celebrated his many contributions and drew notable guests, including U.N. Secretary General Kofi Annan (left).

tured lectures honoring Franck’s academic, judicial, and United Nations work, and dinners celebrating his role as a teacher, mentor, and friend.

U.N. Secretary-General Kofi Annan celebrated the guest of honor, for being “an invaluable advisor, a wonderful friend, and someone who makes even the most dry problems fun.” Harold Koh, professor of international law at Yale Law School and former assistant secretary of state for human rights and democracy, called Franck the “Cal Ripken of international law” and said that his résumé “would make most World Court judges drool, and most younger scholars give up.” Later, Koh paused and said, “Tom, for God’s sake, would you give it a rest?” NYU School of Law Dean Richard Revesz thanked Franck for being a mentor: “Tom was interested in my work before there was any work to be interested in.”

Franck has been widely recognized as one of the greatest scholars and public international lawyers of his generation. He has taught international law at NYU School of Law since 1960 and, over the course of his career, has published 29 books and more than 200 articles. Franck appeared before the International Court of Justice as both lawyer and

### Think Tank on International Governance Launches IILJ’s Project Agenda

What is the relevance of democracy to international governance? How should we assess the legitimacy of decisions and rules made by international institutions, corporations, courts, and non-governmental actors?

Leading figures in international law, international relations, and political philosophy attended a workshop hosted by the Institute for International Law and Justice (IILJ) to collectively rethink concepts of democracy and justice as they relate to legitimacy in international governance. This two-day workshop launched the IILJ’s centerpiece research project on legitimacy, democracy, and justice in international governance.

Workshop participants presented papers about such key topics as the implications of varying architectures of international governance; the relevance of social science and political philosophy; and the implications of legitimacy and democracy in European Union governance. Specific institutional and normative problems were also addressed.

NYU School of Law faculty, scholars, J.S.D. students, and visiting fellows participated in the workshop. A report of the workshop is posted on the Institute’s Web site at [www.nyuiilj.org](http://www.nyuiilj.org).

The project will trace and model the phenomenon of international governance and explore its normative and theoretical implications through the production of working papers and scholarly publications, and by hosting seminars, colloquia, and other events.

# Globalization Progress and Paradox

“Institutions mark their histories with days like today,” said NYU President John Sexton as he opened the Second Annual William Jefferson Clinton Presidential Foundation Forum at NYU School of Law. The day-long event gathered expert practitioners in international law, politics, and diplomacy from across the planet to discuss “Progress and Paradox: The Realities of Globalization in the 21st Century.” The forum included three panel discussions and a keynote address by former President Clinton.

Sexton, in his opening speech, extolled the virtues of NYU’s commitment to a global student body, a global faculty, and a global perspective.

The conference focused specifically on the ways in which globalization — Clinton’s preferred term is global interdependence — is creating both international progress and problems. The purpose of the conference was to engage in dialogue and to raise awareness about what is necessary to, in Clinton’s words, better “spread the advantages and reduce the risks associated with global interdependence.” Clinton said that he hoped the event would help shed light on ways the world’s people and their gov-



Former President Bill Clinton keynotes a conference on global interdependence at the Law School.

ernments can move from the reality of interdependence to “an integrated global community of shared responsibilities, shared benefits, and shared values.”

Clinton said that while the opening of markets, the expansion of technology, and the spread of information have all created hope and progress around the globe, it cannot be ignored that entire populations of

the world’s people continue to suffer from regional violence, environmental devastation, widespread ignorance, and agonizing poverty.

“The truth is that the global economy has lifted more people out of poverty in the last 20 years than in any other period in human history,” Clinton said. But no one can deny, he continued, that economics alone has not

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To ensure that the forces of global integration overcome the forces of disintegration, Clinton said the United States needs to be strong but flexible and willing to use its vast wealth to combat poverty, disease, and oppression around the globe.

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come close to dealing with the problems that face millions of the world’s people. The great paradox of global interdependence is that so many benefits have been achieved, while half the people on earth still live on less than \$2 a day, more than a billion go hungry every night, and 130 million children never go to school. Clinton called for “a way to share the future” and extend the benefits of global integration among the entire world.

The world is already so interconnected that the actions of one nation can impact others in both negative and positive ways. The challenge, Clinton said, is to move from this state of interdependence to one of integration, a world in which nations see their responsibilities and themselves in terms of what world they want for their children. This approach to globalization is the only hope for ensuring that the benefits of global cooperation benefit all people, Clinton asserted.

To ensure that the forces of global integration overcome the forces of disintegration, Clinton said the United States needs to be strong but flexible and willing to use its vast wealth to combat poverty, disease, and oppression around the globe. “We will one day be judged by how we respond,” he said.

All three of the day’s panel discussions attempted to live up to Clinton’s vision. Panel participants included the president’s former National Security Advisor Samuel Berger; the world’s preeminent development economist Hernando de Soto; Mexico’s foreign secretary and NYU professor, Jorge Castañeda; Chilean Senator Alejandro

Foxley; international financier George Soros; the director general of the World Trade Organization, Supachai Panitchpakdi; former deputy prime minister of Jordan, Rima Khalaf Hunaidi; and other luminaries in their fields.

The first panel focused on developing economies in Latin America and Asia and examined the ways in which the two regions have reacted to and been impacted by globalization. The second panel examined two regions, Africa and the Middle East, which have not seen many of the benefits of global-

ization, and the discussion provided insight into how to turn isolation into integration. The final panel focused on the role of the United States in the global community and the ways in which it can better use its power to expand human freedom and opportunity.

While there was much disagreement throughout the day, some consensus did emerge. First, all the participants agreed that massive problems continue to plague the world’s people: four people die of AIDS in Africa every minute; 65 million people in the Middle East are illiterate; children are starving on the streets in Argentina; and billions live in poverty across the earth. Second, the participants agreed that communities all over the world are winning battles against these problems with innovative solutions. Finally, they said that the international community, as well as the world’s wealthiest countries need to do more to support these solutions. Governments and international organizations need to pay more attention to establishing the kinds of social and political institutions and policies that will support participation in the global economy while providing a cushion against the negative economic and cultural consequences of globalization.

The conference was organized and co-sponsored by the William J. Clinton Presidential Foundation, the base of operations for Clinton’s post-presidency activities, and New York University. The foundation’s mission is “to strengthen the capacity of people in the United States and throughout the world to meet the challenges of global interdependence.” ■

## Asian-American Identity

### Volpp Is Featured Speaker at Korematsu Lecture

When Chinese immigrants first began settling in the United States over a century ago, they were often defined in terms of “excess” — in the sheer numbers of arrivals, the rate of disease, and the glut of families living in small, squalid spaces. According to Professor Leti Volpp, their “excess” was reported by the press as if contagious, and while such rhetoric may have changed, Asian Americans today continue to be defined in terms of excess, specifically cultural excess.

Volpp was invited to speak at the fourth annual Korematsu Lecture on Asian Americans and the Law to discuss why Asian Americans are so often depicted as bearing an excess of culture and to examine the effects that this depiction has on Asian-American claims to national identity and citizenship. She is currently a visiting professor at Columbia Law School (from where she graduated in 1993) on a MacArthur Foundation grant, and an associate professor at American University’s Washington College of Law, where she received two Rockefeller Foundation fellowships in the humanities. She has degrees from the University of Edinburgh (Faculty of Law), Harvard School of Public Health, and Princeton University.

Volpp first addressed the issue of selectively blaming culture for bad behavior, a phenomenon that induces Asian “tradition” to act as an explanation for Asian-American acts that might be considered blameworthy in other cultural contexts, like violence against women. In *People v. Don Lu Chen*, for example, a husband was sentenced to probation after beating his wife to death, based on a defense that his

traditional Chinese background justified some action when he believed his wife was unfaithful. “The identity of the actor determines whether behavior is seen as an individual choice or irrational hewing to traditional culture,” Volpp said. “Asians were assumed to participate in cultural practices that fail to change over time or geography.”

The individual rationality applied to Western cultural traditions is not applied in these circumstances, forcing negative cultural stereotypes on Asian immigrants. In Volpp’s

represent 10 percent of the city’s population.

The stereotypes generated about the excessive culture of Asians, Volpp said, negatively impacts their ability to enjoy American citizenship to its full extent. They promote the assumption that the success of the “model minority” derives from its ties to traditional Asian culture. These ties are considered suspect, so Asian Americans face racially defined restrictions on property ownership, and are politically powerless unless they are able to demonstrate that they can “break free from the older, tradition-bound generation considered stuck in the feudal past.” To be “real” American citizens, Volpp said, there is an ongoing belief that Asian Americans “must sever the cultural, community ties to

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“The identity of the actor determines whether behavior is seen as an individual choice or irrational hewing to traditional culture.” PROFESSOR LETI VOLPP

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view, this effect grows out of orientalism or “making the East negative as a counter to the West,” and continues to “circulate here in terms of how ideas persist about aberrant levels of gender subordination and violence.”

Volpp next examined the powerful stereotype of Asian Americans as the “model minority” that has been able to succeed in the United States without government help. Volpp called the definition of success into question.

“The success touted is economic, not political,” she said, drawing evidence from the fact that New York City elected its first Asian American to city or state office in 2001, despite the fact that Asian Americans

Asia that inhibit their ability to progress with American development.”

Volpp closed by considering the recent legal developments with regard to the status of immigrants and aliens in the United States after September 11. The U.S. Department of Justice now seeks wider latitude in the detentions of aliens, and elected officials are proposing new restrictions on U.S. citizenship, even for people born on American soil. Volpp warns of a de facto internment of Asians — “less visible and more removed from our consciousness” than the internment of Japanese Americans during World War II, but nonetheless a great danger to liberty. ■



Korematsu Lecture attendees: (front row, from left) Alvin Lin ('04), Priscilla Ng ('05), Professor Leti Volpp, NYU School of Law Professor Paulette Caldwell, Nerissa Kunakemakorn ('05), Mina Kim ('05), (back row, from left) Marsha Metrisko, Kelvin Chen ('04), and Jimmy Yan ('97).

## Center for Human Rights and Global Justice Opens with Insights from International Leader



Philippe Kirsch, the first president of the International Criminal Court, was instrumental in creating the court.

NYU School of Law opened the doors to the Center for Human Rights and Global Justice with an address from Philippe Kirsch, the first president of the International Criminal Court (ICC). Kirsch was a principal force behind the creation of the ICC and was unanimously elected to its presidency in March 2003.

The creation of the new Center reflects the importance of international human rights in the Law School community and will coordinate human rights activities and scholarship. Worldwide, the most important development in international human rights in recent years has been the development of the ICC, said Professor Philip Alston, the Center's first director and formerly a professor of international law at the European University Institute in Florence, Italy. The new Center, a part of the Institute for International Law and Justice at NYU School of Law, will build on and enhance the Law School's excellent existing teaching and clinical programs and will initiate long-term research projects, a working paper series, a fellowship program, and new seminars.

The Center aims to produce a comprehensive body of scholarship on the theoretical underpinnings of human rights together with sophisticated legal analyses of human rights challenges in a globalized environ-

ment, where emerging problems are universally relevant, yet deeply embedded in local contexts. By emphasizing interdisciplinary analyses, the Center's programs will seek to appropriately contextualize human rights in the broader political landscape of jurisprudential, economic, sociological, historical, and anthropological influences. Substantive areas of focus for the Center include the role of the international financial institutions in human rights discourse; the impact of globalization on human rights; terrorism and human rights; non-state actors and human rights; the human rights responsibilities of corporate actors; and human rights in the contexts of trade, labor, and distributive justice.

In his address, Kirsch, Canada's former ambassador to Sweden, discussed the origins of the concept of a permanent international court to address crimes

against humanity, war crimes, and genocide. He stated that the ad hoc tribunals in Yugoslavia and Rwanda were welcome steps, but suffered from profound shortcomings, because they involved long delays and high costs. A permanent institution will overcome these defects and function as a more effective deterrent to those committing atrocities, said Kirsch.

Kirsch, who chaired the Rome Conference at which the statute for the court was drafted, also discussed the extensive multilateral drafting, planning, and negotiation that preceded the adoption of the statute in July 2002. The central challenge in the process, he said, was to ensure that the statute was strong, yet acceptable to enough countries to be ratified by them.

When asked about ICC's jurisdiction and the protections accorded to those accused of crimes, Kirsch acknowledged that the court has shortcomings in relation to jurisdiction. However, he stated that the problems the court faces are transitional and expressed confidence that, as it is seen to operate in a judicial manner, the court will come to enjoy even greater popularity. The court has the potential to become one of the most valuable international institutions for protecting human security and upholding basic human rights, Kirsch concluded. ■

## Judge Calabresi Brings Madison Lecture Series Full Circle

In 1960, Justice Hugo Black gave an inaugural lecture to launch the James Madison Lecture series at NYU School of Law. The lecture series was established to enhance the appreciation of civil liberty and strengthen the sense of national purpose, and Black seized the opportunity to expound on his commitment to an absolutist interpretation of the Bill of Rights. His ideas on the subject are now legendary, and the James Madison Lecture series has become a platform for some of the more radical ideas of accomplished scholars and legal

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### According to Calabresi, the balance between the federal and state courts has shifted too far from the original vision of the Framers.

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practitioners nationwide. The most recent speaker in the series was Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit, who was a clerk under Black at the time that Black prepared the inaugural lecture.

Calabresi, a former dean at Yale Law School, is perhaps most famous for his important theory of risk distribution and cost allocation in the law of torts. In his lecture, "The Federal Courts in a Federal System: Reestablishing a Madisonian Balance," Calabresi shared his view that the federal courts have been transformed into a system that was neither established by the Constitution, nor contemplated by its framers. Calabresi said that the very idea of creating "inferior tribunals" with national power was extremely controversial at the Constitutional Convention. In fact, James Madison and other defenders of a federal court system had to fight to convince the Framers to even include a provision for the creation of lower federal courts, which,

under Article III, “Congress may from time to time ordain and establish.”

Madison’s argument won over the opposition of those who feared a national court system would encroach on the sovereignty of the states, which is fortunate for the U.S. judicial system as we know it. Indeed, it is hard to imagine this country without a system of lower federal courts with national authority. According to Calabresi, however, the balance between the federal and state courts has shifted too far from the original vision of the Framers. In Calabresi’s view, the federal court system has extended its reach too far into the realm of the states, becoming the very same unwieldy, overreaching system that the anti-federalists feared. The three pillars of the “Madisonian balance” are in crisis, Calabresi said.

The first pillar is the role of state courts in adjudicating criminal law. According to Calabresi, criminal law in the United States has become more and more “federalized,” so that local crimes are prosecuted more often at the federal level under federal statutes. The judge said that the reason for this shift is political expediency; national criminal statutes are politically popular because they create the appearance that Congress is doing something to combat crime.

As a result, criminal prosecutions concerning crimes with local implications clog the federal docket, and slow the administration of justice at the national level. To work toward solving this problem, Calabresi



(from left): Judge Guido Calabresi, Judge Wilfred Feinberg, and Judge James Oakes (right), all of the U.S. Court of Appeals for the Second Circuit, chat with former Law School Dean Norman Redlich (second from right) at the Madison Lecture.

believes that courts should read the Commerce Clause narrowly and reject weak congressional rationales for federal criminal statutes. Further, he feels that that Congress should adopt a law mandating local adjudication when federal and state criminal statutes are parallel. These advances, he said, would reduce the federal docket by up to 50 percent.

Calabresi went on to discuss what he sees as a crisis in civil law. He said that diversity jurisdiction and the expansion of supplemental jurisdiction have moved entire areas of federal law into the state courts. The problem, he suggested, is that federal judges, himself included, often get state law wrong because they do not know state law. Calabresi cited the notorious duty doctrine in New York

as an example. Federal judges often misinterpret it because of its complicated (and sometimes irrational) development in state case law.

Emphasizing the fact that he recognizes the value of diversity jurisdiction, Calabresi said that federal courts should not pretend that diversity jurisdiction qualifies them as the best interpreters of state law. He added that federal judges do not like to defer to state courts because they think they know what state law is, or at least what they think it should be. Nevertheless, he urged federal courts to “certify, certify, certify” when a question of state law is at issue. As a more radical alternative, he suggested that Congress could go so far as to allow the states’ highest courts to review federal interpretations of state law.

The third pillar that Calabresi believes to be in crisis is the interpretation and adjudication of federally protected rights. He argued that there has been a contemporary trend to try alleged violations of federal rights in state courts, and this is an inappropriate exercise of state power, infringing on the territory of federal authority. When states are accused of violating federal rights, Calabresi argued that the case should be heard first *de novo* in federal court, where judges are best equipped to interpret federal law. “Federal rights,” said the judge, “should be tried out in federal court.”

Overall, Calabresi favors placing judicial authority where there is the most judicial competence; his lecture called for a judiciary in which federal and state power are distributed efficiently, pragmatically, and constitutionally. In closing, he said, “Courts should decide what they are best equipped to decide.”

The audience was filled with law students, practitioners, professors, and many of Calabresi’s fellow judges on the Second Circuit. Following in the tradition of his former mentor, Justice Black, and all the James Madison lecturers since, Calabresi delivered a blunt, informed, and at times radical message, in line with his unique perspective. ■

## The James Madison Lectures

To enhance the appreciation of civil liberty and strengthen the sense of national purpose, NYU School of Law established the James Madison Lectures in 1959. The directors of the Madison Lectures since their inception have been Edmond Cahn (1959-1964), Robert McKay (1964-1967), Norman Redlich (1967-1972), and Norman Dorsen (1977-present). This year, the director of the series, Norman Dorsen, Frederick I. and Grace A. Stokes Professor of Law, edited a volume of 12 of the most recent lectures, titled *The Unpredictable Constitution* (New York University Press, 2002). The lectures “address issues that underscore the pivotal role of the courts and suggest new directions that the judiciary may take.”

Funding for the James Madison Lectures has been provided by the Schweitzer endowment, the Philip Morris Companies, the estate of Howard Cosell, and other donors.

### The Lecturers

1960	Hon. Hugo L. Black	1986	Hon. A. Leon Higginbotham Jr.
1961	Hon. William J. Brennan Jr.	1986	Hon. William J. Brennan Jr.
1962	Hon. Earl Warren	1987	Hon. Frank M. Coffin
1963	Hon. William O. Douglas	1989	Hon. Patricia M. Wald
1964	Hon. Arthur J. Goldberg	1990	Hon. Lewis F. Powell Jr.
1965	Hon. Skelly Wright	1991	Hon. Sandra Day O’Connor
1966	Hon. Elbert P. Tuttle	1993	Hon. Ruth Bader Ginsburg
1967	Hon. Abe Fortas	1993	Hon. Jon O. Newman
1968	Hon. Tom Clark	1994	Hon. Betty B. Fletcher
1969	Hon. Thurgood Marshall	1995	Hon. Harry T. Edwards
1970	Hon. Irving R. Kaufman	1996	Hon. Richard S. Arnold
1971	Hon. David L. Bazelon	1997	Hon. Richard A. Posner
1972	Hon. Shirley Hufstедler	1998	Hon. Stephen R. Reinhardt
1979	Hon. James L. Oakes	1999	Hon. Martha Craig Daughtrey
1982	Hon. John Paul Stevens	2000	The Rt. Hon. Lord Irvine of Lairg
1983	Hon. Wilfred Feinberg	2001	Hon. Stephen Breyer
1984	Hon. Harry A. Blackmun	2002	Hon. Guido Calabresi

# Brennan Lecture on Judiciary

## Amestoy Examines Our Common Humanity

In 1999, Jeffrey Amestoy, chief justice of the Supreme Court of Vermont, wrote the opinion for the court in *Baker v. State* in which the court ruled that same-sex couples must be afforded the same legal benefits as married couples under the Vermont Constitution. Amestoy wrestled with the recurring dilemma of how to interpret and apply a constitutional clause conceived hundreds of years ago to today's social issues. At the time of the decision, the media heavily quoted Amestoy's reference to "our common humanity" in his opinion. This common humanity, Amestoy says, "speaks to what is decent, humane, and worthy of protection in human relationships," and defines what is essentially human.

Amestoy visited NYU School of Law to deliver the annual Justice William J. Brennan Jr. Lecture, titled "Uncommon Humanity: Reflections on Judging in a Post-Human Era." This lecture, the ninth in a series of lectures that provoke reflection on and celebrate the state judiciary, was sponsored by the Institute of Judicial Administration (IJA) and the Brennan Center for Justice. Other lecturers have included Thomas Phillips, chief justice of the Supreme Court of Texas; IJA Board member Shirley Abrahamson, chief justice of the Supreme Court of Wisconsin; and Judith Kaye ('62), chief judge of the Court of Appeals of the State of New York.

Amestoy said that the issue most central to the *Baker* case was "whether Vermonters would find in these plaintiffs an aspect so common" — the aspect of ardor and commitment — "as to compel their inclusion in the community and in justice." Other judges weighing in on the decision ruled for the plaintiffs on the grounds of protecting a suspect classification, but Amestoy rejected this justification. "[It] undermines the shared humanity of the plaintiffs and the rest of us," he said. "An act of suspect classification would prevent Vermonters from seeing the whole persona of the plaintiffs."

Throughout his presentation, he returned to the question of what it means to be human, and the challenges this question will raise in the future. "We are not far from a time when a human-animal chimera may bring a claim for damages resulting from the untested medical procedures," said Amestoy. The future decisions that judges make related to cloning, genetic manipulation, and other increasingly relevant societal issues depend on "how we define 'human,'" Amestoy said.

Generally, judges evaluate the positions of parties, the significance of their individual interests, and the burdens placed on them

by one judgment as opposed to another. According to Amestoy, this focus makes it too easy to consider only the parts instead of the whole, and he recommends using balancing tests that look at the big picture.

"We need to preserve the whole persona of individuals," he said. "The point is not what lines should be drawn. The point is that lines should not be drawn without considering what makes us human, which is more than just our ability to reason. Appreciation of humanity is significant not just for what it allows us to protect, but for what it allows us to recognize."

During the lecture's discussion period, several audience members, including Evan Chesler ('75), IJA board president, questioned whether there is a dividing line between the role of the federal courts and the state courts in the "post-human" era.

Amestoy replied that he does not see such a division yet, though federal statutes might be drafted to create one. Most cases developing in this area, he said, are coming in under state jurisdiction. Amestoy said he would "seek to protect the full range of our complex and involved nature against



Jeffrey Amestoy, chief justice of the Supreme Court of Vermont, authored a groundbreaking opinion in support of same-sex civil unions.

attempts at self-modification," and he urged his judicial colleagues to act similarly.

After the lecture, Robin Effron ('04) commented, "I think I liked best his appreciation that, though these disputes are driven by scientific discovery and arise in the context of the law, the resolutions will ultimately lie with broader philosophical judgments about persons." ■



Thomas Gerety

## Former Amherst College President to Lead Brennan Center for Justice

The Brennan Center for Justice at NYU School of Law appointed Thomas Gerety as the new executive director of the Center.

"This is urgent work: When faced with external threats, the American republic has always had to struggle to maintain a democracy that is open and energetic, reflecting the diverse voices and interests of our nation," Gerety said. "The Brennan Center for Justice fights to uphold America's ideals of equality, liberty, and generosity to all. It's a great time to join in this good work."

As Amherst College president from 1994 to 2003, Gerety improved the diversity of the college's student body and also organized private colleges in an amicus brief supporting the affirmative action policies of the University of Michigan. Gerety strengthened Amherst's financial resources, nearly tripling the endowment to almost a billion dollars. He also taught philosophy throughout his presidency, including a first-year seminar called Inner City America in which he asked students to work at social service agencies.

"We're in this fight with lots of others," said Gerety. "We need strong allies and friends. So it's essential to work closely with others who care about these issues — about civil rights, about the poor and their advocates, about the promise of democracy." Gerety has received a University-wide academic appointment as the Brennan Center for Justice Professor at New York University.

"Tom Gerety will be able to capture the synergies available to the Center from its relationship with NYU School of Law, bringing together the best academics, policy analysts, and litigators to address our nation's pressing social problems," said Dean Richard Revesz.

From 1989 to 1994, Gerety was president of Trinity College. From 1986 to 1989, Gerety was dean of the College of Law at the University of Cincinnati. Earlier, he was a law professor at the University of Pittsburgh, and a visiting professor of constitutional law and jurisprudence at Stanford Law School. Gerety has a J.D. from Yale Law School, and also holds a Ph.D. in philosophy from Yale.

Gerety succeeds E. Joshua Rosenkranz, one of the Brennan Center's founders in 1995. The Center's mission is to develop and implement an innovative, nonpartisan agenda of scholarship, public education, and legal action that promotes equality and human dignity, while safeguarding fundamental freedoms.

## IJA Celebrates 50th Anniversary

### Featured Conference Analyzes Arbitration

A brimming crowd of prominent academics, practitioners, and judges from dozens of federal courts of appeals and state supreme courts gathered at NYU School of Law to celebrate the 50th anniversary of the Institute of Judicial Administration. The two-day event, honoring the founding of the Institute by the Law School's legendary Dean Arthur Vanderbilt, chief justice of the Supreme Court of New Jersey, featured a gala dinner (see sidebar) and a research conference. The Research Conference on Domestic and International Arbitration drew prominent speakers and guests and resonated with lively discussions about arbitration trends, problems, and applications.

Keynote speaker Andreas Lowenfeld, Herbert and Rose Rubin Professor of International Law at the Law School, highlighted the past successes of international arbitration to resolve disputes between countries, such as the successful release of American hostages in Iran. Linda Silberman, Martin Lipton Professor of Law at NYU School of Law, commented on problems inherent in the growing phenomenon of private arbitrators addressing statutory and "public policy" claims. Judge Howard Holtzmann, a former member of the Iran-U.S. Claims Tribunal and Claims Tribunal for the Dormant Accounts in Switzerland, offered luncheon remarks highlighting innovative procedural techniques developed through the mass claims tribunals, including relaxed standards of proof.

The first day's program featured issues in international arbitration. Robert Smit

(Simpson Thacher & Bartlett) and commentator Paul Saunders (Cravath Swaine & Moore) explored how far a pro-arbitration policy should be taken in the international context. A presentation then followed by Homayoon Arfazadeh (Pirenne Python Schifferli Peter & Partners), visiting scholar at the Law School, on what he called "the shadow of the unruly horse," the dilemmas courts face in deciding whether to refuse enforcement of arbitral awards on grounds of violation of "public policy." The final panel featured Joseph Weiler, European Union Jean Monnet Professor at the Law School, and Temple University's Jeffrey Dunoff ('86) discussing the dispute resolution processes of the World Trade Organization.

The second day focused on arbitration of disputes arising under U.S. law. University of California Professor Donald Wittman presented the findings of his empirical study of the selection process for arbitrators assigned to court-annexed arbitration of traffic cases in his state, and NYU adjunct professor and former U.S. Magistrate Judge Kathleen Roberts offered reasons why arbitration may be superior to jury trials.

Whether arbitration is really less costly and quicker was the focus of the empirical work co-authored by Cornell's Theodore Eisenberg and NYU alumna and research fellow Elizabeth Hill ('86, LL.M. '02). The Eisenberg-Hill paper compared actual arbitration experience with civil trial court data regarding employment disputes, finding that the bulk of non-discrimination employment disputes that go

to arbitration are disputes brought by non-highly compensated employees, and that their disputes were accorded due process through arbitration. Commentators Lewis Maltby (National Workrights Institute) and Cornell Professor David Sherwyn discussed the merits of employer-mandated arbitration.

Michael Delikat of Orrick Herrington & Sutcliffe and Ethan Brecher ('91) of Liddle Robinson discussed changes in securities industry arbitration of employment disputes, and the research conference concluded with a panel on the arbitration of customer disputes, led by AAA's general counsel Florence Peterson with commentary by Pearl Zuchlewski, Goodman & Zuchlewski, a board member of the Law School's Center for Labor and Employment Law. ■

## Celebration Gala

Judge George Bundy Smith, of the Court of Appeals of the State of New York, opened the Institute of Judicial Administration's (IJA) 50th anniversary celebration and dinner by reminiscing about his experiences with IJA. Smith expressed his appreciation for the Institute's long and distinguished history of service to the state and federal judiciary.

After Dean Richard Revesz introduced the newly elected IJA President Evan Chesler ('75), IJA executive co-directors, Professors Oscar Chase and Samuel Estreicher, introduced the evening's three honorees, all former Institute presidents. Alan Hruska, senior counsel at Cravath, Swaine & Moore and IJA president from 1982 to 1985, was instrumental in building on the base of good relations between the Institute and courts all over the country. Judge Kenneth Starr, who served the longest term from 1990 to 1999 and is a member of Kirkland & Ellis, did much to publicize the Institute's work and develop ties with organizations such as the Federal Judicial Center. Kelly Welsh, executive vice-president and general counsel of the Northern Trust Company, served most recently from 1999 to 2002 and led IJA into its current state of financial well-being and the development of its highly regarded programs for state and federal appellate and trial judges, outreach to the legal profession, and support of empirical research in problems of the administration of justice in the United States and worldwide.

The Institute, founded at NYU School of Law in 1952, was one of the first organizations committed to improving the administration of justice in the federal and state courts. Because of its reputation in the legal community and its relationships with federal and state judges throughout the country, the Institute has offered an unrivaled opportunity for ongoing dialogue among judges, policymakers, and academics.



Judge Kenneth Starr (left), Alan Hruska (center), and Kelly Welsh, former presidents of the Institute of Judicial Administration, were honored at the Institute's 50th anniversary celebration.



# Justice Kennedy Breaks from the Bench to Visit Law School

According to U.S. Supreme Court Justice Anthony Kennedy, you can gauge the complexity of a legal case by the number of operas it takes to get through a brief. This comment, while facetious, nonetheless offered the audience a glimpse into Kennedy's personal life — at home, avidly listening to opera while poring over cases.

As part of a week-long visit to NYU School of Law, Kennedy spoke with students about the inner workings of the Court, and about his role as a justice. He began his talk by urging students to use their time in law school to think critically about the law from a wide variety of perspectives, warning that the opportunity for such reflection would not repeat itself soon, if ever.

In describing the day-to-day functioning of the Supreme Court, Kennedy described the certiorari process as a crucial element of the Court's work, because the process gives the justices an idea of what is going on in the circuits and the states. The Court is presented with about 8000 cases a year, of which the justices discuss about 500 and hear about 90. Kennedy said that the Court's caseload is a little below capacity, estimating that it could hear as many as 100 or 110 cases per term, but does not do so because the kinds of federal statutes that have created conflicts worthy of the Court's attention have not been enacted in recent times. "The limits of the regulatory state have caught up with us," he said.

In response to a question about how the nine justices get along, Kennedy, who is known for his charm and his ability to sway his colleagues, said that the Court itself is "extremely collegial." He explained that the justices distinguish between professional and personal disagreements. They can passionately criticize each other's opinions on an issue and exchange a lunch invitation in the same breath. Kennedy added that politics do not play a role in the Court's decisions, including the *Bush v. Gore* decision, which resulted in many accusations of partisanship.

When asked about his view of federalism, Kennedy passionately argued for the importance of a clear distinction between federal and state power, stating that the separation of powers doctrine is as important today as it was in 1787. "For the Founders, it was morally wrong from the perspective of political ethics and wrong from the perspective of the philosophy of freedom to cede power to one centralized government so that individuals would lose control over their own lives."

"The balance between state and federal power is essential to the constitutional design," Kennedy continued. "I wish Congress

understood this balance, but they don't. There is no constituency for federalism."

Kennedy concluded by again urging the Law School students to take full advantage of their legal education. "You have a mission not only to represent your clients, but also to represent the Constitution and the cause of freedom," he said.

The best way for students to set forward on this mission, he thinks, is to engage the law wholeheartedly and to participate

actively in class. Kennedy said that he does not understand students who fail to speak up in class and then graduate with a diploma and an invisible caveat: "Incidentally, I'm shy to talk about the law." The profession of law carries an incredible responsibility, said Kennedy, himself an example of what it takes to live up to the duty: strong words; good humor; and occasional breaks to reflect on the big picture.

During his visit, Kennedy participated in several classes including Constitutional Law, Professional Responsibility, the Colloquium in Legal, Political, and Social Philosophy, and Civil Procedure, and also attended a faculty workshop/lunch. ■

## CIVIL RIGHTS

### Education as a Human Right Matsuda Delivers Bell Lecture

What happens when a society becomes so anesthetized to injustice that it loses its sense of outrage in the face of it? Mari Matsuda, an activist and a professor of law at Georgetown University, dealt with this question in a lecture titled "Somebody Else's Child: The Public, the Private, and Education as a Human Right," the seventh annual Derrick Bell Lecture on Race in American Society at NYU School of Law.

Speaking as both a parent and a law professor, Matsuda expressed her mournful feelings about the reality that millions of American children are denied the opportunity to obtain a quality education. She called on America to begin caring for all its children.

Born to activist parents, Matsuda attended protests before she could walk. As a law professor and civil rights lawyer, she is recognized around the world as a powerful voice for progressive change. Matsuda has authored influential articles and books on topics such as hate speech, affirmative action, reparations, gender equity, and civil rights. She is currently serving on the court-appointed Texaco Task Force on Equality and Fairness, created as part of a landmark anti-discrimination settlement with one of the world's largest oil companies.

The evening marked Matsuda's second appearance in the Derrick Bell Lecture Series. The series — named for Professor Derrick Bell, the so-called "godfather" of Critical Race Theory (CRT), which challenges the traditional paradigm of law by exposing the invidious, but often undetected, ways that racial oppression is perpetuated through legal conventions — has served as a forum for some of the nation's most compelling activist-scholars. The brainchild of Bell's wife, Janet Dewart



The activist parents of Georgetown University Law Center Professor Mari Matsuda (back row, left) took her to protests before she could walk. She is pictured here with other guests of honor at the Derrick Bell Lecture: (back row) Dean Richard Revesz (center) and Professor Derrick Bell; (front row) Judge Robert Carter and Janet Bell.

Bell, the lecture series was established in 1995 as a gift for her husband's 65th birthday, and she raised more than \$20,000 to fund the first lecture, which was held at the Schomburg Center in Harlem. A long-time friend, colleague, and Bell's former student Charles Ogletree of Harvard Law School delivered the inaugural lecture. The next year President John Sexton, then the dean of the Law School, adopted the series and moved it to NYU.

Past speakers have included Professors Patricia Williams of Columbia Law School, Richard Delgado of the University of

Colorado Law School, Charles Lawrence of Georgetown Law School, and Lani Guinier of Harvard Law School.

Matsuda challenged the audience to think critically about the great discrepancy in the educational opportunities that children have in the United States. Some children attend the nation's finest schools, with the best teachers, the best facilities, and the most resources. Others are forced to attend schools where classes are held in closets, teachers are undertrained, and books are scarce. She urged the audience to consider how the structure of U.S. society depends on, supports, and perpetuates this inequality.

As a PTA member in the Washington, D.C., public schools, Matsuda has faced great obstacles in her attempts to secure a good education for her children. Matsuda said she made a personal and private choice to keep her children in a deeply troubled urban public school system. She and her husband, fellow CRT scholar Charles Lawrence, are committed to the fight for better schools. So far their experience has been difficult, to say the least, she said.

When she enters the large, urban public school, she is a highly educated, articulate, and respected law professor, but she leaves as just another helpless parent. This, she said, is the reality of dealing with an unresponsive and overburdened educational bureaucracy. Local PTA meetings are religiously attended by overworked, dedicated parents desperate to secure a quality education for their children. Still, it remains a struggle to get toilet paper in schools and to have rats exterminated from the classrooms.

Educational injustice persists because the United States has lost sight of the purpose and promise of public education, Matsuda said. Conservatives infatuated with privatization, vouchers, and school choice are using these efforts as a "smokescreen to cover up our abandonment of the idea that all children deserve a quality education." Matsuda sees an ideological shift in the contemporary education debate, from the conception of education as a democratic public good, accessible to every citizen, to education as a commodity that only the wealthy can afford.

Educational inadequacy serves the "deep ideological structure of our society" by creating an entire class of citizens who are easily characterized as the uneducated, unemployable "other." Matsuda argues that this lack of empathy is the true obstacle to reform. Until all Americans see inadequate schools as a shared problem, Matsuda believes that the country's most vulnerable students will continue to attend schools that middle- and upper-class parents would not deem acceptable. The real challenge, she said, is to view all the nation's children as our own. ■

## Finding a Fourth Home

### Former Dean Redlich Honored at Opening of Civil Rights Resource Center

According to Gary Johnson, co-chair of the Lawyers' Committee for Civil Rights Under Law, Norman Redlich is the type of person that most people know in more than one context.

"I'll bet all of us know him in at least two or more organizations," Johnson said. "But, in all of them, you experience the same qualities of intelligence and humanity."

Johnson gave introductory remarks at an event honoring Redlich, who is former dean of NYU School of Law and a board member

what they are today and pioneered the Lawyering program, attracting Professor Anthony Amsterdam to design and implement this flagship program."

Fox added that in the early days of the Rehnquist Supreme Court, Redlich was one of the first to identify the emerging pattern of the Court's assault on civil rights.

Barbara Arnwine, executive director of the Lawyers' Committee, spoke of the importance of Redlich's leadership to the Lawyers' Committee and described the new resource center, before introducing Redlich.



(from left): Professor Eleanor Fox ('61); John Savarese, partner at Wachtell, Lipton, Rosen & Katz; former Law School Dean Norman Redlich; and current Dean Richard Revesz celebrated the creation of the Norman Redlich Resource Center at the Lawyers' Committee for Civil Rights Under Law.

of the Lawyers' Committee, and naming a new civil rights resource center after Redlich. The audience was packed with members of the civil rights community, professors, directors, and Lawyers' Committee staff members. Eleanor Fox ('61), Walter J. Derenberg Professor of Trade Regulation at NYU School of Law, who is also on the board of directors and executive committee of the Lawyers' Committee, spoke glowingly of the principles that defined Redlich's leadership as dean of the Law School.

"Norman always had, and has, unusual vision," Fox said. "His vision depends centrally on equality and merit. He has devoted much of his professional life to the particular problems facing minorities and women, and has made enormous contributions to education and society in his devotion to unmarginizing the marginalized."

Fox underscored the importance of Redlich's contributions. "Norman always stressed the twin values of diversity and excellence," she said. "He made the clinics

Redlich amused the audience by saying that this ceremony "almost sounded like a funeral." In a brief speech, he described his three "homes": Wachtell, Lipton, Rosen & Katz; NYU School of Law; and the Lawyers' Committee.

Dean Richard Revesz said it was an enormous privilege to follow in Redlich's footsteps, and praised his predecessor's many contributions to NYU School of Law.

The Norman Redlich Civil Rights Resource Center, perhaps now a fourth home to its honoree, will be an innovative technology center to assist public interest civil rights lawyers with legal practice, advocacy, research, public policy, and education programs through practical support, and a library and historic archives.

The Lawyers' Committee for Civil Rights Under Law was created at the request of President John Kennedy in 1963 out of a sense of urgency about the absence of the organized bar in helping resolve the nation's civil rights crisis. ■

## Annual Conference on Labor Still Vibrant at 56 Years Old

Increasingly, employment law claims are being brought as class and collective actions. For plaintiffs, the class action device helps promote broader compliance with legal rules and provides a mechanism for funding litigation. For defendants, the prospect of group action significantly enhances the stakes of litigation, and often involves “bet the company” claims. To be effective advocates, lawyers and human resources experts must master not only the substantive law, but also the federal rule-making developments, and must have the ability to negotiate difficult group dynamics.

For that reason, more than 120 professionals from around the country braved overcast clouds and torrential rains to attend the 56th annual NYU School of Law Conference on Labor, a two-day event. The program, coordinated by NYU School of Law Professor Samuel Estreicher, director of the Center for Labor and Employment Law and co-director of the Institute of Judicial Administration, began with a breakfast reception. Faculty and professionals mingled with colleagues, friends, and former students. Estreicher gave the participants a warm welcome at the door before making his formal introductory remarks, during which he called the group before him “the future of the country.”

He stressed the huge responsibilities held by attorneys in labor and employment law, and urged his colleagues to rise to meet them.

Estreicher then introduced Dean Richard Revesz as a “leading scholar in any field.” Revesz proudly pointed out that at 56, the Conference on Labor has a very long and distinguished presence in the legal community.

Dennis Duffy, an attorney at AOL Time Warner, moderated the first panel, titled “Class Action Issues on the Federal Rule-making Front.” Judge Lee Rosenthal of the U.S. District Court for the Southern District of Texas chairs a federal rule-making committee that is considering changes to Rule 23 of the Federal Rules of Civil Procedure. Rosenthal said she would give conference attendees a “voyeur’s look” into the rule-making committee. She discussed the use of proactive employment law audits to help companies avoid high exposure claims, and offered insight as to what federal rulemakers have in store for class actions.

The rest of the day’s events included a special presentation by the litigators who handled the *Robinson v. Metro North* class action; a presentation by Alan Fuchsberg (’79) of the Jacob D. Fuchsberg Law Firm, Katherine Parker of Proskauer Rose, and Richard Seymour of Lief, Carbraser, Heimann & Berstein, on the impact of the Civil Rights Act of 1991; and

a commentary on this presentation from Theodore Rogers of Sullivan & Cromwell.

The participants engaged in a working lunch, during which Vice Dean and Professor Stephen Gillers (’68) led a discussion about the “No-Contact” Rule, moderated by Todd Gutfleish, an attorney at JP Morgan Chase.

Jeffrey Klein of Weil, Gotshal, and Manges opened the events of day two by introducing Roger King of Jones Day, who spoke about challenging class status and focused in particular on efforts to promote and defend privilege

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To be effective advocates, lawyers and human resources experts must master not only the substantive law, but also the federal rule-making developments.

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for internal studies of employment practices. King suggested that intra-company “turf wars” between human resources and legal departments are a typical source of privilege-destroying studies. Interjecting, Klein said,

“You won’t have any privilege if the HR department does an assessment of compliance by themselves.” King agreed. “It’s a lot of horse hockey, but it comes back to bite the employer in the backside,” he said.

King recommended that counsel be substantively involved in all phases of an audit in their capacity as counsel, stressing his words about the capacity in which they should be involved. He said, finally, that the structure of the report is critical. Courts tend to “split the baby” and allow the fact section of the report to be provided upon discovery, but they later defer to the defense counsel’s description of the nature of the opinion section. “By careful and thoughtful drafting, you may be able to convince the court that the evaluative element can be shielded by privilege,” he concluded.

The debate among the next group of panelists highlighted the different perspectives held by



Dennis Duffy (left), an attorney at AOL Time Warner; Professor Samuel Estreicher, faculty director, Center for Labor and Employment Law; and Judge Lee Rosenthal of the U.S. District Court for the Southern District of Texas shared their insights at the 56th Conference on Labor.

litigators with regard to sexual harassment cases. John Hendrickson of the Equal Employment Opportunity Commission (EEOC) spoke about the requirements for establishing a pattern of practice needed to take action against an allegedly discriminatory employer. He began by observing what he called the “scorched earth” tactics of defense lawyers who insist on deposing each member of the class.

In his reply, Michael Delikat of Orrick Herrington spoke from the viewpoint of defense attorneys, saying that it is really the EEOC that has overwhelming resources in the number of people that they will dedicate to pursuing these claims. “A lot of employers cannot afford to try these cases,” he said.

Professor Joan Flynn ('87) of Cleveland State Law School agreed. In her view, the EEOC throws its weight around in unfair and inefficient ways. She referenced an ongoing case that Delikat is trying, arguing that the efforts of the EEOC to establish statistical proof would ultimately prove to be tremendously expensive and fail to arrive at a persuasive statistical conclusion.

After lunch, the final panel discussed class-wide arbitration, focusing on *Green Tree v. Bazzle*, a seminal Supreme Court case. Daniel Edelman, of Yablonski, Both, and Edelman, suggested that the *Bazzle* decision sheds some light, without being definitive, on whether a court or the arbitration agreement should shoulder the responsibility of deciding whether or not a given group of plaintiffs should be treated as a class. He said that proponents of mandatory arbitration wanted to use the agreements as a “magic wand” to prevent class suits in court.

Henry Lederman ('74), of Littler Mendelson, said that the problem of class treatment in arbitration agreements would not become irrelevant even if drafters tried to prevent them. “If companies and employers write express anti-class provisions in arbitration agreements, then plaintiffs’ lawyers will do their best to have them held unenforceable,” he said. He argued that in California, where such issues are arising, a plaintiff’s bar will succeed if procedural and substantive unconscionability can be proven.

Florence Peterson, general counsel of the American Arbitration Association, addressed the direction in which class certification in arbitration agreements is headed. In particular, she spoke of the trend of allowing the arbitrator, rather than the judge, to decide cases. Peterson reviewed some of the problems with this delegation of power. In arbitration agreements, she said, “There’s no transcript, there’s not necessarily a decision, there are no particular rules ... there’s no oversight of the settlement and, of course, in arbitration, there’s little right to appeal.” ■

## INTELLECTUAL PROPERTY

## Drug Research and Development for a Healthier World



Alfred Engelberg ('65) (right), founder of the Engelberg Center on Innovation Law and Policy and Law School trustee, moderates a panel discussing patents and life-saving medication. Two leading experts participated: Dr. Harvey Bale (left) and Professor Frederick Abbott.

One view on providing third world countries complete access to life-saving medication argues: The result will be drug companies do not make as much money, and their research funding will be depleted, and fewer cures will be found for other life-threatening illnesses, turning the purpose of this access on its head. Is it this simple?

The Engelberg Center on Innovation Law and Policy addressed this question at the fifth Gottlieb, Rackman & Reisman Seminar in Intellectual Property. The topic was “Patents, Trade, and Affordable Drugs,” and the panel consisted of two of the world’s lead experts in these areas, Professor Frederick Abbott and Dr. Harvey Bale. Alfred Engelberg ('65), a trustee of NYU School of Law, acted as moderator.

Engelberg began by sharing a personal history. “Because of the education NYU provided me, I am still deeply involved [with the University],” he said. Ten years ago, he founded the Engelberg Center as a place where independent thinking is secure and timely issues are discussed.

Engelberg went on to explain why, without patent protection, there would be no incentive for companies to develop new drugs. Research is enormously expensive, as compared with the very minimal cost of manufacturing drugs. Generic drugs account for between 45 and 50 percent of sales, and only 10 percent of a company’s budget goes to their manufacture. Despite these facts, however, the United States stands alone with the most pro-patent stance.

“Essentially every country, with the glaring exception of the United States, has price

controls,” Engelberg said. The central question is whether people can be denied access to life-saving medication simply because they could not afford to pay for it.

Pointing to President Bush’s speech on AIDS in Africa, Engelberg raised an example to illustrate how oversimplifications of facts muddle the drug access issue. Bush said that even though it only costs about \$300 a year for AIDS medication, Africa nonetheless does not get the drugs it needs. What Bush did not mention, Engelberg

said, is that generic drugs cost \$300, but in countries that enforce patents, this cost increases to about \$12,000 a year.

Abbott, a law professor at Florida State University, discussed compulsory licensing, problems facing developing countries, and the conflicts between the United States and developing countries. He believes that the world is wary of the United States because of its stance on a number of global issues, and developing countries in particular react to its proposals thinking, “What are they trying to do to us now?”

Abbott argued, as he had to the World Bank a few weeks before participating on the panel, that to allow developing countries to manufacture generic products would not be to destroy research and development. He said that the money needed for research and development does not come from developing countries. In his view, generic drug production will lead to a healthier world, not to less research and development.

Bale, director general of the International Federation of Pharmaceutical Manufacturers Associations, represented the research industry at large, focusing on economic and health concerns. Raising attention to the high cost and time-consuming nature of drug research and development, Bale said that his association would not develop a drug without patent protection, because research would not be cost effective. He said that developing countries can impact the world market, and they need to be regulated.

After the formal presentation, the panel of experts mingled with the audience members. ■

## Building Developments

NYU School of Law is set to open its new academic learning center in January 2004 for the Spring semester. The building, the first new construction project to break ground in New York City after September 11, 2001, will be complete in only slightly over two years and will come in under its budget — a rare experience for New York City buildings.

The beautiful space, with its red-brick face fashioned after Vanderbilt Hall,

### Wachtell, Lipton, Rosen & Katz Building Gift

Partners in the firm of Wachtell, Lipton, Rosen & Katz have agreed to contribute more than \$1 million to the Law School's new building fund. In recognition of this generous donation, the first-floor student café will be called the Wachtell, Lipton, Rosen & Katz Student Café. The café, located on the south side of the building's lobby, will have a magnificent wall of floor-to-ceiling windows facing West Third Street.

Founded by NYU School of Law alumni Herbert Wachtell ('54), Martin Lipton ('55), Leonard Rosen ('54), and the late George Katz ('54), the firm has long been one of the principal benefactors of the Law School. Lipton and Richard Katcher ('66), both partners, currently serve on the University's Board of Trustees, which Lipton chairs, and Lipton and Wachtell currently serve on the Law School's Board of Trustees.

### Weil, Gotshal & Manges Names Space in the New Building

The law firm of Weil, Gotshal & Manges LLP, one of the largest firms in the United States with more than

1000 lawyers in 16 offices, has generously donated \$500,000 toward a first-floor seminar room in the new building. The 25-seat space on the southwest side of the building overlooking West Third Street, will be named the Weil, Gotshal & Manges Seminar Room. Senior partner Michael Epstein ('79) spearheaded the naming initiative as a way to support the Law School community and to convey the Law School's importance to the New York based firm. Weil, Gotshal & Manges currently has 34 partners with degrees from NYU School of Law.

### Women's Building Initiative

In 1892, NYU School of Law first opened its doors to women scholars creating a unique opportunity for women to pursue their dreams of a legal education. At a time when women did not yet have the right to vote, the Law School community foresaw that women would soon become an integral part of the fabric of the U.S. legal system. In a relatively short number of years, some of the nation's most respected judges, practitioners, and government officials at the forefront of the legal profession have been women graduates of NYU School of Law. In today's Law School classes, women comprise about 50 percent of



the student population. NYU School of Law's early progressive vision created a supportive learning environment for women in the law.

This history coupled with the opening and creation of a new learning center at the Law School led a few alumnae to stop and take note. To show their appreciation of the Law School's progressive stance, offering women the opportunity to learn when few other law schools would, alumnae Stephanie Abramson ('69), Kathryn Cassell Chenault ('80), Marilyn Friedman ('69), Patricia Martone ('73), Bonnie Feldman Reiss ('69), and Kathleen Shea ('57) contributed their ideas and resources to kick-off a \$1 million campaign to name a classroom in the new building. In recognition of the amazing accomplishments of the female graduates of NYU School of Law, these core women appealed to all alumnae to support the campaign known as the Women's Building Initiative.

The classroom has been chosen and will bear the name Alumnae Hall. On the second floor of the new building, the 60-seat Alumnae Hall will display the pictures of the nearly 50 alumnae of the U.S. judicial system that currently hang in the Vanderbilt Hall Atrium.

In December 2002, Dean Richard Revesz and his wife, Professor Vicki Been ('83), hosted a cocktail party in their home to personally honor and thank the women who created and funded this initiative. ■



boasts nine floors above ground, two below ground, and about 170,000 square feet of space. Despite this enormous increase in space, the number of students at the Law School will remain constant. The West Third Street building will contain distinctive areas for students and faculty to meet and converse. There will be a high-ceilinged study lounge overlooking a garden on the Sullivan Street side. In addition, there will be a student café for the Law School community to enjoy. The new building will be fitted with the latest technology, including computerized classrooms, video conferencing, and email bars. There will be four classrooms that will accommodate 50 to 150 students. This new space will also house the many services that students use on a daily basis: the Office of Career Counseling and Placement; the Public Interest Law Center; offices for financial aid assistance; as well as conference rooms and flex courts. The clinics and clinical faculty will occupy the fifth and sixth floors of the new building in the Jacob D. Fuchsberg Clinical Law Center, and the Global Law Center will also be located in the new building.



The new building takes shape. The view on December 2, 2002, (left) and the progress five months later on May 6, 2003 (bottom). [Credit: Bernstein Associates (Harrison, NY) for Plaza Construction] Top: The final piece of structural steel adorned with the U.S. and NYU flags is lifted to the roof of the new building at the Topping Out Ceremony on December 6, 2002.

## REUNION

## Alumni celebration features four stellar, substantive panels

Dean Richard Revesz expanded the traditional Reunion Weekend events roster this year to include four academic panels featuring many of NYU School of Law's accomplished alumni and faculty. As always, the weekend also included opportunities for attendees to catch up with other alumni and enjoy receptions, luncheons, dinners, and festivities at the Waldorf=Astoria Hotel. Returning to the Law School this year were alumni from the classes of 1953, 1958, 1963, 1968, 1973, 1978, 1983, 1988, 1993, and 1998, along with the Golden Circle and all M.C.J. and LL.M. classes.

Panels discussed Corporate Governance and Ethics; Domestic Environmental Policy; Governing New York City; and Post-September 11 National Security.

Corporate Governance and Ethics examined what the leading corporate practitioners tell their boardroom clients about the ethical issues, risks, and necessary safeguards for today's governance environment. Featuring Samuel Buell ('92), Dennis Hersch ('70), David Katz ('88), and John White ('73), the panel was moderated by NYU School of Law Professor Jennifer Arlen ('86, Ph.D. '92).



(clockwise from top): Class Reunion committee chairs with Dean Richard Revesz: (back row, from left) Herbert Kronish ('53), David Katz ('88), Revesz, Kenneth Heitner ('73), Herbert Podell ('58), (front row, from left) Leonard Boxer ('63), Sabrina Comizzoli ('98), and Joseph Polizzotto ('78). Not pictured: Christopher Austin ('83), Sloan Lindemann ('93), and Catherine Rein ('68). Corporate Governance and Ethics panelists: John White ('73) and Professor Jennifer Arlen ('86, Ph.D. '92), moderator. Golden Circle Induction Dinner Class of 1958. LAA Awards Luncheon honorees.

The panel on Domestic Environmental Policy was moderated by Richard Stewart, University Professor and John Edward Sexton Professor of Law, and Katrina Wyman, assistant professor of law, who both teach at NYU School of Law. Featured panelists were Hal Candee ('83), Michael Gerrard ('78), Felicia Marcus ('83), and Ross Sandler ('65). The panel explored environmental law practice successes, failures, and opportunities and challenges for the future (see p. 58).

NYU School of Law's Michael Schill, professor of law and urban planning and director of the Furman Center for Real Estate and Urban Policy, moderated the Governing New York City panel, which featured Law School graduates who have served in the highest levels of city government: Carol Bellamy ('68), Mark Page ('74), Peter Powers ('68), and Carol Robles-Roman ('89). They discussed the challenges of governing a city as complex as New York, the role of lawyers in city government, and current problems facing the city.

The Post-September 11 National Security panel examined the impact of September 11 and the War on Terrorism on civil liberties, law enforcement, and policy-making. Moderated by NYU School of Law Professor Ronald Noble, secretary general of Interpol, the panel included Nancy Chang ('78); Arthur Culvahouse Jr. ('73); Professor Stephen Holmes of NYU School of Law; Catherine Lotrionte ('93); Stephen Schulhofer, Robert B. McKay Professor of Law at NYU School of Law; and Norman Siegal ('68) (see sidebar).

### LAA Awards Luncheon

Revesz welcomed seven award winners, their guests, and other alumni at the Law Alumni Association Annual Awards Luncheon, which honors the accomplishments of alumni.

Ty Alper ('98) received the Recent Graduate Award. Alper currently works at the Southern Center for Human Rights, where he represents death row inmates in appeals processes and indigent defendants in class action lawsuits.

"While I don't feel that I am any more deserving of this award than anyone else, I do feel there is a great need to represent those among us who are in great need of a lawyer and lack the resources to afford one," Alper said.

Steven Hawkins ('88) received one of two Public Service Awards. Hawkins, currently the executive director of the National Coalition to Abolish the Death Penalty, has represented numerous persons convicted to death, including journalist Mumia Abu-Jamal.

"NYU School of Law has very much helped to shape the work that I do, that Ty has done, and really the work that a whole league of attorneys who represent people under sentence of death around the United States do... It is not a question of if we will abolish the death penalty, but

simply a matter of when,” Hawkins remarked.

Jonathan Lippman ('68) received the second Public Service Award. For seven years, he has been the chief administrative judge for all New York State Courts, the longest serving person in that position in New York state history. He has implemented numerous reforms, including the establishment of domestic violence courts and the opening of Family Court to the public.

In the more than 30 years he has worked for the New York administrative courts, Lippman said he has had the best of both worlds, where he could try to do the right thing and not be encumbered by partisan or parochial agendas.

The Legal Teaching Award was given to Vice Dean Stephen Gillers ('68). He has been a professor at the Law School since 1978 and was named vice dean in 1999. Gillers is considered one of the foremost experts on legal ethics in the United States.

“I know that we have an exceptionally gifted faculty when it comes to teaching, and that makes receiving this award even more humbling,” Gillers said.

This year's Alumni Achievement Award recognized a graduate who has made significant professional achievements and shown a strong commitment to the continued development of the Law School. The award was given to Carol Bellamy ('68), who, after a long and storied career in different fields, is

currently executive director of UNICEF.

Bellamy noted that the Class of 1968 was a remarkable class in many ways, including the fact that it had twice as many women (30) as the class preceding it, and these women have made a large impact on the world.

The Judge Edward Weinfeld Award, established in the memory of honored alumnus Edward Weinfeld ('21), recognizes professional distinction and dedication to the Law School for 50 years or more. This year's award honored Herbert Kronish ('53), the founding partner of the law firm Kronish, Lieb, Weiner & Hellman, LLP. Kronish described how he started a small general practice that has now grown to a firm of more than 100 lawyers, with local, national, and international clients. He also remarked on his involvement in programs for religious freedom in the former Soviet Union.

The highest honor given to alumni by the Law School is the Arthur T. Vanderbilt Medal. The distinctive honor went to NYU School of Law Trustee Rose Rubin ('42). She served as a justice of the New York State Supreme Court, as well as the chief administrative law judge for the New York City Office of Administrative Trials and Hearings.

Rubin, upon being given the prestigious award, remarked, “I am delighted to receive the Vanderbilt Medal. Contrary to the advice of that great sage Yogi Berra that no one should make predictions, especially about the future, I predict the

continuing success of our Law School and my continuing attachment to it.”

### Dinner and Dancing

Capping off the Reunion Weekend were class dinners held throughout the Waldorf=Astoria Hotel. Following dinner was the traditional and well attended Reunion Dance, held at the hotel's Starlight Roof. ■

## Ambitious Reunion Goals

When the Reunion Program began at NYU School of Law in the early 1990s, an enormous effort was made to reconnect alumni who had long been out of touch with one another and with the Law School. As a result of a revamped Annual Fund Program at the Law School, the Reunion Fundraising Program this year received a face lift, initiated by Dean Revesz, using some tried-and-true methods modeled after other successful reunion fundraising programs. In an effort to reach more alumni and increase the Law School's annual giving efforts, each Reunion class had a Reunion chairperson and committee that asked their classmates to attend the Reunion and to participate in the Reunion Gift Campaign.

The result — a tremendous success! In particular, the class of 1973, with Kenneth Heitner as chair, reached its goal of \$650,000 — the largest of any Reunion class to date.

## Panel Debates Post-September 11 National Security

Since September 11, a deep and divisive debate concerning national security and individual rights has pitted government authorities against civil libertarians, the topic of a Law School Reunion panel. Moderated by Professor Ronald Noble, who is on leave from NYU School of Law to serve as secretary general of Interpol, the panelists offered a dynamic and impassioned discussion.

Arthur Culvahouse Jr. ('73), chairman of O'Melveny & Myers and former counsel to President Ronald Reagan, worked on a case involving the arrest of a “noteworthy terrorist” by the FBI in international waters. He noted that the current pace of change has been accelerated since he was in government. “Matters I thought would take years to resolve are being resolved within months in the courts and Congress,” he said.

Drawing on her work as counsel to the President's Foreign Intelligence Advisory Board, Catherine Lotrionte ('93) said the tension between civil rights and security is a constant one. She discussed the ramifications of old and new legislation, like the Patriot Act, being used to combat terrorism and gain information from U.S. citizens and foreigners. The intelligence community

already had “quite a bit of authority” to collect information overseas, she noted, and most limitations on intelligence activities were political rather than legal.

Nancy Chang ('78), senior litigation attorney at the Center for Constitutional Rights in New York City, warned that recent government activity is chilling the exercise of First Amendment freedoms by limiting political protests and criminalizing political disobedience through over-broad statutes. Chang cautioned that limiting civil liberties would promote people to take the more dangerous path — “the safety of silence.”

Taking Chang's argument a step further, Professor Stephen Schulhofer argued that the government's erosion of individual civil liberties was not increasing security, but actually substantially decreasing it. He said that the government's approach was “demonstrably ineffective because they were irrelevant to terrorism” and that increased discre-



Professor Ronald Noble (right) leads a Reunion panel on national security. Professors Stephen Schulhofer (left) and Stephen Holmes participated in the lively discussion.

tion being afforded to law enforcement and the FBI were being used to investigate general crimes instead.

Former executive director of the New York Civil Liberties Union Norman Siegal ('68) said that history will be the harsh judge of the government's recent activities, which are “antithetical to freedom of thought and association.”

# Alumni Activities



## Justice for the (Actually) Innocent

Defense Attorneys, Former Prosecutor, and Judge Discuss Mistakes in Convictions

The Law Alumni Association's Annual Fall Lecture drew more than 400 people, who ranged in age from high school students to an alumnus celebrating his 70th reunion. The lecture, "Guilty Until Proven Innocent: Is There Justice for the Wrongly Convicted, the Actually Innocent?" attracted a record number of alumni, who overflowed into a room with closed-circuit television. The panel comprised two defense attorneys, a former prosecutor, and a judge. Holly Maguigan,

a professor of clinical law at NYU School of Law, was the moderator.

Barry Scheck of Cardozo School of Law, a renowned defense attorney whose clients include Louise Woodward and O.J. Simpson, spoke about the Innocence Project, the organization he co-founded in 1992. The project focuses on exonerating prisoners with DNA test results. Scheck said that the FBI has found that in cases in which DNA evidence is made available, the main suspect is excluded 26 percent of the time. In state

and local labs, the percentage is even higher — the main suspect is excluded about one-third of the time.

"If you translate this error rate into merely one-half of one percent, thousands of people will be exonerated," Scheck said.

Peter Neufeld ('75), also of Cardozo School of Law, co-founded the Innocence Project with Scheck. "What's special about Innocence is that it allows all of the important players — attorneys, judges, law enforcement — to go back and figure out what went wrong and install systemic reform to ensure this kind of wrong does not happen again," he said.

Acting Justice Patricia Anne Williams, of the Supreme Court in Bronx County since 1989, said that justice is served through scientific discovery in a limited number of cases. Williams said that one of the primary reasons that innocent people end up in jail is because





DNA testing has the potential to exonerate thousands of people, said Professor Barry Scheck of Cardozo Law School (second from right) at a lecture titled "Guilty Until Proven Innocent." Other panelists were (from left) Zachary Carter ('75), Associate Justice Patricia Anne Williams, NYU School of Law Professor Holly Maguigan, and Peter Neufeld ('75).

**“What’s special about [the] Innocence [Project] is that it allows all of the important players ... to go back and figure out what went wrong and install systemic reform to ensure this kind of wrong does not happen again.”** PETER NEUFELD ('75)

of mandatory sentences that give the innocent incentive to plead guilty and avoid a life sentence. She also pointed out that public defense attorneys in New York have not received a raise for more than 16 years, and blamed the media for being a major part of the problem.

“Maybe we have to make the media more responsive to a justice system, rather than selling papers,” she said. “The media is many times the worst enemy.”

Introducing yet another dimension to this issue, Zachary Carter ('75), formerly U.S. attorney for the Eastern District of New York and U.S. magistrate judge, who is now a litigation partner at the law firm of Dorsey and Whitney and co-chair of the firm’s white-collar crime group, blamed the jury system.

“One of the problems we face is an unreasonable confidence in the so-called miracle of the jury system,” he said. According to Carter, a Law School trustee, our country’s fervent belief in the jury system has caused us to overlook some blatant flaws, including the fact that so many people are wrongly convicted. He said that judges must stop confusing neutrality with passivity, because it is their responsibility

to ensure that the process of trying a defendant is actually a quest for the truth.

Scheck closed the evening by summing up a sentiment shared by all the lecture panelists, and perhaps by the auditorium full of attendees as well: “It really is time to step up to the plate and do something about this problem of the wrongly convicted.”

The question of what, precisely, must be done was left open, but ample evidence, scientific and otherwise, was offered to prove that finding an answer is crucial. ■

LAA Board member Norman Goodman ('50) talks with panelist Zachary Carter ('75), a Law School trustee and former prosecutor and judge.



## Democratic Decline

### Neuborne Keynotes Annual Alumni Luncheon

“We live in a time of democratic decline,” began NYU School of Law Professor Burt Neuborne, one of America’s top scholars in constitutional law, procedure, and evidence. His remarks, the keynote at the Law School’s Annual Alumni Luncheon, examined the current state of American democracy.

In a passionate expression of his life’s work, Neuborne, the John Norton Pomeroy Professor of Law, detailed ways in which some of our country’s weaknesses can be strengthened. One symptom of our democratic decline is low voter turnout, he suggested. Noting that less than half of all eligible voters in the United States actually vote, Neuborne warned, “The democratic process cannot sustain itself if it cannot get the majority of the people to participate.” Neuborne made a strong case for improving turnout by moving election day to a weekend or a national holiday, like Veterans Day, and by allowing for same-day registration.

Another symptom of democratic decline, Neuborne said, is the difficulty candidates face in gaining access to the ballot and raising the money needed to mount a viable campaign. The United States is ruled by “super-citizens,” wealthy individuals and corporations capable of influencing legislation with campaign contributions, he said.

The third symptom of decline is political gerrymandering. The way in which Congress and the states have created legislative districts “sets the winner before the election,” Neuborne said. Noting a 98 percent reelection rate in the U.S. House of Representatives, Neuborne argued that the system is so rigged in favor of incumbency that seats become nearly impossible to lose. These symptoms of democratic decline keep Neuborne striving for reform and he vowed to continue fighting to improve America’s democratic health.

Speaking to an audience of distinguished Law School alumni spanning seven decades, Neuborne was graciously introduced by Dean Richard Revesz. The dean, who said he would like to clone Neuborne, described Neuborne as an exemplar of the kind of quality educators NYU School of Law has been able to attract. Neuborne recalled his service on the personnel committee that brought Revesz to the Law School, and shared the faculty’s pride in the dean’s

“The democratic process cannot sustain itself if it cannot get the majority of the people to participate.”

PROFESSOR  
BURT NEUBORNE

rapid rise to national prominence. In attendance at the luncheon were two stalwarts, Rebecca Rolland ('23) and Herbert Hirschhorn ('32, J.S.D. '34), as well as younger graduates, including recently elected New York State Assemblyman Jonathan Bing ('95).

The lecture was well received by attendees, and several alumni asked the professor questions after his formal remarks concluded. “This keeps me connected to NYU,” said Mansur Nuruddin ('00), an associate at Cravath, Swaine & Moore. “I really enjoyed the lecture. It was extremely interesting. And, it's great to see early graduates who are still participating in the life of the Law School.”

Neuborne, a recipient of the University's Distinguished Teaching Award who served as national legal director of the American Civil Liberties Union, works on issues concerning access to justice, fair courts, voting rights, and criminal justice reform as legal director of the Law School's Brennan Center for Justice. He also is co-counsel to Senators



Should elections be held on the weekend? Professor Burt Neuborne posed the question in a talk about democracy at the annual alumni luncheon.

John McCain and Russell Feingold in their defense of the Bipartisan Campaign Reform Finance Act. Described by Stuart Eizenstat, the leader on Holocaust-era issues as special representative of the president and secretary of state during the Clinton administration and currently a partner at Covington & Burling, as “the indispensable person” in both the Swiss and German Holocaust litigation, Neuborne serves as court-appointed lead settlement counsel in the litigation surrounding the involvement of Swiss banks in the Holocaust. He also is one of two U.S. appointees on the board of trustees of the \$5.2 billion German Foundation “Remembrance, Responsibility, and the Future,” designed to provide compensation to Holocaust victims. ■

## BLAPA Honored by its Honorees

“Tonight is really about gratitude, yearning and learning, and devotion,” said Natalie Gomez-Velez ('89), one of three honorees at the annual Black, Latino, Asian Pacific American Law Alumni Association (BLAPA) dinner, held in honor of graduates and student scholarship recipients of color.

Gomez-Velez, who serves as special counsel to Chief Administrative Judge Jonathan Lippman ('68) of the New York State Unified Court System, aptly summed up the spirit of an evening that was defined by the graciousness of its honored guests. Her ties to the Law School are strong — she served as an attorney with the Brennan Center for Justice and taught in the Lawyering Program — and also very personal. Gomez-Velez met her husband, Roberto Velez ('89), in their first-year Civil Procedure class.

Dean Richard Revesz opened this year's dinner by thanking BLAPA for its contributions to the Law School community. The dean reflected on the Law School's continued commitment to support students in public service endeavors, detailing the efforts that have been made to sustain the Loan Repayment Assistance Program and to revamp the Public Interest Law Center (see p. 79).

Each year, BLAPA's alumni honorees are chosen based on their work and contributions to the minority and legal communities. Martha Stark ('86), commissioner of the New York City Department of Finance, was the first award recipient. Stark has an impressive career in government, especially on the local level. She has written extensively on the New York City property tax and is co-author of an influential Law School study on the high cost of building and renovating housing in the city. Calling herself “Martha the Tax Collector,” Stark said that her father started her on the path to becoming a lawyer and finance commissioner by teaching her how to prepare tax returns as a young teenager.

In reflecting on her upbringing in the projects of Brownsville, Stark expressed her sincere gratitude to BLAPA. “I know where I came from and the role of the Law School in making my attendance here possible,” she said.

The second honoree, Donna Lee ('91), is a professor in Brooklyn Law School's Federal Litigation Clinic and formerly taught in the Lawyering Program at NYU School of Law. As a student, she was co-chair of the Asian Pacific American Law Students Association

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Each year, BLAPA recognizes alumni whose work contributes to minority and legal communities. The 2003 BLAPA honorees are (from left) Martha Stark ('86), Donna Lee ('91), and Natalie Gomez-Velez ('89).

that "in the future, the administration, current students, and alumni can work together to increase diversity at NYU for the benefit of our Law School, the legal community at large, and the clients that we serve."

The honorees and the scholarship recipients were a source of inspiration for alumna Deanna Grace Logan ('95). "It's important for me to come back and see who is following in our footsteps because the scholarship was a huge help for me," said Logan, who was part of the first class to receive BLAPA scholarships. "I try, even

being in public service, to make sure that I give back so that others can benefit."

Other guests at the dinner shared her enthusiasm for BLAPA, the annual dinner, and everything they represent. BLAPA Vice President Michelle Meertens ('97) said that she was struck by the energy in the room and the sense of warmth and family between the alumni and current students. BLAPA class representative Leander Gray ('97) commented that because law is one of the least integrated professions in the country, the annual BLAPA dinner is especially invigorating.

"While the history of Black, Latino, Asian Pacific, and other underrepresented minorities at the Law School is, unfortunately, a short one, it is becoming more enriched every day by the accomplishments of the students and alumni who form the BLAPA family," said Gray. "Participating in honoring some of them each year is gratifying, as well as inspirational." ■

(APALSA) and received the Vanderbilt Medal for her contributions to the Law School community.

Lee took a moment to express what makes BLAPA special. "We don't just network and share opportunities and information, we socialize together and have fun together," she said, adding that the award "really belongs to all of you."

Following the alumni presentation, three students were named to the eighth class of BLAPA Public Service Scholarship recipients. BLAPA Treasurer Patrick Michel ('96) described the scholarships as a way of honoring and assisting students who have made a commitment to public service and continue to do so.

Benita Jain ('03), co-chair of South Asian Law Students Association (SALSA) and a member of the Coalition for Legal Recruiting, was the first recipient. This year, Jain was awarded a Soros Justice Fellowship to provide legal services to immigrant communities after graduation. She expressed special thanks to SALSA and the other minority law student associations for being instrumental in helping students of color.

Hector Linares ('03), an active member of the Latino Law Students Association (LaLSA) executive board, received a scholarship for his public interest contributions, which include his work for the Community Outreach and Education Clinic and his role as a translator for the Immigrant Rights Clinic. He thanked the Law School for providing "safe havens" for public-interest-minded students and students of color. Linares also thanked BLAPA for "recognizing that we still have a long way to go."

"The gains we have made are not secure," he said. "Every day people are working to take away what we have achieved."

Patricia Abreu ('03), who also was awarded a scholarship, has been involved with the Community Outreach and Education Organizing Clinic, the Door's Legal Services Center, and the Family Defense Clinic in Brooklyn Family Court. After graduation, she plans to return to Brooklyn Family Court as a law guardian. Abreu shared her hope

## Students Connect at BLAPA Reception

The Black, Latino, Asian Pacific American Law Alumni Association (BLAPA) brought together students, professors, and alumni at its annual fall reception. The event, which allows participants to meet and share various experiences at the Law School and beyond, also welcomed students of color from the Class of 2005 and kicked off BLAPA's mentoring program.

The reception began with an informal meet-and-greet session in which students searched the room for their BLAPA mentors. BLAPA Vice-President Michelle Meertens ('97) then opened the event by explaining the function of BLAPA. She analogized it with "Bob city-slicker's" first trip to the country. Like many 1Ls entering Law School, Bob thought that going to the country for the first time would be easy given his accomplished background. Once there, he realized that he had forgotten his map and was unable to navigate efficiently. BLAPA, Meertens explained, provides that map for law students, giving them advice to help them in school, practice, and the transition between the two through a broad, deep professional network. Meertens also expressed her appreciation for the new dean's support of BLAPA's mission.

Dean Richard Revesz conveyed his admiration for BLAPA. Revesz described the necessity of developing Law School connections with members of the legal profession. BLAPA's successful mentoring program is an outstanding example of this system at work, developing "synergies" between students and alumni, Revesz said.

BLAPA Treasurer Patrick Michel ('96) encouraged all members to work to make BLAPA even better, pooling the resources of BLAPA to aid the entire Law School. Michel cited the BLAPA Public Service Scholarship, created in 1994 to promote the practice of public interest law, as one example of the accomplishments that can be achieved by an organization dedicated to improving itself and the institution it serves.

Patricia Abreu ('03) then discussed her relationship with BLAPA, which began when she was an admitted student. Following closing remarks by Meertens, students and alumni returned to the main attraction of the reception, getting to know one another personally. While many pairs of mentors and mentees met for the first time, others were inspired by the great showing of support. Conveying her satisfaction at having this type of an opportunity, Jae Young Kim ('03) remarked, "It's important to bring minority students and alumni together so that there is a sense of support in the legal community." Explaining their attendance at the reception, two recent graduates, Susan Hoshing ('00) and Deidre Norton ('00), said, "We got something out of BLAPA, so we wanted to give something back." Anika Singh ('04) summed up feelings about the event and BLAPA well: "It's wonderful that there is a network of alumni of color who go out of their way to create a supportive forum for networking and dialogue."



BLAPA Board members (from left): Jimmy Yan ('97), Laura González Marcano ('96), Patrick Michel ('96), Alicia Amezcua-Rodriguez ('98), and Michelle Meertens ('97).

# Taxing Decisions

## Tax Workshop Inspires Lively Debate

“It was interesting to hear different opinions on the Democratic and Republican tax plans,” said a European LL.M. student, an attendee at the Graduate Tax Workshop at NYU School of Law. “You read about them in papers and watch people talk about it on TV, but you don’t see such intelligent debate like this anywhere. The speakers made some very interesting points I had never heard before.”

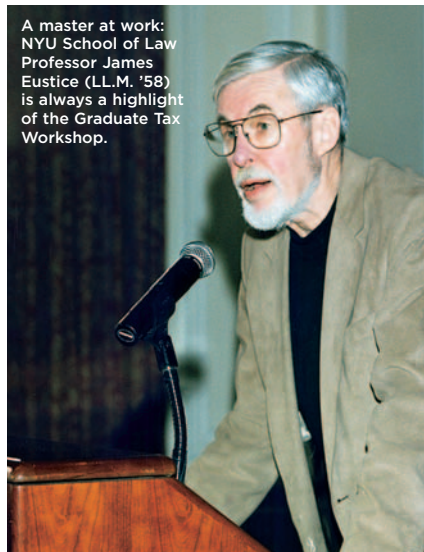
The workshop featured panels with an array of Law School faculty members, and was attended by professionals in different fields of tax law, including corporate, estate planning, and international tax, as well as LL.M. students from around the globe. Some came to hear provocative discussion about the Bush administration’s proposed tax plan. Others came to learn more about developments in estate planning and bankruptcy tax, or to obtain continuing legal education credits. A number of professionals even traveled from across the country to revisit their alma mater. Regardless of the motivations that brought these participants together, there was consensus that the full-day tax workshop was a success.

Mary Silver (’92), the new director of the Part-time Graduate Tax Program at the Law School, welcomed the attendees and discussed the focus of the workshop. NYU School of Law Professor Daniel Shaviro and Professor David Bradford of Princeton University, who also serves on the adjunct faculty at the Law School, kicked off the event, discussing their viewpoints on the differing tax plans.

Bradford’s speech, titled “Tax Reform: Waiting for a New Consensus of the Experts,” proposed the adoption of a tax scheme based on what he called an “X Tax.” He discussed the pros and cons of implementing this plan, which was recognizable to tax experts as having a similar construction to a consumption-based subtraction-type value-added tax.

Shaviro responded with a discussion of the Bush administration’s 2001 tax rebates, which he said had a detrimental effect on the economy. He warned participants about “the growing U.S. fiscal gap” that resulted from such tax cuts, and said that a new tax policy must be designed with great prudence, especially in our volatile economic climate.

Bradford and Shaviro sparked intense debate among program attendees, who lined up at the buffet table following the panel arguing for alternative tax schemes and weighing the merits of additional tax cuts in a sluggish wartime economy. One NYU School of Law alumnus, a tax lawyer in



A master at work: NYU School of Law Professor James Eustice (LL.M. '58) is always a highlight of the Graduate Tax Workshop.

New York City, said that the speakers both addressed a concern, widely shared by people in the United States, that we are not out of the recession.

“These concerns are causing American investors to be jittery and confused,” he said. “It makes me think twice about whether cutting more taxes will spur the economy like we need so badly. With the rise of corporate scandals, the tech bubble-burst, and what-not, we need a solution. We need a solution quickly.”

After the segment on tax reform, attendees had a chance to choose between two concurrent panels. In the morning session, panels addressed corporate taxation and estate planning; following lunch and a lecture on tax shelters, the participants could choose international tax or bankruptcy tax.

The panels were led by NYU School of Law faculty members, including Professor David Rosenbloom, director of the International Tax Program at the Law School and partner at Caplin & Drysdale; James Eustice (LL.M. ’38), Gerald L. Wallace Professor of Law; and adjunct professors Stephen Gardner (LL.M. ’65), partner, Kronish Lieb Weiner and Hellman; Carlyn McCaffrey (’67, LL.M. ’74), partner, Weil, Gotshal & Manges; William Lesse Castleberry (LL.M. ’75), partner, Kronish Lieb Weiner and Hellman; Richard Andersen (LL.M. ’87), partner, Arnold & Porter; and Norman Sinrich (’52, LL.M. ’53), of counsel, Feingold & Alpert.

In addition to a recurring theme of tax reform in a bear market, the panelists discussed the ethical implications of their work as tax advisors and attorneys. In a panel led by Gersham Goldstein (LL.M. ’64), a partner at Stoel Rives, the discussion focused

on disclosure requirements in corporate tax representation; tax planning and return preparation; and the ethical issues that arise from co-worker misconduct. The panel attendees considered various scenarios and debated the ethical ramifications of electing to ignore misconduct. Experts then reviewed the proper procedures for reporting unethical behavior, and helped guide them to the right decisions. Overall, the lawyers grappled most with two scenarios — one involved the disclosure of doubtful positions, and another posed questions about informing the Internal Revenue Service of errors that were discovered after a return was filed.

One tax advisor said that the challenges presented were tough but necessary. “It’s something you hope never comes up,” he said, “but it’s crucial to know what to do in case it does.”

This panel also inspired spirited debates among the professionals in attendance, though everyone agreed that there must be a renewed push for corporate accountability by all executives, auditors, and independent counsel. Several speakers called on members of the audience to take the first steps to ensure that the highest levels of professional conduct were adhered to in their own workplaces.

After the workshop concluded, many people lingered to debate or catch up with former classmates. Many tax LL.M.s walked away with a thirst for more panels like these.

“I learned so much in such a short period of time,” said an LL.M. student from South America. “Now I want to use my knowledge in a practical setting.”

Net proceeds from the event will support the Gerald L. Wallace Fund, which provides scholarships to students in the NYU School of Law tax programs. ■

## Announcing the 2004 Alumni Directory!

You will soon receive your alumni survey. Please take a moment to complete the survey for inclusion in the 2004 Alumni Directory. The updated directory, scheduled for release in the fall of 2004, will be the most up-to-date and complete reference of more than 30,000 Law School alumni. Bound and CD-ROM versions of the directory will be available for purchase.

NYU School of Law is partnering with PCI, The Data Company, to produce the directory. PCI also powers the NYU School of Law’s online alumni directory.

### Questions?

Please call the Alumni Relations Office at (212) 998-6410.

# NYU Law Interactive

## New Initiative Offers Interactive, Online CLE

Socrates could not have envisioned teaching students online, but NYU School of Law has begun to make the idea a reality. This year, the Law School launched NYU Law Interactive as part of an effort to explore how to use the Internet and other technology in teaching law. NYU Law Interactive's initial program offers alumni and other attorneys the opportunity to take online interactive courses for CLE credit.

NYU Law Interactive currently offers three online courses, which were prepared by leading members of the Law School faculty. Vice Dean Stephen Gillers ('68) and Associate Deans Barry Adler and Brookes Billman (LL.M. '75) each authored a course: Introduction to Conflicts of Interest; Issues in Bankruptcy Reorganization; and Introduction to Qualified Retirement Plans, respectively. The conflicts of interest and reorganization courses each take about an hour-and-a-half to two hours to complete, while the course on qualified retirement plans (which offers more CLE credits) takes about three hours to complete.

Attorneys who complete each course are eligible for two or three CLE credits (depending on the course) in jurisdictions that allow CLE credits to be earned online. The ability to fulfill CLE requirements online is very appealing to many alumni. Jacqueline Tepper ('90) noted, "For those of us who don't live or work in New York anymore but are maintaining our status as members of the New York bar, it's particularly helpful to have this resource online."

The genesis for the project arose from an exploration of the potential of online education begun during John Sexton's time as dean and has continued with the enthusiastic support of Dean Richard Revesz. Three online "mini-courses" were developed as a pilot to determine whether there was a role for online learning at the Law School. The three faculty authors, along with a steering committee that included Billman, members of the administration, and two members of the Law School's board of trustees, Paul Francis ('80) and R. May Lee ('90), worked with the leading instructional design firm Cognitive Arts to develop courses that would be both engaging and academically challenging.

NYU Law Interactive's rigorous academic content, original format, and interactive design sets it apart from other online legal education and CLE courses, which primarily consist of videostream lectures. NYU Law Interactive sought to make its courses practical, convenient, flexible, and easy to use. Tepper, who completed Introduction to Conflicts of Interest, noted, "The course is as interactive as you want it to be ... and is different from CLE seminars where you are lectured to for hours on end. The online course is more interesting, and I'd like to see more offerings."

The most distinguishing characteristics of the online courses are their interactive nature and their "learning by doing" approach.

In each course, the faculty author provides an introduction to the course by a downloaded audio recording.

Each course presents scenarios in which the participant receives background information about the case and the client and then is asked to answer a series of questions. The questions are arranged in a multiple-choice format, and participants are sometimes prompted to select the reasoning behind each answer choice. For every incorrect answer chosen, the program provides detailed feedback as to why an answer is wrong and presents other issues that the participant should consider. Additional links to questions and answers related to a given inquiry are often provided. The

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**"For those of us who don't live or work in New York anymore but are maintaining our status as members of the New York bar, it's particularly helpful to have this resource online."** JACQUELINE TEPPER ('90)

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For Introduction to Qualified Retirement Plans participants play the role of a law firm associate providing advice to a client on a retirement plan by reviewing the client's draft plan proposal and answering questions about that plan. The legal principles are taught in the context of these assignments, with tutorial feedback provided throughout the course.

For this program, participants are expected to review provisions of a draft retirement plan, identify key legal principles involved in employee benefits law, and evaluate their impact on the client's business objectives. Participants answer questions posed by both the partner and client, and submit a memo evaluating the draft plan and offering recommendations to the client.

program also provides participants quick access to a plethora of resources like relevant statutes, key cases, and analysis from the faculty authors.

Online participants have been surprised by how comprehensive each course is and the high-level content provided. "The text-based interaction emulates the Socratic method nicely," said Mary Silver ('92), director of part-time programs and professional skills training at NYU School of Law.

NYU Law Interactive's three initial courses were designed to be suitable for the CLE market. The Law School has now begun to explore whether it could utilize online education as part of LL.M. and other graduate programs at the Law School. Online learning has proven to be especially appealing to working professionals in many fields, especially those barred by distance from attending traditional classes or who prefer to learn in a self-paced environment. As Gillers remarked, "Interactive media is an ideal way for busy lawyers to keep up with changes in the law and satisfy CLE requirements. The technology allows for guided complexity where even sophisticated concepts can be treated with respect." It is not expected that online courses will be offered for credit in the J.D. program, although online "learning modules" might be used at some point to supplement classroom work.

Those interested in registering and using NYU Law Interactive can visit [www.law.nyu.edu/interactive](http://www.law.nyu.edu/interactive) or call (212) 992-8980. ■



Mary Silver ('92) (center), director of professional skills training, demonstrates NYU Law Interactive, the Law School's interactive, online CLE program, to attendees at Reunion Weekend.

## How Much Is Too Much?

### Free Speech and Money in Judicial Campaigns

Should judges be prohibited from revealing their political views when running for judicial office? In *Republican Party of Minnesota v. White*, the U.S. Supreme Court said no. Justice Antonin Scalia, writing for a 5-4 majority, held that a Minnesota provision that forbade a judicial candidate from announcing his or her views on disputed legal or political issues was a violation of First Amendment rights.

A panel of NYU School of Law alumni, jointly organized by the Law Alumni Association and the Brennan Center for Justice, explored the Supreme Court decision in *White*, and its impact on judicial elections. Titled “Dangerous Times for the Least Dangerous Branch? Judicial Campaigns and Judicial Independence After *White*,” the panel discussion centered on possible ways to achieve a proper balance in a system that maintains rights to free speech and impartial judges. Judge Jonathan Lippman ('68), chief administrative judge, acting as moderator, questioned the panel members about their views on the *White* decision, and launched the discussion by presenting the basic facts underlying this debate.

“Americans like to elect their judges, but it’s accepted that judges should remain above the fray,” Lippman declared. “Unlike an elected official, whose job is to cater to the desires of constituents, a judge’s job is to make impartial decisions.”

“Americans like to elect their judges, but it’s accepted that judges should remain above the fray. Unlike an elected official, whose job is to cater to the desires of constituents, a judge’s job is to make impartial decisions.” JUDGE JONATHAN LIPPMAN ('68)

Is a judge able to remain impartial if elected by constituents who are aware of his or her political views? According to Zachary Carter ('75), a partner at Dorsey & Whitney and chair of the Mayor’s Advisory Committee on the Judiciary, “Without the constraints of some rules limiting speech, we can’t rely on all candidates to help the public understand that judges once elected are fair and neutral.”

Carter, who is also a Law School trustee, said that there should be some qualification

and experience requirements for each candidate, but in his belief, once they are met, “ignorance would be bliss.”

Deborah Goldberg, acting director of the Democracy Program at the Brennan Center, concurred. “Judicial elections should be determined by qualifications like courage, empathy, and experiences that give me the confidence that someone will fully understand the range of interests involved.”

“But wouldn’t we benefit from more substantial judicial campaigns?” asked Lippman. He said that in a 2002 survey, 75 percent of New York voters couldn’t recall the name of the judicial candidates they had voted for just a few minutes earlier.

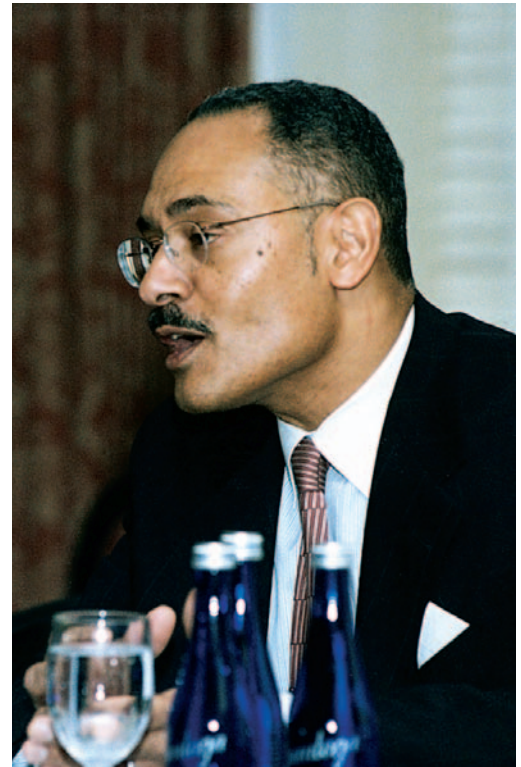
According to Lawrence Mandelker ('68), a partner at Kantor, Davidoff, Wolfe, Mandelker & Kass where he specializes in election law, campaign finance, government relations, and lobbying, voters should have as much information as they can about any candidate they are being asked to elect — or not elect.

“An election is an election is an election,” said Mandelker. “Any information about a candidate that helps a voter make his or her decision should be out there.”

His argument led back to judicial independence, a frequent concern raised throughout the evening. If judges make

political commitments in their campaigns, can they be trusted to rely on precedent instead of trying to stick to their campaign commitments?

Goldberg suggested that to ensure judicial independence, elections should be publicly financed. “Polls indicate that 76 percent of the public believe decision-making is affected by campaign contributions, and 26 percent of judges agree,” she said. In her view, public funding will relieve judges of any obligation to private contributors, and



Associate Justice Barry Cozier ('75) tackles the ramifications of the U.S. Supreme Court decision in *White*.

she also advocated for a one-term limit “since judges up for reelection might feel controlled by public opinion.”

Lippman asked the other panelists to make their recommendations for changes in the current system, and each had their own distinct ideas. Associate Justice Barry Cozier ('75), of the Appellate Division of the Supreme Court of the State of New York, recommended more formalized education through bar associations. Goldberg suggested that judges go out into the community more to increase voter education. Carter proposed developing a set of principles that judges are invited to adhere to on a voluntary basis. “The principles would discourage both explicit promises and implied commitments,” he said.

Yet to speak was Mandelker, who was nudged by Lippman. “And finally, Larry?” he asked. Mandelker looked out to at the audience, smiled, and said, “Good night, everyone.” The audience laughed and began to depart, but Mandelker quickly pulled them back. “I actually do have an answer,” he said. “I would recommend that ethical guidelines be given to judicial candidates.” Lippman laughed at Mandelker’s antics. “Lawyers always want the last word.”

With that, the panel drew to a close, and the audience of alumni, students, faculty, and panelists gathered around trays of cheese, crackers, and fruit to continue the discussion, all fully exercising their freedom of speech between bites. ■

## Weinfeld Patrons New Donor Recognition Level Established

In 1989, NYU School of Law created its first-ever donor recognition club, known as the Weinfeld Program. It was conceived as a way to recognize alumni whose commitment to the Law School mirrored that of one of the School's finest alumni, Judge Edward Weinfeld ('21). At the time, no more than a handful of alumni donated at the \$5000 annual level. Today, nearly 15 years later, the Weinfeld Associates Program boasts nearly 330 members. In the mid-1990s, the Weinfeld Program added a level of recognition that honored recent graduates, one to 10 years out of law school, who annually give at least \$1000, and today more than 170 graduates give at this level.

In an effort to increase opportunities for alumni to participate in raising the Annual Fund at the Law School, Dean Richard Revesz added a new level of donor recognition to the Weinfeld Program. The new level honors alumni making annual gifts of \$10,000 or more. Within the past year, more than 170 alumni and friends have been recognized as Weinfeld Patrons.

All members of the Weinfeld Program enable the Law School to offer the many stimulating and enriching programs that set NYU School of Law apart from its peer schools. Participants play a critical role in meeting the Law School's ongoing needs in vital areas such as student financial aid, the library, clinical programs, student organizations, and career and placement services. Weinfelds have been, and continue to be, crucial to the Law School's drive for curriculum development — and are in large part responsible for the huge advances in legal education the Law School has made over the last several years.

Today, the membership of the Weinfeld Program comprises a "Who's Who" of the Law School, representing a wide range of backgrounds and careers. Throughout the year NYU School of Law recognizes the support it receives from the Weinfeld Program and provides opportunities for the members to meet each other to network and celebrate the Law School's accomplishments.

## Weinfeld Gala 2003

For the 14th consecutive year, NYU School of Law gathered more than 300 Weinfeld Patrons, Associates, and Fellows at a gala dinner to thank them for their continued generosity and commitment to the Law School.

The gala, held at the Pierre Hotel, featured remarks by Lester Pollack ('57), chairman of the Law School Foundation; Dean Richard Revesz; and An-Bryce Scholar Leila Thompson ('05). The program concluded with guests dancing to the music of the Hank Lane Revue.

The Law School celebrated the creation of a new level of giving within the Weinfeld Program — the Weinfeld Patrons. Comprised of more than 170 alumni, each Weinfeld Patron commits to an annual gift of \$10,000 or more.

Commenting on this milestone in Law School history, Revesz said, "As part of our effort to become the leading law school and the law school that leads in providing social good through the education, scholarship, and vision needed to improve our nation and the world, I am committed to increasing the Law School's Annual Fund. I am proud of the leadership that our alumni have demonstrated as they further their commitment to our common goals by joining the Weinfeld Patrons program."

The Weinfeld Associates, consisting of alumni, parents, and friends, commit to annual gifts of at least \$5000 in support of the Annual Fund. Recent graduates are invited to join the Weinfeld Fellows at the \$1000 level.

The Law School is looking forward to a very special Weinfeld Gala in the winter of 2004, which will celebrate the opening of the new building. ■

Weinfeld Patrons, Associates, and Fellows enjoy dinner, conversation, dancing, and fun at the 2003 Weinfeld Gala. Clockwise from upper right: Martin Lewis ('51) and Diane Brandt; Ann Weinfeld Schulman ('80) and Dean Richard Revesz; Jay Furman ('71) (left) and Leonard Boxer ('63); two attendees dance the night away; Leila Thompson ('05) and Rafiq Kalam Id-din ('00).



Please visit  
Around the Law School  
for Reunion coverage  
(page 156).

## The Wall of Honor

The Wall of Honor spotlights law firms for their extraordinary support of NYU School of Law. Listed alphabetically, firms achieve a place on the Wall of Honor through the collective participation of their partners and associates in the Weinfeld Program, the premier donor recognition group at the Law School. The Wall of Honor is an effort to invite greater participation from NYU School of Law alumni in law firms and to foster an annual, friendly competition between firms to receive a place on the Wall of Honor.

Within each firm an alumnus/a agrees to serve as "Firm Agent," motivating and recruiting partners or associates to become members of the Weinfeld Program. The firm agents speak to NYU School of Law graduates at their firms to ask for their support in this initiative and secure their membership to the Weinfeld Program. Firm agents are supported by a development officer from the Office of Development and Alumni Relations at the Law School.

Alumni who are partners at the firm support the Law School by joining the Weinfeld Associates Program with an annual commitment of at least \$5000. Firm associates who have graduated within the past 10 years may join the Weinfeld Fellows Program and commit to an annual gift of \$1000.

Each year, firms will be listed on the Wall of Honor once 75 percent or more of partners who are NYU School of Law graduates contribute to the Weinfeld Program at the \$5000 level. The Wall of Honor will also note contributions made by 50 percent or more of the firm's associates at the \$1000 level.

The Weinfeld Program, conceived almost 15 years ago, currently comprises more than 650 members and provides occasions for members to meet throughout the year to network and celebrate the Law School's accomplishments. Members are the Law School's guests at a variety of special programs, including events focused on legal education, social gatherings, regional events, and receptions for visiting dignitaries.

NYU School of Law gives special recognition to the support of individual Weinfeld members by listing their names on the Weinfeld plaque in the foyer of Vanderbilt Hall, in the *Weinfeld Directory*, and in the *Annual Report of Donors*. Additionally, the Law School honors members of the Weinfeld Program at an annual black-tie dinner, the Weinfeld Gala, which has become the signature event for these supporters of the Law School (see p. 165).

The Law School raises more than \$3 million in annual funds — money which is critical to operating financial aid programs, legal clinics, the library, lecture series, student journals, and student-run organizations.

To achieve the Law School's goal of becoming the leading center of legal education in the nation, we look to our community for its support and encourage increased annual giving from alumni leaders of today and tomorrow. For further information about the Wall of Honor, contact Meredith Celentano, director of development, Office of Development and Alumni Relations, at (212) 998-6389 or [meredith.celentano@nyu.edu](mailto:meredith.celentano@nyu.edu). ■



## The Society of the Torch



"I am proud of the education I received at NYU School of Law

and want future generations to feel as strongly. That's why I chose to support the Law School's New Building Campaign with a planned gift annuity. It's the best way for me to say 'thank you' and to give back to NYU School of Law."

Gary A. Beller ('63, LL.M. '71) is a member of New York University's Society of the Torch, a group of alumni and friends who have established bequests and charitable trusts that benefit New York University.

There can be significant tax and financial benefits for including the Law School in your estate plans, while contributing to ensure that future generations of students receive the best legal education in the world. If you would like more information about including the Law School in your will, please contact Marsha Metrisko (see contact information below). All inquiries will be handled in confidence.

Also, if you have already included a gift for NYU School of Law in your estate plans, please contact the Law School so that we may thank you and officially welcome you as a member of the Society of the Torch.

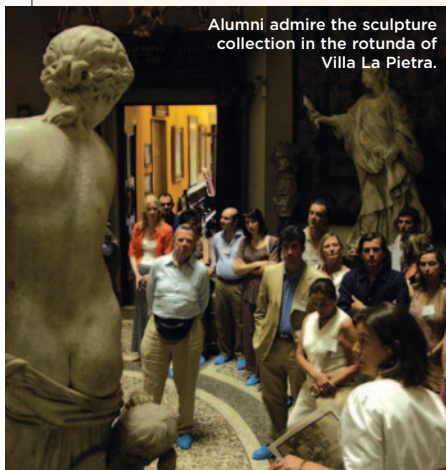
**Please contact:**  
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## Florence, Italy European Alumni Reception

Representing 15 nations, more than 100 European alumni and their guests gathered at NYU's Villa La Pietra in Florence, Italy, for a reception to meet Dean Richard Revesz.

Coming from all over Europe, alumni enjoyed spending time with other Law School graduates as they toured the



Alumni admire the sculpture collection in the rotunda of Villa La Pietra.

newly restored Renaissance gardens and extensive collection of art. Upon their arrival, Revesz gathered with alumni in Villa Sassetti, one of the historic villas on the estate, to give an update on the Law School, including a report on the nearly completed new building, a successful year in student and faculty recruitment, and international alumni news.

Revesz encouraged the alumni to visit the Law School in April 2004 for Reunion Weekend, which will feature several academic and social programs especially designed for international alumni. The event concluded with a lively reception in the teatrino, the "garden theater," which provided a beautiful back-drop as alumni caught up with one another, met new colleagues, and chatted with the dean.

In 1994, when New York University came into possession of Villa La Pietra through a bequest in the will of Sir Harold Acton, it embarked on an ambitious program of restoration. The restoration took just over four years, starting on April 20, 1998, and ending May 5, 2002. New York University has used Villa La Pietra as an academic center in Florence, one of several similar centers in the world. Every semester, undergraduate students study a wide variety of disciplines and graduate students attend summer courses. In addition, Villa La Pietra is used by the University for meetings, conferences, and special events, like the two conferences the Law School held there this summer (see p. 56 and p. 142).

## Regional Events

### AALS Reception

The Law School held a reception January 4 in conjunction with the annual meeting of the Association of American Law Schools (AALS) in Washington, D.C. This reception brought together alumni who are legal academics. Robert Peroni ('76, LL.M. '80), Parker C. Fielder Regents Professor in Tax Law at the University of Texas, commented, "I really appreciated the opportunity to hear Richard Revesz speak at his first AALS meeting as the new dean of the Law School. One striking thing about the reception is how many people NYU School of Law now has in law teaching. NYU School of Law has become a significant feeder school for the legal academy."

### Washington, D.C.

At the Law School's reception, held January 23 at the law firm of Arnold & Porter, Dean Revesz shared his vision for the Law School with attendees. Alumni expressed the desire to increase the visibility of NYU School of Law graduates in the Washington, D.C., area. Charles Kauffman ('55) commented, "Great feelings of unity, pride, and nostalgia exist among Law School alumni and these feelings are harvested at gatherings like this. We should have more meetings of 'local' NYU School of Law graduates. They would prove

a benefit for both the Law School and its graduates." Host Paul Berger ('57) indicated that since the reception, many alumni have expressed great interest in being more involved with NYU School of Law initiatives.

### Palo Alto, California

During this February 23 luncheon at Spago Palo Alto, Dean Revesz met area alumni and prospective students. Host Christopher Compton ('68) commented, "The Palo Alto luncheon ... had one of the largest turnouts in years — no doubt due to the inaugural visit of new Dean Ricky Revesz." Not only did alumni have the opportunity to discuss new NYU School of Law initiatives with the dean, but prospective students joined in the discourse, tapping into the wealth of experience around them. Jeffrey Saper ('71) added, "I am quite impressed by the Law School's ability to attract top academic talent from other leading law schools in virtually all areas.... Judging from the caliber of admitted students who sat with us at lunch, it is equally clear that NYU School of Law continues to be a magnet for the best and the brightest graduates of our leading universities."

### Los Angeles, California

This regional alumni event, hosted by Jerome Coben ('69), was held at the Regency Club. Newly admitted students in attendance were thoroughly impressed by Dean Revesz' level of enthusiasm as they discussed the advantages of attending NYU School of Law. The Los Angeles event had an unusually large turnout.



Palo Alto area alumni dine at Spago Palo Alto February 23 for the Law School's regional luncheon. Several prospective students also attended and had opportunities to talk with alumni and Dean Richard Revesz.



Minneapolis



Washington, D.C.

Minneapolis



Minneapolis



San Francisco



Long Island

### San Francisco, California

At this reception, hosted by Felicia Marcus ('83) at the Sir Francis Drake Hotel, attendees were able to share in the connections enjoyed by alumni in the San Francisco area. Frank Leidman ('80) commented, "The San Francisco alumni have been a very closely knit group for many, many years. Many among the group come to every alumni reception if at all possible, and I am proud to count myself among that group."

### Boston, Massachusetts

Joel Sherman ('64) described the Boston luncheon as "a tradition in the Greater Boston community.... It also gives the 14 alumni from our law firm, Goulston & Storrs, who now span five decades, a sense of community and shared interest." Host Larry Green ('77) commented, "The Boston area Law School alumni were very pleased to welcome Dean Ricky Revesz to a luncheon at the Boston Harbor Hotel. Dean Revesz clearly brings a great deal of energy and excitement to his new position. As

laudatory as he may be about John Sexton's tenure as dean, Revesz seeks to take the Law School to an even higher level of accomplishment.... We look forward to working with him to help him realize his vision for NYU School of Law."

### Minneapolis, Minnesota

Hosted by Law School Trustee Dwight Opperman, the Minneapolis regional reception was held at Key Investment, Inc. Alumni talked with Dean Revesz about happenings at the Law School. Opperman commented, "There was a big turnout to meet the new dean. He made a splendid presentation."

### Long Island, New York

The Long Island Alumni Clambake was hosted by Law School Trustee Martin Payson ('61). While chatting with Dean Revesz, alumni enjoyed the view of the Long Island Sound from the Payson home. The alumni appreciated the opportunity to hear Revesz discuss Law School initiatives. ■

# 2004 Annual Report of Donors

NYU School of Law is proud to recognize the annual support of our alumni and friends by including their names in the Law School's *Annual Report of Donors*, to be published each fall.

## Your Support Counts

Annual support enables NYU School of Law to respond rapidly to new opportunities and provides funding to essential programs integral to the success of the Law School. Your gift makes a tremendous impact and enables NYU School of Law to fully realize the goal of becoming the leading law school and the law school that leads in providing social good. Please consider making a gift to NYU School of Law today.

## Join Our Community

If you would like to be recognized among our supporters, please consider making a contribution to the Law School. Your name will be listed in the *Annual Report of Donors* under the aggregate amount of the donation you make this fiscal year. A gift at any level will be recognized.

## Ways of Giving

Contributions can be made to the Law School by using any of the enclosed envelopes you receive throughout the year. For electronic transfers, please call the Office of Development and Alumni Relations at (212) 998-6061, or make your gift online at [www.law.nyu.edu/alumni](http://www.law.nyu.edu/alumni) and click "Make a Gift to NYU School of Law." Should you wish to make your gift anonymously, please indicate your preference along with your gift.

Make your gift by August 27, 2004, to ensure that your name appears in the *Report*.

**Thank you for your support!**



# 2003-04 Alumni Events Calendar

For the most up-to-date calendar listing,  
visit our Web site at [www.law.nyu.edu](http://www.law.nyu.edu)

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**September 2003** Bankruptcy Workshop  
Chicago Alumni Luncheon  
Seattle Alumni Reception  
Weiss Public Service Forum

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**October 2003** Annual BLAPA Mentorship Reception  
Brennan Center Legacy Awards Dinner  
Delaware Alumni Luncheon  
James Madison Lecture  
KPMG Lecture  
New Jersey Alumni Reception  
Tax Court  
Tillinghaust Lecture on International Taxation

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**November 2003** Annual Fall Lecture  
Annual Scholarship Reception  
Derrick Bell Lecture

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**December 2003** Law Alumni Association Recent Graduate Reception  
Recent Graduate Holiday Happy Hours  
(Washington, D.C., and Los Angeles)

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**January 2004** AALS reception (Atlanta)  
Abrams Public Service Lecture  
Annual Alumni Luncheon (New York)  
Palm Beach Alumni Luncheon  
Washington, D.C., Alumni Luncheon

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**February 2004** Brennan Lecture on State Courts and Social Justice  
Lawless Lion National Tax Workshop  
(Orlando, Florida)  
Los Angeles Alumni Reception  
Palo Alto Alumni Luncheon  
Public Service Auction  
San Francisco Alumni Reception

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**March 2004** Boston Alumni Luncheon  
Graduate Tax Workshop

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**April 2004** BLAPA Dinner  
Reunion  
Root Tilden 50th Anniversary Celebration

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**May 2004** Convocation  
Philadelphia Alumni Luncheon

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New York University School of Law

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