

The Law School

THE MAGAZINE OF THE NEW YORK UNIVERSITY SCHOOL OF LAW • AUTUMN 2007

INSIDE

Practice Makes Perfect:
Clinical training gives students
a professional edge.

The Family Guy: One professor
insists that the legal system can
better serve children. Nine
experts debate his ideas.



Cool & Unusual Advocates

Anthony Amsterdam and Bryan Stevenson reveal what compels them to devote their lives to saving the condemned.

Relax Revisit Reunite Rekindle Reconnect Reunion '08

SAVE THE DATE!
MAY 17, 2008

WERE YOU IN THE CLASS OF
1958, 1963, 1968, 1973, 1978, 1983,
1988, 1993, 1998 OR 2003?

Whether you're returning for your fifth, 10th, 15th or even your 50th reunion this spring, the Law School community looks forward to welcoming you back to Washington Square. Reunion is an opportunity to relive favorite memories, renew friendships and reconnect with the intellectual excitement you felt as an NYU School of Law student. On Saturday, May 17, all returning alumni will be able to spend the morning at our thought-provoking academic panels featuring esteemed faculty and distinguished alumni, enjoy the annual alumni awards luncheon that follows, take a tour of the newer additions on campus, and cap it all off at an elegant and festive dinner dance with classmates.

Look for your invitation in the mail. Please call (212) 998-6470 or send us an email at law.reunion@nyu.edu with any questions.

A Message from Dean Revesz

IT IS A POINT OF PRIDE FOR ME THAT THE NYU SCHOOL OF LAW, WHILE TEACHING STUDENTS HOW TO become exceptional lawyers, makes a concerted effort to instill the value, indeed, the obligation, of public service. Among top law schools, we graduate the most students who go into public-interest law. But that doesn't even tell the whole story, as graduates who work at firms do pathbreaking pro bono work, and some balance private practice with significant civic engagement.

Among the driving forces of public-interest law at NYU are the Clinical and Advocacy Programs, directed by Professor Randy Hertz. About half of our students will take at least one of more than two dozen clinics before graduating. The wide selection of clinics spans criminal and civil prosecution and defense, international human rights advocacy and environmental law, and nonlitigation practices like public-policy reform and mediation. Working on important cases, the students provide much-needed legal services largely to disadvantaged clients in New York and, increasingly, in communities throughout the nation and the world. Each year, we examine an area of law in which I am confident that a peer review would say we lead the way among the top law schools. You can read about the genesis and growth of this year's example, the clinical program, in "Bringing the Law to Life" by Clint Willis and Suzanne Barlyn, on page 20.

Behind the success of the clinics is a talented and devoted faculty. These 15 full-time professors share a deep commitment to helping their fellow human beings. In fascinating in-depth profiles of two of them, Anthony Amsterdam and Bryan Stevenson, you get a sense of why and how they do it. Tony is a legend among death-penalty opponents for his argument in *Furman v. Georgia* that reversed capital punishment in the early 1970s. Now in his 70s, he remains one of the busiest attorneys I know, but has been working quietly out of the public eye. Nadya Labi has produced a lucid portrait of Amsterdam's influence on and enduring contribution to the law and to history. "A Man Against the Machine" begins on page 10.

The Law School has a unique relationship with Bryan, who teaches a capital-defender clinic that takes place in both New York and Montgomery, Alabama, where Bryan's Equal Justice Initiative is a sorely needed resource. On behalf of several indigent

death-row clients, Bryan recently petitioned the Supreme Court to revisit their right to counsel for appeals. Alabama is the only state that denies postconviction legal aid to prisoners facing execution. Although the Court didn't grant certiorari, Bryan was supported by the *New York Times* and five Alabama newspapers; that alone is a feat. In "Bryan Stevenson's Death-Defying Acts" on page 32, Paul Barrett reveals the powerful influences that move

Bryan to represent the most-despised among us.

I am enormously proud of all our faculty and pleased to welcome four new members, whose profiles begin on page 66.

On a more personal note, having reached a five-year milestone, I've had a chance to reflect on the incredible privilege of being dean of this outstanding law school. The students, faculty, centers, programs and institutes continue to amaze me with their energy, ideas and influence. In the past year, Fed Chairman Ben Bernanke spread his free-market message, Archbishop Desmond Tutu remembered the truth commissions, retired Justice Sandra

Day O'Connor defended the judiciary, and dozens of influential policymakers and lawyers spent time on our campus. Our students organized a school-funded alternative spring break, performed spectacularly in moot court competitions, and one even argued and won a Minnesota Court of Appeals case. At convocation, I was moved by the speech given by Omer Granit, an Israeli, and Rayan Houdrouge, a Lebanese, both LL.M.-degree recipients, who shared how their unlikely friendship developed here.

I spoke with reporter Kelley Holland about my first five years as dean and my future plans in this issue's "Dean's Discourse," on page 52, but to get the full flavor of the accomplishments, activities and scholarship of the Law School's talented members, you'll really have to read the whole magazine. Enjoy!



RICHARD REVESZ

The Law School

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66 ADDITIONS TO THE ROSTER

The Law School welcomes four new faculty members and 45 visiting faculty and fellows.



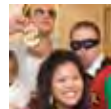
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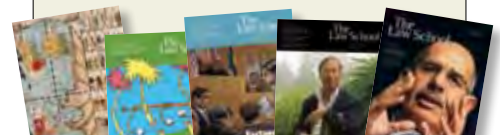
Newark Mayor Cory Booker implores graduates to be mavericks; LL.M. graduates Omer Granit and Rayan Houdrouge share the tale of their unlikely friendship...

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Trustee Rita Hauser talks about politicians, artists, international diplomacy and, well, slipping on banana peels.



In each of the last five years, the magazine has showcased an area of law in which an objective peer review would determine that we have the strongest program among top schools. This year we spotlight clinical education. News on past feature subjects—international, environmental and criminal law, legal philosophy and civil procedure—are marked with the "update" icons above.





The attorneys who devote themselves to saving men and women condemned to death are a unique breed. Shouldering the ever-present burden of being another person's last chance at life requires a singular devotion to humanity—and deft lawyering skills. Bryan Stevenson and Anthony Amsterdam have not only dedicated their careers—more than 60 years, combined—and their lives to fighting capital punishment, they devote endless time and energy to making sure that interested NYU law students absorb the legal tactics to keep up the cause.

A Man Against the Machine 10 details the highs and lows of Amsterdam's war against executions.

Bryan Stevenson's Death-Defying Acts 32 delves into Stevenson's deep commitment to capital defense and his expanding fight to assure justice for all.



Bringing the Law to Life

Born in 1960s idealism, the Clinical and Advocacy Programs have evolved into premier programs unparalleled among leading law schools. Graduating thousands of skilled lawyers, the clinics infuse the Law School with a respect for public service.



Caught by Good Intentions

Professor Martin Guggenheim '71 thinks it's a travesty that the United States leads the world in children in foster care. Nine family and children's advocates debate his ideas on how to keep families intact.



Dean's Discourse

Ricky, as everyone calls him, here with Archbishop Desmond Tutu, reviews his first five years as NYU School of Law's dean—and what he's aiming to do next.

Notes & Renderings



Carnegie Gives NYU Law an “A”

A TWO-YEAR WATERSHED REPORT ON LEGAL EDUCATION BY the Carnegie Foundation for the Advancement of Teaching held up NYU’s clinical legal education as a model approach.

A research team from the Carnegie Foundation visited NYU and 15 other law schools in the United States and Canada in the 1999-2000 academic year to produce its report, “Educating Lawyers: Preparation for the Profession of Law.” In it, NYU’s clinical pedagogy is examined in great detail and praised for how it combines analytical skills with practical training, client relations skills and real-life ethical considerations.

The report includes a profile of NYU’s mandatory first-year Lawyering Program and its focus on simulated tasks such as gathering facts or negotiating a transaction. Peggy Cooper Davis, John S. R. Shad Professor of Lawyering and Ethics and director of the Lawyering Program, said in the report: “It is important that students see expertise in a sense broader than the constant manipulation of a body of rules.”

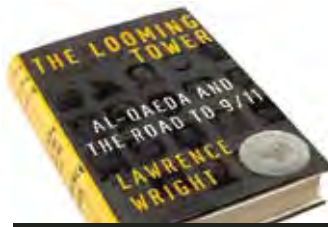
Clinical legal education has not been the subject of an equally compelling national discussion since the MacCrate Report in 1992, says Randy Hertz, professor of clinical law and director of Clinical and Advocacy Programs for NYU. That study of lawyers’ educational and professional development needs advocated for practical legal-skills training as part of legal education. “The Carnegie Report will lead us to a greater consolidation of clinical methodology into traditional, nonclinical courses and a more conscious focus on helping students gain the skills and values needed for legal practice,” Hertz says. “I think NYU inevitably will play an important role in these developments.”

Distinctively Prizeworthy

Lawrence Wright’s bestseller *The Looming Tower* won the 2007 Pulitzer Prize for general nonfiction. The book, which took five years to research and write, scrupulously chronicles the origins of al Qaeda and intelligence failures that led to the attacks on 9/11.

Wright is a staff writer at the *New Yorker* and a fellow at NYU Law’s Center on Law and Security. He also performed a one-man show based on *Tower, My Trip to al-Qaeda*, for six sold-out weeks at the Culture Project in Lower Manhattan.

“Larry Wright’s ability to tell a story,” says Karen Greenberg, the center’s executive director, “is in his talent for finding the ways in which intimate personal agendas intersect with larger political factors to create history.”



It’s “Officier”

On June 20, Theodor Meron, Charles S. Denison Professor of Law Emeritus, was made an officer in the Legion of Honor, earning him France’s highest distinction. French Ambassador to the Netherlands Jean-Michel Gausso presented the medal recognizing Meron’s role as the president of and a judge on the International Criminal Tribunals for the former Yugoslavia and Rwanda.

In his acceptance speech, Meron heralded France’s contributions to international law and justice—from the Declaration of the Rights of Man and Citizen to creating the modern system of civil law—but noted the nation’s greatest achievement is far more personal. “It is a country which has a special place in my heart,” he added, “because, as you know, my wife is French.”

Editor’s note: In July, Professor of Law on Leave Ronald Noble was also named to be admitted into the Legion. The magazine will report on his upcoming induction in the next issue.

What do Roger Angell, Michael Bloomberg, Al Gore, Rem Koolhaas, Spike Lee, Sandra Day O’Connor, Alice Waters and Richard Revesz have in common?

All were elected to the American Academy of Arts and Sciences in 2007.

Taxes, Teamsters & Territory

Last spring, three NYU School of Law professors testified on vital current issues before congressional committees.

Who: Lily Batchelder, Associate Professor of Law and Public Policy

Where: Congressional Joint Economic Committee

When: February 28, 2007



What: Batchelder described policy changes that would ease income instability. Middle- and low-income American families, said Batchelder, are hardest hit by drops in income. The tax system both helps and hurts those with relatively volatile incomes, she said, by reducing their tax rates when yearly earnings fall but levying higher taxes over time. Batchelder proposed targeted income averaging in order to level out fluctuations and increase the after-tax income of those most affected. "The time is ripe," Batchelder said, "to make the tax system more of a cushion and less of a disproportionate burden on these families that are already vulnerable."

Update: This fall, Senator Charles Schumer (D-NY) will include some of Batchelder's income-averaging proposals related to earned income tax credits and personal exemptions in his bill addressing African-American unemployment.

Who: Cynthia Estlund, Catherine A. Rein Professor of Law

Where: Senate Committee on Health, Education, Labor, and Pensions

When: March 27, 2007

What: Estlund supported the Employee Free Choice Act (H.R. 800) that would amend the National Labor Relations Act, which has been virtually unchanged for the last 60 years. The act would allow employers or unions to refer deadlocked first-contract bargaining agreements to federal mediators; let employees select a union through majority sign-up instead of by secret ballot; and penalize employers for anti-organizing tactics. Estlund testified that increasing fines against aggressive employers, tripling back pay to illegally discharged workers and mandating federal court injunctions when there is reason to believe an employer has discriminated against organizing employees "give[s] some teeth to a law whose toothlessness has become an international embarrassment."

Update: H.R. 800 had already passed in the House on March 1, 2007 by a recorded vote of 241-185. On June 26, however, the Senate did not pass a motion for cloture, making it unlikely the bill would be enacted by January 2009, the end of the current congressional term.

Who: Richard Pildes, Sudler Family Professor of Constitutional Law

Where: House Committee on Natural Resources, Subcommittee on Insular Affairs

When: March 20, 2007

What: Pildes urged the rejection of one of two bills currently before Congress that would let Puerto Rico vote for its future political status and relationship with the United States. H.R. 900 allows only two choices: statehood or independence, omitting a third option for a mutually binding agreement with the United States. The omission is "fundamentally flawed and misleading," said Pildes, and based on a mistaken constitutional premise: "Congress does have the power...to enter into a mutual-consent agreement that would create and respect a more autonomous form of Commonwealth status for Puerto Rico."

Update: Subcommittee hearings on the matter have concluded and bills are pending in both the House and the Senate.



New Jersey's Top Legal Eagle

In June, the New Jersey Senate confirmed Anne Milgram '96 as attorney general.

Just 36 years old, Milgram has impressive credentials. As special litigation counsel in the Criminal Section of the U.S. Department of Justice's Civil Rights Division, she successfully prosecuted *U.S. v. Jimenez-Calderon*, winning convictions against multiple defendants who forced young Mexican immigrants into prostitution. Milgram was also an assistant district attorney in the New York County District Attorney's Office of Robert Morgenthau. "It was clear from our very first interview with her that she was smart, that she was a hard worker and that she had good judgment," said Morgenthau to New Jersey's *Star-Ledger*. "It was also clear that she was interested in public service."

Larry Kramer, former Russell D. Niles Professor of Law at NYU, now the dean of Stanford Law School, is well acquainted with Milgram. "Anne was one of my all-time favorite students," says Kramer. "She served as a research assistant—something I do rarely and only with students I really trust. Her work was great. Better still was her attitude: She projects a huge amount of positive energy. Combined with smarts, passion, commitment and a lot of sense, it's no wonder she's done so well at such a young age."

A Building for Bruner

Teaching at Oxford during the 1970s, University Professor Jerome Bruner laid the foundation for the study of children's cognitive development. In March, Oxford recognized Bruner's lasting contribution by naming for him the new \$4 million building housing its education department.

Bruner's revolutionary scholarship drew attention to the negative impact of educational deprivation and the class inequality that it breeds. "Professor Bruner's work made a significant contribution to our understanding of child development," said Parliamentary Under-Secretary of State for Schools Lord Andrew Adonis (below, left). "I am delighted that his name is associated with this new chapter in the history of Oxford University's education department."



Caste & Killings

Two professors reported shocking human rights violations to the United Nations.

Last spring, Assistant Professor of Clinical Law **Smita Narula** presented the report *Hidden Apartheid: Caste Discrimination against India's 'Untouchables'* to the U.N. Committee on the Elimination of Racial Discrimination in Geneva, and to the Congressional Human Rights Caucus Briefing in Washington, D.C. Dalits, India's 165 million "untouchables," endure systemic segregation, violence and exploitation despite the official abolition of caste discrimination by Indian law. Narula urged the U.N. committee to scrutinize the lack of enforcement of constitutional and legislative protections, and called upon the organization to add its voice to "growing international concern over India's failure to protect Dalits' rights."

As a special rapporteur for the U.N., **Philip Alston**, John Norton Pomeroy Professor of Law, reported to the General Assembly last October on the body's responses to extrajudicial executions (the illegal killing of individuals by a government). He called for stricter compliance with the U.N.'s Human Rights Council and recommended instituting "an early warning alarm" for violations in Sri Lanka. In September 2006, the clash between the separatist Tamil Tigers and government forces drove thousands into areas that lacked electricity, food and clean water. Alston urged the General Assembly "to call upon the United Nations Secretariat to establish a full-fledged international human rights monitoring mission in Sri Lanka."



The Hart Specialist

Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law, will deliver the H.L.A. Hart Memorial



Lecture in Jurisprudence and Moral Philosophy at the University of Oxford in 2008.

Established in 1985 to honor H.L.A. Hart, one of the most celebrated legal philosophers of the 20th century, the lecture is among the most prestigious in the legal academy.

The purpose of the series, says Oxford Professor of Civil Procedure Adrian Zuckerman, the secretary to the Hart Lecture Committee, is to continue to contribute to the academic disciplines in which Hart played a crucial role, and to encourage the interest of Oxford's jurisprudence and philosophy students in those areas. "Almost all the prominent legal and moral philosophers of this generation have delivered this seminal lecture," says Zuckerman.

Continued at right



New York City Gives Parents a Break

IN MAY, NEW YORK CITY announced a dramatic reform to its Family Court legal representation system to provide multifaceted assistance to parents. The *New York Law Journal* credited Martin Guggenheim '71, Fiorello LaGuardia Professor of Clinical Law, as the "theorist" who developed the interdisciplinary model the city is now employing, which relies on nonprofit groups to provide social-work services in addition to legal representation for parents and guardians.

The city signed \$9.4 million in contracts with Manhattan's Center for Family Representation (CFR), the Bronx Defenders and Brooklyn's Legal Services for New York City to collectively handle an estimated 2,595 cases over 26 months. This move will shift representation of about 40 percent of indigent parents in the three boroughs from \$75-an-hour city-certified attorneys who have been their sole source of parent representation until now, to the three nonprofit organizations.

"Before this change, the city was shortchanging the parents' representatives," says Guggenheim, a long-time proponent of advocating to rehabilitate entire families, instead of focusing exclusively on children's legal rights during court proceedings (see "Caught by Good Intentions" on page 42). "It's the first time that the city has seen fit to try to level the playing field by providing equal resources to all parties in child-welfare cases."

Students in Guggenheim's Family Defense Clinic will

work on cases with Legal Services for New York City. The clinic partners students from NYU's School of Social Work with law students to handle cases that usually concern parental abuse and neglect. Both CFR and the Bronx Defenders also employ parent advocates—usually social workers—a multidisciplinary approach developed by Guggenheim to address circumstances in which parents require guidance and assistance, but not necessarily legal advocacy, such as reporting on

University Professor Jeremy Waldron, a foremost philosopher in his own right, described the Hart as “the leading public lecture on jurisprudence and legal theory at Oxford. It celebrates the founder of modern analytic jurisprudence; it is given at Oxford, the home of legal philosophy, and it has been delivered by some of the most distinguished theorists in the field.” Ronald Dworkin, Frank Henry Sommer Professor of Law; Thomas Nagel, University Professor; and Richard Epstein, James Parker Hall Distinguished Service Professor of Law at the University of Chicago and an annual visiting law professor at NYU, have also given the lecture. Justices William Brennan Jr. and Stephen Breyer are other past Hart Lecturers.

“Sam Issacharoff is one of the leading scholars of democracy in the modern legal academy,” says Waldron, “and his work on what law can do to strengthen fragile democracy in developing societies is immensely important. I think his Hart lecture will help to open up Oxford-style legal philosophy to richer and more robust engagement with political issues about governance, democracy and rule of law.”

Yoo v. Neuborne

It wasn't quite as combustible as World Wrestling Entertainment's *Friday Night Smackdown*, but last October, when the Law School's Federalist Society invited Professor John Yoo of the University of California, Berkeley, School of Law to debate our own Inez Milholland Professor of Civil Liberties Burt Neuborne, some sparks did fly.



“Why should we be so reliant on the courts to make these kinds of [habeas corpus] decisions? What is wrong with having a system where it's the president and the Congress? This does not have to do with political parties... I will write many op-eds saying that when President Hillary Clinton gets all this power, and makes all these decisions, I will fully support her in making them.” —John Yoo



“Do you really want the president and the Congress to sit as the final determinant of whether people are legally confined? What kind of rule of law would we have if we ousted the courts from the process? I think in years to come, people are going to look back on this and they are going to say that this was the Alien and Sedition Act. This was the terrible mistake we made when we were frightened.” —Burt Neuborne



Big BIDs Win

The Furman Center for Real Estate & Urban Policy released a first-ever study of the impact of Business Improvement Districts (BIDs) on property values. It found that, on average, BIDs increase commercial real estate values within their bounds by roughly 15 percentage points.

Financed by fees assessed on local property owners, BIDs provide services like sanitation and security, and amenities like signage and plantings. While BIDs increase the attractiveness of an area, their financial impact varies based on their size. Those with budgets over \$1.2 million saw an increase in commercial property values while smaller BIDs had no effect.

Concluding that overhead costs eat up monies that smaller BIDs could spend on improvements, the center recommended centralizing administration and encouraging management coalitions.

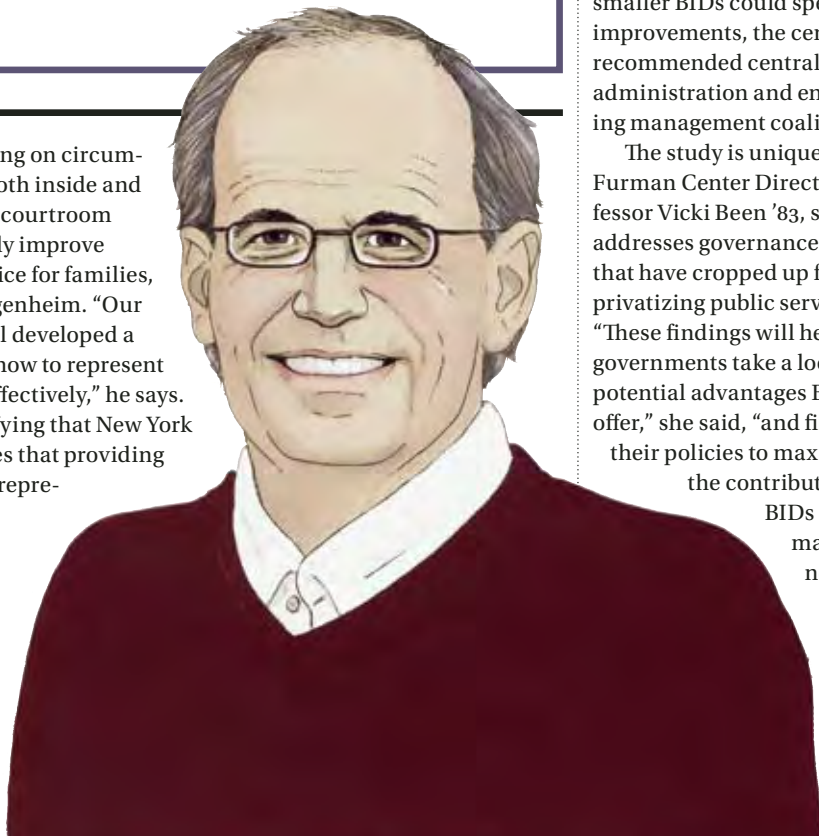
The study is unique, says Furman Center Director Professor Vicki Been '83, since it addresses governance issues that have cropped up from privatizing public services. “These findings will help local governments take a look at the potential advantages BIDs may offer,” she said, “and fine-tune their policies to maximize the contributions

BIDs can make to a neighborhood.”



their progress in drug-rehabilitation or parenting programs. “The city's decision to create organizations to represent parents is nothing short of revolutionary. The support of interdisciplinary representation is a tribute to its recognition that families need strong legal representation and a wide array of services and support to strengthen them and make reunification possible,” says the Bronx Defenders' Executive Director Robin Steinberg '82. Her organization provides holistic, community-based legal and social services for defendants in the criminal-justice system.

Focusing on circumstances both inside and out of the courtroom will greatly improve legal service for families, says Guggenheim. “Our law school developed a model of how to represent parents effectively,” he says. “It is gratifying that New York City agrees that providing excellent representation requires working closely with parents outside of court.”





Home Field Advantage

Mark Boyko (LL.M. '05) coauthored a study in the September 2007 *Journal of Sports and Sciences* that examined 5,000 English Premier League soccer matches. The results:

Home teams scored **1.5 GOALS** per game on average, while away teams scored **1.1 GOALS**.

The researchers “theorized that a home-field advantage may be attributable, at least in part, to a subconscious bias in referees,” said Boyko, “probably due to the influence of the crowd.” The evidence:

1.2 : 1.6
The ratio of yellow cards given to home teams vs. away teams. Home teams also had fewer red cards and more goals resulting from penalty kicks.

Referees who have officiated around **200 GAMES** showed less home-team bias than those with just **50 GAMES** under their belts.

Why Judges Cite Shakespeare

In a January 29, 2007 article in the *New York Times*, Stephen Gillers is quoted extensively, below, about the court’s increasing use of Wikipedia, the online user-contributed encyclopedia, as a source for facts referred to in rulings:

“

The most critical fact is public acceptance, including the litigants,” he said. “A judge should not use Wikipedia when the public is not prepared to accept it as authority.

”

For now, Professor Gillers said, Wikipedia is best used for “soft facts” that are not central to the reasoning of a decision. All of which leads to the question, if a fact isn’t central to a judge’s ruling, why include it?

“

Because you want your opinion to be readable,” said Professor Gillers.

“You want to apply context. Judges will try to set the stage. There are background facts. You don’t have to include them. They are not determinative. But they help the reader appreciate the context.” He added, “The higher the court the more you want to do it. Why do judges cite Shakespeare or Kafka?

”



The Lives of the Party

A case that the Brennan Center brought against New York State in 2004 will be heard by the U.S. Supreme Court in October.

In *New York State Board of Elections v. López Torres*, Brennan Center Senior Counsel Frederick A.O. Schwarz Jr. argues that the state’s nomination model is unconstitutional because it allows only political leaders and not rank-and-file party members to nominate state Supreme Court justices. In January 2006, Judge John Gleeson of the U.S. Court of Appeals for the Eastern District of New York held that the state’s convention process violates the First Amendment and ordered primaries be held until legislators can create a new system. The Second Circuit affirmed his decision.

“This case is crucial to preserve the freedom of ordinary party members,” says Professor Burt Neuborne, Brennan Center legal director. “New York will never achieve a judiciary of excellence as long as it treats Supreme Court judgeships as a crude form of party patronage.”



A Fourth Defense

IN THE SUMMER OF 2005, two St. Paul, Minnesota police officers searched an empty house after a 911 hang-up call. No evidence of a crime was apparent, but the graffiti on a teenager’s bedroom wall gave the officers pause. One of them went to the car for his camera, returned to the house to photograph the graf-

fitti and filed the prints with the city’s anti-vandalism division. Months later, the police matched the photos to graffiti on a dumpster and arrested the teen for vandalism—a criminal offense. He was convicted and sentenced to pay restitution.

Interning with the Minnesota State Appellate Public Defender’s Office between his first and second years, Greg Scanlan ’08 was assigned to this “really juicy Fourth Amendment case.”

Political Power of Attorneys

When Eliot Spitzer and Andrew Cuomo were elected last year as New York State's governor and attorney general, respectively, each swiftly formed transition teams composed of the best and brightest experts in a wide range of fields. Members of the NYU School of Law community constituted a significant presence on both teams, and continue to exert their influence on a more lasting basis with positions in Spitzer's administration and Cuomo's office.



Team Cuomo

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New York State Attorney General (1978-1994)

ZACHARY CARTER '75

U.S. Attorney, Eastern District of New York (1993-1999); Trustee, NYU School of Law

ANDREW CELLI JR. '90

Partner, Emery, Celli, Brinckerhoff & Abady

HENRY ELGHANAYAN '66

Chairman and CEO, Rockrose Development Corp.

KAREN GREENBERG

Director of the Center on Law and Security, NYU School of Law

STAN LUNDINE '64

Executive Director, Chautauqua County Health Network

JOSE MALDONADO '80

Vice President of Operations for the New York Health Plan, United Health Group; Trustee, NYU School of Law

RON MOELIS '82

Principal, L&M Equity Participants; Trustee, NYU School of Law

MAYRA PETERS-QUINTERO '99

Supervising Attorney, NYU School of Law Immigrant Rights Clinic

ELLEN SCHALL '72

Dean, Robert F. Wagner Graduate School of Public Service

MICHAEL SHEEHAN

Distinguished Fellow, Center on Law and Security, NYU School of Law

JEREMY TRAVIS '82

President, John Jay College

MICHAEL WALDMAN '87

Executive Director, Brennan Center for Justice

He was thrilled. Did the two officers have probable cause? If there was no evidence of a crime, could they leave and return? Is it considered seizure to take photos of property? "You'd be lucky to get a case that has one point of law to be settled," Scanlan said. "This one had three."

Scanlan raised these questions in his brief and requested oral argument before the Minnesota Court of Appeals. He specifically wanted to address something avoided in a prior Minnesota Supreme Court

case, *State v. Fulford*, that police must have probable cause to photograph property during a search. "Just because officers are in your house, albeit for a legitimate reason, doesn't mean they get to take pictures of the opened mail that's on your desk or the artwork on your walls," Scanlan said.

To prepare himself, Scanlan consulted with Professor of Law Amy Adler, an expert in art law, and Professor of Clinical Law Randy Hertz, who demystified the courtroom procedures he would soon face.

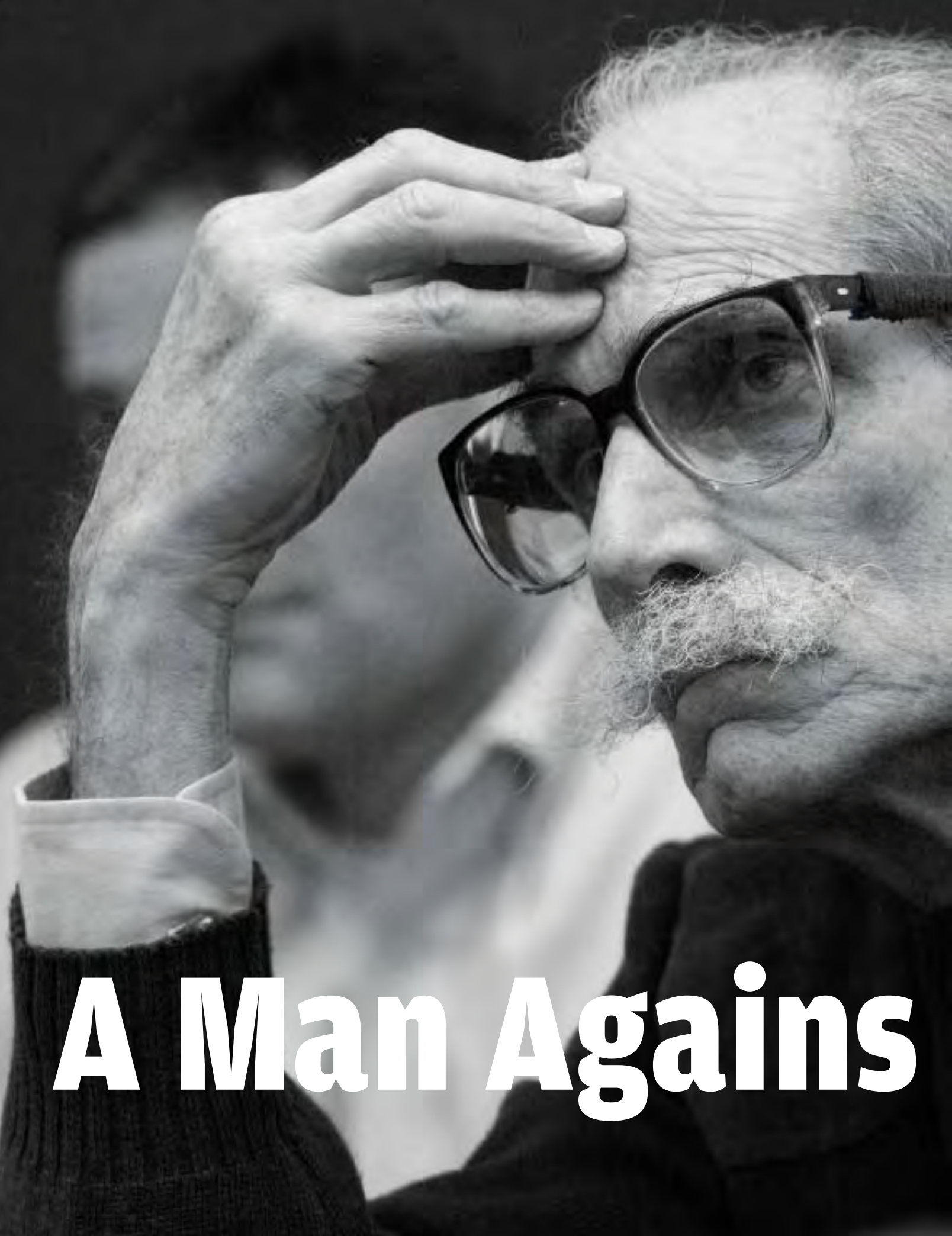
Scanlan also drew upon his first-year course work. "I did oral arguments for my Lawyering class, and a year later I'm doing it for real," he said. "Only now it has consequences for someone's life, and for the law."

This June, the court unanimously ruled in favor of Scanlan's client, declaring that the photographs taken during the warrantless search of the

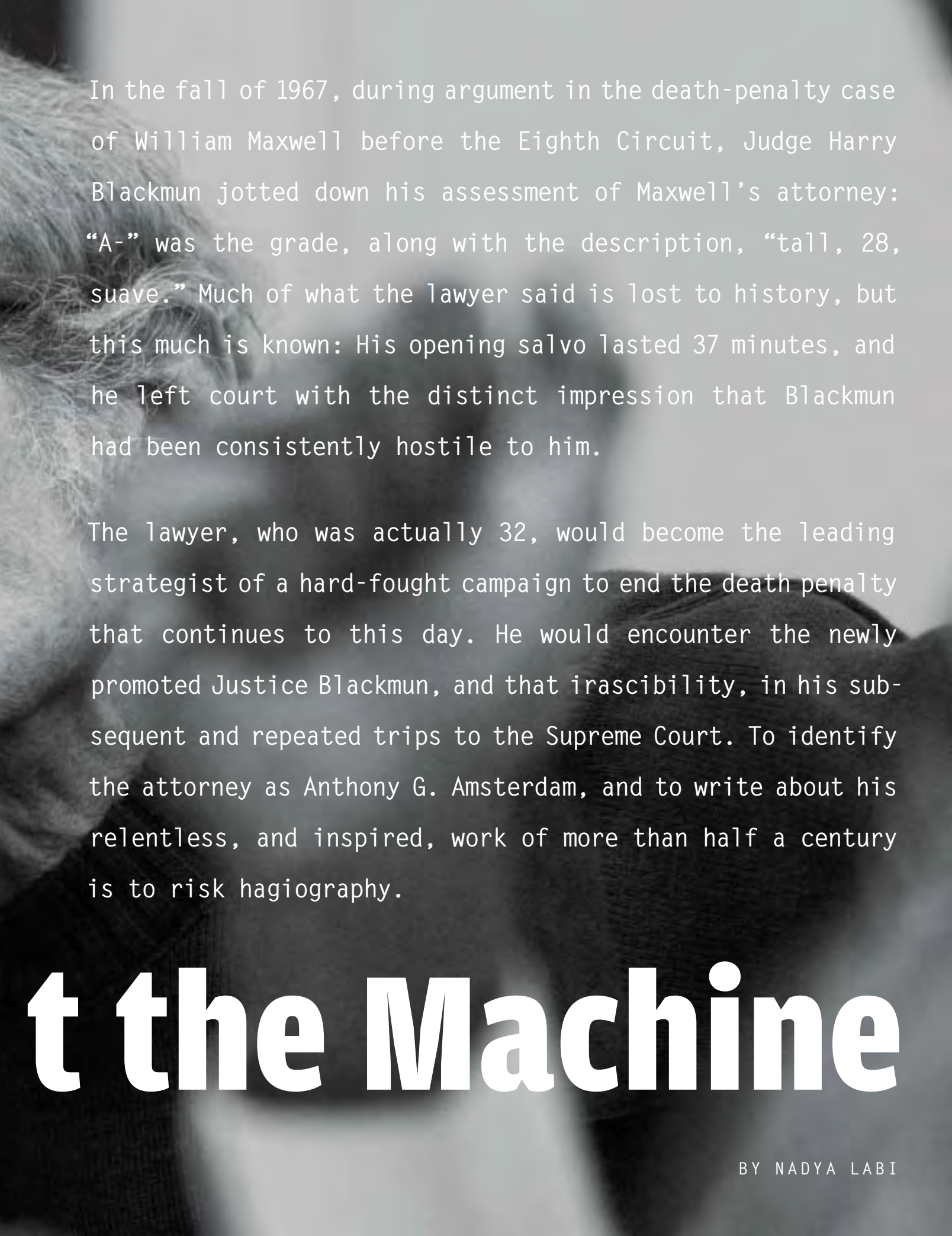
house were unjustified and inadmissible at trial since the officers lacked probable cause.

"Greg successfully anticipated the mindset of the appellate judges, particularly the concerns they were likely to have about the precedential effects of a ruling in his client's favor," Hertz said. "He crafted a narrative that caused the judges to conclude that not





A Man Agains



In the fall of 1967, during argument in the death-penalty case of William Maxwell before the Eighth Circuit, Judge Harry Blackmun jotted down his assessment of Maxwell's attorney: "A-" was the grade, along with the description, "tall, 28, suave." Much of what the lawyer said is lost to history, but this much is known: His opening salvo lasted 37 minutes, and he left court with the distinct impression that Blackmun had been consistently hostile to him.

The lawyer, who was actually 32, would become the leading strategist of a hard-fought campaign to end the death penalty that continues to this day. He would encounter the newly promoted Justice Blackmun, and that irascibility, in his subsequent and repeated trips to the Supreme Court. To identify the attorney as Anthony G. Amsterdam, and to write about his relentless, and inspired, work of more than half a century is to risk hagiography.

t the Machine

BY NADYA LABI

Lawyers who have worked with Anthony Amsterdam cast about for the perfect superlative when they talk about him: His is “the most extraordinary legal mind of anyone I know”; he has a “visionary, imaginative sense of the edges of the possible”; his use of language is “so perfect and so powerful and so utterly logical”; he could “take a pile of coal dust and make a diamond out of it”; indeed, “God broke the mold when he created Tony.”

And yet, these acolytes of Amsterdam’s are among the most respected members of a profession inclined to contrarianism, not reverence; in order, they include George Kendall, a senior counsel at Holland & Knight who headed the capital defense section of the N.A.A.C.P. Legal and Educational Defense Fund (LDF); Sylvia Law, the Elizabeth K. Dollard Professor of Law, Medicine and Psychiatry at the New York University School of Law; Tim Ford, a respected civil rights attorney; David Kendall, a lawyer who is no relation to George, though he also headed the capital defense section, and is best known for representing President Bill Clinton during the Monica Lewinsky debacle; and Seth Waxman, a former solicitor general who continues to argue regularly before the Supreme Court.

Even the Supreme Court justices, who would prove Amsterdam’s toughest audience, did not know quite what to make of the lawyer whose intellect was matched only by the intensity of his opposition to the death penalty. In 1976, after a particularly combative session in which Amsterdam tried, and failed, to persuade the Court to maintain its effective ban on the death penalty, one justice reportedly grumbled, “Now I know what it’s like to hear Jesus Christ.”

Amsterdam still walked among mortals in 1966. When Orval Faubus was wrapping up his tenure as governor of Arkansas, he signed six death warrants and rushed off to California to attend a conference. One bore the name of William Maxwell, a young black man convicted four years earlier of raping a 35-year-old white woman and sentenced to death. Maxwell had appealed to the Arkansas Supreme Court, arguing that jurors in the state had applied the death penalty in a discriminatory manner. He lost. He had submitted a petition for a writ of habeas corpus, a request that the judge free him because his conviction was unconstitutional, in federal court. It was denied. He had appealed to the Supreme Court. It refused to hear his case. Maxwell was running out of options.

While Faubus was flying west, Amsterdam, then a professor at the University of Pennsylvania Law School, was called out of an LDF workshop in New York City. Within hours—as Michael Meltner, Amsterdam’s colleague at LDF, recounts in his compelling

respected criminologist, Marvin Wolfgang. In the period from 1945 to 1965, black defendants who raped white women in Arkansas stood a 50 percent chance of being sentenced to death if they were convicted, compared to a 14 percent chance for white offenders.

The petition was denied, but Amsterdam and LDF continued to exploit every possible legal remedy, appealing to the Eighth Circuit without success and then seeking a stay of execution from the Supreme Court. This time, the Court granted the relief, sending the case back to the appellate court, which didn’t exactly welcome it.

Blackmun, who had received a math degree from Harvard, was not persuaded by Wolfgang’s research. He found the survey sample too small to offer convincing proof of discrimination. And even if the study could prove past discrimination in Arkansas, it did not include data from the county where Maxwell was convicted or interviews with the specific jurors in his case. As Blackmun wrote for the three-judge panel, “We are not yet ready to condemn and upset the result reached in every case of a negro rape defendant in the State of Arkansas on the basis of broad theories of social and statistical injustice.”

Blackmun’s opinion suggested annoyance with Amsterdam. In the course of argument, Amsterdam had been asked whether his analysis meant that a black man could not be put to death under the Constitution for raping a white woman. Amsterdam replied in the affirmative, according to Blackmun. The judge wanted to know if the same logic would hold true for a white man convicted of rape—a fair question on its face but one that ignored the reality that nearly all the defendants executed for rape in the South were black. Amsterdam conceded that his argument did not apply to a white defendant. “When counsel was asked whether this would not be discriminatory,” Blackmun wrote, “the reply was that once the negro situation was remedied, the white situation ‘would take care of itself.’” Blackmun didn’t appreciate the sally.

Amsterdam refused to whitewash what he saw as the discriminatory application of the death penalty. Sitting in his fifth-floor office at Furman Hall recently, he explained why he got involved in death cases. “It wasn’t some sort of ideological opposition to the death penalty,” he said. “It was all about race initially.” In Maxwell’s time, Amsterdam said, local white lawyers could not represent blacks charged with high-visibility crimes against whites without fear of retaliation. LDF, and its roster of “carpetbagger” lawyers, as Amsterdam put it, stepped forward.

But Maxwell’s case brought home to Amsterdam and his colleagues at LDF that they could no longer ignore the pressing needs of all death-penalty clients—whatever their race and whether they had lawyers or not. Amsterdam was Maxwell’s lawyer, but there were four other men without lawyers whom the governor of Arkansas had consigned to death as well. “We said, ‘What the hell! Are we going to let these guys die?’” Amsterdam said. “It was like somebody was bleeding in the gutter when you’ve got a tourniquet. Then, we were in the execution-stopping business.”

It takes some doing to imagine a suave 32-year-old hidden in the layers of Amsterdam’s past. When we met the first time, he wore a red-and-green flannel shirt, olive-green corduroys, and a thin knit tie that approximated the color of his pants. The shirt hung from his frame, so lean that the only matters of substance about him seemed to be a bushy moustache and sunken gray eyes that stared out of the kind of oversized glasses only a septuagenarian would risk. Amsterdam’s hearing has been poor since birth; he wears a hearing aid in his right ear, which picks up sound from a black box

“You feel guilty about every death, simply because there has never been enough time in the day, you have never had enough skill. Hard as you try, you’ve got to admit that maybe you could have tried harder.”

1973 book, *Cruel and Unusual: The Supreme Court and Capital Punishment*—Amsterdam was dictating a second petition for habeas relief by phone to the secretary of one of Maxwell’s lawyers.

Filed in court the next day, Maxwell’s petition marshaled some of Amsterdam’s most persuasive arguments against the death penalty. The death penalty, the petition contended, was unconstitutional on a number of procedural grounds: Jurors were given no guidance about how to reach a decision, leading to arbitrary results; the single-verdict trial, in which the jurors had decided Maxwell’s guilt and sentence simultaneously, denied them the opportunity to weigh mitigating factors; and lastly, and most controversially, the petition raised Maxwell’s claim of bias once more, grounding it in a new study that LDF had commissioned by a

that he positions on the table in front of him. But it is his eyes that draw attention—eyes that look, as one colleague of Amsterdam’s put it, like they’ve never slept.

All-nighters became routine for Amsterdam in the mid-1960s, around the time when he and a band of lawyers at LDF began marshalling the tools they had in hand to save lives. Chugging down bottles of diet soda and chain-smoking thin cigars, Amsterdam forged the legal infrastructure that helped LDF to challenge just about every death penalty case across the country. He and the LDF lawyers created the “Last Aid Kit,” which included sample petitions for habeas corpus, applications for stays of executions, and legal briefs setting forth constitutional arguments against the death penalty; they distributed the kit to capital defense lawyers across the country. With a boldness that is hard to grasp today, Amsterdam set out to change minds about the death penalty by creating a sense of emergency.

In some ways, LDF’s campaign against the death penalty tapped into the country’s mood. In the 1930s, an average of 167 executions was carried out yearly; by the early 1960s, the annual average had dropped to 48. Amsterdam and LDF resolved to bring those numbers to zero. “The legal acceptance and historical force of the death penalty were considered a given,” said Jack Himmelstein, who headed the capital defense section at LDF during that time. “It was the power of Tony’s mind and heart that said, ‘That doesn’t have to be the case.’” By the early ’70s, that refusal to accept the death penalty as a given had translated into the continued survival of about 700 individuals on death row. An effective, if not official, moratorium was in place; the last legal execution had taken place on June 2, 1967, and few judges wanted to be the first to begin clearing the row. Amsterdam’s legal arguments against the death penalty made their way up to the Supreme Court, which did its utmost to bat away the increasingly unavoidable question—was the death penalty still constitutional in the United States?

By the end of 1971, the Court seemed well on its way to answering “yes.” In 1971, with the freshly appointed Justice Blackmun on the bench, the Court rejected two of Amsterdam’s most powerful arguments against the death penalty—that the absence of standards guiding a jury’s decision to sentence a defendant to death was unconstitutional, and that a defendant was denied his right to a fair trial if his guilt and sentence were decided by a jury at the same proceeding. Amsterdam had only one argument left in his quiver, and it was his longest shot: that the death penalty was cruel and unusual punishment.

How could Amsterdam convince the Court that a punishment which a decade ago had been “a given” had suddenly become cruel and unusual? As was his custom, he delivered his oral arguments in two of the four death-penalty cases before the Court without notes, setting out in *Furman v. Georgia* to neutralize what was likely to be the fallback position of the justices—that it was up to legisla-



Young Man of the Year: so declared the Philadelphia Junior Chamber of Commerce in 1966.

tures, not judges, to decide whether the death penalty should exist. The legislature could find a legitimate basis for boiling a criminal in oil, for example, but the Court might well find the punishment “unnecessarily cruel.” Forty-one states had death penalty statutes on their books, Amsterdam conceded, but the key question was: “What do they do with it?”

The penalty was “almost never” inflicted. One in a dozen juries at the most returned a sentence of death, according to statistics that LDF had compiled, and only a third to half of those defendants were actually executed. (Amsterdam was treading on dangerous ground here, because it was his own strategy at LDF that had contributed to declines in the number of defendants executed.) Then he built to his next point, that the rare sentence of death fell only on the “predominantly poor, black, personally ugly, and socially unacceptable”—those for whom “there simply is no pressure on the legislature” to take the penalty off the books. Amsterdam seemed to be having an effect on Justice Byron White, whom the LDF had anticipated would be squarely in favor of upholding the death penalty. Justice White rocked back and forth in his chair, and his face was ashen, according to Meltsner’s account in *Cruel and Unusual*. In *The Brethren: Inside the Supreme Court*, Bob Woodward and Scott Armstrong

report that White later told his clerks that Amsterdam's oral argument in *Furman* was possibly the best he'd ever heard.

In the summer of 1972, the Court announced its verdict in *Furman*, a decision that, at nearly 80,000 words including footnotes, remains among its longest. By a margin of 5-4, it found that the death penalty was "cruel and unusual punishment" in violation of the Eighth and Fourteenth Amendments. The justices could agree on little else, however. Each one of the nine justices penned his own opinion. Justices Potter Stewart and White offered the narrowest grounds, finding that the arbitrary application of the death penalty was unconstitutional. "These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual," Justice Stewart wrote. While emphasizing that he did not find the death penalty "unconstitutional per se," Justice White sided with the majority, finding that "the penalty is so infrequently imposed that the threat of execution is too attenuated to be of substantial service to criminal justice."

Justice Blackmun, for his part, offered a dramatic dissent. "Cases such as these provide for me an excruciating agony of the spirit," he wrote. "I yield to no one in the depth of my distaste, antipathy, and, indeed, abhorrence for the death penalty,... and of moral judgment exercised by finite minds." He went on to conclude, however, that he was not a legislator and therefore could not allow his personal preference to guide his judicial decision.

Amsterdam was driving along a highway south of San Francisco when he heard the news on the radio. He pulled over, sat, and looked around him. "You represent people under sentence of death, you're always walking around with a dozen, 50 lives on your shoulders," he said. "The feeling of weight being lifted, knowing that these guys...you worry about each and every one separately." For the first time in longer than he could remember, Amsterdam stopped, and didn't feel guilty about standing still. Recalling the moment with his hands clasped behind his head and his eyes closed, he said, "I felt free for the first time in years. I thought, 'That job is done. Those guys are gonna live.'"

Ask Amsterdam about himself, and he seems uncomfortable and slightly bored by the topic. He answers some questions out of a deep sense of courtesy, but in the universe of potential conversation—about art, basketball, law, anything, please!, but himself—he'd rather not pursue this line of questioning. If Amsterdam had his way, his biography would contain a single line: In his youth, the lawyer occasionally played pick-up basketball with the legendary Wilt Chamberlain.

Amsterdam grew up in a middle-class neighborhood in West Philadelphia. His father, descended from a line of rabbis, served as a military lawyer in Luxembourg during World War II; after returning home, he became a corporate executive. His mother did a range of volunteer work.

Judaism provided the backdrop of his childhood, but it never entered the foreground. His parents weren't observant, which may explain why they gave their son a name—"Tony"—that seemed to align him with the Italian-Americans who, along with Jews and African-Americans, comprised the community. After attending a predominantly Jewish grade school, Amsterdam enrolled in a junior high school that reflected its location at the intersection of the three ethnic communities. "I tended to run with a crowd that had all three groups in it," Amsterdam recalled. "Like most kids of that age, we had our games." Box ball, played in a square laid out in the school's courtyard, was a favorite of his but there were also basketball, football and tennis.

The fun came to an abrupt halt, however, when Amsterdam turned 12 and was hit with bulbar polio. Though spared the paralysis of the limbs that can accompany the often fatal disease, he spent days in an iron lung and was quarantined for a longer period of time that remains a blur for him now. Amsterdam's highly retentive memory fails him when he trains it on his youth, a quirk that is either a convenience or a symptom of his lack of self-interest. But Amsterdam does remember the upside of being bed-ridden: He was elected to become box ball captain in absentia and returned in time for the end of the season "mightily inspired to play better."

A Transformer of Legal Education: The visionary first director of the clinical program, Amsterdam is shown in 1983, far right, and in 1990.



PHOTOS: PATRICK D. PAGNANO

At college—Haverford—French literature became the new box ball. Amsterdam majored in comparative literature, and consumed 17th-century French poetry with an appetite he would later bring to Supreme Court opinions. Schoolwork for its own sake didn't excite Amsterdam, but college offered new ways of thinking that were exhilarating. "College opened doors to a lot of things I hadn't thought about," Amsterdam said. "I pushed myself very hard, but not to study in the sense of folks who are trying to accomplish something." If he didn't like a course, he didn't spend much time on it. He read the assigned pages, and "got done what needed to be done." For Amsterdam, that translated into summa cum laude at both Haverford and the University of Pennsylvania Law School.

Amsterdam fell into law school without any firm intent. While at college, he had participated in some early civil rights sit-ins in Delaware, and the law seemed to be connected to that. Still, Amsterdam spent much of his time in law school auditing lectures on art history at Bryn Mawr College. His enthusiasm for art stemmed from a period in high school when he had worked at a private museum. Between and sometimes during classes, he took long nature walks, painted water colors, read French poems and wrote some of his own, though mostly in English. Amsterdam also managed to keep up his duties as editor-in-chief of the law review, but two months before graduation, he hadn't even begun the mandatory paper. He dashed it off: The result, the influential "Void-for-Vagueness Doctrine in the Supreme Court," helped reshape First Amendment law. His later work, "Perspectives on the Fourth Amendment," is ranked among the most-cited law review articles of all time.

Still, in 1960, the law's hold on Amsterdam seemed weak, too weak to repel the pull of those art galleries. Fortunately for the bar, one of his law professors recommended him to Justice Felix Frankfurter, and the new graduate ended up clerking for the justice. It was during that year, when Amsterdam worked mainly on criminal cases, that he began to see the law's potential. Those early sit-ins in Delaware took on new meaning as he witnessed the interplay of civil rights and criminal law. Mass demonstration had become an integral tool of the civil rights movement, and Amsterdam resented that the criminal process was being used to try to repress Dr. Martin Luther King—and hundreds of other activists.

Long after his official obligations as a clerk ended, Amsterdam continued working for the ailing justice, helping Frankfurter with his speeches and memoirs, which were never published. Frankfurter put him in touch with the U.S. Attorney of the District of Columbia; Amsterdam joined the office, and set to deepening his understanding of criminal law.

The results of his study were impressive. Anecdotes about Amsterdam's powerful memory and unique intellect abound, but one incident in 1961 has captured the imagination of those who know him best. During his time as a government prosecutor, Amsterdam was handling an appeal that raised the question whether a defense psychiatrist could testify that the defendant had a mental disease within the meaning of the insanity defense. Arguing before a three-judge panel, Amsterdam drew an analogy to life insurance, arguing that a medical expert witness would not be permitted to testify that an insurance claimant had a "total and permanent disability" within the meaning of his insurance contract. Shaking his head, the judge pressed Amsterdam, who cited an old Supreme Court case by volume and page in support of his point. The judge called over an assistant and asked him to fetch the volume. After flipping to the page number Amsterdam had offered, the judge hastened

to report that the case wasn't there. Amsterdam replied that the volume must be mis-bound. Not willing to give up so easily, the judge probed further, and discovered that 210 U.S. was bound in the cover of 211 U.S. When the correct volume was located, he found the case on the cited page.

The government would inevitably lose Amsterdam, who is more comfortable upending, rather than upholding, the establishment. After a year and a half as a prosecutor, Amsterdam joined the faculty at the University of Pennsylvania Law School, and began splitting his time between teaching and consulting on civil rights cases across the country. Time took on an altered quality; there was no longer enough of it and something—a lecture to prepare, a brief to edit, a student to mentor—was always pulling at him. Even today, he can't quite control his time, though he tries by breaking it into blocks and dispensing those blocks with extreme generosity. When

Ask Amsterdam about himself, and he seems uncomfortable and slightly bored by the topic. If he had his way, his biography would contain a single line: In his youth, the lawyer occasionally played pick-up basketball with the legendary Wilt Chamberlain.

Seth Waxman, for example, was asked to argue *Roper v. Simmons*, which persuaded the Court to abolish the juvenile death penalty two years ago, he immediately turned to Amsterdam. He received an email from the professor within minutes, saying: "I have to teach a course in seven minutes until 6:30, and then I'm editing a brief, but I could be available from 11:10-11:30 p.m. or from 4:30-4:50 a.m." Waxman recalled thinking, "I'm unworthy. There I was asking for help on short notice and there he was, almost apologetic in freely offering time at the very edges of the night."

Amsterdam worked 20-hour days in the '60s. David Kendall's theory was that there were two Amsterdams. The "Tony" he worked with—the one who chain-smoked cigars and was sometimes accompanied by his two dogs, Brandeis and Holmes—would switch roles every 12 hours with a clone who caught up on sleep. (The personalities of the dogs reflected their judicial namesakes, Amsterdam said: "Holmes was a real patrician, a large dog who condescended to spend time with us. Brandeis had a concerned, thoughtful quality." The dogs, who died of old age, were succeeded by Mandy and Pru, short for Mandamus and Prohibition, two kinds of judicial prerogative writs.)

In 1965, Amsterdam helped oversee LDF's project to collect data on racial bias in about a dozen Southern states for the Wolfgang study he referred to in *Maxwell*. That same year, he cowrote an ACLU amicus brief for *Miranda v. Arizona* that described police procedures during interrogations; the brief cited police manuals at length that exhorted the interrogator to "dominate his subject and overwhelm him with his inexorable will to obtain the truth." Chief Justice Earl Warren lifted that passage, and many others, wholesale from the ACLU brief in his decision revolutionizing police practice. In 1967, Amsterdam cowrote an amicus brief for LDF, this one on the police's stop-and-frisk tactics. In 1969, he helped in the appeals of the Black Panther Bobby Seale and the civil rights demonstrators known as the Chicago Seven. Around the same time, he began working on a landmark case of journalistic privilege, defending Earl Caldwell of the *New York Times* from prosecution when he refused to turn his notes on the Black Panthers over to the F.B.I. By 1972, when Amsterdam argued *Furman*, he had filed dozens of briefs with the Court, once conducting oral arguments in three unrelated cases in the space of a week. Meanwhile, he was receiving letters from death-penalty prisoners seeking help.

Something had to give, and Amsterdam had too much integrity to short-change his clients. “Once you assume the responsibilities of attorney to client, you do what has to be done. You leave no stone unturned,” he said. “No French poem in the world demands that of anybody.” If Amsterdam has a weakness, it may be that he is unable to resist the needs of others. Norman Redlich, the former dean of NYU School of Law who succeeded in hiring Amsterdam from Stanford in 1981, recalled when he was hospitalized for surgery on an optic nerve a decade later and received a flurry of notes from faculty members offering to help if they could. Amsterdam’s note was different. “He said, ‘These are the things I can do: I can go to the cheese store, walk the dog,’” Redlich said. There were at least 10 items on the list, and Amsterdam asked the dean to check the ones he’d like, which he did.

What Amsterdam gives to his clients and everyone else is easy to chart; his losses are harder to trace. When a novel went unread or a painting didn’t materialize or a poem went unwritten, did Amsterdam feel regret? He won’t say, except to insist that his work isn’t a sacrifice.

As generous as Amsterdam is of himself, when faced with pesky questions from this reporter, he zealously defended a private space for himself and his loved ones. He would say nothing about his family except that his wife of nearly 40 years, Lois Sheinfeld, shares his commitment to causes. Hers was poverty law when they met; it is now the environment; she writes and lectures on organic gardening and other environment-saving measures.

Earl Caldwell caught a rare glimpse of Amsterdam’s private side in 1969. He recalled catching the recently married Amsterdam and his wife at their home in Los Altos, California, after midnight. Caldwell, desperately in need of a lawyer, had driven there with a coalition of black journalists. “Frankly, we didn’t have anyone else,” Caldwell said. “We were reluctant, wondering: ‘How do we know we can trust him? Who is this white guy?’” Sheinfeld made coffee and chatted with the journalists to put them at ease. Amsterdam didn’t waste time: He dove right in, telling Caldwell that he didn’t have to turn his notes on the Black Panthers over to the FBI. “I’ve been studying the case and mind you, they can’t make you do it. You have a legal right to refuse,” Amsterdam said. From then on, Caldwell knew he had his lawyer. “He was a person I always felt looked at you and all he saw was a human being,” he said.

In *Furman*, Justices Stewart and White made clear that they weren’t abolishing the death penalty outright. States could respond with new legislation crafted to meet the Court’s insistence on rational, uniform standards in applying the death penalty. With a speed that surprised even Amsterdam, who knew better than to celebrate for long, 35 state legislatures across the country raced to comply.

Four years after *Furman*, in 1976, Amsterdam was back before the Court to argue that the newly enacted statutes did not meet the constitutional bar. The Court had chosen to hear five capital

penalty. Amsterdam argued that the reforms that had been made in response to *Furman* were largely cosmetic, leading to the same arbitrary outcomes that had troubled Justices Stewart and White so deeply. Justice Stewart questioned whether Amsterdam’s focus on the exercise of discretion throughout the judicial system “prove[d] too much.” Amsterdam did not budge from his stance, insisting, “Our argument is essentially that death is different. If you don’t accept the view that for constitutional purposes death is different, we lose this case.”

In July of 1976, in the cases that are known collectively as *Gregg v. Georgia*, the Court found that death wasn’t so different after all. It struck down mandatory death-penalty laws like one in North Carolina, but upheld statutes like one in Georgia, which compelled juries to weigh aggravating and mitigating factors. Judge Thurgood Marshall read a pained dissent in Court, and suffered a mild heart attack later that evening.

In *The Supreme Court and Legal Change*, Lee Epstein and Joseph Koblyka fault Amsterdam for his absolutist position, accusing the lawyer and LDF of misreading the doctrinal glue that held the *Furman* majority together. Justices Stewart and White were concerned with process, and not substantive arguments based on the particularity of the death penalty. If Amsterdam had pursued a multilayered strategy, rather than boxing himself into an all-or-nothing approach, the outcome of the case might have been different. Edward Lazarus, a former clerk to Justice Blackmun, echoes that criticism in *Closed Chambers: The Rise, Fall and Future of the Modern Supreme Court*, reporting that Amsterdam’s “total immersion in the abolitionist cause” had “rendered him tone deaf to the changing tune of the country and the Court.” It is hard to imagine, however, what Amsterdam could have said to convince the justices to maintain their ban on capital punishment, after the country had roundly rejected that position. As Meltsner argues persuasively in *The Making of a Civil Rights Attorney*, Amsterdam chose the “death-is-different” approach because he had to find a way to attack the post-*Furman* statutes without indicting the discretionary decision-making that lies at the heart of the criminal justice system.

Amsterdam was surprised by the Court’s decision, not so much because it had reinstated the death penalty, but because it had backed away so readily from the concerns it had raised in *Furman*. “We really thought the Court would be more resistant than it was to evasions of the rules it laid down in *Furman*,” he said. “We were disappointed in precisely the proportion to our naïvete. Some days, you let yourself hope more than you should.”

When I visited Amsterdam in January, a giant framed collage was packed away in his office. Presented at a 1990 LDF tribute to Amsterdam, it includes 52 photos and about 350 signatures of death-row prisoners through the decades and from across the nation. In one picture, a handsome dark-haired man with a streak of white hair running along the top of his head smiles at the camera. His name is John Spenkellink.

In 1979, Spenkellink became the first person executed against his will since the moratorium began in 1967. In the wake of *Gregg*, the newly elected Florida governor, Bob Graham, was determined to prove that, though he was a Democrat, he had the guts

to carry out an execution. Spenkellink was not an obvious candidate for death. A convicted armed robber who had escaped from a prison in California, Spenkellink picked up a hitchhiker, a career felon 20 years his senior, in the Midwest. As Spenkellink told it, he was forced to perform sexual acts on the older man. He said he

“He was a person I always felt looked at you and all he saw was a human being.”

—Earl Caldwell, former New York Times reporter and defendant in a reporter privilege case in which Amsterdam argued, and initially won, Caldwell’s right to refuse to disclose his sources in the Black Panthers to the FBI.

cases that represented a sampling of the new laws, and Amsterdam argued three of them over two days. He began by giving an overview of all 35 statutes, organizing them into four categories, and adding that the states had come up with “elaborate winnowing processes” and “an array of outlets” to avoid the use of the death





A Legacy of Lives: A collage of condemned prisoners' signatures and photos in Amsterdam's office; inset, Amsterdam with 28 exonerated former death-row prisoners at the 1998 National Conference on Wrongful Convictions and the Death Penalty.

planned to abandon the man at a Tallahassee motel, but returned to the room and a fight ensued. While not denying he shot the man twice, Spenkellink maintained that he'd done so in self-defense.

"Our thought was that Florida chose him because he looked like such an ideal candidate from the state's viewpoint. He wasn't from Florida, was white, an escapee, and it was a relatively simple case," David Kendall, Spenkellink's primary attorney, said. "Otherwise, we couldn't explain the decision." Spenkellink had been offered a plea of second-degree murder, and turned it down. "The killing—if murder can ever be mitigated—was mitigated," Kendall added. Kendall felt cautiously optimistic going into the clemency hearing; nearly everyone who knew Spenkellink then, including the prison warden, thought Spenkellink was a reformed man. Unfortunately, Kendall didn't factor into the equation that Governor Graham couldn't stand the sight of blood. After seeing photos of the crime at the hearing, according to David von Drehle in *Among the Lowest of the Dead: The Culture of Capital Punishment*, the governor left the room to throw up.

Spenkellink was the first of 17—17, and counting—men Amsterdam got to know well, and care about, who ended up dead. "After John's death, I became much more vividly aware of the fact that this was a feature of our existence," Amsterdam said. "You can't be a capital defense lawyer without this."

The realization changed Amsterdam. "In my heart of hearts, I couldn't face the reality that things could go as wrong as they went and there was no correction, no remedy, no court would listen," he said. That things can go so wrong is a constant reminder—not to hope, not to take anything for granted, not to stop. "You feel guilty about every one, simply because there has never been enough time in the day, you have never had enough skill," Amsterdam said. "Hard as you try, you've got to admit that, life being what it is, maybe you could have tried harder."

In 1981, eager to move to New York City and impressed by then-Dean Redlich's commitment to clinical practice, Amsterdam arrived at NYU from Stanford Law School, where he had been teaching since 1969. In his first lecture, entitled "Saving the Law from [then-Attorney General] William French Smith...," he laid out a new strategy for civil rights activists: In light of the Reagan-era conservative judiciary, they should downplay the significance of a case or create a factually messy record to discourage the Supreme Court from granting cert. In this manner, the Warren Court precedents might survive until a more liberal court was constituted.

"The present Supreme Court lineup is one which we superannuated football fans like to think of as two horsemen and seven mules," the professor said, praising Justices William Brennan and Thurgood Marshall for "dissenting in virtually isolated splendor." If public-interest lawyers were unfortunate enough to find themselves before the Court, however, they should make progressive arguments. "If you don't raise these issues, you will not get the atrocious opinions which Justice [William] Rehnquist is capable of writing—and which, I firmly believe, we will one day have a judiciary fit to disavow."

Amsterdam's lecture wasn't revolutionary, and no doubt he had communicated similar ideas at Stanford, but there was a key difference: It was delivered in Greenberg Lounge, which, it turns out, had a direct line to the *New York Times* in the reporter David Margolick, Amsterdam's former student at Stanford. It was an indication of Amsterdam's legendary status that the *Times* ran a sidebar with his comments, as if, Margolick recalled, they were "quotations from Chairman Mao."

The lecture reflected the straight-shooting style of Amsterdam the professor, but it was a rare misstep for Amsterdam the lawyer, who continued to appear before those same seven mules on a regular basis. Asked if he regretted his comment, Amsterdam replied,

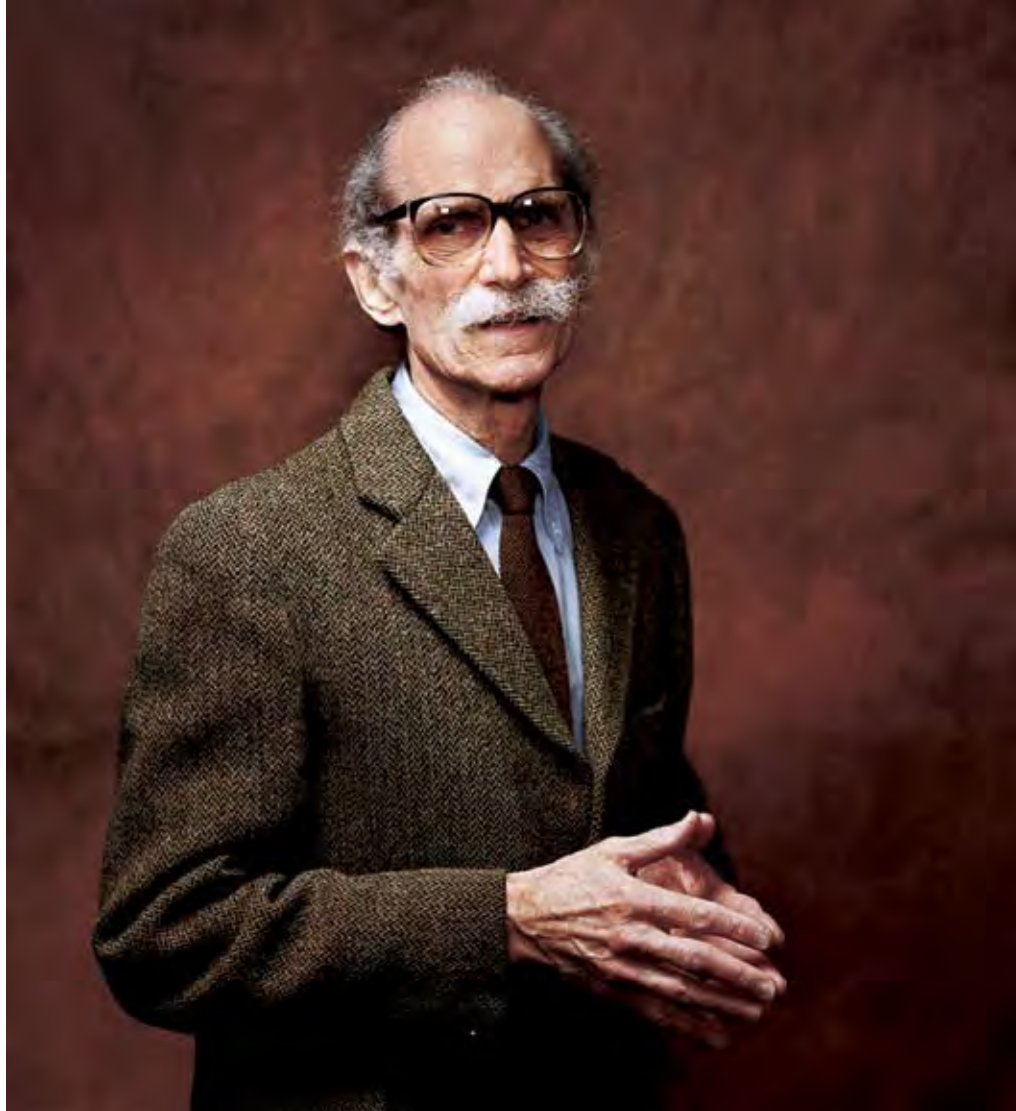
"I regret almost everything I've ever said that was not absolutely necessary to say, and even some of the few things that were necessary. The seven mules is high on a very long list."

In 1983, two years after his lecture at NYU, Amsterdam stopped arguing cases before the Supreme Court. The reasons for his unorthodox decision were complex. First, and of least importance, was his poor hearing. To compensate for it, Amsterdam uses a hearing aid and zooms that intense focus of his on a speaker to read lips. Still, in 1972, the problem was exacerbated by Chief Justice Warren Burger's decision to shift from a straight to a curved bench. "Nine justices in a curved amphitheater does present a complicated problem," Amsterdam said. "You don't want to be blindsided." On a number of occasions, even as early as *Gregg*, Amsterdam asked a justice to repeat a question. Lawyers with perfect hearing do the same, either because they miss a question or because they're stalling for time. But in his final argument in 1983, Amsterdam unintentionally talked over a justice, who he hadn't realized was posing a question over to the side. The vulnerability was slight, and few observers noticed it, but Amsterdam did.

Amsterdam had bigger problems on his hands, however. In 1976, after turning back from *Furman*, many of the justices wanted to put the debate over capital punishment behind them. But there was Amsterdam, year after year, scrupulously challenging each aspect of the system that put a man to death. The Court, and especially Justice Blackmun, didn't need the constant reminder of what a procedural mess the death penalty was fast becoming. Amsterdam's high-profile opposition to most of the judges now sitting in front of him, along with that unfortunate mule comment, didn't help his popularity. "Having been a visible opponent of the confirmation of more than a majority of the Court and having written some very critical stuff about the Court's opinions," Amsterdam told me, explaining his continued refusal to argue orally, "I had a concern that some of that might rub off on a client."

Staying off the podium also allows Amsterdam to have a broader influence. To play first chair in any one case takes a singularity of focus and time that Amsterdam can otherwise devote to teaching—in the most catholic sense of the word. Amsterdam is committed to helping everyone in his midst, whether they are officially his students or not, to become better lawyers. In 1967, he cowrote a trial manual about litigation that offered lawyers a systemic treatise on the nuts and bolts of how to try a case. In the '80s, he brought that pragmatic, real-world sensibility to the NYU School of Law and reshaped legal teaching as the director of clinical education.

Amsterdam initially taught a consumer protection clinic, but he had bigger ambitions. He wanted to create at NYU a full-fledged three-year-long program in which fieldwork clinics would represent the capstone of a progression of learning. "My image of a clinical program included pieces of varying sizes—clinics that were one semester and one year long, heavier and lighter—to enable students to have a smorgasbord set of choices," Amsterdam explained. "Students could have as much or as little clinical educa-



Portrait of an Artist. March 2007: Amsterdam strategically uses poetry techniques to achieve certain effects in legal briefs.

tion as they wanted." To achieve his goal, Amsterdam developed a comprehensive course on "lawyering" that is now required of all first-year students and has been widely acclaimed. With those tools, students can graduate to simulation courses that follow a single case from start to finish and to full-blown clinics that involve fieldwork in actual cases.

Amsterdam no longer teaches the lawyering course, but he now coteaches the Lawyering Theory Colloquium, a course for 2Ls and 3Ls that brings an interdisciplinary approach to analyzing the law. The insights he gained from that class led to *Minding the Law*, which he co-wrote with the psychologist Jerome Bruner in 2000. In addition to the Colloquium, Amsterdam coteaches the two Capital Defender Clinics—the year-long New York clinic, which includes simulation and work on appellate cases, and the New York class sessions of the Alabama clinic, which sends students to the Southern state for fieldwork. (See "Bryan Stevenson's Death-Defying Acts" on page 32.) The New York clinic grew out of a clinic that Amsterdam cofounded in 1996, a year after New York State reinstated the death penalty. When the district attorneys in New York City did not pursue death-penalty cases aggressively, Amsterdam regrouped, focusing the attention of his students on post-conviction work around the country.

When I visited the New York clinic last January, the students were acting as defense attorneys in a simulated case. Their client, based on a real defendant in California, was on trial for two homicides; he pleaded self-defense for the first murder and denied committing

the second. Amsterdam welcomed the students back from winter recess, pausing when his aide delivered bottles of soda and bags of candy. “Bravo,” he said. “We’ll start over, properly equipped.”

As Hershey’s Kisses and Twix bars made their way around the table, Amsterdam sat back, crossed his arms behind his head, and began discussing strategies for managing the interplay between the guilt and penalty phases of a capital case. He asked, “What do you think is the price we pay if we take the position that our client didn’t do it at all?” A third-year student suggested that if the defense failed, the attorney would lose credibility with the jurors, which might harm the client’s chance at a sentence less than death. “Can we zero in on what it is the jury would be holding against us?” Amsterdam pressed. “What accounts for the demise or diminution of credibility?”

Amsterdam’s version of the Socratic method, not surprisingly, values humaneness over humiliation. He challenges his students, but is firmly on their side. When a question was met by silence, as the nine students looked awkwardly at one another, the professor responded, “Come on. If somebody goes over the hill, the others will follow.” Deborah Fins, who coteaches the class, chimed in: “Step in a toe. One toe and we’ll get you the rest of the way.”

The rest of the way can carry students to the Supreme Court. Over the years, Amsterdam’s students have worked on a host of high-profile appellate cases, including two of the most important “death-row cleaning cases,” as Amsterdam put it, that the Supreme Court has heard: *Atkins v. Virginia*, which abolished capital punishment for mentally retarded defendants in 2002, and *Roper v. Simmons*, the case Waxman argued that ended the penalty for juveniles in 2005. Amsterdam tries to involve his students in all aspects of cases: The students collaborate with Amsterdam and cocounsel on developing a litigation strategy; they conduct research and help to frame the issues to be argued, and draft pleadings, motions, petitions for review, and briefs.

The students also participate in the moot courts that Amsterdam hosts at the Law School for lawyers arguing death-penalty cases around the country. Last January, for example, five lawyers flew from Texas and Massachusetts to the sixth-floor conference room of Furman Hall to moot three cases about the Lone Star State’s mitigation practices. Two clinic students who had prepared questions for Amsterdam sat in on the session. “Some of the questions that he throws out at the moot are questions that we came up with together,” one of the students, Sungso Lee ’07, said. “Being in this clinic, I have to think more freely about the law and how it should be applied.” During the moot, the lawyers seemed to listen most attentively to Amsterdam, who acted as one of the six “judges” and expressed optimism that the current conservative Court would find in the capital defendants’ favor. (His instincts were proven right last April.) During a break, one of the lead lawyers came up to Amsterdam and asked, “Do you mind if I send you what will be my three-minute intro?” The professor responded, “Yeah, sure.”

Those requests come along frequently, and Amsterdam’s answer is always the same. His “edits” have become a source of gratitude, and some amusement, among his colleagues. In the days before computers, he used a bright red magic marker and his edits resembled a strange calligraphy, with carets marking new passages complete with full citations. James Liebman, a professor at Columbia Law School, sent his Supreme Court brief for a Florida death-penalty case to Amsterdam, and received an edit that contained,

among other things, an awkward line, which he then changed. When he sent it back to Amsterdam, the line was changed back. After a couple of back and forths, Amsterdam finally said: “I guess you’ve never written poetry. I’m making it awkward because I want the justices to stumble on that point in the brief. I want them to stop right there and think about it.” Liebman kept it, and Justice White adopted that very bit of analysis in his opinion giving relief to the defendant.

Amsterdam is described by one of his colleagues as a “special resource.” It’s tempting to begrudge that “resource” the time he devotes to teaching. Should Amsterdam be spending intensive, one-on-one time with Capital Defender clinic students when he could be consulting on even more civil rights cases? Arguably, though it’s hard to imagine how much more any one person could accomplish. More importantly, however, teaching is a rare unalloyed pleasure for Amsterdam. “He likes doing litigation with students. It’s a fresh eye and a fresh perspective,” Fins said. “For a lot of lawyers, especially as they grow older, their perspective on the world freezes. Tony gets really invigorated by his students.”

In 1994, in a routine denial of certiorari, Justice Blackmun appended a dissent that, along with *Roe v. Wade*, has become a defining moment in his legacy. “From this day forward, I no longer shall tinker with the machinery of death,” he wrote. “For more than 20 years I have endeavored—indeed, I have struggled—along with a majority of this Court to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor.” He added that he found it impossible to reconcile *Furman’s* promise of consistent standards with its later guarantee in *Lockett v. Ohio* of individualized sentencing. Amsterdam had argued both cases.

It is hard not to read in that dissent vindication for Amsterdam, who withstood Blackmun’s hostility to persuade him of the very contradictions the justice identified in his dissent. It may also explain why the justice seemed so easily annoyed by Amsterdam. “I think I was a very convenient figure for him because I think he identified me with an idealistic part of himself that he felt it was his duty as a judge to severely repress,” Amsterdam said. Black-

“From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored...to develop...rules that would lend more than the mere appearance of fairness to the death penalty endeavor... Rather than continue to coddle the Court’s delusion that the desired level of fairness has been achieved...I feel...obligated simply to concede that the death penalty experiment has failed....”

—Justice Harry Blackmun, dissenting in *Callins v. Collins*, 1994

mun retired a few months after his famous dissent, choosing to withdraw from the mess that capital punishment had become and arguably always was.

Amsterdam stands firm, working to save lives and dismantle the system of capital punishment case by case. “When this country repudiates the death penalty, as it will, people will look back at him and say, he devised the campaign that led to this,” David Kendall said. If that happens, and those people know about the low-profile professor, perhaps they’ll come to the same realization that Blackmun seems to have reached: that Amsterdam had it right all along. □

Nadya Labi is a writer based in New York City.



New Orleans

Title

Effect on...
crashes, falls, other
accidents

New Orleans - and its justice system - were
higher

disaster zone

represents
disaster zone

6.5 inches

Effect on...
crashes, falls, other
accidents

*Having side
work causing
something*

Montague

Inset portraits: Xochitl Bervera '02, Derwyn Bunton '98 and Randy Hertz. Bervera is co-director of Friends and Families of Louisiana's Incarcerated Children (FFLIC). The work done by Bervera and others is paying dividends: the number of children in Louisiana's prison system has declined from 2,000 to 500 since FFLIC started in 2001. See a sampling of other NYU law alumni with prominent public-interest careers on page 31.

Bringing THE Law TO Life

NYU's Clinical Program Helps Students Change the World—One Case at a Time

Shackled by the wrist and ankle to two other boys, Paul could only watch as floodwaters caused by Hurricane Katrina began rising in his New Orleans prison cell, entering from the drains, toilets and sinks, eventually reaching chest level. Only 15 years old, Paul had been detained for violating probation for marijuana possession, but was transferred along with other kids from juvenile detention to the adult population of Orleans Parish Prison when the sheriff made the ill-fated decision not to evacuate his charges. Most of the prison staff fled, and the adult prisoners threatened to riot, while Paul went without food or drink; some of the other children ate the hotdogs and pieces of cheese that floated by them in the filthy water. The prison was evacuated two days later, and after a frightening week under armed guard outdoors alongside angry adult criminals, Paul was placed into state custody and sent to a detention center in Shreveport. He had no idea what had become of his family, who had lived in the devastated lower Ninth Ward—and no one could tell him. He was afraid his parents had drowned.

“Standing there talking with that kid, it struck me so deeply that we were *it* for him,” says Derwyn Bunton '98, associate director of the New Orleans-based Juvenile Justice Project of Louisiana, who met Paul a month after his harrowing ordeal. “This child was 500 miles from home, wondering if his family members were alive or dead. If we didn’t step in to help him, no one would.” The Juvenile Justice Project (JJP) got to work. Bunton worked with the Louisiana Office of Youth Development to find the boy’s parents, who had fled to Dallas, and went to New Orleans Parish Juvenile Court to obtain a release order that closed Paul’s case. He arranged for a youth advocate to travel with Paul to Dallas where Paul finally rejoined his family. And in May 2006, the JJP published a scathing report coauthored by Bunton: *Treated like Trash: Juvenile Detention in New Orleans Before, During and After Hurricane Katrina*. The report, which found that the storm had merely exacerbated and made blatant the huge problems of a juvenile-justice system that was dysfunctional long before the storm hit, garnered international media attention from publications such as the United Kingdom’s

Guardian, the *Los Angeles Times* and the *New York Times*.

By Clint Willis and Suzanne Barlyn
Illustrations by Brian Hubble

For Bunton, tracking down family members and arranging transportation is as much a part of his job as writing policy reports. He credits the Juvenile Defender Clinic taught by Professors Randy Hertz and Kim Taylor-Thompson and former Adjunct Professor Jacqueline Deane '85 for teaching him how to help clients who are often as much in need of food and shelter as legal representation. "Everything we did in the NYU clinics, we do here," says Bunton. "We work for the clients any way we can—through litigation, policy work, outreach, mobilization and organizing. The clinic taught me to think about clients and find ways to address their needs through legal and policy changes. Those lessons continue to pay dividends today."

As Bunton's story demonstrates, even one person can make a huge impact on the life of an individual and a community. For nearly 40 years, NYU School of Law's Clinical and Advocacy Programs have been offering committed, bright and talented students an unparalleled introduction to the challenges and rewards of hands-on legal practice. In turn, these lawyers have fought poverty, injustice and political repression in New York City, across the nation and around the world. "I am struck by the passion and commitment of NYU's clinical faculty, the commitment of graduates to pursue careers in the public interest, and the wide range of scholarship that influences understanding of clinical education for students, lawyers, judges and scholars," says Charles Ogletree, the former vice dean of the Harvard Law School Clinical Program who is the Jesse Climenko Professor of Law at Harvard and director of the Charles Hamilton Houston Institute for Race and Justice.

More than just a means through which students learn to practice, however, the clinical program influences the character of the Law School. "NYU has a vibrant commitment to public-interest law and advocacy," says Kevin Ryan (LL.M. '00), the first-ever commissioner of the New Jersey Department of Children and Families. "Public-interest advocacy is intentionally nurtured as part of the law school experience. The faculty create real oxygen for students to discover how law can become a tool for social change."

A Revolution in Legal Education

Clinical education at the NYU School of Law began in the late 1960s, as an outgrowth of those turbulent times. "The call in education was for 'relevancy,' and that call affected law schools perhaps more than any other educational institution," says Martin Guggenheim '71, Fiorello LaGuardia Professor of Clinical Law. Students agitated for legal education that was better connected to the real world.

Such an education would make a significant change from the status quo of that day. "Law schools had been around for a century, and had mostly shunned anything to do with practice," notes Harry Subin, professor of law emeritus. "They didn't hire people with experience in practice, and they were more concerned with scholarship than with training lawyers."

These 1960s students wanted experiential learning that was framed against the concerns of the day: Vietnam, civil rights, and the 1963 U.S. Supreme Court case *Gideon v. Wainwright*, which institutionalized every defendant's right to counsel. "Students really believed they knew better than their teachers what they should be learning and what the curriculum should include," says Guggenheim. "We demanded—that's how we spoke then—that our education give us opportunities to provide service to underrepresented groups and to learn to be practicing lawyers."

The students championed the writings of Jerome Frank, the late federal judge and former Yale professor, who had published a series of articles back in the 1930s maintaining that law schools taught nothing but theory because no one on the faculty knew

what it was like to actually practice law. "Sometimes ideas need to be articulated when the time is right. His ideas fit perfectly with the times," recalls Guggenheim.

Meanwhile, *Gideon* had also created a need for lawyers who knew how to handle themselves in a courtroom. Justice William Brennan Jr. and others argued that one good way to provide lawyers for defendants was through clinical legal education. In response, the Ford Foundation, through its grantee, the Council on Legal Education for Professional Responsibility (CLEPR), offered generous grants to law schools that were willing to provide clinical legal education. "The confluence of factors—the students' demand for relevance, the legal establishment's support for clinical education, and the resources made available by the Ford Foundation—gave clinical education its foothold," says Guggenheim.

Beginnings at NYU

The availability of funds played a major role in convincing the Law School faculty and administration to initiate clinics at NYU. "Most faculty treated the offer as a freebie," says Guggenheim. "They weren't against the idea philosophically, and since it didn't come at the expense of other courses, they thought, 'Why not?'"

The Law School recruited Subin, a Yale Law School graduate, to teach its first clinic, Criminal Law, in 1969. Subin had held positions with the Department of Justice and the Vera Institute of Justice, which works with governments and organizations throughout the world to improve criminal justice and public safety programs. Subin had no special interest in clinical education, but the Ford Foundation funding covered an eight-month clinical teaching position at NYU and the job sounded interesting.

It was. The eight students in the first Criminal Law Clinic represented indigent defendants in the New York City Criminal Court, and called themselves the CLEPR 8, to honor the grant that funded the clinic. The label suited the times. "It was in vogue to be a member of some underground movement," says Subin. "They really wanted to fight the good fight." He was struck by the passions of the clinical students, especially compared to his own 1950s peers. "Law students in my day were 50 years old before they were 25. These NYU students were a different story. They were politically involved. They weren't rioting on the fringes, but interested in the causes: feminism, race problems and treatment of the poor."

Subin became the first chair of the Clinical Programs Committee at NYU and was centrally involved in the expansion of the clinical curriculum in the 1970s and early '80s. Faculty who joined the clinical program during this time included Claudia Angelos, who had been a lawyer for Prisoners' Legal Services of New York; Paula Galowitz and Lynn Martell, both civil attorneys for the New York Legal Aid Society; Guggenheim; Chester Mirsky, who was a senior trial attorney at the Criminal Defense Division of MFY Legal Services, and Laura Sager, who enrolled in law school after participating in the Selma civil rights marches of 1963 and 1964.

Meanwhile, across the country Anthony Amsterdam was serving as Montgomery Professor of Clinical Legal Education at Stanford University School of Law. Amsterdam had earned the first endowed clinical chair in American legal education in part by amassing a nearly unparalleled record of civil rights and capital defender victories, including *Furman v. Georgia*, the 1972 Supreme Court case that resulted in a divided court ruling the death penalty unconstitutional. (See "A Man Against the Machine" on page 10.)

By 1981, Amsterdam had been teaching at Stanford for 12 years and longed to move back East—he is from Philadelphia—and settle in a big city. NYU's clinics—which were among the top three such

BEYOND LAW & ORDER

Not just saving lives, but assuring quality of life for those in need.

Life and death struggles naturally gain a lot of attention, and NYU's renowned capital defender clinics are no exception. But the death penalty plays a part in only a tiny fraction of criminal-court dockets. Students and faculty involved in NYU's nine other criminal fieldwork clinics provide a public service to their local communities by serving poor and disadvantaged individuals whose struggles have a profound effect on the quality of their lives.

Take Professor of Clinical Law Anthony Thompson, whose Offender Reentry Clinic introduces students to the post-incarceration consequences of criminal convictions. The clinic—the first of its kind in the nation—is at the cutting edge of public-interest law, creatively expanding advocacy to bring resources and compassion to bear on an urgent public need. Restrictions such as the inability to find work, or being legally barred from public housing, can effectively prevent an offender's reentry into society. The result: despair, poverty and recidivism. As many as half

of all individuals leaving prison are homeless upon release, and an estimated two-thirds of former prisoners who do not have appropriate housing commit crimes within the first 12 months of release. "We often hear that when you've done your time, you've paid your debt to society," says Thompson. "But people who are coming out of prison are just beginning to pay their debt."

Students in the Offender Reentry Clinic work with the Center for Employment Opportunity (CEO), a New York-based nonprofit agency, counseling former inmates who are denied employment or lose their jobs because of prior convictions. Child support enforcement presents difficulties for many ex-inmates, since support accrues while inmates are in jail; many of them cannot meet their financial responsibilities upon release. Tamzin Kinnebrew '07 encountered one man who had amassed \$10,000 in child support debt while he was in jail. She helped him through legal procedures to reduce the amount of his child

support payments due to changes in circumstances: "Many clients didn't have resources or the understanding of the system that was necessary to address that kind of issue."

Thompson also teaches students to explore other forms of advocacy, such as promoting legislative change and media advocacy. For example, students learn to write op-ed pieces and to lobby reporters and editorial boards to publish stories about reentry. Thompson has invited newspaper editors to speak to his classes on how stories are placed. Students have also drafted proposed legislation to reinstate Pell-type grants for educational and vocational opportunities in New York State prisons. Congress abolished Pell grants for inmate higher education in the early 1990s.

For clinic students, accepting the responsibility of representing actual people in real need of legal advocacy provides many sobering lessons. Randy Hertz, director of Clinical and Advocacy Programs and professor of clinical law, directs the Juvenile Defender Clinic. Students act as defense counsel in juvenile delinquency proceedings in

New York Family Court. Hertz works with Legal Aid Society Juvenile Rights Division staff attorneys to supervise clinic participants.

The exposure to practice is immediate. Just weeks after the clinic began, Jason Washington '07 appeared in court for arraignments. He later argued a rare motion in the furtherance of justice, which defense attorneys rely on to argue that there's no reason to proceed with a trial because justice won't be served by going to court. The case involved a domestic dispute between a 15-year-old girl and her mother. The girl admitted striking her mother, but Washington argued that the two were still living together eight months later and that the girl and the mother could better resolve their differences through counseling. The case was dismissed even though, as the judge later told Washington, most attorneys wouldn't have filed the motion because the chances of success were slim. "I was able to file the motion because of the backing and resources of the clinic," says Washington. "I was taught that you have to do absolutely everything possible to help your client."



programs in the nation and had the faculty support to aim even higher—piqued his interest. “I thought NYU was in a position to help create a new era in clinical education,” says Amsterdam, who took over the program that year and ran it until 1988.

Amsterdam’s arrival brought high-octane star power to the clinical education program. “When Tony joined the NYU faculty as the first faculty director of Clinical and Advocacy Programs, he was considered among the elite in three separate spheres: legal scholarship, education and practice,” recalls Guggenheim. “His rare status as a triple threat made him uniquely qualified to reshape and reconceptualize clinical education at NYU.” Perhaps more important, Amsterdam brought innovation, scholarship and a passion for clinical teaching that didn’t exist among law schools at the time—and is still rare today, even at top institutions.

From Clinics to a Clinical Program

Amsterdam held the opinion that 20th-century legal education was too narrow. Most law schools focused exclusively on teaching students to think analytically within a specific body of law—mainly the traditional first-year areas of contracts, torts, property, civil procedure and criminal law. “I thought legal education should include an examination of lawyer’s thinking, planning, decision-making and performance in practice,” he says. “I believed that examination should engage the same exacting critical analysis that law schools had traditionally applied to substantive legal doctrine.”

To that end, he designed the first integrated clinical curriculum, which reorganized the clinics into a three-year series of related learning experiences. The new curriculum included a seminal first-year lawyering course taught in seminar-sized classes that was devised by Amsterdam (originally as an experimental course at Stanford) using simulations, or role-playing, to develop critical ways of thinking about a lawyer’s basic practice skills such as in-

terviewing, negotiation, witness preparation and drafting. “Teaching the course was like sky-diving off the edge of the known law school universe, and hoping that a conceptual parachute would open before we hit bottom,” says Amsterdam.

Open it did. Lawyering, which became a mandatory full-year course in 1986, has grown into its own program with a 16-member lawyering faculty led since 1999 by Peggy Cooper Davis, the John S. R. Shad Professor of Lawyering and Ethics and a former Family Court judge. (See “Where It All Begins,” below.) In March, the Carnegie Foundation for the Advancement of Teaching released a two-year study that held up Lawyering at NYU as a model for “induct[ing] students into an understanding of how this complex system of society’s self-regulation works—or should work—to uphold and extend socially vital ends and values, and to put students on the path toward developing expertise as practitioners of the legal art.”

Amsterdam’s curriculum continued in the second year with more simulations, typically following a case or fact pattern for the entire semester. Cases such as the trial of a teenager accused of robbing a convenience store, with a victim who didn’t get a good look at the alleged perpetrator and a witness with credibility problems, would allow the instructor to control the progress of a case to create learning opportunities. Students can shift roles in order to develop multiple perspectives on a single situation. For example, acting as a witness motivated to lie or a prosecutor who asks a question and gets an answer that damages his or her case. Students can review themselves and critique their classmates’ performance by watching footage of their role-playing. They can also review a trial in its entirety, an experience that gives them an opportunity to reflect on alternative approaches to various circumstances. State-of-the-art simulation rooms in Furman Hall are equipped with microphones suspended from the ceiling and separate video rooms where the action is filmed from behind a glass wall.

WHERE IT ALL BEGINS

Learning the craft and building a foundation for legal practice

When University Professor Anthony Amsterdam conceived of Lawyering in the late 1970s, he was convinced that doctrinal analysis was just one of the many skills needed to be an effective lawyer. Through role-playing, written exercises, teamwork and feedback, the lawyering program lays a foundation for lawyers to understand and fulfill their complex role in society. “Our mission is to teach students what it means to practice law and to think critically,” says Peggy Cooper Davis, the John S. R. Shad Professor of Lawyering and Ethics, who has directed the program since 1999.

Teaching such fundamentals requires a clear comprehension of legal practice. To explore and

develop a conceptual framework for what lawyering is, Davis and Amsterdam began the Lawyering Theory Colloquium in 1991, in which faculty and upper-level law students gather ideas from many disciplines, such as psychology, rhetoric, anthropology and performance studies. Teaching units of the colloquium, experts such as cognitive psychologist Jerome Bruner can explore the effect of narrative on persuasion and decision-making, and Tony-winning playwright Anna Devereaux Smith can hone techniques of interviewing and representation. “The development of the program during the past two decades is clear evidence that the faculty is always pushing to expand the

meaning of experiential learning for everyone,” says Leonard Noisette ’84, executive director of the Neighborhood Defender Service of Harlem, who role-plays a judge for a Lawyering exercise on litigation.

The mandatory, year-long Lawyering course encompasses seven exercises that address the multiple intelligences required in lawyering and the multiple dimensions of the work. The Lawyering faculty meet throughout the month of June to analyze the prior year’s curriculum, hone their teaching methods and redesign exercises to make sure they will teach effectively the range of lawyering skills the colloquium has helped identify. For example, the exercise in Negotiation and Transactional Lawyering takes students through a hypothetical transaction involving NYU, which holds the patent on a breakthrough HIV/AIDS drug, and

Aderson, a fictional pharmaceutical company that wants to license it. The students are assigned to represent NYU or Aderson and given different sets of facts about financial, regulatory and other issues. They are then tasked with striking a deal. “Some students find dealing with numbers scary,” says former Associate Director of Lawyering Jacqueline Jones-Peace ’95, who was once an investment analyst. “This simulation should help them when they encounter negotiations requiring mathematical skills in the real world.”

The exercise requires the students to research, interview, negotiate and then engage in a comprehensive critique. Interpersonal and mathematical skills, the students learn, are equally important. The economic value of the deal, its public relations implications, its social effects and its meaning to

Finally, third-year students could elect to take fieldwork clinics where they represent actual clients. Over the years, fieldwork clinics have become an option for second-year students as well. “Tony’s approach was groundbreaking because it created a sequenced set of lessons that all built on the foundation of lawyering,” says Randy Hertz, the current director of Clinical and Advocacy Programs. “That sequence still sets the program apart: an overarching conceptual structure that defines what students can learn through clinical teaching and then finds the best way to provide that learning experience over a three-year cycle.”

The clinical program’s new structure drew more students into the program, and Amsterdam recruited professors, including Hertz, who came from the Public Defender Service of the District of Columbia; Holly Maguigan, a former criminal defense attorney from Philadelphia, and Nancy Morawetz ’81, who came from the Civil Appeals Unit of the Legal Aid Society of New York. The faculty also drew closer together under Amsterdam, meeting together regularly to talk about their goals for students.

In reflecting on the clinical program’s growth during the 1980s, Hertz, Guggenheim and others fondly remember the positive and creative contributions of Chester Mirsky, who passed away in 2006. Mirsky developed the Federal Defender Clinic, which evolved from the Criminal Law Clinic he cotaught with Harry Subin, and innovated another course with Subin called Criminal Procedure and Practice, which taught doctrine such as the law of bail and search and seizure, and used simulations to teach skills such as motions to suppress and how to do direct and cross examinations and make closing arguments. “The students loved it,” Subin says. “In terms of really understanding doctrinal law, it just brought it to life.”

In 1985, the clinical program achieved another milestone when Guggenheim became NYU’s first full professor of clinical law, beginning a tenure track for clinical professors that was in the vanguard for American law schools.

Recruiting a Diverse Faculty

In 1971, NYU became the home of the Juvenile Justice Standards Project, which lasted 10 years and produced 23 volumes developed by national juvenile-justice experts across a range of disciplines. The chairman of the project, the late Chief Judge Irving R. Kaufman of the U.S. Court of Appeals for the Second Circuit, suggested that NYU create a juvenile-justice clinic. Robert McKay, then dean of the Law School, went looking for someone to direct the clinic.

Martin Guggenheim got the job in 1973. He thought he’d stay for a year or two, but he found that he loved teaching in a clinical setting. It wasn’t long before Guggenheim realized he was learning a great deal about his profession through the craft of teaching it to his students. “I now was obliged to reflect analytically on the things I did as a lawyer,” he recalls. “I realized that there was a blueprint, which I was learning myself by teaching it to my students. I became a much better lawyer by teaching them to be lawyers—and the same thing is true of every clinical teacher I know.”

Guggenheim succeeded Amsterdam as director of Clinical and Advocacy Programs in 1988. He is particularly proud of his faculty recruiting and the expansion of clinic course offerings during his 14-year tenure. He inherited a distinguished group of mostly New York-based faculty, and created a more diverse faculty with a national reputation. The leading lights of this generation included Gerald López, who founded his own community-based law office in Los Angeles and subsequently taught public-interest law at the law schools of Stanford and UCLA; Anthony Thompson, a deputy public defender in California; Kim Taylor-Thompson, a former director of the Public Defender Service for the District of Columbia and Stanford professor, and Bryan Stevenson, who gained national prominence by appealing death-penalty convictions in the South.

The line-up of clinics also became more diverse. Professor of Clinical Law Sarah Burns, former legal director of the NOW

key personnel at both Aderson and NYU all receive careful attention in a fully realized bargaining plan. As one student wrote in an anonymous course evaluation: “Nothing I could have read about mediation or negotiation or interviewing a client could have taught me some of the lessons I learned from actually practicing.”

The real test of Lawyering’s success is when students apply their skills outside the classroom. Morgan Bottner ’07 clerked one summer for the Environmental Enforcement Division of the U.S. Department of Justice. He wrote part of a brief seeking a default judgment against a landowner whose corporation polluted property. “Lawyering was the one class that made me effective at my job,” says Bottner. “I learned to research issues that were new to me and write about them effectively.”



CLINICS ACROSS BORDERS

From a base in Washington Square, students investigate global issues

To effectively advocate for their clients across time zones, cultures and languages, the International Environmental Law and International Human Rights Clinics marshal all available resources at the Law School, including the international body of LL.M. students and the Centers of Human Rights and Global Justice (CHRGJ) and Environmental and Land-Use Law (CELUL). The clinics' successes have been stunning, especially considering the complex challenges they face.

The International Environmental Law Clinic selects an equal mix of J.D.s and LL.M.s who analyze the legal and policy issues presented by clients who include environmental groups, foreign governments, the U.N., the World Bank and other multinational organizations. Their output may include drafts of laws or policy proposals; research and preparation of position papers, and analysis of policy revisions or reforms. The students work closely with University Professor Richard Stewart, director of CELUL and the Hauser Global Law School Program.

Students in his clinic have worked for Environmental Defense

in New York, researching the practice of using carbon credits to reduce deforestation in developing countries. The trading scheme, formalized in the Kyoto Protocol, encourages polluting companies to fund environmentally friendly practices such as tree planting in other countries. Another group of students assisted the Israel Union for Environmental Defense, a Tel Aviv-based public-interest group, in analyzing the environmental law and policy issues that arose in developing a cooperative program between Israelis and Palestinians to better manage shared water resources.

The International Human Rights Clinic has leveraged the contacts, scholarship and passions of Assistant Professors of Clinical Law Smita Narula and Margaret Satterthwaite '99, to lead the world in human rights reforms in several key areas. Narula, a Human Rights Watch senior researcher for South Asia before coming to NYU in 2003, has focused her laser-sharp investigative skills to advocate on behalf of people suffering from religious and caste discrimination in South Asia and from racial

profiling post-9/11. Satterthwaite, a veteran human rights advocate for Amnesty International and the Haitian Truth Commission, has made world and national governing bodies address the practice of torture by proxy in the War on Terror, and has promoted social and economic rights in Haiti. "We bring our scholarship into the clinic, which creates a nice synergy between our research and clinical work," she says.

The clinic's work has generated a series of influential reports. Narula directed Jennifer Kim '07 and Naseem Kourosh '08 of the International Human Rights Clinic to produce "Americans on Hold: Profiling, Citizenship, and the 'War on Terror,'" in April. The report describes how immigration policy since 9/11 has institutionalized discrimination against immigrants perceived to be Muslim, Arab or South Asian. Also in 2007, Narula, CHRGJ Research Director Jayne Huckerby (LL.M. '04) and clinic students Stephanie Barbour (LL.M. '07), Tiasha Palikovic '07 and Jeena Shah '07 presented their report, "Hidden Apartheid: Caste Discrimination Against India's 'Untouchables,'" to the U.N. in Geneva on India's failure to end caste discrimination.

Satterthwaite made national news in 2006 and 2007 when the

research project she directs on extraordinary rendition and secret detention was cited by the Council of Europe as a major source of analysis. She also called for action in Haiti when she testified last year before the Inter-American Commission on Human Rights, the human rights body of the Organization of American States, denouncing as human rights violations the extreme poverty of Haitian citizens and their lack of food, clean water and shelter. Jordan Fletcher '06 and Swam Sallmark (LL.M. '06) helped prepare Satterthwaite's testimony. "The countless hours they put into constructing a compelling legal argument paid off when we arrived at the hearing room," says Satterthwaite.

Jennifer Turner '06 is the Arthur Helton Fellow at Human Rights Watch, in the women's rights division where she worked while a clinic student. During a month-long fact-finding mission last year, Turner investigated the physical, sexual and human rights abuses Sri Lankan women often endure as domestic workers in the Middle East. "The International Human Rights Clinic exposed me to the work I'm doing now," says Turner. "It helped me decide what I wanted to do with my life after law school."



Legal Defense and Education Fund, started the first nonlitigation-focused clinic, the Public Advocacy Clinic. It is cotaught with Brennan Center lawyers and has become the Brennan Center Public Policy Advocacy Clinic, designed to teach public policy reform strategies. López, a professor of clinical law, began the Community Outreach, Education and Organizing Clinic, in which students learn how to supplement traditional practice with a three-pronged problem-solving approach to helping the poor and educating the public about legal issues of the poor. Professor of Clinical Law Nancy Morawetz (with Michael Wishnie, who is now a professor at Yale Law School) began the Immigrant Rights Clinic (see “Come In and Get Out” on page 30), initially focusing on the rights of low-wage immigrant workers and protecting long-term lawful permanent residents from detention and deportation due to a criminal offense. Taylor-Thompson, a professor of clinical law, began the Community Defender Clinic, which teaches students to explore ways for defender offices to reinvent themselves and assume a broader role in the criminal-justice community by engaging in community outreach, building coalitions and participating in community action, and employing a wide variety of litigative and nonlitigative strategies, including legislative advocacy, community education, and media campaigns. Thompson, a professor of clinical law, launched the Offender Reentry Clinic (see “Beyond Law & Order” on page 23), which teaches students to be advocates for ex-offenders as they encounter legal and societal issues upon their return to free society, and Stevenson, a professor of clinical law, launched NYU’s nationally known Capital Defender-Alabama Clinic, which appeals death-penalty convictions in a state with no state public-defender system and 190 death-row inmates, 95 percent of whom can’t afford representation. When New York State reinstated the death penalty in 1995, NYU created the Capital Defender-New York Clinic, tapping Amsterdam (with, originally, Randy Hertz) and Deborah Fins, an attorney with the NAACP Legal Defense and Educational Fund, to teach it.

A 21st-Century Legal Education

Randy Hertz, who became director of the Clinical and Advocacy Programs in 2002, traces his interest in public-interest law and clinical education to his early life experience. As a high school student, he spent a summer as an intern for Queens Legal Services, standing on welfare lines with legal services clients. During college, he took a class with the late Democratic senator and social-justice champion Paul Wellstone, and worked with him in a community-based welfare rights organization. “The injustices that I saw and learned about made me feel like I had to devote my career and my life to trying to help those in need. It seemed to me that the best way to make a difference in the world would be to get a law degree and to devote my career to public-interest law.”

After Stanford Law School, where he had taken a criminal-law clinic taught by Anthony Amsterdam, Hertz joined the D.C. Public Defender Service, and then the NYU clinical faculty, teaching the Juvenile Defender Clinic. “All along the way, I had role models—people such as Amsterdam, Wellstone, and a Legal Aid lawyer named Neil Mickenberg,” he recalls. “They helped me to understand the critical importance of empathizing with clients, collaborating with clients, and seeking to empower clients. These are some of the lessons that I seek to pass on to my students.”

Indeed, Hertz serves as a mentor to many current and former students. In 2006, Juvenile Defender Clinic veterans Susan Lee ’06 and Vanita Gupta ’01 worked on a trial together in Louisiana in which they unexpectedly needed to cite a case in support of their

NYU Grad Takes Road Less Traveled

Chose school for its public law prep; generous debt plan

By Cynthia Rigg

Each year, nearly 1,400 students begin their legal studies at New York University School of Law. They are an elite group. *U.S. News & World Report* ranks NYU’s law school fourth in the nation. Less than 25% of applicants are accepted. Nearly 70% of NYU’s graduates last year went on to law firms—many of them among the country’s most prominent. Ten percent of graduates, however, choose to go into public service.

One of those is Joshua Perry, who has an undergraduate degree in English and American literature from Harvard University and graduated from NYU last December. He’s now with the New Orleans public defender’s office. Here, Mr. Perry discusses his reasons for going to NYU’s law school and how it helped prepare him for his new career.

Why did you choose NYU? I always wanted to work in indigent defense, especially capital defense. Some of the real heavy-hitters in criminal law are at NYU, like Tony Amsterdam, who litigated all the important death-penalty cases before the Supreme Court. It was important to be around people like him.

I also had expectations that NYU was a place that would help me get where I wanted to go, and that turned out to be true. It was welcoming and very established for people interested in going into public law, both in terms of preparing you and helping you find a job.

How so? I never felt pressure from my professors or peers to do the white-shoe law firm thing. If you wanted to, there was plenty of opportunity. Every fall, the top firms are banging down the doors to get students to work for the summer. But it was always clear that there were other ways to go. There is a very large public-interest law fair in February. There’s a sense of balance. Of course, there’s the pressure of debt.

How are you handling your school debt? [If you] go to a top law school, you are going to be coming out with \$150,000 in debt unless you’re lucky enough to have money. There’s no way to repay that kind of debt when you go into public defense in New Orleans, which pays \$40,000 a year. But NYU goes a long way to alleviating that pressure through what I think is a generous loan repayment program.

How does it work? The school is picking up my loan debt and will make the payments as long as I stay in the public interest area with a salary below a certain cap. I need to stay in public interest for five years to realize the benefits.

How did NYU prepare you for your job? Were there specific courses that helped? It goes without saying that NYU has impressive talent among its teachers, but what makes it different is the faculty’s single-minded focus on the welfare of the students. I went to Harvard and was lucky enough to take classes from all kinds of brilliant professors, many of whom couldn’t have cared less about me and my career. That wasn’t true at NYU, particularly in the law clinics.

NYU has a ton of clinical law programs. I took a law clinic in civil rights litigation, which focused on the rights of prisoners. While that isn’t exactly applicable to the work I’m doing, more broadly I was being taught to think strategically—always keeping your client in the center of what you do.

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argument that a defendant should be allowed to use statements that defense attorneys had previously succeeded in suppressing. They tried to access Westlaw from an Internet cafe during recess, but having no luck, they called Hertz, who gave them three cases in five minutes. "Maybe he doesn't want this to get out, but students use him as a resource long after they leave the Law School," says Lee.

The rewards of assuming that mentoring role are great. "Some of the best moments in clinical teaching are when students connect to their juvenile clients and bridge the divides that sometimes result from differences in race or class or by the lawyer's professional status," he says. "The student's act of transcending that gap can make a crucial difference in helping a client overcome adversity in his or her life or in winning a case in court for the client."

Hertz recounts the case of a 15-year-old client who was charged with robbery, but who claimed that he had acted under duress by other youths. "The case seemed unwinnable," he says. "But clinic student Marisa Demeo '93 won the bench trial by using witness examinations and closing arguments to help the judge see the world through the client's eyes—to appreciate how peer pressure and fear could cause a young person to act in ways that would seem unreasonable to an adult." Demeo was recently appointed a magistrate judge in the Superior Court of the District of Columbia.

Hertz lectures regularly to the local bench and bar about developments in criminal and juvenile law, and does pro bono work on briefs in criminal appeals, including capital appeals and habeas corpus proceedings. He is coauthor (with Amsterdam and Guggenheim) of the standard trial manual on juvenile court practice, and cowrote *Federal Habeas Corpus Practice and Procedure*.

All told, the Law School has 15 full-time clinical faculty, including 12 tenured or tenure-track faculty—the largest among top-five law schools. About half of all students take at least one fieldwork clinic before graduating—in 2006-07 about 325 upperclass students participated in 25 fieldwork clinics. The clinics have evolved,

but the basic structure of the program has remained the same over the last two decades. Through lawyering classes, simulations and fieldwork clinics, students learn how to navigate the client-counsel relationship and test legal strategies. They see firsthand how the legal system works, and gain the tools, experience and insight to discover in themselves how to advocate for their clients. "Clinic was my biggest learning experience in law school," says Bunton, the New Orleans juvenile defender. "There was, all of a sudden, this space where theory got applied to reality. Everything I had learned about how to practice came together. And then I understood why people call it the practice of law. No one really gets it right every time. It's constant practice and constant learning."

Hertz has expanded the clinical program in directions that serve the global community and redefine the nature of public-interest law. Both domestic and international clinics increasingly welcome collaboration with other fields, ranging from social work to medicine. "These changes all reflect trends in the world of practice," says Hertz. "The clinical program adjusts to new developments by offering students a chance to learn about cutting-edge issues and interesting new approaches."

One of the newest clinics, the innovative Medical-Legal Advocacy Clinic taught by Clinical Professor of Law Paula Galowitz, is a case-in-point. Students in the clinic, the first of its kind in the New York area, work with social pediatric medical residents at Montefiore Comprehensive Health Care Center, a federally funded community health center in the South Bronx, to develop and practice more holistic approaches to client treatment. Students handle legal issues that affect the health of the center's patients, most from indigent African-American and Latino communities. The clients' ailments include asthma triggered by mold from leaky roofs or rodent infestation and lead poisoning from paint.

Clinics continue to stretch beyond the role of teaching students how to litigate. The Mediation Clinic, taught by Burns and Ray

RESPECTING THE FAMILY ORDER

Giving children and parents the best chance to remain together

Martin Guggenheim '71, Fiorella LaGuardia Professor of Clinical Law, has a problem with the way our society approaches child welfare. In particular, Guggenheim believes that working to rehabilitate entire families should take precedence over efforts that focus solely on children's rights.

His views on such topics inform his work as a scholar—he wrote *What's Wrong with Children's Rights* (2005)—and as codirector of the Family Defense Clinic with Adjunct Assistant Professor of Law Christine Gottlieb '97. The clinic represents the adult relatives of children removed from their homes by Family Court. Clients, including parents accused of child abuse and

neglect, often suffer themselves from addiction, illness and poverty.

Like other NYU clinics, this one is interdisciplinary. In addition to Gottlieb, an attorney in private practice who is formerly a lawyer with the Juvenile Rights Division of the Legal Aid Society, Guggenheim is also joined by a social worker. The three supervise law students and master's candidates at the NYU School of Social Work as they help clients try to recover their family lives. The advantage of this collaboration is that the law students get to know their clients better, and the team is better able to ascertain the client's needs and develop a plan to get the client what he or she needs in terms of legal and

social services. Other organizations, including New York's Center for Family Representation and South Brooklyn Legal Services, have replicated Guggenheim's interdisciplinary model (see related stories on pages 6 and 42).

Guggenheim's 17 years of work with the clinic have helped create a cadre of young lawyers who share his views about the best way to approach the problems of child welfare. He makes no bones about his social justice agenda, which has had an important impact on the lives of former clinic students such as Heather Howard '97, policy counsel to New Jersey Governor Jon Corzine. Howard has spent the past decade working to develop public policies that strengthen families. "Usually, everyone talks about children's rights, but I like to get people thinking about defending families' interests," she says.

Howard helped develop New Jersey's Department of Children and Families, and helped create budget initiatives that doubled funding for after-school programs and delivered health insurance coverage to 50,000 children. As a student in the Family Defense Clinic, she represented a mother whose parental rights were terminated due to abuse and neglect of her two daughters. Years later, Howard learned that the mother had reunited with her children after pulling her life back together. "The clinic was the first time I recognized the unfairness in the system," says Howard. "When the state takes kids away from families, the families are almost always poor."

Like Howard, many students who participate in the Family Defense Clinic at NYU leave with a deeper understanding of the problems low-income families face in

Kramer, an administrative law judge with the Office of Administrative Hearings and Trials, begins by teaching students to resolve residence disputes in NYU dormitories and advances to mediating employment disputes arising at New York-area agencies. Galowitz will coteach the new Neighborhood Institutions Clinic with David Colodny, an attorney at the Urban Justice Center (UJC). The clinic will provide legal services to grassroots organizations that are clients of the Community Development Project of the UJC. The transactional needs of such organizations may include assistance with forming and governing a nonprofit, applying for tax-exempt status and negotiating leases.

The Comparative Clinical Justice Clinic crosses both geographic and theoretical borders. It's taught by Professor of Clinical Law Holly Maguigan, an expert on legal issues affecting battered women who have killed or harmed their abusers, or who were coerced by their partners into committing crimes, and social worker and psychologist Shamita Das Dasgupta, the cofounder of Manavi, an organization committed to ending domestic violence against South Asian women living in the United States. Students examine how different nations combat domestic violence through criminal law; they also help develop new criminal-justice initiatives with U.N. agencies, advocacy groups and nonprofit organizations.

The clinical faculty has taken on an even deeper international flavor with the 2003 hires of Assistant Professors of Clinical Law Smita Narula and Margaret Satterthwaite '99, whose credentials include advocacy and activism with Human Rights Watch and Amnesty International. (See "Clinics Beyond Borders" on page 26.) Coteaching the International Human Rights Clinic, Narula and Satterthwaite work together with their students to influence worldwide human rights policies through reports to Congress and the United Nations, and public-awareness campaigns on topics such as torture and racial profiling of Muslims, caste discrimination in South Asia, and lack of sustainable living conditions in Haiti.

Meanwhile, the long-standing clinics have evolved to adapt to changes in practice and new pedagogy. For example, the Civil Rights Clinic, taught for many years by Clinical Professors of Law Claudia Angelos and Laura Sager, has developed into two clinics that focus on cutting-edge civil rights issues. Sager teaches the Employment and Housing Discrimination Clinic, where students represent plaintiffs in discrimination cases in state and federal court. Angelos works with New York Civil Liberties Union attorneys Christopher Dunn and Corey Stoughton in a reconfigured Civil Rights Clinic on a wide range of civil liberties issues, including free speech, religious freedom and racial and economic justice. The Urban Law Clinic, taught for years by former Clinical Professor of Law Lynn Martell and Galowitz, evolved into the Civil Legal Services Clinic, focusing on housing and government benefits, and thereafter added a substantial component on representing clients applying for asylum.

A clinic that will be offered for the first time is the Supreme Court Litigation Clinic, taught by Dwight D. Opperman Professor of Law Samuel Estreicher with two adjunct professors who are partners at Jones, Day: Donald Ayer, a former U.S. deputy attorney general, and Meir Feder. The clinic will supervise students as they draft briefs and petitions for certiorari and oppositions. The clients will be prisoners appealing their convictions or seeking affirmative relief through civil actions. Students will take part in discussions with counsel and in moot courts and attend oral arguments.

Changing Views on Legal Education

Randy Hertz was a consultant to the task force that produced the 1992 MacCrate Report on legal education for the American Bar Association. The two-year study recognized the valuable contribution that clinics can make to a law school education, leading to a national discussion on legal education and pedagogy that continues today. In fact, Hertz recently lectured on his work on the report

the legal system, where the typical child welfare docket for one judge might include 200 cases a week. Judges commonly adjourn cases for up to 12 weeks, and children languish in the foster-care system for months if not years, while their families wait for a case to conclude. "The real teacher in this course is the client," says Guggenheim. "Once students learn to care about their clients, they see the world through the clients' eyes. They see that key actors, including lawyers, caseworkers and judges, treat these people very poorly. There is often a pivotal moment when a student comes to appreciate the difficulty that their clients experience—and comes to understand why so many of our clients would fail if they didn't have an NYU student working on their cases. After a moment like that, a student sees the world differently."



COME IN AND GET OUT

Post-9/11, clinic students serving immigrant clients must practice creatively.

The United States deported about 208,000 individuals in 2005, 38 percent more than in 2002. The surge is one indication of the new challenges facing immigrants in this country, and their growing need for legal representation. “September 11 has changed the rights of immigrants and the practice of immigration law,” says Professor of Clinical Law Nancy Morawetz ’81, who directs the Immigrant Rights Clinic.

It has also deeply influenced the students who represent immigrants. In 2004-05, an unprecedented four Immigrant Rights Clinic students argued three cases before the court of appeals, opposing the deportation of long-standing legal U.S. residents. “The opportunity to tell my client’s story in court was both terrifying and empowering,” says Angelica Jongco ’05, whose client, Luis Gutierrez, had been deported to Colombia but, after her appeal, was granted habeas corpus relief. She is now a law fellow with San Francisco’s Public Advocates firm. Kathryn Ann Ruff ’06 and Peter Hartley ’06, who took the Civil Legal Services Clinic cotaught by Clinical Professors of Law Paula Galowitz

and Lynn Martell, were so dedicated to their client’s cause that they gave up precious hours studying for their bar exams to continue her representation after graduation. Their client was a woman seeking asylum from China’s one-child policy, a claim that rarely succeeds. They prepared the woman and her husband for their asylum interview—a nearly full-time job in itself. When she learned her client had been granted asylum, says Ruff, “it was the best moment of my life.”

But traditional skills like effectively preparing and arguing appeals or prepping for hearings no longer suffice in today’s heated immigration climate. Clinics are now teaching creative advocacy—working with resources and constituents outside the legal profession to advance a client’s interests. “Immigration issues are too important to keep doing things the old way,” says Morawetz. “We will work with anyone in any forum. The goal is to give students a real sense of the many tools that can help their clients.” For example, the Civil Legal Services Clinic worked with organizations such as Doctors

of the World and Physicians for Human Rights, which conduct medical and psychological evaluations to substantiate the torture and abuse suffered by the clinic’s immigrant clients seeking asylum.

Some clients’ cases demand uncommon strategies. In 2002, the Immigration and Naturalization Service imposed a “special registration program” that required males residing in the United States who were citizens of one of 25 predominantly Muslim countries to register in person with the agency. Many who dutifully showed up, however, were arrested and placed in deportation proceedings.

Working with Lutheran Family and Community Services and the New York Immigration Coalition, Immigrant Rights Clinic students Matthew Ginsburg ’05 and Vanessa Lee ’05 represented one such person, Nofrizal Yahya, a then-44-year-old immigrant from Indonesia who had married and had a child during the nine years he had been in the United States. Yahya was a year short of eligibility to claim a “compelling circumstance”—in his case that his U.S. citizen daughter was born with Down syndrome and needed special care—that would

likely have made him eligible for permanent residency.

Ginsburg and Lee posted queries with various groups, and found a filmmaker, Jayden Films, willing to make a documentary that would inform the public about special registration and Yahya’s poignant situation. The strategy worked. *Removal* was selected as a finalist in the Short Documentary category at the 2005 Los Angeles International Short Film Festival. Immigration officials reconsidered the case, and in 2005 entered into a settlement that allows Yahya to live with his family in the United States, though he must report every three months to officials. His daughter is receiving the treatment and schooling he sought.

Omar Jadwat ’01, currently a staff attorney at the ACLU Immigrants’ Rights Project, credits his experience in Morawetz’s Immigrant Rights Clinic with giving him a broader view of his work and the discipline to self-criticize as a means to improve. “You have to sit down and discuss why you’re doing certain things,” he said. “The luxury of clinical work—even though it doesn’t seem like a luxury at the time—is the fact that there’s a reflective process built in.”



to students and faculty at three law schools in Japan. The country's Justice System Reform Council is focusing on the role that clinical legal education should play in Japan's law schools.

The invitation to give those lectures is one more sign that, as in the 1960s, different forces—including 9/11 and its aftermath, the growing need for lawyers to represent those who have fallen through the widening holes in our social net, and increasing interest in clinical education here and abroad—are giving rise to a new era in clinical education. Hertz cites the 2007 Carnegie Foundation report, as well as the Clinical Legal Education Association's recent *Best Practices for Legal Education*, as strong signs that clinical education is once again attracting the interest of the legal establishment and the broader legal community. Both advocate that law schools direct more resources to clinical programs in the education of law students, so that graduates are more adequately prepared for real-life practice early in their careers. The American Bar Association's Section of Legal Education and Admissions to the Bar hosted a national conclave in May that brought together judges, lawyers and legal educators to discuss possible legal education reforms. "This is a very exciting time to be a clinical teacher," says Hertz, who became chair-elect of the ABA section in August. "We're on the brink of developing and integrating important new ideas into clinical pedagogy to fulfill law schools' responsibility to—as it's phrased in the ABA Accreditation Standards for Law Schools—prepare students for 'effective and responsible participation in the legal profession.'"

Hertz currently is the editor-in-chief of the *Clinical Law Review*, the only peer-edited journal of lawyering and clinical legal education, established in 1994. NYU cosponsors the journal with the Clinical Legal Education Association and the Association of American Law Schools. A recent issue featured an article by students, in collaboration with professors Amsterdam and Hertz, which examined the first Rodney King assault trial. Among other things, the piece explains how lawyers used narrative in litigation, describing the facts of the case, the procedural posture at the outset of the trial, and the "cultural surround" on which the lawyers were able to draw in crafting narratives that would likely resonate with the jurors. In 2006, Hertz helped organize the first-ever *Clinical Law Review* workshop, held at the Law School, which gave 60 clinical law teachers from across the nation a chance to focus on academic writing skills that can help them earn tenure—an increasingly important goal as clinical education gains a higher profile.

All of the attention to the training of clinicians and to the clinical curriculum, and serving communities in need, bear fruit in experiences like Rachel Meeropol's. Meeropol '02 is an alumna of Bryan Stevenson's Capital Defender Clinic who now practices with the Center for Constitutional Rights in New York. She has acted as lead counsel on numerous prisoner rights cases, including *Turkmen v. Ashcroft*, a class-action suit on behalf of Arab and Muslim men rounded up in immigration sweeps after 9/11; *Doe v. Bush*, seeking representation for the unnamed detainees at Guantánamo, and other Guantánamo-related litigation. *The American Lawyer* recently ranked her among the 50 Top Lawyers Under 45. "We face some incredibly difficult battles in the field of immigrant rights," she says. "Because of my clinic work, I'm less inclined to fear that battle, or view it as impossible to win." □

Clint Willis has published more than 40 books, including award-winning anthologies on adventure, politics, religion and war. His writing has appeared in Money, Outside and the New York Times. Suzanne Barlyn has contributed to the Wall Street Journal and Fortune and is a nonpracticing attorney who received her J.D. from American University Washington College of Law.

DOING WELL BY DOING GOOD

As a student in the Women's Prison Project, Robin Steinberg '82 got hooked on public defense as she represented women incarcerated at the Bedford Hills Correctional Facility. "I was so moved by the women and their stories that I wanted to understand better what was happening in the criminal-justice system," she says. She later took the Criminal Defense Clinic and is now the executive director of the innovative Bronx Defenders Office that incorporates a holistic approach to criminal defense. "I am eternally grateful to NYU, my clinical instructors and my clients for bringing my law degree to life and giving it meaning," she said. A sample of NYU clinic alumni includes:

Steven Banks '81
Urban Law Clinic
Attorney-in-Chief, Legal Aid Society
(New York)

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Capital punishment, that contentious old emblem of the American criminal-justice system, is under fire. In recent months, California and Maryland followed eight other states in suspending operation of their death chambers. In 2006, the number of executions nationwide dropped to 53, the fewest in a decade, as governors, legislators and even some prosecutors questioned whether the ultimate punishment can be administered fairly and humanely.

And so, one might assume that a conversation with Bryan Stevenson, the celebrated death penalty defense lawyer and professor, might have an upbeat, even triumphant tone. One would be incorrect.

A man with a shaved head, wearing a dark navy blue jacket over a white shirt and a red and brown striped tie, sits on a simple wooden chair. His hands are clasped in his lap, and he has a serious, intense expression, looking slightly to the left of the camera. The background is plain white.

BRYAN STEVENSON'S DEATH-DEFYING ACTS

Stevenson arrives late, apologizing. A fundraising appointment uptown dragged on longer than expected and, he intimates with a sigh, could have gone better. We walk from his modest campus office to a Middle Eastern café near Washington Square Park. When I note all the recent news on the death penalty, Stevenson's face creases with concern. He worries about complacency among foes of capital punishment, while more than 3,300 people remain on death row. He detects "innocence fatigue" among media outlets, which he fears are no longer interested in covering the justice system's myriad flaws unless the story ends with the vindication of a long-suffering inmate. "9/11 had a role in this," he says. "The country had a huge new concern, a new fear. There was a new prison narrative in Abu Ghraib and Guantánamo....All of these things have tended to eclipse concern about the death penalty."

Stevenson, in sum, feels no reason to rejoice. He stays on message with an impressive discipline. He wants to talk about Anthony Ray Hinton, a condemned man he currently represents on appeal in Alabama, where Stevenson runs a nonprofit law firm called the Equal Justice Initiative, or EJI. Hinton has served 20 years on death row, convicted of a pair of robbery-murders at fast food restaurants near Birmingham. Stevenson says Hinton is innocent and received a capital sentence only because he is black and poor and couldn't afford a decent trial attorney.

In full advocate mode now, Stevenson cites statistics from Alabama and the nation as a whole, showing that a murder defendant is more likely to get the death penalty if he's black and the deceased is white. Stevenson speaks calmly, in carefully crafted sentences. "The real question," he says, "isn't whether some people deserve to die for crimes they may have committed. The real question is whether a state such as Alabama, with its racist legacy and error-plagued system of justice, deserves to kill." He thinks not.

Since his days as a law student at Harvard, Stevenson, who is 47 years old, has inspired breathless awe for his commitment and idealism. Randy Hertz, the director of clinical programs at NYU and one of Stevenson's best friends, acknowledges that the adulation at times seems implausible. But, Hertz says, "when you work closely with Bryan and spend a lot of time with him, what you discover is that the stories about him that seem like they must be apocryphal—the brilliance, the round-the-clock schedule, the selfless devotion to others—are absolutely true, and if anything, probably too understated." Cathleen Price, a senior attorney who works for Stevenson at EJI in Montgomery, says he stands out even within the tiny fraternity of die-hard death-penalty lawyers. The labor is draining; the pay, poor. "You decide in each year whether you can go on for another year—how much sacrifice you can give versus the great need for the work," explains Price, who's been with EJI since 1997. "But Bryan doesn't seem to think that way. His life is the work and the sacrifice. It's what he wants. He is unique."

Stevenson has mixed feelings about all the wonderment. Single and famously ascetic, he admits that apart from family, everyone close to him comes from his professional circles. He doesn't know any of his neighbors in Montgomery, where he has lived for nearly 20 years. Outside of the EJI office, a spacious downtown building next door to the Hank Williams Museum, Stevenson says he feels wary and unwelcome. The Confederate flags flown by some businesses and homeowners rankle him, as does a popular bumper sticker: "If I had known it would turn out like this, I wouldn't have surrendered," attributed to Confederate General Robert E. Lee.

On the topic of sacrifice, he can get a little defensive. "To me it was completely fortuitous that I found something that I was so energized and jazzed by," he insists. "I think it became a lifestyle

because it seemed like it was that way for the people I initially met" doing death-penalty work. "But it didn't seem like a lifestyle that was out of balance.... Nothing felt sacrificial."

It becomes clear during a series of conversations over several months that the roots of Stevenson's singular dedication—a term he might prefer to sacrifice—trace back to a childhood influenced by the African Methodist Episcopal church. The gospel of lost souls seeking redemption echoes in his memory. "I believe each person in our society is more than the worst thing they've ever done," he sermonizes in nearly every appearance, his voice intense yet controlled, his cadence that of a preacher in full command of a congregation. "I believe if you tell a lie, you're not just a liar. If you take something that doesn't belong to you, you're not just a thief. And I believe even if you kill someone, you are not just a killer. There is a basic human dignity that deserves to be protected."

Identifying that shard of dignity became Stevenson's own form of redemption, his means of achieving a personal state of grace, though in his unusual life, the liturgy of litigation has replaced communal worship: He rarely finds time anymore to attend church. His exertions produce results in the secular realm. EJI has helped reverse the death sentences of no fewer than 75 Alabama inmates over the past two decades. He has argued twice before the Supreme Court of the United States and received practically every award a liberal civil rights attorney could receive.

For all that, though, Stevenson is not a man free of doubt. Sometimes, when he's not standing in front of an appellate court or an audience of law students, he quietly admits to a measure of uncertainty over how to map the second half of an extraordinary career. He is looking beyond capital punishment, determined to broaden his focus. He has begun to seek redress for inmates condemned to life in prison for crimes committed when they were 13 or 14 years old. This and other new forays have him redoubling his fundraising, expanding his 19-person organization, and feeling more than typically stretched as he juggles teaching in New York, litigating in Alabama, and speaking across the country. "It's harder and harder to assess what you can do and what you want to do," he concedes. "My vision of the needs of the world gets bigger and bigger."

Born in 1959, Stevenson grew up in rural Milton, Delaware, a border area more a part of the South than the North. *Brown v. Board of Education*, the 1954 Supreme Court case that condemned segregation in public education, was slow to reach southern Delaware, and Bryan spent his first classroom days at the "colored" elementary school. By the time he entered the second grade, the town's schools were formally desegregated, but certain old rules still applied. Black kids couldn't climb on the playground monkey bars at the same time as their white classmates. At the doctor's and dentist's office, black children and their parents continued to enter through the back door, while whites went in the front. White teenagers drove past black homes, the Confederate flag flying from one car window, and a bare behind sticking out another one. "Niggers, kiss my ass!" they shouted.

Bryan's father, Howard Stevenson, Sr., worked at the General Foods processing plant. Mr. Stevenson had grown up in the area—his female relatives worked as domestics for white families—and he took the ingrained racism in stride. "He'd pray for people and say God would deal with the bad ones," recalls Bryan's older brother, Howard, Jr. Their mother, Alice Stevenson, was a different story. A clerk at Dover Air Force Base, she had grown up in Philadelphia, where the constraints on African Americans were less oppressive. She bristled at the routine bigotry she encountered in southern Delaware. When Bryan was automatically placed, along



*The Family Stevenson: Howard Sr., Christy, Howard Jr., Alice and Bryan on the steps of the U.S. Supreme Court after Bryan argued *McMillian v. Monroe County* in 1997. From left: Bryan, about age 8; with Christy's daughter Victoria Taylor in 1989; school portrait, about fourth grade.*

with the other black children, in the slowest of three groups in second grade, his mother wrote letters and objected in person until he was moved up to the previously all-white accelerated group. When white supermarket clerks placed her change on the counter instead of directly into her hand—a gesture she interpreted as a racial slight—she demanded, “You give me my money!”

Alice Stevenson’s “message was, ‘Don’t let people mistreat you because you’re black,’” says Howard Jr. “She was very direct: ‘If someone speaks the wrong way, you speak back. If someone hits, you hit back.’” This wasn’t theoretical advice. In elementary school, the Stevenson brothers, often allied with an Hispanic classmate, did fight with white boys who came at them swinging. Bryan translated their mother’s eye-for-an-eye philosophy into a career of legal combat. Howard, a noted Ph.D. psychologist and associate professor at the University of Pennsylvania’s Graduate School of Education, researches the socialization of African American boys, although with the goal of steering them away from violence.

Alice Stevenson inherited her fierce dignity from her mother, Victoria Golden, the daughter of slaves from Virginia and family matriarch. Bryan, Howard, and their younger sister, Christy, visited their grandmother regularly at her home in Philadelphia. Victoria’s word was law that no one questioned. When she took young Bryan aside one day and asked him never to touch alcohol, he promised he wouldn’t. Four decades later, he still hasn’t.

But not all of the extended family served as a source of pride. Bryan and his siblings had an uncle who died in prison, and the children rarely saw Victoria Golden’s husband, their grandfather Clarence. In contrast to his abstinent wife, Clarence had been a bootlegger during the Prohibition era and also did time behind bars. Known for his sharp wit and wiliness, Golden drifted away from his family and as an old man lived alone and poverty-stricken in a public housing project in south Philadelphia. One day some

teenagers broke in to steal his television. When he resisted, they stabbed him to death. He was 86; his grandson Bryan, 16.

The murder intruded on the remarkable bubble of achievement in which Bryan thrived. His parents, steadily employed, provided a more comfortable life than that of most of the family’s rural black neighbors. Bryan excelled at Cape Henlopen High School, bringing home straight A’s and starring on the soccer and baseball teams. He performed the lead role in “Raisin in the Sun,” the play about a striving working-class black family. He served as president of the student body and won American Legion public-speaking contests. His grandfather’s brutal death reminded Bryan how different his family was from those of the middle-class white kids he mingled with at school. Until adulthood, he never spoke of the killing in public. “I didn’t want anyone to know about some of these realities that were unique to people living at the margins,” he says.

Church was the place where a young Bryan made sense of how the fulfillment he derived from early success could coexist with the racism and poverty he observed around him. The family attended the Prospect African Methodist Episcopal Church where Bryan’s father played a prominent role. At special testimonial services, members of the congregation stood one by one and competed to confess the lowest sin. “God delivered me from alcohol,” one would say to light applause. “God delivered me from drugs,” said the next, as excitement built. “If you said you had been in prison, you got even bigger applause,” Stevenson recalls. “The more you had fallen, the more you were celebrated for standing up.” Here were the beginnings of his belief that people are defined by more than their worst act.

Worship had another dimension for Bryan. His mother played piano and encouraged her children to listen to music, especially gospel and jazz. Bryan, it turned out, could pick up songs by ear

and taught himself to play the beat-up old piano his mother kept in their home. His family appears to have taken this in stride, along with his other talents. By the age of ten, he was accompanying the gospel choir at Prospect AME. “Playing piano gave him confidence in front of an audience,” his brother, Howard, says. “He became a performer.” When the choir toured the state, Bryan went along.

His repertoire expanded to include blues, Motown, and R&B. “Stevie Wonder and Sly and the Family Stone were favorites,” Howard recalls, “in part because of the way they combined their music with themes having to do with right and wrong in society, and injustice.” Kimberle Crenshaw recalls Bryan’s piano playing drawing a crowd of black teenagers during breaks in a 1976 conference for student leaders in Washington, D.C. Crenshaw, like Stevenson, was 17 then, and has been a friend ever since. “His music—he was playing gospel and spiritual—created a space for other African Americans who came from a church background,” she says, “and that led to discussions of social and racial issues. He was not loud, not boisterous. He was as firm and resolved as a 17-year-old could be.”

A year later, Stevenson followed his older brother to Eastern University, a Christian school in Pennsylvania with a vibrant music program and a strong soccer team. He majored in political science and philosophy and directed the campus gospel choir. For a time, he dreamed of a career playing piano or professional sports. But as the years went by, he realized that a life on the road might be less than glamorous. He says he chose law school without much thought. “I didn’t understand fully what lawyers did,” he admits.

His brother sees a natural progression from precocious musical performer to high school debater to professional advocate. Howard even takes some credit for helping hone Bryan’s rhetorical skills:

“We argued the way brothers argue, but these were serious arguments, inspired I guess by our mother and the circumstances of our family growing up.” Bryan headed for Harvard Law School.

He arrived in Cambridge in the fall of 1981, he says, “incredibly naïve and uninformed.” His only prior visit to the Boston area was with his college baseball team. The local fans had shouted slurs and thrown bottles at the black players from Eastern University, forcing the game to end early. While his classmates at Harvard Law School were friendly, he never felt comfortable among students who for the most part were from more privileged backgrounds. “I stopped almost immediately trying to fit in,” he says. “I thought about it more like a cultural anthropologist,” trying to figure out the customs of a tribe in whose midst he found himself. Subjects like property, torts, and civil procedure seemed abstract and distant. “I just found the whole experience very esoteric,” Stevenson says.

The arcane suddenly became relevant, even urgent, when he traveled to Atlanta for a month-long internship in January 1983—part of a Harvard course on race and poverty. He worked for an organization now known as the Southern Center for Human Rights. “For me, that was the absolute turning point,” he says—of both his time at Harvard and his nascent legal career. The center, led by a dynamic young attorney named Stephen Bright, engaged in a case-by-case war against the death penalty. Bright threw his inexperienced Harvard intern into pending appeals on behalf of death-row clients whose trial lawyers, out of either ignorance or negligence, hadn’t put on much of a defense. “He is brilliant, quick, and speaks with eloquence and power,” says Bright. “That was apparent from when he was a student here. It was obvious that his natural skills gave him an advantage over many practicing lawyers.”

PHOTO CREDITS FOR #1 ANDY LEVIN; #4 DARLENE BENWAY

Scenes from *Montgomery*: (1) with client Jesse Morrison, who won a reduced sentence after 19 years on death row; (2, 3) glimpses of people at work in the EJI offices; (4) with client Jerald Sanders after his release from prison; (5) a tower at Holman State Prison; and (6, 7, 8) Stevenson at the EJI offices where he manages 18 lawyers and staff members.



Stevenson read transcripts that revealed trial attorneys failing to offer either witnesses or closing arguments. He reviewed briefs devoid of legal analysis. "I could do better," he thought. "It really did change the way I thought about law," he explains. "All of a sudden, the more you knew about procedure, the more you could problem-solve for someone who had a good claim that had been procedurally barred. The more you knew about the substantive law, the more likely you would be to come up with ten other options for this person to get a new trial." In both of the cases he worked on that January, the clients eventually had their death sentences set aside and received prison terms instead. "It did seem to me you could actually do something," he says. From that point forward, he thought of himself as a death-penalty lawyer.

Kimberle Crenshaw ended up being a classmate at Harvard Law. She and other black students focused on such campus issues as integrating the faculty. Stevenson sympathized but kept his distance, she says. "He was kind of ahead of the curve, looking beyond the law school, focusing on the disenfranchised and how to use the system to fight for them." Crenshaw now teaches civil rights law at Columbia University and UCLA.

Returning to Bright's center after graduating from Harvard, Stevenson relished everything about the role of being a staff attorney at a public-interest organization: the life-and-death stakes, the long hours, the sense of mission, even the low pay. "The lawyers," he says, "seemed passionate and engaged and completely focused on the problems of people on death row, who were literally dying for legal assistance." For about a year, he slept on Bright's couch, which Stevenson recalls as lumpy. ("It couldn't have been too lumpy," Bright responds, "because he slept on it a long time!")

Joking aside, Stevenson stresses how important near-poverty became to him. "Nobody got paid any money, or at least very little," he says, "and that struck me as the ultimate measure of something genuine." In contrast to the fancy corporate law firms that charmed so many of his Harvard classmates, he says, "it became clear to me that these death-penalty folks were real. They were serious."

Stevenson had discovered a cause in correcting injustice. He also found an inner path to authenticity by denying himself the material trappings of the professional class. "If monks were social activists, that is what he would be," observes Crenshaw. "There are people who do what he does when they're 20 or 30, but by the time they're 40 or older, they're usually looking for at least some creature comforts.... There is a spiritual element to it for Bryan, something otherworldly about it. I can't quite put my finger on it."

In an interview published last year by the Christian magazine PRISM, Stevenson elaborated on this theme. Noting that after Harvard he could have had any legal job he wanted, the publication asked why he chose a death-row practice. "For me, faith had to be connected to works," Stevenson answered. "Faith is connected to struggle; that is, while we are in this condition we are called to build the kingdom of God. We can't celebrate it and talk about it and then protect our own comfort environment. I definitely wanted to be involved in something that felt redemptive."

By the time Stevenson moved from Cambridge to Atlanta in 1985, the campaign against the death penalty had seen its greatest breakthrough in *Furman v. Georgia* (1972), the culmination of a series of challenges charted by Anthony Amsterdam, now University Professor at NYU School of Law. (See "A Man



At work and at home in Alabama: (1) The nondescript entrance to the EJI's offices; (2) Stevenson at his home office; (3) a conference at EJI; (4) flags at Holman State Prison; (5) clinic students Isaac Bowers '07, Jens Knudsen '07 and Sarah Schindler-Williams '07, and (6) late at night, Stevenson plays jazz, gospel, R&B, Motown and the blues when a client's uncertain fate makes sleep impossible.

Against the Machine,” on page 10.) The Supreme Court had reinstated capital punishment in 1976. The tiny corps of lawyer-activists appealing death sentences thereafter sought narrow victories based on specific facts. They crafted arguments that a defendant’s childhood deprivation, physical mistreatment or limited mental capacity, for example, hadn’t received sufficient attention at trial.

As Stevenson familiarized himself with such obscure specialties as obtaining an emergency stay of execution, the issue of race surfaced in case after case. Black defendants were overrepresented among the condemned, and murders of white victims seemed to lead prosecutors to seek death sentences.

Outside the courtroom, Stevenson was frequently reminded of his own race. One weekend, he glanced out the window of the supermarket where he shopped and noticed a rally in the parking lot. Members of the local Klavern of the Ku Klux Klan had gathered to promote white prerogatives.

On another occasion, he was sitting in his parked car at night, listening to Sly and the Family Stone on the radio before going inside to his apartment. A passing police cruiser stopped, and an

capital punishment more cautiously. “What was shocking,” he says, “was the majority’s comfort level in justifying these racial findings, which they didn’t question; they accepted them.” Georgia executed Warren McCleskey in 1991, and most death-penalty litigation then returned to parsing alleged procedural defects in trials.

Two years after the decision in McCleskey, Stevenson accepted another death-penalty case suffused in race, but one unencumbered by lofty debate about statistics. The raw injustice at the core of Walter McMillian’s case catapulted Stevenson into the national consciousness as a gifted and passionate capital defender.

At Bright’s request, Stevenson was spending an increasing amount of time in Alabama in the late 1980s, helping with litigation concerning the abysmal conditions of the state’s prison system. Stevenson also agreed to represent a batch of Alabama death-row inmates. McMillian, a 45-year-old pulpwood worker with only a misdemeanor bar fight on his record, had been convicted in 1988 of the murder two years earlier of an 18-year-old dry-cleaning store clerk. He was black; she was white. The case played out in Monroe-

“It’s harder and harder to assess what you can and what you want

officer ordered him out of his car. When Stevenson, who was wearing a suit and tie, stepped out, the nervous white policeman pointed his gun at the 28-year-old black lawyer and shouted, “Move, and I’ll blow your head off!” Another officer threw Stevenson across the hood of his car and conducted a fruitless search. Neighbors came out to watch. Frightened and enraged, Stevenson clung to long-ago advice from his mother: don’t challenge angry white cops.

The police eventually let him go without so much as a parking ticket. Months later the Atlanta Police Department officially apologized, but only after Stevenson had filed an administrative complaint and implied he might follow up with a misconduct suit.

During this period, Amsterdam and other anti-death-penalty strategists decided to try another frontal constitutional assault. They selected a case from Georgia and asked the Supreme Court to declare the death penalty unconstitutional once and for all because it systematically discriminated on the basis of race.

McCleskey v. Kemp, decided in April 1987, involved a black man, Warren McCleskey, sentenced to die for killing a white police officer during the course of a furniture-store robbery. Stevenson, a junior lawyer on the McCleskey team, helped with legal research. The McCleskey lawyers based their appeal on a study of more than 2,400 homicide cases in Georgia in the 1970s. The research indicated that Georgia juries were 4.3 times more likely to impose the death penalty if the victim is white—and that the odds only got better if the victim is white and the killer is black.

The Supreme Court rejected the argument, 5-4. Writing for the majority, Justice Lewis Powell didn’t dispute the statistical showing but said that McCleskey’s lawyers had failed to offer evidence specific to his case that showed racial discrimination. “Apparent disparities in sentencing are an inevitable part of our criminal-justice system,” Powell observed. “McCleskey’s claim, taken to its logical conclusion throws into serious question the principles that underlie our entire criminal-justice system.” Justice William Brennan Jr. responded in dissent that “taken on its face, such a statement seems to suggest a fear of too much justice.”

When he heard the result, Stevenson wasn’t surprised that the high court refrained from striking down the death penalty across the board. But he had hoped for a ruling that would at least require Georgia and other states with records of racial misdeeds to apply

ville, best known as the home town of Harper Lee, author of “To Kill a Mockingbird,” the best-selling novel published in 1960 about racial injustice in a Southern small town dominated by Jim Crow.

Stevenson says he didn’t take the case because he thought McMillian was innocent. Most death-row inmates, including most of his clients, he says, are guilty of something, if not necessarily the precise charges that led to their sentences. But the taint of racism in the McMillian case piqued the lawyer’s interest. First there was the sentimentalized reverence that Monroeville’s citizens had for “To Kill a Mockingbird.” They wore their association with the book as a badge of honor, when in fact the work was meant as an indictment. “It was clear to me when I got there that very little of the book had sunk in,” Stevenson deadpans.

The sociology of the place was highly relevant because of McMillian’s local reputation. Though married to a black woman, he had crossed a sacrosanct line by openly having an affair with a white woman. Making matters worse, one of McMillian’s grown sons was married to a white woman. “The only reason I’m here is because I had been messing around with a white lady and my son married a white lady,” McMillian told the *New York Times*.

The evocatively named Judge Robert E. Lee Key had moved the trial from Monroe County, which was 40 percent black, to Baldwin County, which was only 13 percent black. The jury of 11 whites and one black heard testimony from three prosecution witnesses implicating McMillian. Foreshadowing the outcome, the authorities had held McMillian for months before trial on Alabama’s death row. The two-day trial ended in conviction, and the jury imposed a sentence of life imprisonment. Judge Key overrode the sentence, as Alabama’s law permits, and sentenced McMillian to death. Key described the crime as the “vicious and brutal killing of a young lady in the first full flower of adulthood.”

As he began to investigate the case, Stevenson found McMillian’s friends and neighbors suffering from what he interpreted as a form of group depression. The verdict, he says, “was incredibly debilitating to people of color and to poor people in that community,” because so many of them knew that the defendant’s alibi was true. Defense witnesses at trial had placed him at a fish fry 11 miles from the killing. “I think it felt like an indictment and a prosecution of an entire community,” Stevenson says.

Then he came across the defense lawyer's dream: police files improperly concealed at trial. Within those files was an audiotape, and on that recording were the voices of officers coercing the main prosecution witness to testify falsely that he saw the killing. All three witnesses for the state eventually recanted. But shockingly, Judge Key refused to throw out the conviction.

Stevenson "was sure that McMillian was innocent," recalls Bright, "but the setting in which he had to investigate the case and present his arguments could not have been worse." Stevenson received telephone death threats at his home and office in Montgomery. Meanwhile, Alabama's appellate courts refused to act.

Stevenson decided to try another sort of appeal. Working with Richard Dieter of the Death Penalty Information Center, a clearinghouse in Washington, D.C., the attorney arranged to meet a producer from the CBS newsmagazine show "60 Minutes." Dieter recalls the session at an outdoor restaurant: "Bryan was warm and affable as always, but he got right to the point. He told the story of his client's innocence and the prosecution's manipulation of the case through inaccuracies and racial taint. With Bryan weaving

in the last 14 hours of my life, than they ever did in the first 19 years of my life," Richardson said to his attorney.

Stevenson tells this story in many of his speeches. He asks rhetorically where those attentive Alabama officials had been when Richardson was being physically and sexually abused as a child, when he became a teenage crack addict, and when he was homeless on the streets of Birmingham. "With those kinds of questions resonating in my mind," Stevenson says, "this man was pulled away from me, strapped in Alabama's electric chair, and executed."

Even fellow death-penalty activists marveled at Stevenson's decision to leave Atlanta for Montgomery. "Many law school graduates go to a place like Montgomery for a couple of years—maybe four or five—which is wonderful," says Bright. "But Bryan has gone way beyond that."

Stevenson thought little of it. "What might have intrigued people was that there was no clear 'get' if you were going to spend all your time helping really hated people in the deep South," he says. "What you're going to get is a lot of contempt and hostility,

to do. My vision of the needs of the world gets bigger and bigger."

the story, it was spellbinding. After he finished, the producer said, 'If even half of what you are telling me turns out to be true, we'll be down in Alabama in a few days.'" The newsmagazine aired a devastating piece. "Just the presence of this show in Monroeville caused the legal wheels to start turning," Dieter says.

The Alabama Court of Criminal Appeals, which had earlier brushed off a series of appeals on McMillian's behalf, now unanimously threw out his conviction. In March 1993, Walter McMillian left his cell, a free man. "We told the court when we were here a year ago that truth crushed to earth shall rise again," Stevenson told the *Times*. "It doesn't necessarily mean we believe in the judicial system." Dieter today identifies Stevenson's victory in the McMillian case as "the start of a long series of innocence cases that has led to the present rethinking of the death penalty."

Stevenson never gained faith in Alabama's judicial system, and even as he fought the McMillian case, he suffered one of his most poignant defeats. Soon after moving to Montgomery in 1989 to open the predecessor agency to the EJI, he received a collect call from Holman State Prison. A death-row inmate there had heard about the young lawyer and decided to plead directly for help. His story was a grisly one. The inmate, an emotionally disturbed Vietnam veteran named Herbert Richardson, had left a homemade bomb on the porch of a woman he was stalking. The bomb exploded and killed not the woman, but a little girl from the neighborhood.

Richardson's execution was only 30 days away. Stevenson recalls telling him there was nothing he could do: "I'm sorry, but we don't have staff, we don't have books." Richardson called back the next day, begging. The lawyer finally agreed to do what he could. He gathered some documents on the case and filed for an emergency stay of execution. "But," he says, "it was too late."

On Richardson's execution day, Stevenson drove to Holman so he could keep his client company during the final hours. An innocent child had died, the lawyer acknowledges. But Stevenson's thoughts focused on the inmate, whom he believed had been in the grip of mental illness. Richardson made an observation that has haunted Stevenson ever since. All day long, people had asked the condemned man what they could do to help. Prison officials gave him special meals, all the coffee he wanted, and stamps for farewell letters. "More people have said 'What can I do to help you?'

maybe disrespect and a lack of appreciation from your immediate environment." His life was already so Spartan—a barely furnished apartment; 14-hour work days, seven days a week; only occasional socializing—that the Montgomery move didn't seem like much of an additional deprivation. Many types of law practice, not just at a fancy corporate firm, would have fattened his bank account. Almost any other kind of job would have left more time for a personal life. He wanted none of it. When the board of directors of the non-profit Capital Representation Center in Montgomery offered him \$50,000 as a starting salary, he insisted on taking only \$18,000.

His parents for a long time had difficulty comprehending his commitment. "They were a little mystified by what I was doing and why," Stevenson admits. Being a lawyer was fine, but why did he have to represent people accused of such horrible crimes? Why did he have to work so many hours? Aware of this consternation, Stevenson years ago gave his parents a videotape of a speech in which he explained to an AME church convention why he represented men on death row. He quoted the Bible, Matthew 25:34-40, in which it is predicted that in Heaven, Jesus will say to the righteous:

Come, you who are blessed by my Father; take your inheritance, the kingdom prepared for you since the creation of the world. For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me.

The righteous, perplexed, will ask Jesus when they had fed Him, clothed Him, or visited Him in prison. And Jesus will reply: "I tell you the truth, whatever you did for one of the least of these brothers of mine, you did for me."

Hearing their son put his work in a Christian context allowed Alice and Howard Stevenson to understand why Bryan had decided to spend his life in the service of men on death row. Around the family, "he never talked about himself," Alice Stevenson told the *Washington Post* before her death in 1999 at the age of 70. "Me, I've been a money-grubber all my life," Mrs. Stevenson continued. "But now that I've been sick, I see that Bryan is right. Really, what are we here for? We're here to help one another. That's it."

Media coverage of the McMillian case brought Stevenson a measure of fame. Accolades began to accumulate, including, in

1995, a \$300,000 “genius” grant from the John D. and Catherine T. MacArthur Foundation. Stevenson says he passed all the money along to his nonprofit legal center in Montgomery, which at the time had an annual budget of \$500,000.

Law schools, including NYU, invited the now-prominent Stevenson to lecture and teach. He enjoyed interacting with students and saw hands-on legal education as an effective way to train public-interest lawyers. John Sexton, then dean of the NYU School of Law, made an extraordinary offer: Stevenson could teach alongside the legendary Amsterdam and continue to run the EJI, shuttling back and forth from Montgomery to New York. The Law School would provide generous funding to support students and recent graduates to work for Stevenson in Alabama. In other words: lots of free labor.

Stevenson asked Amsterdam for advice. Amsterdam answered with a question: Will it advance the interests of your clients? Concluding it would, Stevenson became an assistant professor of clinical law in 1998 and five years later, full professor. He teaches three classes: Race, Poverty and Criminal Justice; Capital Punishment Law and Litigation, and the Capital Defender Clinic, which includes three months at the EJI in Montgomery. Amsterdam coteaches the New York portion of the clinic. Stevenson gives part of his NYU salary to EJI and lives on the rest. He takes no pay from the EJI.

What began as an unconventional experiment has paid off for all concerned. “The Law School has been a really great partner,” Stevenson says. He has benefited from the work of dozens of students like Aaryn Urell '01. A native of southern California, Urell encountered Stevenson soon after she arrived at NYU. “People in

the public-interest community all said, ‘Oh, you have to go hear Bryan speak. You won’t believe how inspiring this guy is.’” Urell had a master’s degree in international peace and conflict resolution and had done human rights work in Africa. She had heard rousing speeches, but the Stevenson talk was different: “He spoke about serving the despised, the poor, the abused, people without resources and all alone and abandoned in a system set up to work against them....I resolved on the spot to work for him.”

During the summer after her first year, she worked at EJI in a public-interest internship funded by proceeds from a student-organized annual auction. She returned for spring break her second year. “They couldn’t get rid of me,” Urell says. She took Stevenson’s two classroom courses in New York and then spent much of the fall semester of her third year in the clinic in Montgomery. Eight students at a time work in the clinic, an intensive experience which includes reinvestigating the cases of death-row clients and drafting appeals. After receiving her J.D. in 2001, Urell returned to Montgomery as one of two NYU-sponsored postgraduate fellows at EJI. When that two-year program ended, she signed on as a staff attorney and continues in that capacity. “It’s a privilege to work on these cases and to serve these clients and their families,” she says.

Stevenson teaches students an array of formal and informal legal lessons. They draft appellate briefs and learn the Southern etiquette needed to negotiate with Alabama court clerks. He instructs them never to call any adult—especially clients and their family—by their first names, always “Mr.” or “Mrs.” He also teaches them that remaining silent is sometimes the best way to get a reluctant witness to revisit a long-ago murder case. “Generally

The Capital Defender Clinic—Alabama: (1) Anthony Amsterdam coteaches New York sessions of the clinic; the eight students of the 2007 clinic included (2) Tricia Bushnell '07 and Ryan O'Dell '07 and (3) Sarah Schindler-Williams '07, and (4) Bushnell.



people do want to tell you their stories. You need to let them," says Matthew Scott '07, who worked at EJI in the spring of 2007 and plans to become a public defender.

In her first summer at EJI, Urell investigated a series of robbery-shootings at fast food restaurants from Birmingham to Atlanta. "We spent a lot of time in the car, I'll tell you that," she recalls. Her goal was to demonstrate that the distinctive crimes—during which the robber forced restaurant managers into walk-in freezers and then shot them—continued even after an EJI client accused of two of the crimes had been arrested and taken off the street.

That client is one of Stevenson's top priorities at the moment because the lawyer believes he can prove the man innocent. Anthony Ray Hinton was arrested in 1985 and charged with two of the fast-food murders. No eyewitnesses or fingerprints placed him at either crime scene, but he was identified by a victim who survived a third restaurant shooting. Strangely, prosecutors never charged Hinton with the third attack. In addition to the victim identification, the state offered expert testimony that slugs from all three crimes were fired from a .38 caliber revolver recovered from Hinton's mother.

At the time of the trial in 1986, Alabama capped compensation for court-appointed criminal trial lawyers at \$1,000. Hinton's trial attorney received only an additional \$500 to hire a ballistics expert and ended up with one who was both inexperienced and blind in one eye. The prosecutor tore the unqualified "expert" to shreds, and Hinton was convicted and given two death sentences, which Alabama appellate courts affirmed.

Stevenson stepped into the case in 1999, 14 years after Hinton's arrest. The lawyer has presented testimony from a trio of well established ballistics experts who say the bullets can't be definitively matched to one another or to the .38 caliber handgun. (The defense contention that similar crimes continued to occur after Hinton's arrest—the issue that Urell investigated—has been eclipsed by the ballistics conflict.) Stevenson is now trying to persuade Alabama courts to reopen the case, even though his client has exhausted his direct appeals. Prosecutors are unmoved, arguing in a recent brief: "Hinton was guilty in 1986, and he is still guilty today. Simply wrapping an old defense in a new cover does not prove innocence."

In April 2006, the Alabama Court of Criminal Appeals upheld Hinton's conviction, 3-2. Stevenson has appealed to the state's Supreme Court. He points to the cases of Walter McMillian and six other Alabama men freed from death row after they were found not guilty of the crimes that put them there. "With 34 executions and seven exonerations since 1975, one innocent person has been identified on Alabama's death row for every five executions," he argues. "It's an astonishing rate of error." Nationally, more than 120 death-row inmates have been exonerated since 1973.

Hinton, a former warehouse worker, believes in Stevenson. In a letter from death row, he writes: "I felt that this man went to law school for all the right reason. And that reason was to fight for the poor. Here was a lawyer who knew his purpose as a man!" Hinton adds, "If God create a better man, He keep him for His Self."

Amazing as it might seem to those with ordinary jobs and ordinary lives, Stevenson wonders about the adequacy of his accomplishments and the reach of his responsibilities. He believes he needs to do more, take new risks.

But is that physically possible? Will he cloud the clarity of his mission and risk confusing those who help fund it? "It's much simpler if you say, 'We're the death-penalty people. We do the death penalty in Alabama,'" he concedes. "But it's never felt descriptive and accurate. I've always considered myself a lawyer concerned more broadly about human rights."

He's angry not just about the cloud of injustice he sees hanging over death row, but the wrongs that he contends permeate the entire American criminal-justice system. The country's prison population has soared from fewer than 200,000 in 1970 to more than 1.3 million. Another 700,000 inmates reside in jail. All told, the United States locks up more than two million people, resulting in the highest per capita rate of incarceration in the world. Nearly one in three black men between the ages of 20 and 29 is in prison or jail or on probation or parole, according to the Sentencing Project, a research and advocacy group in Washington, D.C.

Stevenson is broadening EJI's mandate to address what he considers to be other egregious aspects of an excessively punitive system. His organization represents inmates in Alabama and elsewhere sentenced to life terms without the possibility of parole under repeat-offender statutes, also known as three-strikes laws. One wall in the EJI offices displays photos of clients such as Jerald Sanders, who was sentenced to life without parole after being convicted of stealing a bike, his third strike. He spent 12 years in prison until EJI won his release in 2006. "Somebody who has three prior rapes and rapes again is not the same as someone with three prior bad checks who writes another one," Stevenson argues.

He has taken on the cases of some of the dozens of youths serving life terms without parole for crimes committed when they were 13 or 14. "The short lives of these kids will be followed by long deaths as a result of America's other death penalty: life imprisonment without parole," he contends. The list of ambitions continues: He wants to challenge laws that ban people convicted of drug crimes from receiving food stamps or living in public housing. He plans to step up civil litigation to combat exclusion of blacks from jury pools.

His small nonprofit is already straining. "I've had a huge problem keeping folks in Alabama," Stevenson admits. Of his 18 lawyers and staff members, four now live out of state. He has no office manager or anyone to handle media inquiries. "It's just a little overwhelming for me right now, trying to do it all myself."

He has briefed his foundation backers on his expansion plans. His main supporters are the Public Welfare Foundation in Washington and the Open Society Institute in New York. They have been "respectful and concerned," he says. More specifically, officials at the foundations have asked: "You've already got an impossible task. Why are you trying to make it harder?"

Stevenson understands the concern. "You can get kind of overwhelmed by it," he says, "and you realize you can pick up more than what you can hold." He also sees how some might conclude that he is trying to diversify as the death penalty appears to recede. But capital punishment isn't going away anytime soon and certainly not in Alabama, which houses more than 190 people on its death row. In any event, he says, the vicissitudes of capital punishment aren't driving his decision to branch out.

The impulse to right a broader array of wrongs comes from within. It is an instinct that he can do more, and therefore must. "Things that are the most rewarding and engaging involve struggle, involve commitment, involve dedication," he says. "I think those are the key ingredients to that sense of fulfillment."

Stevenson seems greedy for just one thing: the opportunity to pursue righteous struggles, as he defines them. Unlike most people who understand the personal cost incurred by such a life, he seems eager to pay it. □

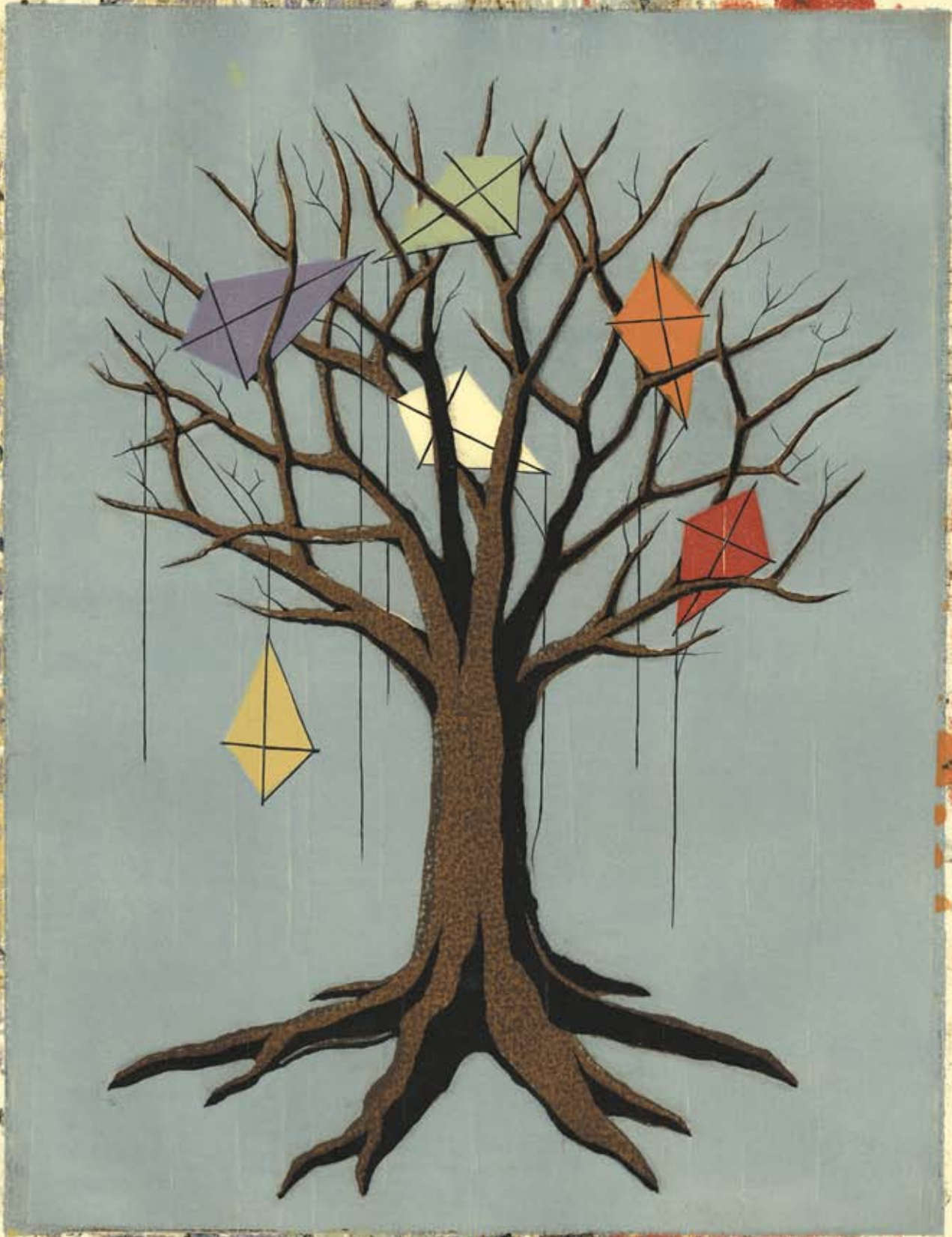
New York journalist Paul Barrett is the author of American Islam: The Struggle for the Soul of a Religion (Farrar, Straus and Giroux, 2007) and The Good Black: A True Story of Race in America (Dutton, 1999). He has a J.D. from Harvard Law School.

[ROUNDTABLE]

CAUGHT BY GOOD INTENTIONS

No one disputes that children like Nixzmary Brown, the seven-year-old Brooklyn girl who was starved and beaten to death in January 2006, should be removed from their dangerous homes. But there are 600,000 children in foster care in the United States, and experts estimate 40 to 70 percent of them are needlessly separated from their families, usually for reasons of benign neglect that better healthcare, education, nutrition and other basic social services could ameliorate. *The Law School* invited 10 alumni and NYU faculty who work in the area of children's welfare to discuss these thorny issues, and particularly the position of Martin Guggenheim, author of the 2005 book, *What's Wrong with Children's Rights*, who argues that children's lawyers are part of the problem.

[ILLUSTRATIONS BY DANIEL BEJAR]



JANE SPINAK Last year when Marty’s article, “How Children’s Lawyers Serve State Interests,” was in draft form, I gave it to my students. They had been representing children for about four months at that point. Even though we had talked a lot about what it meant to be child advocates in an imperfect, imbalanced and unequal system, they were really taken up short by the piece. Part of the reason was that within a very short period of time of representing children, they could already see that they liked being heroes. They liked winning. They liked being on the right side. Many of them were doing a lot of work to have children not removed from their parents and to have them reunified. But they had never thought about themselves as being state agents.

So let’s begin by asking what we think the role of a child advocate should be. I’m not going to start with Marty’s admonition that we shouldn’t have child advocates at least for very young children and some others, because I think he’s lost that battle. But given the system that we have, what is the job of a child advocate?

PEGGY COOPER DAVIS Well, I’m reluctant to walk away from Marty’s recommendation so quickly because in many ways the great problem in child welfare is that people who influence policy in this country and to some extent the general public are in this terrible position of, of course, loving all children, including the children of the poor, but hating and blaming their parents. And the impossibility of helping children outside of families creates a situation such that I hope we’ll talk seriously about this idea of family representation as opposed to child representation.

KAREN FREEDMAN I would be thrown out of my office if I didn’t at least attempt to answer Jane’s question. If I can’t answer it perfectly, it’s only because I have spent a lot of time reading Marty’s work and he does an excellent job of revealing the complexity inherent in the role of a child advocate. But for me and for the people in my office, the most important thing about being a child advocate is keeping ourselves honest about what our role is. First and foremost, every attorney in our office is a lawyer and their job is to represent their clients’ legal interests. The presumption is that we’re going to be able to relate to our clients the same way any attorney relates to their clients. We’re going to counsel them, explain what the law is that affects their lives, and gain their participation in the case. We don’t see ourselves as adversaries of the parent or the system that’s placing children in care. We see ourselves as lawyers for our clients.

Now it gets more complicated because we represent children from newborns up through age 21. So the hard question is, when is the presumption overcome that you can treat your client the same way any attorney treats their client? It is overcome in the most obvious instance when you’re representing a nonverbal client. At that point, however, the attorney for the child cannot default to their personal instincts about what feels good or right for

a client. When an attorney for a child is unable to ascertain that child’s position, the attorney must substitute judgment in a carefully considered, well-investigated, evidentiary-based way and present that client’s legal position to the court. It’s critical that there be an independent expert working with the lawyer, someone trained in child development, who can help the attorney determine what the client’s legal interests are in the context of the case. There is no question that lawyers are not trained to make some of the judgments that they’re asked to make on behalf of very young children. That’s why there’s a social worker and an attorney on every single case in our office.

CRAIG LEVINE I was particularly taken by Marty’s notion that counsel for children ought not to attach unless and until there’s a finding of parental unfitness. His idea that the presence of three attorneys as opposed to two from the very outset of these cases goes a long way toward undermining the presumption of

fitness with which all parents should enter the courtroom is thought-provoking. It left me wondering how this idea might inform the mode of lawyering for children, even if the political reality is that Marty’s recommendation is not going to be adopted anytime soon.

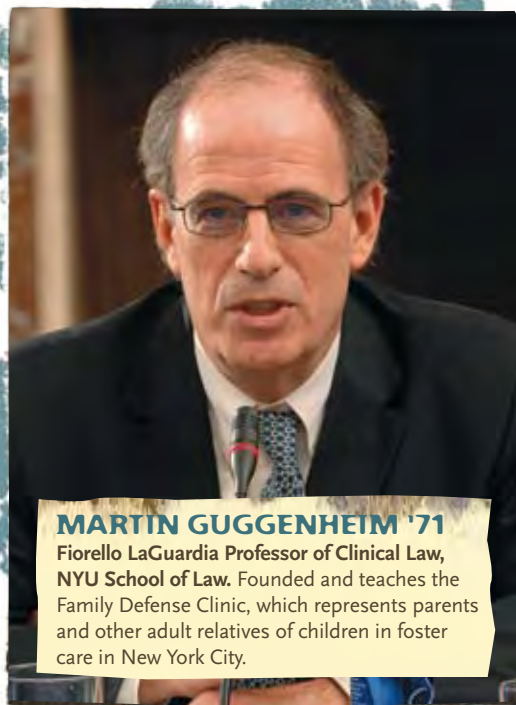
SPINAK Kevin—you’ve been on both sides—do you see the role of the child advocate as Marty’s described it?

KEVIN RYAN It’s striking that we have focused so quickly on the Child Protection System. What is most resonant for me in Marty’s writing is how often the modern child-welfare system in the United States masquerades for political will with respect to the type of investments and supports that we would need in order to achieve the outcomes that we hope to secure for children.

In too many places, system reform has been mobilized by tragic anecdote, not by our

ambition for strong families. If we were serious about the latter, we’d be talking about across-the-country universal healthcare, expansions in the Earned Income Tax Credit, childcare accessibility, work supports. We would fundamentally rethink the public welfare system. I don’t want to succumb to talking about child advocacy as only being about working within the four walls of the modern child protection system. Can I challenge us to think about whether the status quo is sufficient? Marty’s rallying cry—that it’s not—is right. When it comes to building stronger families and preventing abuse and neglect, modern child welfare is the opiate of the people and can lead us to think that we’re achieving some great due process for children.

ABIGAIL TRILLIN I found myself feeling in complete agreement with Marty with the principles and what we need to do in terms of the greater investment in children. But I also found myself thinking about my clients. I wish I was working with a family that was working actively to reunite or to not have their children removed.



MARTIN GUGGENHEIM '71
Fiorello LaGuardia Professor of Clinical Law,
NYU School of Law. Founded and teaches the
Family Defense Clinic, which represents parents
and other adult relatives of children in foster
care in New York City.



JANE SPINAK '79

Edward Ross Aranow Clinical Professor of Law, Columbia Law School. Director of the Multi-disciplinary Center of Excellence in Child and Family Advocacy. Former attorney-in-charge, the Juvenile Rights Division of the Legal Aid Society.



ALMA CARTEN

Associate Professor of Social Work, NYU School of Social Work. Teaches Social Welfare Policy. Former director of the Office of Adolescent Services for the NYC Human Resources Administration and interim commissioner of the Child Welfare Administration.



PEGGY COOPER DAVIS

John S. R. Shad Professor of Lawyering and Ethics, NYU School of Law. Judge of the Family Court of the State of New York from 1980 to 1983.



KAREN FREEDMAN '80

Founder and Executive Director, Lawyers For Children, New York. LFC provides free legal and social-work advocacy to children in foster care and addresses systemic changes in child welfare policy.



CRAIG LEVINE '91

Senior Counsel and Policy Director, New Jersey Institute for Social Justice, a research and advocacy organization that, among other work, seeks improvement of the state's juvenile-justice and child-welfare systems.



STACEY PLATT '91

Clinical Professor of Law and Associate Director, Loyola University Chicago School of Law's Child and Family Law Clinic. Former staff attorney at the Legal Assistance Foundation of Chicago.



KEVIN RYAN (LL.M. '00)

Commissioner, New Jersey Department of Children and Families. Formerly the state's first child advocate and a legal advocate for homeless youth at Covenant House.



GAIL SMITH '85

Founder and Executive Director, Chicago Legal Advocacy for Incarcerated Mothers, providing legal and educational services to maintain the bond between imprisoned mothers and their children.



ABIGAIL TRILLIN '95

Managing Attorney, Legal Services for Children, San Francisco, representing children and youth in dependency, guardianship, school discipline, immigration and other juvenile law issues.

But my clients are mostly teenagers. Many have not had biological parents in their life for longer than I've had the case in the 10 years that I've been there. So I'm struggling with what my role is for those individual clients and I think that it is being their lawyer, treating them respectfully as I would any client, and making sure that they have some voice and some ability to control the situation. As much as I agree with Marty in terms of the overall political implications of having attorneys for children, I also know that my clients need somebody to represent them, and to make them feel like they have an independent and individual interest in what happens to them that is being respected and fought for.

I also consider one of my primary roles as protecting my children and my clients from the state, from the foster-care system, and holding that system accountable to them to provide them with the few things that it can.

MARTIN GUGGENHEIM I'm very comfortable, Abigail, insisting upon lawyers for children when they are in the state's care because I am largely anti-state. Your clients deserve lawyers, to be sure. But that's because they have already lost their birthright to have their parents choose their representative.

SPINAK By doing individual advocacy and being deep into the child-welfare, special-education or juvenile-justice systems, do we lose sight of the broader societal questions that Kevin raises? Does our individual advocacy have an impact on our ability to look more broadly at the way our society works and diminish our capacity to be child advocates in a broader sense? Child advocates of children who are parts of families who are not getting what they deserve, what they should have, but also, who are parts of families of color and poor families?

GAIL SMITH Where were the lawyers for Abigail's clients when they were losing their parents? In Illinois, 85 percent of the foster care cases, more or less, are neglect and pretty much mild neglect. The return of children to families is at about 28 percent. In the cases that we see, I would argue that really good advocacy for individual children wouldn't mean that 72 percent of all children in foster care lose their parents. It seems to me that many child advocates have lost sight of the long-term results for their clients when we have the phenomenon of so many children aging out of foster care.

I had a client a few years ago who entered prison while in her teens, who was there because she had developed a drug problem while in foster care. She was about 21 and she was losing her three-year-old. She and her three siblings had been removed from her mother when she was 13. But there was arguably no risk at all to her and her siblings at the point when they were removed. I was talking to her about services that she got as a teen when she developed a drug problem and how could those services be improved. And I said to her stupidly, "What did you need?" And she looked at me and said, "I needed my mother."

So as we're seeing children whose adoptions have failed, children whose adoptive parents have died because they were so elderly, children who have aged out of the system who are searching for their parents, children who go home when they're not legally supposed to, what we need is a movement, we need a change in political will.

LEVINE It's impossible to consider our roles as children's advocates without considering the political and reputational, almost cultural, incentives and disincentives at work here. We talk about the need for a movement or a different narrative. The violence of family dissolution is a much quieter violence and does not make the front page of the *New York Post*.

It strikes me that all the actors in these systems share the blame here. I've never seen a child-welfare system issue a press release saying, 'We preserved or reunified X families last year.' Every year, there's a spate of stories like that regarding adoption, as well there should be. But half the story gets omitted from the public discussion.

And because of the political risks, I hypothesize that many judges are part of this, that there's a powerful, unconscious fear of finding themselves in Rupert Murdoch's crosshairs.

SPINAK Both Marty and I have used Peggy's early work about judges being risk averse and not feeling the urgency of what's happening to these children and families but rather taking the "safer course" [see below] in their decisions to remove children from their parents rather than recognize the trauma of removal itself. The New York Court of Appeals has recently rejected the "safer course" doctrine in *Nicholson*. Karen said her job is to represent

the legal interests of her clients in court. How does *Nicholson*'s rejection of the "safer course" doctrine affect how lawyers for children represent their client's legal interests?

FREEDMAN How it matters is borne out by the statistics. If you look at what happened following the **Nixmary Brown** case, the

The "Safer Course" doctrine is a justification used to place a child in foster care pending the full fact-finding hearing on alleged abuse or neglect whenever there is reason to doubt that the child would be safe if permitted to remain at home.

***Nicholson**: Parents whose children had been removed from their homes by the NYC Administration for Children's Services (ACS) filed suit charging that the ACS as a matter of policy removed children from mothers who were victims of domestic violence solely because they "allowed" their children to witness the abuse. In 2004, the New York Court of Appeals ruled that these removals violated New York law and also criticized and rejected the "safer course" doctrine that lower courts had been applying to remove a child in the absence of evidence of imminent danger to the children.*

*Seven-year-old **Nixmary Brown** was brutally beaten to death in January 2006. Her stepfather and mother were charged with murder. ACS had been called twice to investigate the family, beginning in May 2005. At the time of Nixmary's death, ACS had an open investigation on her case.*



numbers of reported incidents of abuse went way up; the courts were flooded with cases, and yet the numbers of children in foster care did not rise over the past year the way they have in response to many other similar situations. Children and families in crisis were offered supervision and services and children in care continued to be returned home. That's a unique situation in the history of New York child welfare. When the courts, ACS, and family and child advocates adhere to the law and the evidence, we can keep the numbers of children in care down, without risking their safety.

One of the things that Marty's **babies-in-the-stream parable** makes us think about as child advocates is that we can't just be the ones pulling the kids out of the stream. Yet somebody still needs to stand there and try to keep them from drowning. I don't feel any shame in doing that as long as I am mindful of the fact that I have to go up to the top of the stream as well. That is why I think that the most effective impact litigation comes from a collaboration between child advocates who are working on a daily basis representing individual clients and policy-directed organizations like Children's Rights, or the Juvenile Rights Division's Special Litigation Unit, with whom we have worked on class-action cases like *Nicholson*.

Now, under Marty's theory, we had no business in the *Nicholson* case. Yet the fact that child advocates were also arguing the injustice of taking children from a mother who was a victim of domestic violence made a difference in that case. The children, after all, are the ones who are being taken into state custody. In the same way that Marty feels they need an advocate if they're being incarcerated by the state, I am absolutely convinced they need an advocate if they're being taken into what's called protective custody by the state.

So I have a hard time when the bottom line is that it's the child advocates who are aiding the state in a process that all of us who try to be honest about our work find offensive.

GUGGENHEIM It's nice to say that children's lawyers need also to go upstream. But they can't. They are mired in the muck. That's not a criticism of the lawyers. It's the reality of where they are obliged to turn their attention—to the courtroom and the details of their clients' individual cases. But this virtually exclusive focus on individual cases comes at a huge cost—the loss of an entire generation of caring professionals who get trapped into doing work into which the state wants to trap them.

Moreover, Karen, the real picture of children's lawyers' performance in regards to *Nicholson* is considerably less rosy than you suggest. Children's lawyers were silent through the 40 years of the pre-*Nicholson* behavior. I've never said that children's lawyers had no business in *Nicholson*. It remains the case, however, that they defended and supported the removal of children

from parents on a routine basis. There never was an appeal prosecuted by a child's lawyer for a wrongful removal. When the *Nicholson* case got to federal court, for the first time, the children's bar was freed to take a position outside of the constraints of what happens in Family Court, where if you don't support the agency, your reputation and ability to be a forceful advocate is adversely affected.

FREEDMAN I have to take issue with that, because the fact that someone else originated an action in federal court does not mean that in Family Court there weren't hundreds of cases where law guardians were arguing against the agency in favor of individual children going back to a mother or a father who was a victim of domestic violence and posed no risk of harm to the child. That was going on all the time. And there most certainly were appeals

prosecuted on behalf of children wrongfully removed.

RYAN To Karen's point that in the stream parable, we need to pick the babies out of the water and still retain the capacity to work upstream to prevent child abuse or neglect. The federal government has made this very hard. The country invests disproportionately to subsidize two types of activities in the modern child-welfare system: the removal of very poor children from their families, and, through a bonus system, achievement of permanence through adoption—not in family preservation, not in family reunification and family support work, but through adoption. Each year, our law schools and social-work schools are graduating thousands of committed, genuine people who want to make a difference in the world. And where are they going? They're going downstream

because that's where the money, processes and infrastructure live.

The challenge is to build an infrastructure, a scaffolding if you will, that gives people meaningful opportunities to fight the causes of child abuse and neglect upstream. For the most part, we don't have that today.

GUGGENHEIM This diversion of resources is the most pernicious feature of our child-rescue focus that law schools in particular have taken very seriously. Not only do most law schools that have a clinical program in child welfare choose to represent the children, but schools have celebrated programs for graduating children's lawyers. These lawyers, almost to a person, care deeply about the inequalities in American society. But we've lost them to the work that they're now obliged to do, as Kevin just explained.

DAVIS I want to start by just saying how much I admire Lawyers for Children and Karen's work. That should not go without saying. **FREEDMAN** Now my defenses should be up.

DAVIS No, they shouldn't. Just a few things: First, there are very strong cognitive biases against doing what we all agree is the right thing in Family Court. We respond more strongly to risks associated with leaving children in their homes than we do to risks

BABIES IN THE STREAM: A PARABLE

A man visiting a small town notices a lot of activity on the street. He goes over to the stream that runs through town to find scores of people working furiously. Babies are floating downstream and the townspeople are pulling them out of the water. The stranger learns that the townspeople have been at this process day and night. He is asked to join them but refuses, and the townspeople become indignant.

"How can you not help us in this crisis?" they ask. "Don't you have any compassion? Don't you care?"

The stranger answers quietly, but emphatically. "You can continue to pick up these babies all you like. But it strikes me that your efforts are ultimately inadequate. Obviously, somebody keeps putting these babies in the stream. I'm going to go upstream, find the source, and put an end to it once and for all."

associated with separating children from their families. So on that account, I worry that it's not enough for the Court of Appeals to say that "safer course" is not the answer.

I worry about it in another respect. One of the things that was so uncomfortable for me as a Family Court judge was how lawless the place is. Part of it is that so much is resolved in conferences among the lawyers and the judge. So much is settled. So much is about, as I recall hearing in the midst of a very difficult case, making everybody comfortable. But even when things are litigated, the dominant ethos in that court was that social workers, lawyers, judges felt that what they really needed to do was what they thought was right for this child, and if the law got in the way to fudge it. I can't think of a context in which law mattered less in my career.

The third thing is resources. Parents are pathetically represented. People barely conscious were standing before me representing parents. So at minimum, we need to find a way to put some resources behind the representation of families.

FREEDMAN The question of lawlessness in the Family Court is a critical issue. In Marty's article, he suggested that the outcome *In the Matter of Jennifer G.* might have been different if the law guardian's position had simply been articulated differently. He suggested that the law guardian should have said that there was insufficient risk of any danger to the children to warrant their removal. I would argue that's not the right formulation because there's a critical lawyering element missing.

What the attorney should have said was that there was insufficient *evidence* of risk to warrant removal. And if the lawyers in Family Court can keep to the law and talk about the weight of the evidence in support of keeping a child in their home or having them removed, we're going to have a much better system than we have now. But we have to keep reminding ourselves, whether we are attorneys for the parents or for the children, that this is an evidence-based system. This is a legal system.

TRILLIN I'm wondering if there isn't a role for individual children's lawyers in exactly the type of change that we're all advocating. My voice as the children's advocate talking about family preservation and family reunification is different. It's seen differently by the court than the parents' attorney. And I don't think we necessarily would have the same result, even if my not being there would give the parents' attorney a few extra dollars an hour.

It's different for me to bring forward the individual right of the child to be in their family, and if they can't be with their parents, then to be with relatives and to be in a situation that's more likely to return them to their family. To be able to talk about that either from the perspective of my client's stated interest—as with my older clients—or with very young clients trying not to substitute judgment but to base their legal interest on basic objective principles, such as their right to be with their family, individual attorneys for children can play a forceful role in individual cases in keeping families together.

RYAN Marty's idea of having fitness hearings early in the course of a case to determine whether or not parents can continue to speak on behalf of their children is a good one. Frankly, it would reflect what's normative in modern child welfare, which is that

the majority of children in out-of-home placement return home to their families and many are in out-of-home placement for reasons other than serious abuse.

SPINAK Family Court has been given greater responsibility for monitoring the child-welfare system. And one of the end results is we don't get to fitness hearings quickly because the court is overwhelmed with its monitoring responsibilities. It takes five and a half months on average in Brooklyn right now to reach fact-finding in a child protection case, when it should be no more than 30 days.

So what does it mean that we are all kind of complicit in thinking this is okay? I mean the lack of urgency, the sense that this is the way it works, accepting both on a federal and state level that the resources are going to go for placement and adoption and not for family preservation.

LEVINE On grounds of both principle and pragmatism, lawyering should be improved across the board. You get better, more just results if all parties have excellent representation. As a lawyer for children or the state, this might be a bit of a pain. But your client is better served. As we all know, children's lawyers have the juice, politically and culturally. I wonder if there might be a project we could come together around—the bar, the bench, academia, and all who can claim the societal mantle of child advocate—toward the end of equalizing the resources available to counsel for all parties.

The current disparities here are staggering. As Marty has reported, a couple of years ago New York City spent about \$24 million on lawyers for children, and about \$11 million for lawyers for parents, including experts' fees. That's not a fair fight in individual cases. And parents' lawyers cannot solve this. They're the only people on earth with less political juice than criminal defense lawyers. And they're in a much more vulnerable position. Winning their cases can put parents' lawyers at risk reputationally.

STACEY PLATT In addition to equalizing representation, which is critically important, we also need to reclaim some of the rhetoric around children and families. In Chicago, there is a dedicated office that represents parents in child-protection disputes. They're not blamed when they win their cases, but they aren't considered the noble civil rights workers they are. Parent representation is not the glamorous job that law students and young lawyers pursue.

If we can help young lawyers understand that termination of parental rights is, as other advocates have said, a death penalty for families, and that children in the system are suffering, that will help in the struggle for family defense. Having a dedicated office in and of itself is not enough.

SPINAK Let's expand beyond law school to the role of the social-work schools, too, because we're turning out generations not only of lawyers, but of social workers. How does the social-work profession embrace this idea that children are part of families and that we should be worried about families?

ALMA CARTEN Marty outlines very well that from the very earliest years in our history of child-welfare services, we've focused on rescuing children and punishing families. We are moving away from this now. For example, policy reforms like the Adoptions Assistance and Child Welfare Reform Act of 1980, and the 1996 Adoptions and Safe Families Act recognize that children need stable permanent attachments to families. These laws encourage the use of family-support services to preserve biological families, prevent out-of-home placement of children in the first instance, support early reunification of children for whom placement was necessary, and speedy adoption of those for whom return to their own homes is not an option.

In re Jennifer G.: In 1984 and 1985, an appellate court twice reversed a trial judge for granting a mother's requests for the return of her children. The children had been placed into foster care after a school principal notified authorities that they appeared to have been abused. On the first appeal, the appellate court declared that the "safer course" was to keep the children in foster care until a clear determination of abuse or neglect could be made. On the second appeal, the court removed the trial judge and the children's lawyer, both of whom supported the return of the children, and specifically rebuked the children's lawyer for the position he took.

RYAN There's an interesting disconnect emerging in the United States between the operations of the best-functioning child-welfare systems and the legal processes that monitor families when children are placed in foster care. The positive outcomes for children and families that have been achieved in places like Alabama and Utah have increasingly occurred through the work of family teams, where from the outset of the engagement the public agencies are working with families collaboratively. It is almost always safe and appropriate to do so.

If this becomes more common, as I hope it will in the next few years, public systems will be embracing and implementing a social-work process of engagement, collaboration and teamwork with families and their natural supports. But we will have a legal process of adversity. That disconnect is bound to cause some problems for the social work, which is the heart of the exercise. And we will have to rethink aspects of the legal process in short order.

CARTEN Social work has a long tradition of interdisciplinary collaboration. We often practice in host settings, working in partnership with teachers, physicians and attorneys. And we have had a strong tradition of advocacy for clients, social justice, and improving the operations of systems that serve as barriers to client access to services. We at the schools of social work may need to reinforce this tradition; since about 1980 there has been a growing preference in the profession for clinical social work which has diminished our presence in those areas of practice that focus on client advocacy, system change and reforms.

I'm doing a program now with immigrant families. I've been very cautious that the status of immigration does not pathologize parental behavior. We in schools of social work may need to work harder in educating the new generation of professionals about the important role of activism in working with families in need of child-welfare services.

DAVIS I can't resist tying a couple of things together around the idea of rhetoric because you've made such a profound point: You talk about immigration as a pathologizing label. You talk about the absence of a story that resonates with respect for families. And Karen made the beautiful point that the very rhetoric in the Family Court needs to reflect that it's a court of law. So if you find yourself not talking about evidence but talking about feeling, then you need to change your behavior and pay attention to the story of why we have constitutional protection of family independence and integrity. It's a deep story. For me, it's a story that goes back to Reconstruction and reflection on why the absence of family was what made slavery possible, and why that was connected to civil death and connected to the idea of socialization by the state—and so a very authoritarian vision of the state.

The message that at the heart of our democracy is the idea that children will be socialized by families rather than by the state is a

message that's very hard to communicate. But to tap some of the richness of that message may offset some of the juice imbalance that we've been talking about.

SPINAK What is the difference between the role of the child protective system in engaging families in a way that may allow them to remain whole and get what they need to remain whole, and the steps that take them into court? We should not be less adversarial in court for purposes of determining whether the state should intervene. How do we distinguish between problem-solving methods before cases come to court and those methods once the court intervenes?

PLATT One concern about the influx of nonadversarial processes into child-welfare cases is the way in which lawyers coopt those processes, particularly lawyers who are not trained to conduct or manage them in a way that genuinely respects families.

Cross-training is wonderful. But we should not be blurring roles to the extent that the entire process becomes nonadversarial, where everyone has a nice discussion and due process concerns take a back seat. Because then we have lawyers performing functions that we are not trained to perform and families not being empowered in the ways those processes were intended to empower them.

RYAN I question how empowering these processes are for families. There are real questions about the need for and the efficacy of independent attorneys for children when their families are deemed fit enough to meaningfully participate in a service plan designed to achieve safe and sustained reunification and are working to achieve that plan. But then when the forum is the court, the parent is in most systems

deemed not fit to speak on behalf of their child. The dissonance there is a puzzle.

GUGGENHEIM Jane started us off this morning trying to take us away from too-high theory to being on the ground. But the answers about how to be a good lawyer on the ground are themselves theoretical because Karen's answer is one that I love and would be thrilled to see invoked. But heads would roll if children's lawyers aggressively argued for dismissal of cases when the evidence wasn't sufficient. If they wouldn't roll, children's lawyers would rather quickly feel their loss of influence on the court process. But it would be a truly wonderful change to contemplate. I might even start smiling.

So one answer to the question, "What should children's lawyers be doing?" is, as Karen says, basing arguments on the evidence presented instead of assuming that there likely are worse facts than have been thus far gathered.

It remains the sad truth that the children's bar has been complicit with the two great trends in child welfare over the past generation: the ease with which children enter foster care and the vast increase in the permanent destruction of parent-child



relationships. The children's bar's complicity has been revealed by its silence. There is no lobby of children's lawyers criticizing these trends. Not within the legal arena. Not in the legislative process. Not even in public discussion on these issues.

FREEDMAN There really isn't all that much disagreement around this table. But a lot depends on how we frame the issues. When Kevin was talking about parental fitness to speak for a child, it brings me back to something that Marty taught me in his class that has stayed with me throughout the years. The worst things happen to children when people sit around a table just talking about what's best for them. Whenever lawyers lose sight of legal parameters and bring that generalized best interests rhetoric into the courtroom, we're courting disaster.

It's wonderful that we're using more of a collaborative model and more family-based supports outside of the courthouse. That's where it should be. That's why it's a good thing that now, for the first time, there are more families and children receiving preventive services in New York City than there are children in foster care.

But to say that a child's attorney, articulating the child's position, somehow denigrates the parent's right to speak for that child is a false premise. Everyone who walks into the Family Court is invoking the child and what's best for the child to advance their own position. For the judicial system to work, once you're in the courthouse, you've got to invoke due process. The child's position needs to be out there and it can be represented most effectively by an attorney for the child.

SMITH This brings me to two thoughts. One is that even when our public-guardian system in Chicago is properly critical of foster-care agencies, they're so deeply anti-parent coming into the courtroom that it creates an imbalance. And some judges are almost rubber stamps for some of those guardian ad litem positions. I'm thinking also about the expansion of the use of guardians ad litem outside the child-welfare system into the Probate Court and domestic-relations courts.

I've never seen a probate judge not take a recommendation by a child's lawyer. A lot of attorneys appointed to represent children in Chicago's Probate Division are volunteer lawyers. If you look at the Chicago Volunteer Legal Services Web site's training for those lawyers, one of the things that it says is follow your instincts. Use common sense. It's as fuzzy as it can get. I don't see a lot of cultural-competency training coming out of that office.

It's very hard for those of us who are trying to follow the law, and certainly for those of us who are trying to overcome some pretty strong biases against our clients on the front end, to protect not only our clients' rights but also the rights that their children should have to continue their relationship with them.

SPINAK One of the things that we haven't talked about is child participation. A lot of the system would have worked differently

had children been participating much more. Judges could not have gotten away with some of what they got away with if the child were actually sitting there listening to this dysfunctional system going on. How do you think that might help to improve the way in which this court works?

PLATT I've noticed that our child clients are often greeted with distance, at times even hostility, when they show up at the courthouse. Nobody really wants them there, in particular when they take positions that are unpopular, or that other people believe are not in their best interests. At times, we have had to push ourselves into the courtroom with our clients. But when we get them in there, they make a big difference. I'm very much in favor, if they want to be there, of young people participating more fully in their cases, holding the court system and the advocacy system more

accountable to their wishes and their conceptions of their own best interests.

TRILLIN Having the young people and also the parents in the courtroom does raise the level of practice. It reduces that informality in people who work together every day talking about these cases as if they're not about real people.

I wouldn't say that the young people are unwelcome. One time that they're very welcome and everyone is really nice to them is at their emancipation hearing. One of our judges actually gives them gift cards to one of the music stores. After all these years of them being unheard in the system, when they show up to leave the system, they get a gift card.

So we need to do a lot better than that in terms of involving them and making it actually meaningful for them. Many times my clients choose not to

come to court after talking to me because for many of them so little is happening in their cases in court that it is deeply disappointing to them because it doesn't change what's happening in their lives.

GUGGENHEIM Children should be in court, not at the fitness hearing, but at almost all proceedings afterwards. One of the sad truths about child representation, sad particularly for the lawyers representing the children, is the frequency with which foster children say, I never even knew I had a lawyer.

FREEDMAN I totally agree. Young people need to be in the courtroom. That's part of what makes it a real judicial process. And that's why many people are afraid of having young people in court—because when the child has the same right to be present in court as any other party, it reinforces the premise that the family court is first and foremost a court of law.

The New York State Bar is currently rewriting the standards for representation of children. One revision proposes that we get rid of the title "law guardian," which does a disservice to the practice and also perpetuates the idea that if you're representing a child, you're something less than a real attorney. This can only help move us toward the goal of creating a legal system for families



and children that allows us to function the way we were trained to function in law school—as lawyers. The outcomes will be better for children and for families.

CARTEN If we want to empower parents, it's a good thing for children and parents to be present. There are some parents and children who are very articulate and able to negotiate well in this system. On the other hand, the larger universe of parents coming before the system may not be well informed about court procedure or familiar with legal language. Most of the principals bear little resemblance to them. So it may be a good thought that they're there in court, but it can be intimidating to them.

GUGGENHEIM Well, if we invite them in, we have to make it friendly. But a reason they need to be there is to correct the countless inaccurate facts which are routinely reported in cases. It is astonishing how commonly reports about children get even the most basic facts wrong: They're in a home for six months. No, they've been there for three. They like the school they're in. No, they haven't registered. They've just been to the dentist. No, they haven't. At a minimum, children's presence at hearings will make it more likely that we will get the facts straight.

CARTEN Perhaps this means that we should strive to have closer communication with staff or social workers who may have that information. The push for me is to have more collaboration with lawyers because social workers are in a much better position of assessing risk. They're looking at a broader picture. They're looking at environments and systems within which families operate. There needs to be a closer relationship—the court atmosphere is so rushed that there's not enough time for social workers and lawyers to collaborate.

FREEDMAN I would like to throw out one more possibility for how we could raise the standard of practice in family courts, at least in New York City. One of the things that's always been shocking to me is the idea that a Family Court judge should be appointed for a 10-year term. Ten years is an unbelievable amount of time, especially in the life of a child. It has a lot to do with why judges—many, not all—become very complacent in their role, why they see time frames differently. There is really no reason why, if a judge had a five-year term of appointment, they couldn't then be reappointed if they were doing their job properly. But the fact of the matter is, it would give us an opportunity to be mindful that we have a court of law where everyone is accountable, the judges, too. When a judge is on the bench for 10 years, if their courtroom happens to be the courtroom where the rule of law doesn't apply, there is virtually nothing that is done about that.

DAVIS My anxiety is that the judges who are operating on a due process model are those who will not be reappointed. Judicial independence is a necessary counterweight to the sense of vulnerability that you have and the sense of danger that attaches to the idea of returning children to their families.

SPINAK If we think about the way in which our system finances what we're willing to pay for and what we're not willing to pay for in addition to what we think about families, particularly poor families and families of color—what do we do up at the beginning where the babies are going in?

DAVIS I'm drawn to this idea of going even further upstream. My daughter and I have done some work with the Baby College in the Harlem Children's Zone, which works primarily with families that are not yet involved in the child-welfare system. There's an interesting role for lawyers there because they are families very much at risk of being investigated. The idea of giving them support in caring for their children before there ever is a problem is a wonderful one. The idea of giving them some tools for fending off

intervention is a promising one and another place where people might work to relieve some of this imbalance of resources.

RYAN For lawyers, perhaps the way into the problem is to think about how the Constitution approaches these questions. Peggy's book [*Neglected Stories* (Hill and Wang, 1997)] demonstrates the centrality of family integrity to the Fourteenth Amendment. For social workers, the way in might be to think about how positive family outcomes are achieved for and with those families. And it's almost always by working together in a family-centered fashion.

Could we take the resources that exist now in individual representation for children and families and augment them with an equal commitment to tackle the public-policy questions about family preservation, reunification, and public investments for families? And then maybe, over time, we'll create some equilibrium between the downstream and the upstream investments. As long as we insist that suspected child abuse and neglect be a prerequisite to aid hundreds of thousands of children and their families, we'll keep living downstream and the babies will keep drowning.

Real system change is probably going to take a [political scientist Frances Fox] Piven and [sociologist Richard] Cloward poor people's movement. To change the way we make these investments—in health care, income security, childcare—we will need to see a mobilization and an uprising among poor and politically disenfranchised families that today is so elusive.

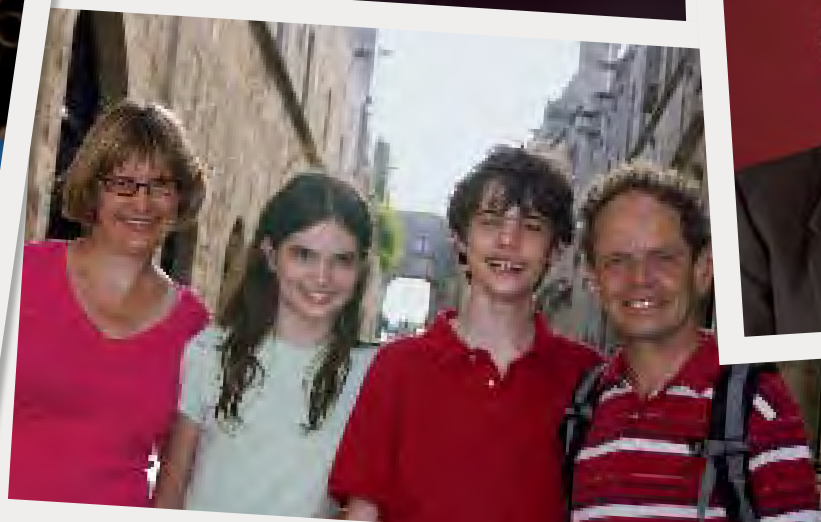
SPINAK But we'll also need to use good social science to support this movement. It is really striking to read David Fanshel [child welfare expert and author of, among many works, *Children in Foster Care: A Longitudinal Investigation* (1978), and coauthor of *How They Fared in Adoption* (1971)] from 35 years ago when he says the one thing we know is the more visiting that children have with their parents, the more likely it is they're going to go home. And yet we still don't create social-welfare systems that support the relationships of children and parents.

LEVINE We need a subtler and more nuanced political narrative. American issues tend to be framed in such Manichean fashion: You're on the side of the angels or you're the devil. This manifests in this "Who speaks for the child?" question with which we started. But it strikes me that we need a vigorous acknowledgment that deeply imperfect and messy families are worthy of celebration and support—and that in the majority of cases, they're the best possible option available to the children. But we're in this box that politics and the allocation of resources has put us in, in which parents' lawyers are forced, in reality if not doctrinally, to meet an impossible standard—that a family needs to be perfect—to warrant reunification. We need to acknowledge that although many families are troubled and complicated, they remain, in most cases, deserving of our respect and support.

CARTEN I feel optimistic about the way the system is moving. It's focused on outcomes. It's focused on accountability. It's focused on prevention. It's focused on permanency. The child-welfare system has been an American tragedy for so many years. But we're moving in a positive direction.

GUGGENHEIM I'm an optimist only in the sense that I am, as a student of history, aware of cycles. We are near the end of the darkest period in the last 40 years in child welfare and my only optimism is that we will rebound from it. We will someday look back on this time as a very sorry experiment. We live in a country that leads the world in the forcible breakup of families by court order. It is a thing we still celebrate. Yet it is to our shame.

At the same time, I do see in the children's bar today a vigor and an excitement for speaking beyond individual cases and talking about social justice. So I'm happy to end on that optimistic note. □



Dean's Discourse

NYU's approachable yet intensely focused Dean Richard Revesz talks with reporter Kelley Holland about what he's accomplished during the first five years of his tenure at the helm of the Law School, and looks ahead to how he hopes to steer the institution, fine-tune the academy, and affect the profession in the future.

Let me begin with an overall culture question: Now that you are at least fourth on everyone's lists of top law schools, you don't have the same pressure to strive and innovate. How do you keep the creativity flowing?

First of all, if an idea's really good, we are willing to find a way of getting it started right away. In a lot of institutions, even wealthy ones, if someone has a good idea, they'll say, we should raise endowment money for this and then launch. That's the norm. But here, for the most part, we have not done things this way. For example, we're spending something like \$4 million a year on our Loan Repayment Assistance Program; it would cost \$80 million to endow the program. My hope is that we'll raise that during the course of the campaign, but if we had waited to endow it first, that would mean that five, ten years' worth of students would not receive this benefit. We'd rather act while the community is excited, otherwise we might miss the moment. This was the approach of my predecessor, John Sexton, now NYU's president, and it's something I've followed. It is part of our institutional DNA. We also stave off any sense of complacency by hiring faculty who are bubbling with ideas about things they want to do.

The question is how to transmit this approach to a whole institution, and make sure it's part of the infrastructure. We're involved now in a strategic planning process that is partly focused on formalizing some of these values.

Speaking of strategy, your faculty recruitment has been extremely successful. What specialties are you aiming to strengthen now?

We're not focused on going area by area. If you say you're going to have a search in this particular specialty, the best person might not be available. You're better off being flexible. Since I started, we've added 19 full-time members to the faculty—two clinical, 17 academic, 11 women and eight men—and it's a spectacular group.

(Please see the timeline on page 54, which shows these faculty arrivals.) I'm really proud of each of them. I pay a lot of attention to

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natural turning points, like when the people we want have kids getting ready to go to college. Or, on the other side, people often want to move before their kids start kindergarten. In the lateral market (as opposed to the entry-level), almost all the hiring gets done after people have been visiting for a semester or a year—fortunately, that immersion works well for us. Since NYU Law is a terrific place to be, the more time a potential colleague spends here, the more likely he or she will want to be here permanently.

Why is there so much competition right now for legal scholars?

It's a good question. This is actually a very good time for legal scholars; very good work is being done. There are terrifically strong people coming into the market and there are a number of institutions trying to be as good as they can be, and in order to make significant strides, you have to be in the lateral market on a regular basis, even if you do some entry-level hiring as well. We've done extremely well in this competition.

How can you leverage the Law School's location more aggressively—both to attract new faculty and to add to the vitality of the student experience?

There are faculty members in other places who might think it's daunting to raise kids in the city, but I'm a big fan of it. My wife, Vicki Been, is on the faculty here, we have two kids, and we live six blocks from Van Hall in the West Village. For new hires, we can help with housing, provide in-house expertise about schools, and help make connections for spouses looking for new jobs. We spend a lot of time and energy on making this work for the whole family.

In terms of campus life, being in the city is a huge substantive advantage because leaders in every field are based here, or have reason to pass through. In just one week last year, we had a major speech by Louise Arbour, the U.N. High Commissioner for Human Rights, Archbishop Desmond Tutu shared some powerful stories, and Justice Ruth Bader Ginsburg joined the the 10th anniversary celebration of the Brennan Center.

In terms of curriculum, we're now creating transaction-based courses in a number of different areas that we will offer to at least half our students every year. A full-time faculty member will apply the theoretical construct, and then every week, the principal in an important deal being analyzed will come and present—and we'll

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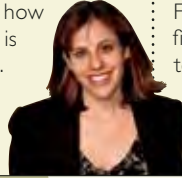
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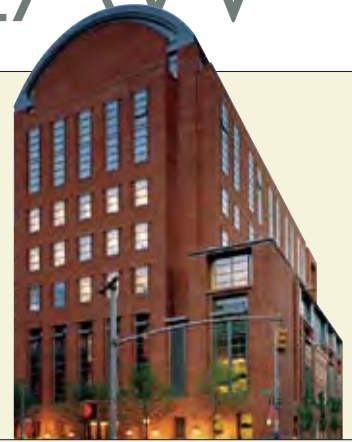


RICHARD REVESZ succeeds **JOHN SEXTON**, now president of NYU, as the 14th dean of the Law School.

Hired: RACHEL BARKOW examines the theory of administrative law and its interplay with the criminal justice system—specifically how sentencing is meted out.



FURMAN HALL opens to fanfare on January 22, 2004, demonstrating NYU Law's faith in New York City's resilience; Furman was the city's first large-scale project to break ground after the September 11 attacks.



Hired: JENNIFER ARLEN focuses on corporate governance and torts, and how they affect our lives; her work demonstrates that companies can curb consumer risk without reducing profits.



During the Hauser Global Law School's first **TRANSATLANTIC DIALOGUE** at La Pietra, the constitutional future of Europe is debated by, among other invited guests, Supreme Court Justices Breyer, Ginsburg, Kennedy, O'Connor and Thomas.

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'04

Hired: DEBORAH MALAMUD examines the working middle class in America, and how historic initiatives such as the New Deal and the Civil Rights Act have affected its status.



VANDERBILT HALL gets a \$22 million face lift: The library is renovated, faculty offices are outfitted with new lights and carpeting, and students keep their cool with new A/C.



Dignitaries like former U.N. Secretary-General Kofi Annan and Dominican Republic President Leonel Fernández join alumni to celebrate the **10TH ANNIVERSARY OF THE HAUSER GLOBAL LAW SCHOOL PROGRAM**.

During a four-week **SUMMER TRIP THROUGH ASIA**, Professor Jerome Cohen and Dean Revesz and his family meet alumni living and working in Tokyo, Shanghai, Taipei and Beijing.



Thanks to a matching gift from Jerome Kern '60, the **ROOT-TILDEN-KERN SCHOLARSHIP PROGRAM** expands from 12 to 20 students who receive full tuition—a first in over two decades—to prepare for careers that serve the public interest.

Hired: KEVIN DAVIS is a prolific writer and a self-described "cautious optimist" whose teaching illuminates how the law should positively affect business transactions, especially in developing nations.



The Law School's **LOAN REPAYMENT ASSISTANCE PROGRAM** repays a whopping \$3.7 million of student debt to 416 graduates who choose public service work.

Hired: STEPHEN CHOI has cemented his expert status in the areas of securities regulation, securities class-action empirical studies and the judiciary.



The **NYU LESTER POLLACK CENTER FOR LAW & BUSINESS** is dedicated with a keynote by former Federal Reserve Board Chairman Paul Volcker. Interdisciplinary interest is compounded by the year-old **JOURNAL OF LAW & BUSINESS**.

Hired: DANIEL HULSEBOSCH, a historian and constitutional scholar, is fascinated by New York. His book, *Constituting Empire*, explains the city's early role in constitutionalism and imperial expansion.



Hired: SAMUEL ISSACHAROFF is primarily interested in procedure and constitutional law, but earned his place in the American Academy of Arts and Sciences in part for his work in employment law.



Hired: FLORENCIA MAROTTA-WURGLER '01 is pioneering deeper study of the latest phase of American commerce: the online market and its legal interplay with contracts, buyers and sellers.



Hired: RODERICK HILLS cherry-picks from every corner of the U.S. legal structure to satisfy his research interests: from state and federal government to land use regulation, constitutional law to education.



Justice Sandra Day O'Connor and Professor Oscar Chase inaugurate the **DWIGHT D. OPPERMAN INSTITUTE OF JUDICIAL ADMINISTRATION** with a conversation on the importance of an independent judiciary.

The Law School offers a **NEW DUAL-DEGREE PROGRAM** with the National University of Singapore Faculty of Law, focusing on global economics, trade law and human rights.



Hired: SMITA NARULA has shed light on caste discrimination, HIV/AIDS abuses, religious marginalization and state-sanctioned massacre in her work as a human-rights advocate and clinician.



Revez's accomplishments as dean range from dazzling new faculty hires to increased funding for students, and from brick-and-mortar improvements at home to academic expansion around the globe.



Hired: **KATRINA WYMAN** is writing a series of case studies about international and domestic environmental standards, and why the U.S. has led the way in leveraging markets to regulate pollution.



The **FURMAN ACADEMIC PROGRAM** launches, preparing exceptional scholars for the highly competitive teaching job market and careers in legal academia.

The **FACULTY ON THE ROAD PROGRAM** gets moving, connecting far-flung alumni, from Buenos Aires to Tokyo, to the Law School through visits and local lectures.

The **CENTER ON LAW AND SECURITY** is established to develop multipronged, cooperative international approaches to combatting terrorism, while preserving civil liberties.



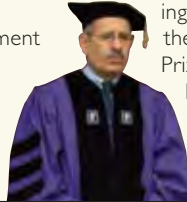
PUBLIC-INTEREST GRANTS help those who want to make a difference. Funding is guaranteed for any J.D. student who takes a public service summer internship.



The **DEAN'S STRATEGIC COUNCIL** is formed, and sets priorities to pave the way for an ambitious Capital Campaign.

The Center on Law and Security hosts its first **GLOBAL TERRORISM CONFERENCE** at La Pietra to facilitate communication between government officials, intelligence agencies, journalists and academics.

DR. MOHAMED ELBARADEI (LL.M. '71, J.S.D. '74) is awarded the Doctor of Laws degree by NYU. The following year he shares the Nobel Peace Prize with the IAEA, the nuclear watchdog group he heads.



'04
'05

Hired: **LILY BATCHELDER** puts a face on the numbers. Her unique approach analyzes the tax system as a tool to improve social policy and redistribute resources.



Hired: **CRISTINA RODRÍGUEZ** is a leader in the field of language rights. Her scholarship concerns immigration, multilingualism and their intertwined effect on American democracy.



NYU's academic environment is further diversified by the **NYU JOURNAL OF LAW & LIBERTY**, founded to promote classical liberal legal scholarship. Richard Epstein delivers the journal's inaugural Hayek Lecture.

'05
'06

The **CAPITAL CAMPAIGN** to raise \$400 million for scholarships, student loan repayment and faculty resources launches during a gala at the New York Public Library.

Hired: **OREN BAR-GILL** loves numbers and how they relate to the law. His unconventional ideas—like, inventors should eschew broad IP protections for narrower ones—presage economic trends.



A **MEMORIAL FOUNTAIN** honoring the lives of six alumni lost on September 11, 2001, is unveiled in the courtyard of Vanderbilt Hall.

The **ANBRUCE SCHOLARSHIP PROGRAM** reaches its target size in welcoming its first class of nine outstanding students who are the first in their families to pursue an advanced degree.

Jason Washington '07, now a Kirkland & Ellis associate



'06
'07

Hired: **MARGARET SATTERTHWAITE '99** is a clinician who exposes the practices of extraordinary rendition and enforced disappearances, and investigates human rights violations relating to extreme poverty.



Hired: **JEREMY WALDRON** is a leading political and legal philosopher whose work addresses property rights, judicial review, torture and, recently, the role of foreign law in the Supreme Court.



Transactional Learning: The **LEADERSHIP PROGRAM IN LAW AND BUSINESS** does for business careers what clinics do for legal practice. J.D.s can now hone their legal education with a business-oriented curriculum.

Hired: **CYNTHIA ESTLUND** has written on the relationship between the workplace and democracy; she focuses her research on unions and asks compelling questions about the barriers that prevent reforming labor law.



The **STRATEGIC PLANNING INITIATIVE** gets underway, gathering ideas from faculty, students, alumni and administrators so that the Law School's pace-setting trajectory is ensured.

COMING THIS FALL

In 2007, **TROY MCKENZIE '00**, a specialist in bankruptcy law, and **CATHERINE SHARKEY**, a leader in torts, join the full-time faculty. Read their profiles, and others, starting on page 66.

use new cases each year. We've designed an innovative business ethics curriculum in collaboration with the Stern School of Business. These courses will do for students interested in business and in corporate transactional careers what the clinics have done for those interested in litigation careers. It's almost impossible to create these kinds of partnerships anywhere other than in New York. Weekly, I also bring in successful alumni who are doing something other than practicing law in a traditional setting for intimate conversations with groups of students. It's eye-opening for the students to see a path to becoming a major real estate developer, or the president of a football team, or a hedge fund manager. Finally, our faculty in the international area works closely with the United Nations and the Council on Foreign Relations.

The Law School—and you—have been responsible for many financial-aid innovations. Do you plan to expand the range of assistance you provide going forward? Yes. I'm a big believer in education as an avenue for opportunity, partly because it connects with my own history of coming to the United States from Argentina. Our capital campaign will support the initiatives that will ensure that the Law School is always a place of opportunity. Students who take summer jobs that are public service-oriented are guaranteed financial assistance. Today, we're looking at not only the need coming in, but need going out, primarily in connection with public-service jobs. When I became dean, I expanded the Loan Repayment Assistance Program so that someone who takes a public-service job and stays with it for ten years has his or her whole debt burden paid by the Law School. We're also focused on setting up funds for post-graduate fellowships with public-service employers. We're creating funding vehicles so people can go to leading organizations with financial support from us, getting them started in their careers.

Several of your centers, like the Center on Law and Security, are really shaping the public debate in certain areas. How do these centers contribute to the intellectual life of the Law School and its place in the larger society? I see the centers as a way of amplifying the voice of the faculty in the public discourse. We are also working to make the centers more relevant to students by involving them in the research or getting them involved with preparing and arguing cases that stem from the centers' activities.

You've been busy with curriculum reform. Are you planning more changes? We've done four major rounds of curriculum reform since I started as dean. I see the whole Law School as a work in progress, and I think that's actually what makes it exciting: We're not self-satisfied. We led the way going back more than 20 years to the transformation of law school curricula, especially when it comes to the first year. Students need to understand institutions and government—not just the courts, but administrative agencies, too. So we introduced the Administrative and Regulatory State class for the spring term of the 1L year, and also introduced at least one smaller class for each first-year section. We have a set of first-year electives now, motivated by students who made it clear that they wanted to take International Law in the first year, in part to prepare for summer internships overseas, but after some discussion it became clear that there was a need to include other choices, too. So Property, Corporations, Constitutional Law, Taxation and International Law are now offered, and that started with the Class of 2009. It's good for students to be able to start exploring areas of our enormously deep curriculum sooner, so that they can take full advantage of that richness, and it also makes it easier for them to write their law journal notes, or large papers, in their second

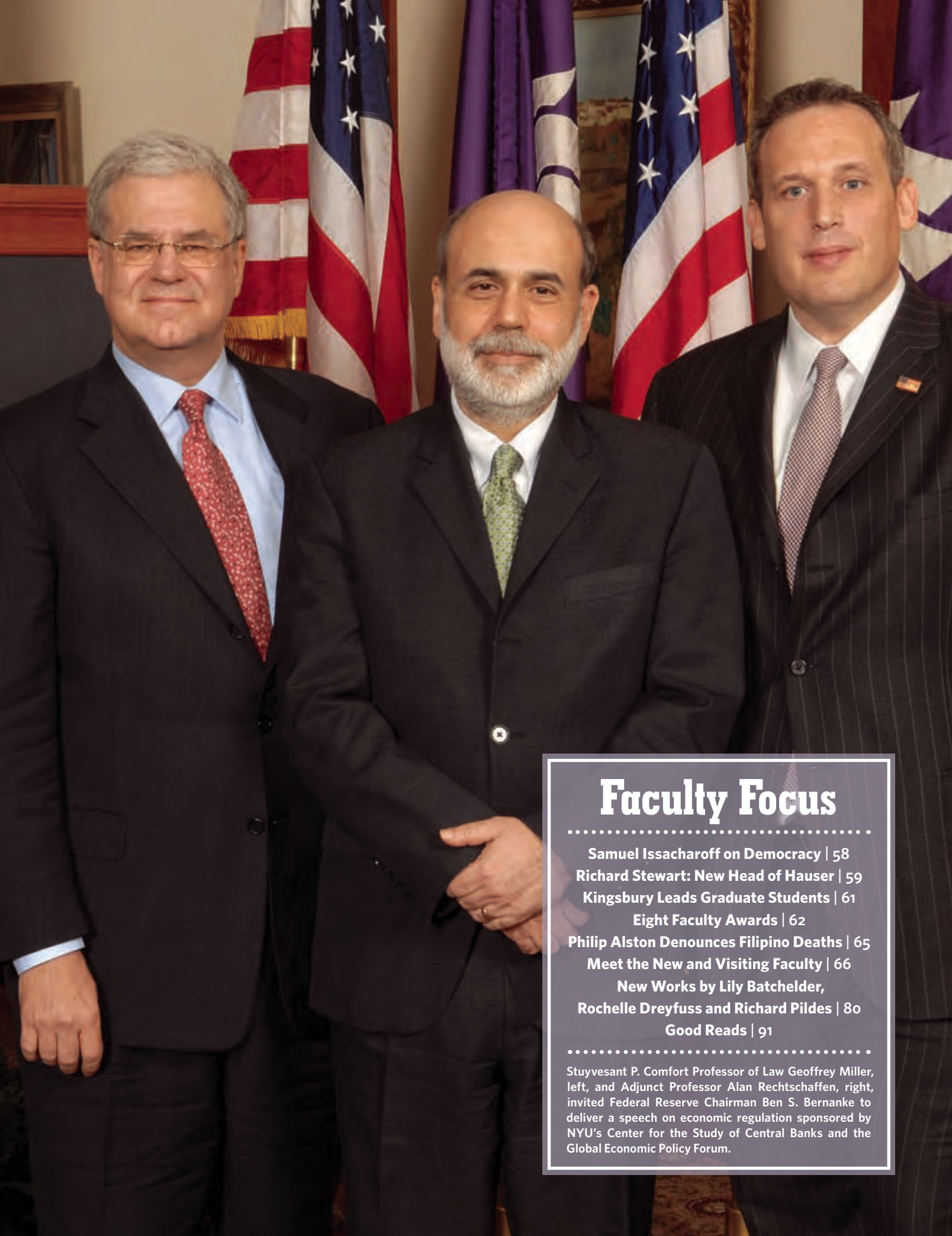
year. We will continue to reexamine the curriculum, especially the interaction between the first-year and upper-year courses.

You mentioned that you have an overall strategic planning process under way. Will that help you consider these sorts of changes, and direct the flow of ideas? Yes. We had a terrific retreat in early December. We got together trustees and alumni, administrators, students and faculty to talk about these sets of issues. There was a consensus that we should focus on preparing lawyers for leadership careers as problem-solvers and high-level advisers in a fast-changing, global, legal and business environment. We also want to encourage them to be leaders in civic life, in part by leveraging our unique public interest culture. We discussed ways to foster cross-fertilization across disciplines and areas of law, and everyone agreed that our New York location provides enormous opportunities, both for our current students and faculty, and in terms of attracting the best people to study and teach.

Many of your newest female alumni are working at big firms, but women a few years out leave firms at a worrisome rate. Can law schools help ameliorate this? Recently, I gathered a group of alumni who are presiding partners at major law firms together with NYU graduates for a conversation around these issues. The first large law firm that does a good job fixing this problem is going to have a huge comparative advantage, because there's enormous talent out there, so this would be a good business decision. I was on a panel a few years ago with a hiring partner at one of the major law firms here, and he was very proud that half his first-year associates were women. He was looking forward to the time when they would have the first class of partners that was half women, and I said, That'll never happen unless you restructure the way your firm operates. I asked this partner, Could you imagine lawyers having dinner with their families and working after dinner? He said no. I predict that will change, and I'd like to help in that process. Huge talent is being left on the table. That's one reason I'm interested in having students see all other career options: so that even if they go to a firm, and that might be a very good decision to make, they know there are ways one can make transitions.

Speaking of transitions, so far you have managed to continue your academic work while serving as dean. Do you plan to keep it up? Absolutely. I think I have a distinctive perspective on some issues that shouldn't be put on hold for however long I do this job. For example, the world has split into people who are fans of cost-benefit analysis and against serious environmental regulation, and people who just knock down cost-benefit analysis. But it's counterproductive to just say this type of analysis is evil and that we shouldn't be trading other goals against the environment, unless one is prepared to go to zero contaminants, which no one is. So you have to decide where you draw the line. I just finished writing a book about this called *Retaking Rationality: Using Cost-Benefit Analysis To Defend the Environment and Protect Public Health*, co-authored with a former student of mine, Michael Livermore '06. My next project is an article tentatively entitled "Climate Change and Future Generations." I also teach a four-credit environmental law course every fall; it's important for me to be able to have some kind of normal professor-to-student relationship. So, through my academic work, I'm preserving a path to my post-deanship time on the NYU School of Law faculty. □

Kelley Holland, a former editor at Business Week and at the New York Times, now writes a management column for the Times.



Faculty Focus

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-

Stuyvesant P. Comfort Professor of Law Geoffrey Miller, left, and Adjunct Professor Alan Rechtschaffen, right, invited Federal Reserve Chairman Ben S. Bernanke to deliver a speech on economic regulation sponsored by NYU's Center for the Study of Central Banks and the Global Economic Policy Forum.

Saving Democracy from Itself

SAMUEL ISSACHAROFF, THE BONNIE and Richard Reiss Professor of Constitutional Law, delivered his inaugural lecture, "Fragile Democracies: Elections and the Rise of Extremist Parties," on October 30, 2006. He reminded the audience of the violent riots and outraged calls for censorship that had erupted

order to shut down malevolent groups are essential to a democracy's well-being. Issacharoff was careful to make a distinction between American democracy, where the criminal-justice system is the mechanism used to deal with spoilers, and other nations, where the brakes have a much better chance, because of the use of

proportional representation, to become part of the government's infrastructure. "Most countries do not use the criminal code as the primary regulator of the political process," Issacharoff said, mentioning Germany, Russia and Turkey, where constitutional amendments disallow fascism, communism and sectarian rule.

As he wrapped up, Issacharoff, who was born in Argentina, raised in the United States and is Jewish, joked that his own prospects in the democratic process had been short-circuited: The Argentinean

constitution prohibits any non-Catholic from being the chief executive, and in America, the commander in chief must be native-born. "Sometimes," Issacharoff lamented, "you can't catch a break." □



Issacharoff, center, with trustee Bonnie Reiss '69 and Richard Reiss '69

the year before when the conservative Danish newspaper *Jyllands-Posten* published cartoons depicting the prophet Muhammad in an unflattering light, and then asked them all to imagine that something else had happened: What if, instead, the protesters had formed a political party and fomented a movement meant to wreak havoc from the inside out? "There is a haunting quote from the Nazi Joseph Goebbels that puts this absolutely perfectly," said Issacharoff: "This will always remain one of the best jokes of democracy—that it gave its deadly enemies the means by which it was destroyed." Therefore, Issacharoff noted, in order for democracies to thrive, a shift from absolute protection of free speech is sometimes necessary; oversight bodies need to judge whether a group's political viewpoints (and actions) are truly dangerous or not. He also argued that administrative measures taken by agencies in



STEPHEN CHOI AND MARCEL KAHAN WROTE or cowrote three of *Corporate Practice Commentator's* top 10 corporate and securities law articles of 2006.

Two of the best were by Kahan, George T. Lowy Professor of Law. "The Demand for Corporate Law: Statutory Flexibility, Judicial Quality or Takeover Protection?" shows that when companies based in states with flexible corporate laws go public, they are more likely to incorporate in their home state than in Delaware. "Symbiotic Federalism and the Structure of Corporate Law" (with Edward Rock) looks at the ramifications of federal corporate laws that preempt those of Delaware. In March, Kahan and Rock also won the 2007 De Brauw Blackstone Westbroek Law Prize from the European Corporate Governance Institute for a forthcoming article on hedge funds.

"Do Institutions Matter?" cowritten by Choi, who is the Murray and Kathleen Bring Professor of Law, examines the extent to which, under a presumption by Congress in passing the Private Securities Litigation Reform Act of 1995, institutional investors assume lead plaintiff status and ensure that counsel pursues claims in securities class-action cases. "The article is one of the first to provide empirical evidence on the impact of the lead plaintiff provision," says Choi. "It's great to get this recognition." □

A Theory of Government Reenvisioned



Richard H. Pildes delivered the inaugural lecture of the Sudler Family Professorship of Constitutional Law on March 20, 2007. In "Separation of Parties, Not Powers: Re-Creating Checks and Balances in Modern Government," Pildes made the case that the central dynamic of government is competition between parties, rather than between the executive, legislative and judicial branches. Pildes (at far left with Trustees Eileen '74 and Peter Sudler '73) cowrote an article on this topic that was published in the June 2006 *Harvard Law Review* and is excerpted on page 87.

Widening the Circle of the Global Community

Environmental and administrative law expert Richard Stewart shares his vision for his new job as head of global law at NYU.

WHY IS IT THAT WHEN DEALING with some of the most important global issues of the day, the very countries that would benefit most from an international conversation are often left out? Developing-country interests are often marginalized in global institutions such as the World Trade Organization, World Bank and International Monetary Fund. All too often, legal thinking about global governance and global regulatory issues reflects only the perspectives of the United States and Europe.

Richard Stewart, University Professor and John Edward Sexton Professor of Law who became the director of the Hauser Global Law School Program on June 1, hopes to bridge the divide between the developed and developing nations by reaching out to universities in Africa, Asia and Latin America. By bringing academics and lawyers from these often-excluded nations to NYU, and sending students and faculty there, he aims to turn out students who can think about global issues by broadening their experience.

As a founder of the fledgling discipline of global administrative law, Stewart devotes much of his work to grappling with issues of accountability in global governance. "Legal education and legal research, like legal problems, are global now," says Stewart, who is also an environmental law expert. "Our goal is to engage our students in an educational program that allows them to address these issues not just from the perspective of New York, but from that of Capetown, Santiago or Beijing."

Stewart credits his predecessors, Norman Dorsen, the Frederick I. and Grace A. Stokes Professor of Law, and Joseph Weiler, the Joseph Straus Professor of Law, with creating a terrific base. "Professor Weiler strengthened the academic orientation of not just Hauser but our LL.M. program and our Ph.D. program," Stewart says. "The idea of partnerships is his. So I'm really very much building on what he did." (*Please turn the page for more on Weiler.*) Stewart intends to build teaching and research partnerships with the Catholic University in Santiago, Chile, the National University of Singapore (where Weiler has already

built ties) and the University of Capetown. He also hopes to forge new cooperative arrangements with law schools in China and India. While his focus will be on developing countries, he plans to strengthen an existing relationship with Oxford University.

Faculty from partner institutions would continue to teach at NYU, as they have since the inception of the Hauser Program in 1995. But under Stewart's plan, NYU faculty and students would teach and study abroad either physically or via virtual classrooms. There would also be joint research projects, conferences, publications and continuing legal-education programs on global issues affecting developing regions.

"We want to reach out to the developing regions," says Stewart. "We now have global faculty and scholars coming here. The next step is to link up with students and faculty there, to be able to learn more from their perspective."

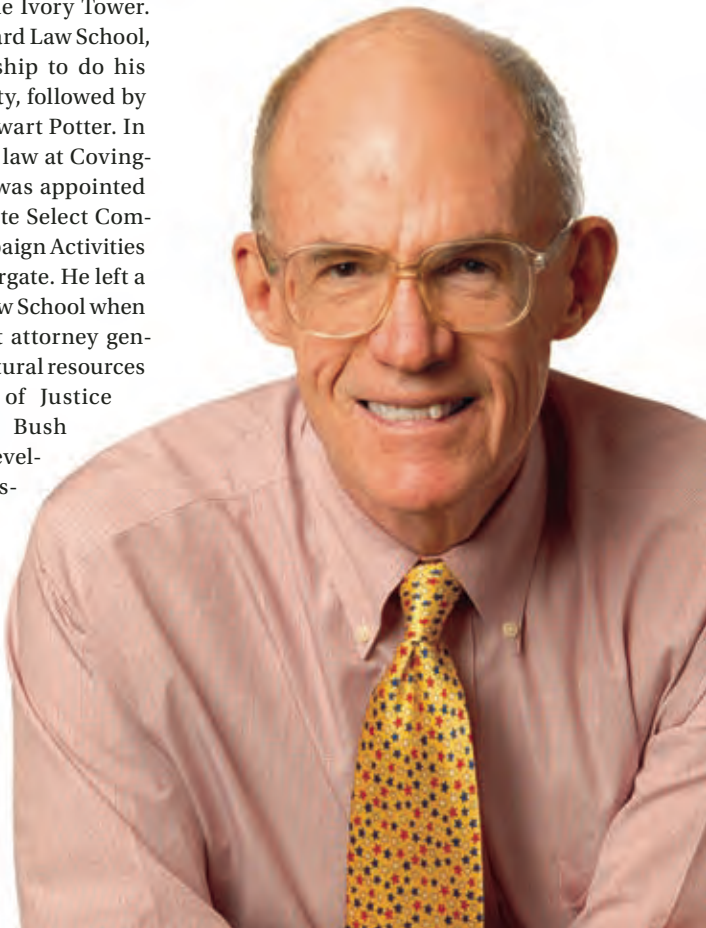
Stewart, by all accounts, possesses the qualifications to steer a preeminent global legal program. He is the rare academic who has moved in and out of the Ivory Tower. After graduating from Harvard Law School, he won a Rhodes Scholarship to do his master's at Oxford University, followed by a clerkship with Justice Stewart Potter. In the late 1960s, he practiced law at Covington & Burling, and in 1973 was appointed special counsel to the Senate Select Committee on Presidential Campaign Activities that was investigating Watergate. He left a professorship at Harvard Law School when he was appointed assistant attorney general for environment and natural resources in the U.S. Department of Justice during the George H.W. Bush administration. There he developed a market-based emissions trading system to limit greenhouse gases, which was later adopted by the 1997 Kyoto Protocol.

Stewart joined NYU in 1992, and in the late 1990s headed two environmental legal-assistance projects in China for the Center on Environmental and Land Use Law. He

and Benedict Kingsbury, the Murry and Ida Becker Professor of Law, are credited with defining the field of global administrative law at a joint NYU-Oxford workshop convened in October 2004, "Towards a Global Administrative Law? Legality, Accountability, and Participation in Global Governance." That workshop was followed by a similar conference in the spring of 2005, and yearly conferences in Viterbo, Italy.

"He created a new field that has enormous political and legal importance for the world," says Carlos Rosenkrantz, a professor of law at the University of Buenos Aires, who taught in the Hauser Program in the spring. After a conference held in Buenos Aires last March, Stewart trekked with Rosenkrantz and others through the delta near the city. "He's very sensitive to different landscapes, cultures and traditions, which is essential for someone who wants to lead a project that's global in nature," he says. "And he's genetically engineered for the job," says Rosenkrantz wryly, explaining that Stewart alone among their group was not bitten by mosquitoes.

Dorsen, founding director of Hauser, has said that whoever leads the program needs a high profile to attract top foreign faculty. "He knows many foreign law professors on several continents, and foreign faculty like to work with him," says Dorsen of Stewart. "Anyone at that level will attract great people." □ *Jennifer Frey*



Forging Ahead

Joseph Weiler looks back at the five years he spent as director of the global program and chair of the graduate division, and turns toward the future.



When you accepted leadership of the Hauser Global Law School Program, you described an ambitious and broad agenda. How would you rate your success in carrying through on your ideas and plans? *Nemo iudex in causa sua!* You don't really expect me to answer that question?

Okay, then, which of your initiatives mattered to you most? And next you will ask which of my five children do I like most? Let me try to list my five favorites.

The Global Fellows Program was one of the fundamental building blocks of “The Turn to Scholarship”—the principal motto of my tenure as director. It sets the gold standard for such programs. The soaring number and quality of the applications we receive, the success of the Global Working Paper Series and the strong and abiding ties created with our fellows tell the story.

I am very attached to the new doctoral program. We provide full funding, which I believe is unique among U.S. law schools. We have become extremely selective, picking but a handful of the most promising candidates and then following them assiduously as skeletal research plans become fully fledged dissertations.

NYU's graduate program, composed mostly of overseas students, is larger than most of our peer schools'. Foreign students are not token visitors but a critical mass, which redefines our classrooms, affects our institutional culture and reconstitutes our intellectual community. We truly are a

global law school. The new Graduate Division is an expression of this commitment and awash with new initiatives. Examples? The Lawyering Program for LL.M.s—another first.

Singapore: Enter a classroom on the world-class campus of the National University of Singapore. Shut your eyes. You could be in Vanderbilt Hall: Students from the United States, Europe, Latin America, Australia and Asia; teachers—Philip Alston, Stephen Gillers, etc.—are familiar. While some classes are the same as those taught in New York City, others are quite different. Taught by the National University of Singapore Faculty of Law, the leading law school in Asia, students will be absorbing knowledge they could not obtain anywhere but Asia itself. The combination has no parallel. The effort of all concerned is enormous. So are the rewards. Students will emerge after a strenuous year with an NYU LL.M. and an NUS LL.M.—testament to a new frontier of global legal education at its most imaginative.

Last, least, but most fun: I have installed a webcam in my office window overlooking the courtyard of Vanderbilt Hall. Beautiful and vibrant in all seasons, the courtyard is a spatial expression of the excitement of NYU Law. I love looking up from my desk and watching life pass by; occasionally an overseas student will be talking on a cell phone to a loved one far away. Check it out 24/7 on www.nyulawglobal.com. Share the fun! And see what Global is up to.

In announcing your decision to step down as director, Dean Richard Revesz mentioned three books you were hoping now to complete. Is it really true that you are writing a Jewish cookbook? Have you heard the joke about the definition of kosher? If it's good, it can't be kosher!

There is no shortage of Jewish cookbooks, but to read most of them you would get the impression that Jews eat only on the Sabbath and the various festivals—Okay, on Sunday they eat the leftovers and the rest of the week they order takeout, usually Chinese. And that Jews eat only meat—and if they will make a concession to vegetables, potatoes will do nicely, thank you.

My cookbook, *Kosher, but Really Good...!* is an exercise in the unexpected. Take the chapter entitled “Land of Milk and Honey?” My wife and I give various wonderful combinations of cheeses and honeys. One of my hobbies for years has been beekeeping (yes, in our New York City backyard). And in our pantry we have a huge (global!) collection of honeys, from the bittersweet Sardinian Corbezzolo to the perfumed Tasmanian leatherwood. Once you have combined cheese and honey, you risk never wanting either of them on their own.

Your books speak to an impressive range of interests. Tell us about the one on the Bible. *The Genesis of Our Civilization—Five Essays on the Book of Genesis* is another exercise in the unexpected. Consider an essay on Eve and Adam, in which I argue that Eve, in that very act of transgression, paradoxically completes our creation in the image of God as sovereign moral agents with the capacity to say No, and hence establishes the only position from which one can also truly say Yes. Or an essay on marriage, which examines the surprisingly diverse relationships between Abraham and Sarah, Isaac and Rebecca, Jacob and the tragic but ultimately favored Leah, and Jacob and beautiful, petulant Rachel. You will never think of patriarchy in quite the same way.

Okay. Now a law book, but what does geology have to do with law? *A Geology of Public International Law* is the title of the third book. Well, it is about accretion and a different way of examining the evolution of international law throughout the 20th century. The metaphor is really quite useful when we discover—taking a sounding of international law circa 2007—how much of 1907 is still present in its very structure.

So no more institution-building at NYU? Let's talk again next year.... □

Minding the Other 2Ls: LL.M.s

THREE YEARS AGO, MURRY AND IDA Becker Professor of Law Benedict Kingsbury and John Edward Sexton Professor of Law Richard Stewart together launched a program in global administrative law. The response was overwhelming, as students and academics have submitted more than 80 research papers about matters ranging from sex abuse in refugee camps to a World Bank loan for a dam in Argentina. Now, Kingsbury aims to encourage more students to conduct original research on international matters. As the new chair of the graduate division, he's in the perfect position to realize this goal.

"He's got lots of energy and lots of ideas," says Professor of Law Kevin Davis, who is working with Kingsbury to create courses online. "He can deal with students and faculty, keep writing and still do research."

In his new role, Kingsbury will oversee the Office of Graduate Admissions and the Office of Graduate Academic Affairs, taking over from Joseph Weiler, Joseph Straus

Professor of Law, who held the chair of the graduate division and directed the Hauser Global Law School Program.

In that vein, Kingsbury, who like the vast majority of the Law School's graduate students was born and raised abroad, is sensitive about making NYU a welcoming community. "It's always an issue at a big law school like this one—how to make people feel at home as individuals."

Although he grew up in the Netherlands, Kingsbury is a New Zealand national who earned his LL.B. there at the University of Canterbury. He was a Rhodes Scholar at Balliol College in Oxford, where he attained an M.Phil. in international relations and a D.Phil. in law. In 1990, he became a University Lecturer at Oxford, came to the United States as a professor of law at Duke in 1993 and joined the NYU law faculty in 1998.

Kingsbury's other position, as director of the Institute for International Law and Justice (IILJ), dovetails nicely with his new role. At the IILJ he works on issues relating



to indigenous populations, and heads the program in the history and theory of international law. One of his initiatives is the Private Military Companies Project, which studies the role of mercenaries in conflicts such as the underreported mid-1990s civil war in Sierra Leone. And Kingsbury also intends to launch a colloquium in 2008 about legal affairs and global business, dealing with topics like international labor law or cross-border mergers and acquisitions.

Says Davis, "He presses students to work on projects with real-world payoffs." □

Missions Accomplished, Vice Deans Make Way for Successors

EACH YEAR, THE LAW SCHOOL'S VICE deans oversee an extensive academic program, determining the curriculum for over 1,400 J.D. and 600 LL.M. students; negotiating a complex teaching schedule involving courses that are taught by full-time, visiting, global and adjunct faculty members; guiding the symposia and activities of eight student-run journals and some 60 active student groups, and ensuring a rich intellectual life for both students and faculty. Since 2004, two of the Law School's most distinguished faculty members: Barry Adler, Charles Seligson Professor of Law, and Clayton Gillette, Max E. Greenberg Professor of Contract Law have been managing this Herculean task.

In his role of vice dean, Adler oversaw important developments in information and technology, including the hiring of the chief information officer; managing vast improvements in the Law School's online registration system, and launching a new joint LL.M. degree program with the National University of Singapore. Vice Dean Gillette implemented programs to enrich the intellectual life of the Law School, including the very successful Faculty



Gillette



Adler



Murphy



Friedman

Scholarship Forum and the Brown Bags and Books series, in which faculty at NYU and elsewhere present their books to students and peers. He has worked closely with the student journals and organizations to sponsor quality symposia and academic conferences, and has significantly strengthened the Law School's intellectual ties with other parts of the University, particularly the College of Arts and Science and the Stern School of Business, through joint-degree programs.

After three years of dedicated service, the vice deans passed the baton to Barry Friedman, Jacob D. Fuchsberg Professor of Law, and Liam Murphy, Herbert Peterfreund Professor of Law and Philosophy. Friedman, who has a book due out this fall on the relationship between popular opinion and judicial review, will continue

to promote interdisciplinary scholarship, foster greater collegiality and collaboration, and improve the substance of the student and faculty experience. Murphy, who is finishing a book, *Law, Morality, and the Concept of Law*, will be primarily responsible for the development of the Law School's vast curriculum.

Freed of their vice dean responsibilities, Adler will be busy writing a book on corporate insolvency, while Gillette will be working on a book on local government law. Adler will continue to play an important role in the development and design of a new system that will introduce a market-based bidding system for courses to better match students to courses based on their interests. Gillette will also continue his efforts to launch a yearly interdisciplinary conference.

Laurels and Accolades

For their exceptional scholarship, lifelong achievement or dedication to causes, NYU law professors are acclaimed by their peers, students and compatriots.

DALE HONORED BY ABA

University Professor of Philanthropy Harvey Dale was named the 2007 Outstanding Academic by the Nonprofit Corporations Committee of the American Bar Association's Business Law Section. Dale is the founder and director of the Law School's National Center on Philanthropy and the Law (NCPL), which is devoted to the study of legal issues concerning the nonprofit sector. NCPL Executive Director Jill Manny calls Dale "simply the best that the field of nonprofit law has to offer. Not only is he an outstanding teacher and a productive scholar, but he has advanced the study of law and philanthropy by facilitating the teaching of the topic at law schools throughout the country." Dale has advised organizations worldwide, including the Internal Revenue Service and other government agencies.

AALS SINGLES OUT DORSEN

Last January, Norman Dorsen became the first-ever recipient of the Association of American Law Schools' (AALS) Lifetime Contributions Award. Dorsen "is a prolific, outstanding scholar whose contributions to the development of the law and legal education serve as a model for all of us to emulate," said Carl Monk, Washburn Law School professor and executive director of the AALS.

For 46 years, Dorsen, Frederick I. and Grace A. Stokes Professor of Law, has influenced and shaped hallmark programs as the codirector of the Arthur Garfield Hays Civil Liberties Program, the editorial director of the *International Journal of Constitutional Law* and the founding director of the Hauser Global Law School Program.

A renowned constitutional law and civil rights scholar, Dorsen is a fellow of the American Academy of Arts and Sciences and a member of the Council on Foreign Relations. He was general counsel of the American Civil Liberties Union for seven years, and served as president for 25 more. He has often argued before the Supreme Court and submitted amicus briefs in such landmark cases as *Gideon v. Wainwright*, *Roe v. Wade*, and the Pentagon Papers and Nixon Tapes matters.

AALS executive committee member Stephanie Wildman, a Santa Clara law

professor, said, "Many professors excel as practitioners or academics, but it is more rare to find the stellar combination embodied by Professor Dorsen's work."

HULSEBOSCH'S FIRST BOOK IS HONORED TWICE

Daniel Hulsebosch has won the American Historical Association's 2006 Littleton-Griswold Prize, and the American Society for Legal History's first-ever John Phillip Reid Book Award for his first book, *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664-1830*.

"Daniel Hulsebosch's book stood out as an original reconstruction of established interpretations of the trans-Atlantic constitutional transfer of institutions and ideas during the Age of Revolution," said Tony Freyer, professor of history and law at the University of Alabama and chair of the Littleton-Griswold Prize committee.

William Nelson, Judge Edward Weinfeld Professor of Law at NYU and chair of the John Phillip Reid Book Award committee, said that the award recognized Hulsebosch's "sweeping reinterpretation of early American constitutional history," as well as his uncovering of original sources; innovative use of established ones, and scholarly work building on that of Reid, a renowned legal historian and Russell D. Niles Professor of Law Emeritus at NYU. Nelson suggested that the book "may well have pioneered a new line of scholarship exploring the social politics of constitutionalism."

LOWENFELD GETS HUDSON MEDAL

The American Society of International Law (ASIL) selected Andreas Lowenfeld, Herbert and Rose Rubin Professor of International Law, to receive its prestigious

Manley O. Hudson Medal, which honors major contributors to the field of international law. Lowenfeld's wide-ranging expertise has been gleaned from more than 50 years of experience in the law, 40 of them at NYU. He has frequently arbitrated international disputes and has argued before the International Court of Justice, the Iran-U.S. Claims Tribunal and the U.S. Supreme Court. Before joining the Law School faculty in 1967, he was deputy legal adviser in the U.S. Department of State.

In lieu of a speech at the medal ceremony in March, Lowenfeld spoke with Harold Koh, the dean of Yale Law School, about the evolution of his international law scholarship and shared a memorable anecdote: Late on the evening of February 2, 1962, he was assigned to draft President



Dale



Dorsen



Hulsebosch



Lowenfeld

John F. Kennedy's Cuba embargo proclamation. Unsure how to go about writing such a document, he said, "I remembered that President McKinley had issued an embargo on Cuba in 1898. So I got the custodian to open the library, and I found McKinley's proclamation; I more or less copied that—changed a few dates—and the next morning Kennedy announced it."

Lowenfeld's self-deprecating humor aside, he has earned the utmost respect of the international law community. "Professor Lowenfeld is the quintessential scholar-practitioner," says Christopher Borgen, a St. John's University School of Law professor and a member of ASIL's Honors Committee. "He has not only played a major role in

the development of thinking about public international law and private international law—a distinction he has shown is increasingly irrelevant—but, as a prolific author and an inspiring teacher, has also shaped the evolution of the law through his work as a premier counsel, adviser and arbitrator.”

Thomas Buergethal '60 and NYU law professors Thomas Franck and Theodor Meron have also won the Hudson Medal.

MERON EARNS HASKINS PRIZE

Charles L. Denison Professor of Law Emeritus and Judicial Fellow Theodor Meron will receive the 2008 Charles Homer Haskins Prize from the American Council of Learned Societies (ACLS). Meron, an appeals judge on the U.N. Criminal Tribunals for the former Yugoslavia and Rwanda, will



Meron



Morawetz



Neuborne



Persico

deliver the next installment in the Haskins Prize lecture series, “The Life of Learning,” at the ACLS Annual Meeting in Pittsburgh next spring. The series prompts Haskins recipients to reflect on their time spent in scholarly pursuits. Each lecturer is chosen by the ACLS as an “eminent humanist.”

Peter Trooboff, a partner in the Washington, D.C., firm of Covington & Burling who nominated Meron for the ACLS prize, considers Meron “among the few international legal scholars of his rank who have had the opportunity to apply their knowledge and skill on a global scale, in his case to one of the most challenging legal processes since World War II—the trial of those accused of having violated interna-

tional law by criminal acts targeting their own citizens.” Pointing to Meron’s extensive writings and lectures on the role of law in Shakespeare’s works as an example of bridge-building between law and the humanities, Trooboff, who is the American Society of International Law’s delegate to the ACLS, also asserted that “the importance of humanistic values permeates every aspect” of Meron’s writings on human rights and his work in the U.N. tribunals.

NOMINATED BY STUDENTS, MORAWETZ WINS LEVY AWARD

In June, Professor of Clinical Law Nancy Morawetz '81 received the LexisNexis Matthew Bender Daniel Levy Memorial Award in recognition of her immigrant rights work and her immigration law scholarship. Morawetz heads the Law School’s Immigrant Rights Clinic, which has pioneered new legal theories and precedents that have achieved remarkable success, especially considering how immigration laws have tightened since 9/11.

The annual award, which comes with a \$2,000 cash prize, honors major contributors to the field of immigration law. Morawetz was nominated by 34 of her current and former students, who wrote, in part: “Through her work on behalf of immigrants facing deportation and detention, Nancy has championed what has been and continues to be an extremely stigmatized and marginalized group

of individuals and has elevated the promotion of their rights to justice, fairness and dignity on the immigrant rights agenda and in the public sphere.”

In their nomination letter, the students included a number of supporting statements, including one by Rose Cahn '07, who touched on Morawetz’s enduring influence: “Nancy’s contribution to immigration law can be seen in the dozens and dozens of students she has inspired to become tireless and diligent immigrant advocates.... As I go on to pursue a career in immigration law, I will approach each case with the values that Nancy instilled: a passionate commitment to justice, an open heart and an active mind.”

Isaac Wheeler '03 described how Morawetz inspires him: “Through creativity and extraordinary energy and effort, she and her students eke out amazing wins in case after case.... When I’m inclined to pass on a case I think is just too hard, I’m always asking myself—wouldn’t Nancy take it and find a way to win?”

ADL LAUDS NEUBORNE

On October 11, the Anti-Defamation League bestowed its prestigious American Heritage Award on Inez Milholland Professor of Civil Liberties Burt Neuborne in recognition of his long career in civil rights, and for defending American values, free speech, equality and mutual toleration. “Neuborne is at the center of emerging legal issues affecting democracy, poverty and the criminal justice system,” said Rachel Robbins '76, the ADL’s New York regional board chair. “He has also worked tirelessly to defend the rights of victims of the Holocaust.”

Presenting the award to Neuborne, Professor Norman Dorsen said, “He excels in every aspect of the profession—as a teacher and mentor, as a trial and appellate litigator, as a counselor to organizations and individuals facing injustice.... All these contributions are infused with a moral purpose that reflects a humane and sterling character.”

“I’m honored to be thought of in those terms,” said Neuborne, who is not typically at a loss for words.

ITALY RECOGNIZES PERSICO

Affiliated Professor of Law Nicola Persico was awarded the first Carlo Alberto Medal for outstanding research contributions to the field of economics by an Italian economist under the age of 40. “It is nice to be recognized by anyone,” said Persico, “but the recognition is especially welcome when it comes from one’s own country of origin.”

His work, self-described as “an economist’s take on constitutional design,” bridges economic theory and hard data to examine how campaign finance, the electoral process, racial profiling and antidiscrimination laws affect the economy, as well as constitutional and corporate law.

The Collegio Carlo Alberto in Turin, Italy, picked Persico from a group of more than 300 nominees. “His work has been exceptionally creative in a variety of areas,” said Alberto Alesina, an economics professor at Harvard and a selection committee member. “He has several papers in political economics and the economy of discrimination, combining theory and empirics in ways that are rare in our profession.” □

Speaking Up for the Untouchables

BY THOMAS ADCOCK

ARMED WITH A DEVASTATING CATALOGUE of indignities and unspeakable crimes against the so-called “untouchables” caste of India, a small delegation from New York University School of Law is bound for Geneva next week to present United Nations officials with an indictment against the government of New Delhi as the “greatest violator” of its own statutes outlawing discrimination against the country’s 165 million Dalit people.

“Hidden Apartheid,” a 113-page study produced by NYU Law’s Center for Human Rights and Global Justice, was published this week as a shadow report to official periodic filings the Indian government is obliged to make as a signatory to the United Nation’s 1968 Convention on the Elimination of All Forms of Racial Discrimination.

“Under-educated, severely impoverished and brutally exploited, the Dalits struggle to provide for even their most basic daily needs,” the report says of a socio-economic condition as old as India itself. “A review of the political, social, economic and cultural status of Dalits . . . shows [the Indian government] to be in violation of its obligation to respect, protect and ensure [U.N.] convention rights to all individuals.”

Professor Smita Narula, the Indian-born faculty director of the NYU center, said the project was “an incredible learning opportunity” for 15 students enrolled in her International Human Rights Clinic, who worked through the campus center and in conjunction with Human Rights Watch, an international agency. Two of the students—Jeena Shah, a first-generation Indian-American, and Stephanie Barbour, an Irish attorney pursuing an LL.M. degree—are set to present the report in Geneva on Feb. 23, accompanying Narula and Jayne Huckerby, an Australian attorney and research director for the NYU Law center. “To be able to advocate effectively on behalf of Dalits, and to be sure laws are enforced, you first have to create a climate where the problem is acknowledged and the government is made to feel political pressure,” Barbour said in an interview.

Pressure the report is likely to bring on the Indian government builds on two recent breakthroughs in the cause of Dalit rights:

- On Dec. 27, Manmohan Singh became



Professor Smita Narula, seated left, and attorney Jayne Huckerby (LL.M. '04), seated right, surrounded by students who worked on the Dalit project including, from left, Center for Human Rights and Global Justice intern Maithili Pradhan, Stephanie Barbour (LL.M. '07), Tiasha Palikovic '07 and Jeena Shah '07.

the first prime minister of India to equate the plight of Dalits in his country with that of blacks during the apartheid era of South Africa. “Untouchability,” he declared, “is not just social discrimination. It is a blot on humanity.”

- On Feb. 1, a resolution from the European Parliament found India’s efforts to enforce laws protecting Dalits to be “grossly inadequate,” adding that “atrocities, untouchability, illiteracy [and] inequality of opportunity continue to blight the lives of India’s Dalits.” Officials in India’s national congress dismissed the resolution as “lacking in balance and perspective.”

Throughout the years of periodic filings in accordance with the United Nations’ race discrimination convention, government officials have said that India’s age-old caste system, in which Indians are born into firm categories of work and social standing, does not equate with racism. However, the convention’s first article prohibits discrimination on the basis of “race, colour, descent or national or ethnic origin.” In 1996, U.N. officials concluded that the plight of Dalits, exploited on the basis of descent, is squarely within the convention’s purview.

CRIMES AGAINST DALITS

Ten years ago, while completing studies at Harvard Law School, Narula extended her research work on human rights issues in South Asia to specific investigations of crimes against the Dalit people of her native India. “I’d been doing enough human rights work to know that things are always worse than they seem,” said Narula. “But to learn of the extent of discrimination against Dalits, the entrenched nature of it, the inhumanity, was an eye-opener—even to someone who considered herself well

educated to human rights issues.”

After graduation, Narula expanded the scope of her work on behalf of Dalits by helping to found two civil rights organizations—the National Campaign for Dalit Human Rights, based in India, and the International Dalit Solidarity Network—that could use the accomplishments of lawyers to fuel their efforts at applying political pressure on government and business leaders. “I was taken aback at how overwhelming [abuse of Dalits] is, how it is so permeating, yet so invisible. It’s like oxygen. All around you, yet you can’t see it. In urban areas of India, people say it doesn’t exist, yet they won’t allow Dalits into their kitchens. This is not just cultural silence, it’s denial.”

Likewise for Shah, born in Michigan to Indian professionals, the experience of preparing the report was disturbing. “It’s shocking to me that I’ve been to India many times, and that half my family lives there, and that I didn’t know what I now do from writing this report,” said Ms. Shah.

What Shah did not fully appreciate about the daily life of India’s lowest caste of people is that Dalit women are routinely raped, or stripped naked and paraded through the streets, according to the report’s findings. Further, the report found Dalit children are denied education, Dalits are considered “impure” by upper-caste Indians, and are exclusively assigned to “manual scavenging” as their life work.

According to the report: “Manual scavengers [die] of carbon monoxide poisoning while cleaning septic tanks. In Mumbai, for instance, Dalits are lowered into manholes to clear sewage blockages—often without any protection. More than 100 workers die every year due to inhalation of toxic gases or drowning in excrement.”

In the person of the late Bhimrao Ramji Ambedkar, there is irony to the cruelties visited upon today's Dalits, of whom an estimated one to three percent attain educations and economic opportunities conducive to a decent life. A Dalit himself, the iconic Ambedkar (1891-1956), a lawyer who earned a Ph.D. from Columbia University, was chief architect of the Indian constitution, adopted in 1949 upon the country's independence from Britain.

According to an article published this month on the politically progressive Web site "India Together," to be a Dalit today "means having to live in a subhuman, degraded, insecure fashion: Every hour, two Dalits are assaulted. Every day, three Dalit women are raped, and two killed. In most parts of India, Dalits continue to be barred from entering Hindu temples or other holy places." But due in part to international legal efforts in concert with grassroots political movements, the article added, "[T]he Dalits are resisting. In parts of the country, they are organizing politically to demand their rights. A Dalit woman rules the largest state, Uttar Pradesh. However, breaking the barriers laid down by the Hindu caste system is an uphill struggle, especially when the government does little to uphold the law of the land that prohibits discrimination on account of descent."

PAINFUL KNOWLEDGE

Shah said she knew only "generally" about discrimination against the Dalits. "I'd spoken about it in the past with my mother," she said. "But it upsets her. It's one of the reasons my parents so wanted to come here."

As research director of the center, Hucklerby helped Shah and the other students gain such knowledge, however painful. "It was so important," she said, "and so beyond academic work. This was real work, dealing with real organizations and real-life situations." Narula, too, provided her students with the real-world lesson in the intractability of social crime.

"The caste system is a mechanism for keeping intact an exploited economic order, a source of very cheap and sometimes bonded labor," she said. "That's what motivates the system, and keeps it from becoming dismantled easily." Bottom line in human rights advocacy, she said, "Laws in place are not all that's needed." □

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Strong Parting Shot

BY AMANDO DORONILA

WHEN PHILIP ALSTON, THE UNITED NATIONS special rapporteur on human rights, ended last week his 10-day mission to inquire into extrajudicial killings in the country, he created a political tempest. He delivered a strong parting shot asking the Philippine government and military to acknowledge that the murders were taking place.

Holding the authorities accountable for the killings, Alston, in a pre-departure press conference, said: "I would like a statement from the very top, from the President, secretary of defense and certainly from the (Armed Forces) chief of staff saying that extrajudicial killings will not be tolerated."

He also said: "The AFP remains in a state of almost total denial of its need to respond effectively and authentically to the significant number of killings which have been convincingly attributed to them."

Turning to the responsibility of President Macapagal-Arroyo, the commander in chief of the Armed Forces, Alston said: "The President needs to persuade the military that its reputation and effectiveness will be considerably enhanced, rather than undermined, by acknowledging the facts and taking genuine steps to investigate."

Alston left a strongly worded press statement, representing his preliminary report to the UN on the findings of his mission. It was so scathing it left a heavy political fallout and elevated the killings to a major issue in the mid-term elections in May and raised the possibility of UN and European Union sanctions on the Philippines for its human rights abuses.

The Alston statement was followed by the release to the public of the long-withheld report of the Melo Commission, formed by President Arroyo, "to get to the bottom of why these extralegal killings are taking place and who probably are responsible."

The findings of Alston and the Melo Commission emphasize one point: the accountability of the government and the military for the killings. But Alston was harsher than Melo in holding the government and the military responsible for the murders that have killed at least 800 political activists since 2001. He went as far as demanding a categorical statement from the President and military authorities that they would not tolerate extrajudicial killings.

The Melo report said: "There is some circumstantial evidence to support the proposition that some elements within or with connection to the military are responsible for the killings." In a swipe at the President and the highest military authorities, the report said: "While the killings are certainly not attributable to the military organization itself, or the state, but only to individuals or groups acting in pursuant to their own interests, this does not mean that the state can sit idly by and refuse to act. Ultimately, the state has the responsibility of protecting its citizens and making sure that their fundamental liberties are respected."

Pointing out the implications of the unabated killings for raising these as an international human rights issue, the Melo report said: "The growing worldwide consensus for state responsibility for non-state acts posits that if the state fails to investigate, prosecute or redress private, non-state acts in violation of fundamental liberties, it is in effect aiding the perpetrators of such violations, for which it could be held responsible under international law."...

Responding to accusations from right-wing administration supporters, including Sen. Juan Ponce Enrile, who is ironically chair of the Senate committee on human rights, Alston made clear in his report: "I have spent the past 10 days in the Philippines at the invitation of the government to inquire into the phenomenon of extrajudicial executions."

The President has also invited the EU to assist in the investigation, after her government came under strong pressure to put an end to the killings and prosecute the perpetrators. The EU has warned that the Philippines faces sanctions, including cuts in technical and economic aid if the killings are not stopped. Alston clarified that "my formal role is to report to the UN Human Rights Council on the situation I have found."

His findings provoked a barrage of insults from Justice Secretary Raul Gonzalez who called him just a "muchacho" of the UN, and military officials who ridiculed him for making sweeping conclusions after staying for only 10 days in the country.

The best answer to these reactions is that they should read the full text of Alston's statement. This goes to the forum of international opinion, which is what matters.

Then we can wait for the backlash from the UN and EU. The electoral backlash in the country could also be a political tornado. □

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New Faculty

Troy McKenzie

ASSISTANT PROFESSOR OF LAW

IN 1999, WHEN REGIS PHILBIN'S *WHO WANTS to Be a Millionaire* hit the airwaves, *New York University Law Review* students agreed that, should they ever land on the show, Troy McKenzie '00 would be the first person they'd pick to be their "lifeline," a friend they could call with an all-time stumper of a question. "He's a walking Google," says Carol Kaplan '00, now an associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York. Once, she, McKenzie and other friends were talking about a case involving the Pennsylvania Railroad, she recalls, and "Troy went off

on a riff about different train manufacturers, different gauges of tracks, eras when trains were used—facts, figures and offbeat information."

Those who know him say his encyclopedic knowledge of everything from kites to electronics, coupled with perfect comedic timing, will stand him in good stead in the classroom. "With a wonderfully placed bon mot," Kaplan says, "he makes his friends convulse with laughter. That's a great asset for a professor."

McKenzie will teach civil procedure—in, perhaps, the same classroom where he was a first-year student exactly 10 years ago. "It makes you feel like you've accomplished something, stepping back into the same forum but on the other side of the table," he says. But "it's an odd feeling, a sense of familiarity and newness at the same time."

McKenzie, 32, will become the fifth professor of the Law School who is 35 or under. Still a bit uncomfortable with such a grownup salutation, he laughs when he's addressed as "professor." But Kaplan is not alone in thinking that McKenzie is a natural for the job.

"What's striking about Troy is, this is a guy with real presence, unusual presence for someone who's just 32 years old," says William Nelson, the Judge Edward Weinfeld Professor of Law, who teaches legal history. Nelson recalls McKenzie's job talk before the Law School's Academic Personnel Committee. "He was dropped in the middle of a lion's den," he says, "and was extremely good on his feet. Just as he can get up in front of faculty members and not fall apart, he'll be able to get up in front of students and put them at ease." And with McKenzie having left Debevoise & Plimpton in Manhattan, where he specialized in bankruptcy litigation for the past three years, NYU will gain another practitioner. "He knows the importance of procedure and substantive law and will bring that real-world understanding to his students," says Helen Hershkoff, Joel S. and Anne B. Ehrenkranz Professor of Law.

McKenzie is currently at work on a paper, "Judicial Independence, Autonomy, and the Bankruptcy Courts," which examines the role of bankruptcy judges in the federal court system. Unlike other federal judges, bankruptcy judges do not enjoy the protections of Article III of the Constitution—namely, life tenure and compensation that can't be diminished—but nonetheless hear cases in federal courts. Supreme Court doctrine and scholarly literature justify that departure, saying that, while bankruptcy cases require judges who have technical expertise, these cases are unlikely to generate the political pressures other federal judges may come under. Plus, bankruptcy cases can be appealed to Article III judges.

McKenzie questions both points. "Bankruptcy may be a specialized process," he says, but "bankruptcy cases can involve a broad range of subject matters, including multibillion-dollar tort and contract claims." He also argues that in practice, bankruptcy cases generate few appeals. In his long-term work, he intends to examine other aspects of the bankruptcy process as well as class actions and complex litigation, which have close connections to the bankruptcy process.

McKenzie, a native of Jamaica, moved to the United States in 1980 with his family, settling in New Jersey. His dad, Delroy, 63, a chemist, works at a dairy processing plant. His mom, Monica, a librarian (now deceased) brought home "tons of obscure books," McKenzie recalls, which sparked his diverse interests. "I'd go through a different hobby every week." When he was eight, he spent the summer building kites. At ten, he says, "I very scientifically studied every plant in our garden and ended up growing a pound-and-a-half tomato. I cycled through lots of ideas quickly."

In 1993, he entered Princeton University to study chemical engineering. Sometime in his sophomore year, his roommate "dragged" him to a campus lecture given by U.S. Supreme Court Justice Antonin Scalia. "I liked the give-and-take style of argument," McKenzie says. He took some pre-law courses but enjoyed the small classes in his major, and stuck with engineering.

Upon graduation, he turned down an engineering job at Union Carbide, fearing his future might be too dull, and entered NYU School of Law. "I got a first-rate education and fell in love with the place," says McKenzie, who received an award for most outstanding *Law Review* Note—a paper about sovereign immunity in bankruptcy. Active in the Black Allied Law Students



Association, he says: "Though the numbers of black students weren't huge, there was definitely a sense of comfort." After he earned his J.D., he clerked for Judge Pierre Leval of the U.S. Court of Appeals for the Second Circuit and then for U.S. Supreme Court Justice John Paul Stevens during the course of two terms.

While taking a 2005-06 sabbatical as a Furman Academic Fellow, McKenzie says, "I realized that I liked being in an academic environment. I liked the luxury of being able to think about problems on an extended basis." His return to NYU gives him the chance to do just that. □ *Jennifer Frey*

Arthur R. Miller

UNIVERSITY PROFESSOR

DURING HIS 36 YEARS AT HARVARD LAW SCHOOL, Professor Arthur Miller's intimidating teaching style made him the stuff of legend. Students caught unprepared risked being ejected from class. Or, worse still, Miller would storm out himself. The story has it that, after seeing Miller deliver a blistering dressing-down to one student, Scott Turow based hard-as-nails law professor Rudolph Perini on him in *One L*.

"I demanded absolute preparation and I got it," says Miller, who also commands respect with his signature three-piece suits worn with a red tie and pocket square. "Call it a dictatorship if you will, but my belief is that you never say 'I'm unprepared' to a judge or a senior partner."

NYU Law students entering Miller's first-year Procedure class (he will also teach Complex Litigation this spring) should expect to be put on the spot. "It's a procedure course," he says. "It isn't a pablum course." But, the 73-year-old admits, "I've mellowed." In the five years he's been a visiting professor here, he hasn't stomped out of a single classroom. He even allows students to submit a note if extenuating circumstances prevent them from studying.

Miller, an expert in civil procedure, copyright law, privacy rights and complex litigation, keeps a toehold in practice, arguing in the appellate courts as well as the Supreme Court. He has also been a ubiquitous legal commentator on television. Among practitioners and judges, however, he is best-known for his multivolume *Federal Practice and Procedure*, which he coauthored with Charles Alan Wright.

"He is not only a superb legal scholar, a mesmerizing legal educator, and a great lawyer, he is also among that handful of people who can explore legal topics in a

public forum in a manner that is vivid and captivating, respectful of the law, and respectful of the audience," says NYU President John Sexton, who helped recruit Miller as a "University Professor," which allows Miller to teach both in and outside the Law School. He is developing a seminar called Dialogues on Law, Society and the Future for the NYU School of Continuing and Professional Studies.

Miller was brought up an only child in a lower-middle-class Brooklyn neighborhood by his father, Murray, a struggling solo practitioner, and mother, Mary, a legal secretary. Discouraged from following in his dad's footsteps, he entered the University of Rochester to study metallurgical engineering. That lasted eight days. "I fell asleep in calculus and fell off my chair. I was so embarrassed, I walked out of the room and changed my major." An aptitude test steered him toward law, so after graduating a year early, Miller entered Harvard.

Given his tough-guy reputation, it's ironic that Miller was himself a timid, insecure law student. "I used to hide so the professors wouldn't call on me," he says. Six percent—11 students—in his section could expect to fail. "I used to sit there," he says, "trying to find 11 guys dumber than me." That summer, while working as a waiter in the Catskills, he received his first-year grades. He came in fourth in a class of 535—and was invited into the *Law Review*. Miller called the registrar the very next day: "I thought they made a mistake."

The next fall, civil procedure professor Benjamin Kaplan took him under his wing. Kaplan "cared if you learned," Miller says. "Ben instilled in me not only an affection for civil procedure and copyright, but the possibility that academics was a real life."

Graduating magna cum laude in 1958, Miller joined Cleary, Gottlieb, Steen & Hamilton in

Manhattan, where he practiced for three years before accepting an offer from Columbia Law School to become associate director of its Project on International Procedure. There, he worked closely with Kaplan, who was then a reporter for the Advisory Committee on Civil Rules of the Judicial Conference—a position Miller would later hold—and went on to teach first-year procedure alongside the Honorable Jack Weinstein, a giant in the field.

Once Miller entered the classroom, he found a strong, authoritative voice he didn't know he had. "I wound myself up like a top because I was so petrified," he recalls. "I overprepared. Then I sort of exploded!"

Miller taught at the University of Minnesota Law School and the University of Michigan Law School before returning to his alma mater, where he became Bruce Bromley Professor of Law.

One day he was teaching "the most dull, picayune stuff imaginable," he says, when after class two men whom he assumed were alums approached him. They were ABC executives. Miller became the first law professor to appear regularly on television, hosting *Miller's Court*—the TV show that pioneered making real-life lawyering accessible to a lay audience—from 1979 through 1987. The show created media buzz, and led to a 20-year stint as *Good Morning America's* legal editor. He has also hosted a weekly show on Court TV, won an

Emmy in 1984 for one of three Fred Friendly seminars he moderated for PBS's 13-part series *The Constitution: That Delicate Balance*, and garnered three American Bar Association Gavel Awards for promoting public understanding of the law. "TV was a wonderful experience," he says, despite channeling his energies away from becoming a judge—an early aspiration.

Miller had been toying with the idea of coming to NYU for two



decades. His TV experience confirmed he was a New Yorker at heart. And as his Harvard colleagues retired or passed away, he became closer to the NYU School of Law faculty. Miller, three times divorced with one son and two grandchildren, bought a Chelsea townhouse two years ago, which he shares with Belle, his two-year-old Welsh Terrier. "When you stop being apprehensive about being the best you can be, that's when you retire. I'm not ready just yet." □ *Jennifer Frey*

Samuel Scheffler

**AFFILIATED PROFESSOR OF LAW;
PROFESSOR OF PHILOSOPHY AND
LAW, FACULTY OF ARTS & SCIENCE**

THE ACADEMIC GRILLING—SKEWERING, some might say—that marks the Law School's Colloquium in Legal, Political and Social Philosophy has unnerved many an accomplished scholar. Yet when Samuel Scheffler opened his presentation last fall, he took the opportunity to take a playful jab at his colleagues instead.

Scheffler told the gathering he was glad Jeremy Waldron had joined professors Ronald Dworkin and Thomas Nagel in running the colloquium "because," he said in his trademark deadpan style, "it wasn't much of a challenge with just the two of them."

Although Scheffler does not hold a law degree, his area of expertise—moral and political philosophy—overlaps with studies in jurisprudence, the theory and philosophy of law. When he arrives at NYU in 2008-09, he will divide his time between the philosophy department and the Law School, as he's done at Berkeley since 1997. (He taught exclusively in Berkeley's philosophy department from 1977 to 1997). There, he teaches the Workshop in Law, Philosophy and Political Theory, which he freely acknowledges as "a shameless ripoff of the colloquium."

Reserved and unassuming, Scheffler, 55, is known not only for his wry wit—making him Berkeley's most sought-after roast master—but for his lucid mind and relevant work. "He contributes to any discussion with a very pure and targeted statement," says Nagel, who was Scheffler's Ph.D. adviser at Princeton University 30 years ago.

Eric Rakowski, who coteaches the Berkeley workshop, adds that when Scheffler presents a summary of the presenter's work, the visiting professors routinely ask him for a copy, noting, "It's so beautiful, and it typically improves on the argument of the paper itself."

Nagel calls Scheffler "one of the leading moral philosophers now writing. His work is about real, moral problems, not just abstract questions." Adds onetime Berkeley professor Robert Post, now at Yale Law School, "Many philosophers write what they can get right. Sam writes about what matters."

An ongoing theme of Scheffler's current papers and his three books, *The Rejection of Consequentialism* (1982), *Human Morality* (1992) and *Boundaries and Allegiances* (2001), is the tension between ideas of universal justice and cosmopolitanism—the idea that all of humanity belongs to a single moral community—on the one hand, and a person's particular loyalties and affiliations, such as family, nation and religion, on the other.

"I've spent a good deal of time investigating the reasons and responsibilities that arise from our development of personal projects and our participation in interpersonal relationships," he says. "I have tried to explain the sources of these reasons and responsibilities, and to consider the extent to which they take priority over other proposed duties, such as the duty to promote the general welfare or to maximize the overall good." In "Morality and Reasonable Partiality," a paper he delivered at NYU in March, Scheffler argues that "up to a point, but only up to a point, we are not merely permitted but obligated to give the needs and interests of our intimates and associates priority over the needs and interests of others."

Scheffler practices what he preaches. Berkeley colleague Sandy Kadish, a founder of that law school's Jurisprudence and Social Policy Program (JSP), where Scheffler teaches his workshop, says he's "a devoted citizen of the university community. He's not the kind

of fellow who says, 'No, I'm too busy.'" Plus, "He doesn't speak a lot at meetings, but when he does, people listen carefully."

Scheffler has served as chair of Berkeley's Department of Philosophy; has headed up the department's personnel, admissions and placement committees; was active in the Law School Dean Search Committee; and served as an acting vice provost. While a faculty in residence at NYU last spring, Scheffler organized both the law and philosophy faculties to raise the profile of their course offerings and research opportunities.

He was brought up in the Boston area by his mother, Rosalind, a clinical psychologist, and father, Israel, a philosophy professor at Harvard University. A rebellious product of the 1960s, he received his first philosophical education as a teen arguing with his father. "My basic view was that whatever he said must be wrong,"

Scheffler recalls. When Israel opposed the Vietnam War, Samuel took the opposite position—at least until the antiwar fervor swept him up. "Then I argued that my dad wasn't far enough left," he says. Through such father-son volleys, Scheffler says, "I was getting some sense of how you construct an argument and what resources there are for developing a position."

Scheffler, who first got interested in politics and journalism in high school, entered Harvard to study political science. Much to his surprise, he found himself drifting toward philosophy, "where people were grappling with the most fundamental questions." Upon completing his doctorate in philosophy, Scheffler landed a teaching job in Berkeley's philosophy department, then joined the JSP program as well. He met his wife, Kathryn, when she worked at the university, and the two wed in 1983. They have two grown sons, Adam and Gabriel.

As for his move East, he says, "Berkeley is a wonderful place. I've loved



being there.” But, he continues, “the central figures [in law and philosophy] are at NYU,” singling out professors Dworkin, Nagel, Waldron and Liam Murphy. “It’s a really extraordinary collection of people. Given the opportunity to join this group of people, anybody with my interests would have to have a very good reason not to do it.” □ *Jennifer Frey*

Catherine Sharkey

PROFESSOR OF LAW

WHEN CATHERINE SHARKEY WAS A RESEARCH fellow at Columbia Law School writing her first law review article, on the disconnect between the theoretical reasons for awarding punitive damages and the actual effect when they are granted, she sent a draft to mentors like her Yale law professor Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit, for whom she had clerked, but also was brash enough to slip a copy to University of Chicago law professor Richard Epstein, whom she didn’t know but whose work on torts she particularly admired. Upon reading her draft, Epstein picked up the phone and called her. “We had a one-hour conversation that was a litany of everything wrong with my article,” says Sharkey. “He said, ‘You’re taking us to hell and you don’t even have a handbasket!’”

Despite his critique, Epstein was impressed. “I knew from the first conversation that this young professor would soon make it to the ranks of top legal scholars in any area in which she worked,” he recalls. “She was focused and determined, with an immense knowledge of the case law and a real commitment to intellectual rigor.”

Sharkey, 37, who comes to NYU from Columbia Law School, has gotten over the sting of her initial acquaintance with Epstein and now counts him among the impressive academics who inspire her with their passion for teaching and desire to apply their work to real issues; her own work, in turn, elicits high praise from them. Calabresi recalls telling Justice David Souter, who was interviewing Sharkey for a clerkship position, “A quite extraordinary thing has just happened: Cathy has drafted a short opinion from my chambers, and it is the first time I have taken an opinion of this sort and sent it in without changing a word.”

Sharkey’s scholarship and teaching focus on torts. She is forging new theories by using torts and products liability as a lens through which to examine the interplay between private law and public law. She is currently exploring the relationship be-

tween civil litigation and administrative regulation of the pharmaceutical industry. Her book, “Federalism in Act Regulatory Preemption in Pharmaceutical Litigation: State Versus Federal Courts” is one of the upcoming law review articles that deal with federal preemption. In them, Sharkey analyzes whether courts and agencies work in tandem or at odds with each other when creating enforcing regulations. The U.S. Food and Administration proves a pharmaceutical company’s shield the comparative tort liability in these areas particularly rich because of the tensions of federalism, she says. Tort law at the state level, agencies such as enforce federal state regulations. “My adds, “is to develop interaction between agencies and Congress.”

There is a grace and pull to Sharkey’s scholarship and teaching that represents her love and her devotion to practical problem-solving. This tension has played out in the evolution of her academic and professional career as well. Sharkey attended Yale as an undergraduate, where she first encountered economics in classes taught by renowned economists William Nordhaus and Nobel Prize-winner James Tobin. “I was mesmerized by the subject matter and how their research related to actual ongoing public policy issues,” Sharkey says. Reaching her senior year with more than enough credits—she would later graduate summa cum laude—Sharkey took off her first semester and pursued an independent study, an on-the-ground examination of the bail bond system in New Haven. She collected data from bail commission records and interviewed bail bondsmen, ultimately determining that the private sector, represented by bail bondsmen, mitigates racial discrimination in the public sphere, where courts



bail for black and Hispanic detainees. She won Yale’s prize for the best economics thesis and her work developed her by professors Ian and Joel Waldfoegel a 1994 *Stanford Law Review* article, “A Market Test Race Discrimination in Bail Setting.”

Fast-talking and energetic, Sharkey was also an American goalie for Yale women’s lacrosse, becoming captain and most-valuable player as well as one of ten finalists for the NCAA Woman of the Year in 1992. While she didn’t win the latter distinction, she was granted a Rhodes Scholarship at Oxford where she pursued a doctorate in economics. But the practical side of her won “Economics was theoretical,” says Sharkey; “in law it’s the problem-solving. I was influenced by pioneers like Richard Posner who were applying economic analysis to legal questions.” Professor Noah Feldman, now on the faculty of Harvard Law School, says Sharkey, his friend since both clerked for Justice Souter, “It’s rare to master abstract theory and then match it up with the way things actually happen in the real world; Cathy does it in a smooth, seamless way.” He adds, “She has the whole academic package.”

Sharkey grew up in Baltimore, the third of four children. Her mother is a professor of management science at Loyola College. Her father was a commercial litigation attorney at a Baltimore firm, and is now an administrative law judge in Washington, D.C. “I thought I’d charted my own path,” she says. “But I think there were subtle influences.” She will have a chance to see whether law is destiny for the next generation, too, though she and her partner, Ina Bort, a partner at Kornstein Veisz Wexler & Pollard who practices commercial and matrimonial litigation, are doing their best to remain neutral. The couple have an eight-month-old son, Caleb. Recently, friends gave Caleb a T-shirt that reads, “Future Lawyer.” He hasn’t worn it yet. □

Visiting Faculty

AKHIL AMAR, the Southmayd Professor of Law and Political Science at Yale University, will visit the Law School in Spring 2008 to teach an advanced course, Reading the Constitution.

A constitutional law expert who has testified frequently before Congress and been cited in more than 20 Supreme Court cases,



Amar has published nearly 100 articles in journals including the *Columbia Law Review*, the *Harvard Law Review*, the *Stanford Law Review* and the *Yale Law Journal*, along with 100

pieces in publications such as the *Los Angeles Times*, the *New York Times*, *Time* and the *Washington Post*. His books include *The Bill of Rights: Creation and Reconstruction* (1998), *America's Constitution: A Biography* (2005) and *Processes of Constitutional Decisionmaking: Cases and Materials* (2006, fifth edition), which he coedited.

Amar earned a J.D. from Yale Law School, where he was an editor of the *Yale Law Journal*, and clerked for Justice Stephen Breyer when Breyer was on the U.S. Court of Appeals for the First Circuit. He has presented endowed lectures or been a visiting professor or scholar at dozens of colleges and universities, and received the Paul M. Bator Award from the Federalist Society for Law and Public Policy Studies.

After the 2000 presidential election, Amar formulated a plan with his brother Vikram Amar, professor of law at the University of California Hastings College of Law, to ensure that, even without a constitutional amendment, the people, not the electoral college, would decide the outcome. Under their proposal, if the legislatures of the 11 most populous states passed a statute stipulating that they pick electors loyal to the national popular vote winner, that candidate would become president. The two noted an odd theoretical possibility: "A candidate," they wrote, "could win the presidency by winning the national popular vote, even if he or she lost in every one of these big states!"

WILLIAM CARNEY will teach Business Associations when he visits NYU in Fall 2007. Outside the classroom, Carney, the Charles Howard Candler Professor of Law at Emory University Law School, plans to coauthor a mergers and acquisitions textbook and two articles explaining the pre-eminence of Delaware corporations law.

The author of two casebooks on corporate finance and mergers and acquisitions, two books on corporate and securities law, and more than 50 book chapters, Carney has published articles in the *Notre Dame Law Review*, the *Southern California Law Review*, the *University of Pennsylvania Law Review* and the *Wall Street Journal*, among other publications.

Carney, who earned an LL.B. from Yale Law School, began his teaching career at the University of Wyoming. He has been the James Monroe Distinguished Visiting Professor at the University of Virginia and



a visiting professor at Central European University in Budapest, the Technical University of Dresden, the University of Antwerp and the University of Michigan. Along the way, he has also held positions at numerous law firms, including partner at Holland & Hart in Denver.

Along with fellow lawyer Leonard Silverstein, Carney has filed a patent application for the "Reload Poison Pill," an improved defense against hostile corporate takeovers. Carney developed the idea while consulting on takeover defenses. After he ran the numbers on a conventional poison pill, he says he discovered that "the client was still vulnerable." In an article published in the *Emory Lawyer*, the pair wrote that, unlike the regular poison pills that "fire" only once, "the reload pill is more like an automatic rifle that keeps firing at the enemy as long as necessary."

Carney also serves on the board of Pharmasset, a biotechnology company, and as chair of the Corporate Code Revision Committee of the State Bar of Georgia.

DONALD CLARKE, a Chinese-law specialist, will teach corporate law, an introduction to the Chinese legal system and an advanced Chinese business law course during his 2007-08 visit. A professor at George Washington University Law School, he plans to also research Chinese citizens' use of courts and legal institutions as instruments of social change.

Clarke, who is fluent in Mandarin, was a Fulbright Research Fellow at Tsinghua University Faculty of Law in Beijing and a visiting fellow at Yale Law School's China Law Center. He directs both the U.S. China



Law Society and the Pacific Rim Law and Policy Association, and belongs to the Council on Foreign Relations and the Academic Advisory Group of Congress's U.S.-China Working

Group. Clarke has written articles for publications such as the *Columbia Journal of Asian Law*, the *Encyclopaedia Britannica*, the *Harvard Law Review* and the *Stanford Journal of International Law*.

Formerly an attorney at Paul, Weiss, Rifkind, Wharton & Garrison in New York, Clarke has an M.Sc. in the government and politics of China from the University of London and a J.D. from Harvard Law School. He has taught at the University of Washington School of Law and the University of London. Clarke coedits *Asian Law Abstracts*, a Social Science Research Network electronic journal; edits the *Chinese Law Prof Blog*, which he founded; and has consulted for the Agency for International Development, the Asian Development Bank, and the Financial Sector Reform and Strengthening Initiative.

Clarke's interest in Chinese law was sparked by NYU Professor Jerome Cohen's book on the criminal process in China, which Clarke discovered in the Canadian Embassy's library in Beijing. "I arranged to meet Professor Cohen when we were both in Tokyo a couple of years later," Clarke says, "and he was strongly encouraging about my pursuing a career in Chinese law. I took his advice and have never regretted it."

DANIEL CRANE will teach Antitrust and Intellectual Property and U.S. Contract Law and Theory during his 2007-08 visit. Crane, whose research principally concerns the institutional structure of antitrust enforcement, is a professor at Yeshiva University's Benjamin N. Cardozo School of Law and litigation counsel at Paul, Weiss, Rifkind,

Wharton & Garrison in New York. Crane was previously an associate at the firm, as well as at Morgan, Lewis & Bockius in Miami. An important aspect of his research



is the history of U.S. antitrust institutions. "One potentially surprising fact my research has uncovered is the degree to which some of the institutional features of U.S. antitrust policy are

attributable to a clash between ideological impulses at the time of the Constitution's framing," Crane says. "The Antifederalists were opposed to any sort of federal role in creating and structuring corporations. During the founding era of U.S. antitrust policy [1890-1914], this antifederalist impulse was still very influential and contributed to the defeat of proposals for a corporate regulatory model."

After earning a J.D. from the University of Chicago Law School, Crane clerked for Judge Kenneth L. Ryskamp of the U.S. District Court for the Southern District of Florida. He has published articles in the *California Law Review*, the *Cornell Law Review* and the *Michigan Law Review*. With Eleanor Fox, Walter J. Derenberg Professor of Trade Regulation at NYU, he is coediting *Antitrust Stories*, part of the Law Stories series.

In 2006, Crane appeared before the Department of Justice and Federal Trade Commission's joint hearings on loyalty discounts and bundled rebates. He recently presented "Patent Pools, RAND Commitments and the Problematics of Price Discrimination" at the Law School's La Pietra Conference on the Expansion of Intellectual Property Rights in Florence.

MIHIR DESAI, professor at Harvard Business School, will coteach the Tax Policy Colloquium and Seminar with Professor Daniel Shaviro while visiting NYU in Spring 2008. He will also research corporate taxation and governance, particularly the concept of recentring the corporate tax on public financial statements.



Desai is the author of *International Finance: A Casebook* (2006), and has published articles in the *Brookings Papers on Economic Activity*, the *Journal of Finance*, the *National Tax Journal*, the *Quarterly Journal of Economics* and the *Review of Financial Studies*, along with

the *Financial Times*, the *Harvard Business Review* and the *Times of India*.

Desai is a research associate at the National Bureau of Economic Research, a nonprofit research organization, where he codirects the India Working Group. He was a financial analyst at CS First Boston.

He has testified before the U.S. Senate's Committee on Homeland Security and Governmental Affairs, the U.S. House Committee on Ways and Means, and the President's Advisory Panel on Federal Tax Reform on the issues of tax treatment of stock options, the corporate tax, and taxation and global competitiveness. In his House testimony, Desai pointed out problems with the corporate taxation reporting system.

"While individuals are not faced with this perplexing choice of how to characterize their income depending on the audience," he said, "corporations do find themselves in this curious situation. Dual books for accounting and tax purposes are standard in corporate America and, judging from recent analysis, are the province of much creative decision-making."

Desai received an M.B.A. and a Ph.D. in political economy from Harvard University, and was a Fulbright Scholar in India.

THEODORE EISENBERG, who is in the vanguard of scholars interested in empirical analysis of legal issues, will teach Bankruptcy and Empirical Methods when he visits the Law School in Fall 2007.



Of his research, he says, "The most surprising thing is how little we know about how the legal system is actually working." The Henry Allen Mark Professor of Law at Cornell University, Eisenberg will also work on projects involving choice of law terms in contracts, patterns of dissent in state court opinions and dissemination patterns of legal precedent.

He is founder and editor of the *Journal of Empirical Legal Studies* and serves on the editorial board of the *American Law and Economics Review*, as well as two advisory boards of the Social Science Research Network and the board of directors of the Society for Empirical Legal Studies, which he incorporated. The editor-in-chief of the 13-volume *Debtor-Creditor Law* (2004), Eisenberg is also the author of *Bankruptcy and Debtor-Creditor Law* (2004, third edition) and *Civil Rights Legislation: Cases and Materials* (2004, fifth edition); in addition, he has written, cowritten or coedited

a number of other works. His articles have appeared in journals such as the *Georgetown Law Journal*, the *Harvard Law Review*, the *Stanford Law Review* and the *Yale Law Journal*, and in reference works including the *Encyclopedia of the American Constitution* and the *Oxford Companion to the Supreme Court of the United States*.

Eisenberg earned a J.D. from the University of Pennsylvania before clerking at the U.S. Court of Appeals for the District of Columbia Circuit and for Chief Justice Earl Warren of the U.S. Supreme Court. He worked at Debevoise & Plimpton in New York and has been a visiting professor at the Fondazione Collegio Carlo Alberto as well as Harvard and Stanford law schools. In recent years, Eisenberg has testified before several committees of the U.S. House of Representatives and the U.S. Senate on issues including litigation abuse, civil rights and the bankruptcy code.

MITCHELL ENGLER is no stranger to NYU: After earning a B.A. in political science here, he went on for his J.D. ('90) and an LL.M. in tax law ('91) and has been an acting assistant professor at the Law School. During his return visit, he will teach Corporate Tax, Tax Policy, Taxation of Property Transactions and Timing Issues and the Income Tax.

Engler worked as an associate at two New York firms—Davis, Polk & Wardwell and Fried, Frank, Harris, Shriver & Jacob-



son—before becoming a professor at Yeshiva University's Benjamin N. Cardozo School of Law, where he chairs the Academic Standards and Educational Policy committees. At Car-

dozo, Engler teaches Corporate Accounting, Corporate and Partnership Tax, Corporate Tax, Corporations and Federal Taxation.

Engler has published articles on a range of tax-related topics in journals such as the *Cardozo Law Review*, the *Columbia Business Law Review*, the *Notre Dame Law Review* and the *Tax Law Review*.

A major component of his scholarship has been the advocacy of a tripartite progressive consumption tax composed of "a progressive wage tax, a business tax solely on corporations and a limited individual tax on consumption wages. This combination minimizes both individual tax reporting and changes to current law, thereby facilitating the transition to a more equitable, efficient and administrable tax system."

JESSE FRIED, a professor of law at the University of California, Berkeley, will teach a corporate bankruptcy and reorganization course and a corporate governance seminar when he visits NYU in Spring 2008. His



research projects will focus on executive compensation, securities regulation and venture capital contracting. The most surprising element of his research into executive compensation, he says, is the realization of “the lengths to which firms have gone to hide from shareholders both the amount and performance-insensitivity of compensation—including illegal steps such as backdating of options.”

Fried is the coauthor of *Pay Without Performance: The Unfulfilled Promise of Executive Compensation* (2004). He has published articles in the *Harvard Law Review*, the *University of Chicago Law Review* and the *Yale Law Journal*. He is the editor of the *Review of Law and Economics*.

Fried codirects the Berkeley Center for Law, Business and the Economy, and directs the Boalt Tel Aviv Executive LL.M. Program. He has been a John M. Olin Research Fellow in Law, Economics and Business at Harvard Law School, and a tax attorney at Sullivan & Worcester in Boston. Fried has also been a visiting professor at Tel Aviv University Law School and the Swiss National Bank's Studienzentrum Gerzensee.

He holds an A.B. and an A.M. in economics as well as a J.D. from Harvard University, where he was a Department of Education Jacob K. Javits Fellow and a John M. Olin Fellow, and where he won the Olin Prize in Law and Economics. Fried is a litigation consultant and expert witness in the fields of bankruptcy and corporate law.

SARAH BARRINGER GORDON says the conflict between the Mormons and federal government was “a key part of American history in the 19th century.” The Arlin M. Adams Professor of Constitutional Law and Professor of History at the University of Pennsylvania, who has researched and written extensively on the topic, will teach *Blasphemy in America*, and *Property* during Fall 2007.



The “Mormon Question,” she says, encompassed religion, westward migration,

local versus national power, the economic effects of the California Gold Rush, and “the growth of legal regulation and professionalization that allowed lawyers to control the central offices of American government at virtually every level by the end of the 19th century.”

Gordon earned a J.D. from Yale Law School. She has been a visiting professor at University College in London, a visiting research fellow at Princeton University, a visiting scholar at the National Constitution Center, a Rockefeller Fellow at Princeton's Center for Human Values and a Samuel I. Golieb Fellow at the NYU School of Law. Before teaching at the University of Pennsylvania, she was an associate at Fine, Kaplan & Black in Philadelphia and a law clerk for Judge Arlin M. Adams of the U.S. Court of Appeals for the Third Circuit.

Gordon's books include *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (2002), which won Best Book awards from the Mormon History Association and the Utah Historical Society, and the forthcoming *The Spirit of the Law: Religion and Litigation in Twentieth-Century America*. She has been published in the *Journal of American History*, the *New York University Law Review* and the *Yale Journal of Law & the Humanities*.

In addition to being a former associate dean at the University of Pennsylvania Law School, Gordon has served on the boards of the American Society for Legal History, the Mormon History Association and Vassar College.

ROBERT HOWSE, the Alene and Allan F. Smith Professor of Law at the University of Michigan Law School, will teach International Financial Architecture and International Investment Law during his Spring 2008 visit. An expert in international economic law and a specialist in European legal and political philosophy of the 20th century, Howse will also research the connection between



international trade and investment rules and addressing global warming, as well as the question of global justice.

Before embarking on a law career, Howse worked for the Policy Planning Secretariat's Department of External Affairs in Ottawa and the Canadian Embassy in Belgrade. He has been a professor at the University of Toronto Faculty of Law; a member

of the faculty at the World Trade Institute in Berne; and a visiting professor at Harvard Law School, Osgoode Hall Law School at York University in Toronto, Tel Aviv University, Tsinghua University in Beijing and the University of Paris I (Panthéon-Sorbonne). Howse received an LL.B. from the University of Toronto and an LL.M. from Harvard.

Howse has been a consultant to the Inter-American Development Bank, the Organisation for Economic Co-operation and Development, the U.N. Conference on Trade and Development, and the U.N. Office of the High Commissioner for Human Rights. He is the coauthor of a number of books, including *Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization* (2000) and *The Regulation of International Trade* (1995; third edition, 2005). His articles have appeared in publications such as the *Columbia Journal of Environmental Law*, the *Michigan Law Review* and the *Virginia Law Review*.

EDWARD IACOBUCCI, an associate professor of law and the Osler Chair in Business Law at the University of Toronto, will visit in Fall 2007 to teach *Corporations* and research how the governance arrangements of business trusts differ from those of corporations, which have less legal discretion in structuring those arrangements. “[My coauthor and I] hope the results shed light on a long-standing debate over the role of mandatory and default rules in corporate law.”



Iacobucci, the director of the J.D./M.B.A. Program at the University of Toronto, was a visiting professor at the University of Chicago Law School, John M. Olin Visiting Fellow at Columbia Law School and John M. Olin Visiting Lecturer at the University of Virginia School of Law. He has coauthored *Cases, Materials and Notes on Partnerships and Canadian Business Organizations* (2004, fourth edition); *Economic Shocks: Defining a Role for Government* (2001); and *The Law and Economics of Canadian Competition Policy* (2002), which won the 2002-03 Purvis Prize for the best written work on Canadian economic policy. He has also published articles in journals including the *Harvard Law Review*, the *Osgoode Hall Law Journal* and the *Virginia Law Review*.

He received an M.Phil. from St. John's College at the University of Oxford, where he was a Rhodes Scholar, and an LL.B. from

the University of Toronto Law School, where he earned the Angus MacMurphy Gold Medal for the highest cumulative average upon graduation. Iacobucci subsequently clerked for Justice John Sopinka of the Supreme Court of Canada.

MITCHELL KANE, an associate professor of law at the University of Virginia School of Law, will teach Income Taxation during Fall 2007. At the University of Virginia, where he earned his J.D., he teaches Federal



Income Tax and International Taxation. Kane was an associate in Covington & Burling's London and Washington, D.C., offices, and clerked for Judge Karen LeCraft Henderson of the U.S.

Court of Appeals for the District of Columbia Circuit. He has been a visiting professor at the Harvard and University of Pennsylvania law schools.

He has published articles in journals such as the *British Tax Review* and *Tax Notes*. Kane's current scholarly work includes a coauthored paper on the relative effects of corporate law versus corporate tax law on firms' choices as to where to locate. "As the decision about corporate location becomes increasingly internationalized," he says, "the effects of the tax law become more pronounced. This can be expected to lead corporations to locate in suboptimal jurisdictions, from a corporate law standpoint."

He continues, "Our research explores the ways in which one can use bilateral treaties or appropriately designed federal structures to remove, or ameliorate, this tax-induced distortion." Kane is also researching how to use international taxation rules to create new development finance sources, in response to the United Nations' call for creative thinking to address the projected difficulties of meeting many countries' Millennium Development Goals.

CHRISTOPHER LESLIE, a specialist in antitrust law, will visit in Spring 2008 to teach a class on antitrust law and a seminar on antitrust law and intellectual-property rights.

The Chicago-Kent College of Law professor clerked for Judge Diarmuid O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit and worked as a litigation associate at Pillsbury Madison & Sutro and Heller Ehrman, two San Francisco firms.

The coauthor of *Gilbert Law Summaries: Antitrust* (2004), Leslie has also published



articles in numerous publications, including the *Harvard Civil Rights-Civil Liberties Law Review*, the *Texas Law Review* and the *UCLA Law Review*. He is the author of the upcoming casebook *Antitrust Law and Intellectual Property Rights* (2008).

JOHN LEUBSDORF, a professor of law and Judge Frederick B. Lacey Scholar at Rutgers School of Law-Newark, will teach two classes, Evidence and Professional Responsibility and the Regulation of Lawyers, during Spring 2008. He will also work on an article, "Legal Ethics Falls Apart," which posits that the body of law created by legislative and administrative bodies to govern lawyers is becoming increasingly fragmented.

"Some of these requirements seek to protect clients from their lawyers, extending the traditional rules with that goal," Leubsdorf says, "but often they seek to limit the rights of lawyers to pursue their clients' interests in order to protect either opposing parties or the government."

Leubsdorf has been a Fulbright Scholar in Paris; a professor at Boston University School of Law; and a visiting professor at Yeshiva University's Benjamin N. Cardozo School of Law, Columbia and Cornell law schools, and the University of California, Berkeley, School of Law. He was also a partner at Foley, Hoag & Eliot in Boston.



He is a coauthor of *Civil Procedure* (2001, fifth edition) and the author of *Man in His Original Dignity: Legal Ethics in France* (2001). What interests Leubsdorf about French legal ethics, he says, is that it "has rules much like ours, but is based on a very different ideological foundation." His articles have appeared in publications such as the *Harvard Law Review*, the *Stanford Law Review* and the *Yale Law Journal*. He earned a J.D. from Harvard Law School and clerked for Chief Judge Bailey Aldrich of the U.S. Court of Appeals for the First Circuit.

JERRY MASHAW will teach The Administrative and Regulatory State during his Spring 2008 visit. He will also work on a major project, composed of four articles and a book, concerning the historical origins of American administrative law between 1787

and 1887. The book, Mashaw says, will explain how administrative law "developed out of the practical necessities of administration, the evolving understanding of the role of the federal government under the Constitution, and the intellectual resources available to 19th-century lawyers and policy-makers for building an administrative



state that was consistent with American commitments to individual liberty and the rule of law."

At Yale Law School, where he is the Sterling Professor of Law, Mashaw teaches courses on administrative law, designing of public institutions, legislation, regulation and social-welfare policy. He taught at the University of Virginia Law School and Tulane University Law School. Mashaw has authored or coauthored numerous books, including *Administrative Law: The American Public Law System* (2003, fifth edition) and *Greed, Chaos and Governance: Using Public Choice to Improve Public Law* (1997), which received awards from the American Bar Association's Section on Administrative Law and Regulatory Policy and the Order of the Coif. His articles have appeared in publications such as the *Georgetown Law Journal*, the *New York Times*, the *University of Chicago Law Review* and the *Virginia Law Review*. He earned an LL.B. from Tulane, where he was first in his law school class; studied at the University of Edinburgh Law School as a Marshall Scholar; and received a Ph.D. in European governmental studies from the University of Edinburgh.

Mashaw is a fellow of the American Academy of Arts and Sciences; a founding member, board member and past president of the National Academy of Social Insurance; and founding coeditor of the *Journal of Law, Economics, and Organization*. He has consulted for the National Institute of Medicine, the Social Security Administration and various private foundations, as well as the Argentinian, Chinese and Peruvian governments.

TREVOR MORRISON, an associate professor at Cornell Law School, will teach Constitutional Law during his Fall 2007 visit. He will also work on several research projects related to the War on Terror, including "Suspension and the Extra-



judicial Constitution,” a forthcoming article about the appropriate roles of the legislative and executive branches during a valid suspension of the writ of habeas corpus.

Defining the term “extrajudicial Constitution” as “the interpretation and implementation of the Constitution by nonjudicial actors,” Morrison argues that “although suspending habeas corpus removes a vital remedy against unlawful detention, detention that was unlawful before the suspension remains unlawful. But this raises important questions about how Congress and the executive branch should think about their obligations to the Constitution during periods when the courts, on account of the writ’s suspension, are not in a position to enforce the Constitution.”

Morrison was an associate at Wilmer, Cutler & Pickering in Washington, D.C. He also worked for the U.S. Department of Justice as a Bristow Fellow in the Office of the Solicitor General and as an attorney-advisor in the Office of Legal Counsel. Morrison clerked for Judge Betty B. Fletcher of the U.S. Court of Appeals for the Ninth Circuit, and for Justice Ruth Bader Ginsburg of the U.S. Supreme Court.

He has published articles in the *Columbia Law Review*, the *Cornell Law Review*, the *Michigan Law Review* and the *Yale Law Journal*. Morrison received a B.A. in history from the University of British Columbia and a J.D. from Columbia Law School. He was also a Richard Hofstadter Fellow in History at Columbia University.

ROBERT RABIN, the A. Calder Mackay Professor of Law at Stanford Law School, will visit NYU during the 2007-08 academic year. Rabin previously visited NYU



in 1999-2000. He will teach Protection of Personality, which will cover liability for defamation, invasion of privacy and emotional distress, Torts, and Toxic Harms.

Rabin is the author of *Perspectives on Tort Law* (2003, fourth edition); a coauthor of *Tort Law and Alternatives: Cases and Materials* (2006, eighth edition); and a coeditor of *Torts Stories* (2003), *Regulating Tobacco* (2001) and *Smoking Policy: Law, Politics and Culture* (1993). His articles have appeared in publications including the *Columbia Law Review*, the *Georgetown Law Journal*, the *Stanford Law Review* and the *Yale Law Journal*.

Rabin has been a visiting professor at Harvard Law School, the Jack N. Pritzker

Distinguished Visiting Professor at the Northwestern University School of Law, an associate professor of law at the University of Wisconsin, a senior environmental fellow at the U.S. Environmental Protection Agency, a visiting fellow at Oxford University’s Centre for Socio-Legal Studies and a fellow at the Center for Advanced Study in the Behavioral Sciences. He earned a J.D. and a Ph.D. in political science from Northwestern University.

Rabin has devoted considerable scholarship to tobacco regulation. “It struck me back in the early ‘90s that for all of the success plaintiffs were having in the products liability area, there had never been a single successful claim in a tobacco tort suit over a 40-year period,” he says. “I was intrigued by this low-visibility corner of tort law and decided to explore it through an empirical, interview-based study.” The Robert Wood Johnson Foundation then asked Rabin to be program director of its Tobacco Policy Research and Evaluation Program, and other research, writing and consulting activities followed, including testifying before the House Judiciary Committee.

R. ANTHONY REESE, the Arnold, White & Durkee Centennial Professor of Law at the University of Texas at Austin, will visit in Spring 2008 to teach Copyright Law.

Reese has published articles in the *Journal of World Intellectual Property*, the *Stanford Law Review* and the *Texas Law Review*, among other publications. He is the coauthor of *Internet Commerce: The Emerging Legal Framework* (2006) and is collaborating with Stanford Law School Professor Paul Goldstein on the forthcoming new edition of *Copyright, Patent, Trademark and Related State Doctrines*. He is also coauthor of the new edition of the casebook *Copyright* with Jane Ginsburg and Robert Gorman.

Reese has taught English for the Yale-China Association in Tianjin and Hunan. He earned his J.D. from Stanford Law School and clerked for Judge Betty B. Fletcher of the U.S. Court of Appeals for the Ninth Circuit. He also worked as an associate at Morrison & Foerster in San Francisco, and continues to serve as special counsel to the firm.

LARRY RIBSTEIN, the Mildred van Voorhis Jones Chair at the University of Illinois College of Law, will teach Jurisdictional Competition, Survey of Securities Reg-

ulation and Unincorporated Business Associations during his 2007-08 NYU visit. He will also pursue research, including a project on how American filmmakers



have portrayed business; revise two of his books; organize a conference at his home institution; participate in a symposium at Georgetown University Law Center; and complete a coauthored book, *The Law Market*.

He is the author of *Unincorporated Business Entities* (2004, third edition) and the coauthor of works including *The Sarbanes-Oxley Debauch: What We’ve Learned; How to Fix It* (2006), *Ribstein and Keatinge on Limited Liability Companies* (2004, second edition), *Business Associations* (2003, fourth edition), the four-volume *Bromberg and Ribstein on Partnership* (1988-present) and *Bromberg and Ribstein on LLPs, RUPA, and ULPA* (annual editions). Ribstein’s articles have appeared in such journals as the *Georgetown Law Journal*, the *University of Chicago Law Review* and the *Virginia Law Review*.

Ribstein has been a professor at George Mason University School of Law and Mercer University Law School, and a visiting professor at the St. Louis University, Southern Methodist University, University of Texas and Washington University schools of law. He was also an associate in the trial department of McDermott, Will & Emery in Chicago. He received his J.D. from the University of Chicago Law School.

He has testified before the U.S. House Committee on Ways and Means and advised the Legislative Affairs Commission of the National People’s Congress of China.

In a paper connected to his research on portrayals of business in American film, Ribstein wrote, “It is not business that filmmakers dislike, but rather the control of firms by profit-maximizing capitalists. This dislike stems from filmmakers’ resentment of capitalists’ constraints on their artistic vision. Their portrayal of business is significant because films have persuasive power that tips the political balance toward business regulation.”

SUZANNE SCOTCHMER is a professor of economics and public policy at the University of California, Berkeley. Her academic interests include intellectual-property protection and rules of evidence. During Spring 2008 she will research the economics of digital rights management and teach *Innovation: Law, Policy and Economics*.

Scotchmer says that vendors are turning from legal protections to technical protections, and raising questions about which safeguards are the most effective and the best incentive for artists to continue to create: "One of the difficulties is trying to push and pull the modern world into the old legal systems. It just doesn't work."



She is the author of *Innovation and Incentives* (2004) and has been published in the *International Journal of Law and Economics*, the *Journal of Public Economics*, the *RAND Journal of Economics, Science* and the *Yale Law Journal*.

Scotchmer was an associate professor of economics at Harvard University. She has been a visiting professor at the New Economic School in Moscow, Stanford University, the Stockholm School of Economics, Tel Aviv University, the University of Auckland, the University of Cergy-Pontoise near Paris, the University of Paris I (Panthéon-Sorbonne), the University of Southern California Law School, the University of Toronto Faculty of Law and Yale University. She was a scholar in residence of the U.S. Court of Appeals for the Federal Circuit and has been an antitrust consultant to the U.S. Department of Justice's Antitrust Division. Scotchmer received an M.A. in statistics and a Ph.D. in economics from the University of California, Berkeley.

MATTHEW SPITZER, the Robert C. Packard Trustee Chair in Law and a professor of political science at the University of Southern California, will teach *The Administrative and Regulatory State* during his Fall 2007 visit. In Spring 2008, he will be in residence at the NYU School of Law.

He is the author of *Seven Dirty Words and Six Other Stories: Controlling the Content of Print and Broadcast* (1986), and the coauthor of *Public Policy Toward Cable Television* (1997) and *Administrative Law and Regulatory Policy: Problems, Text, and Cases* (2002, fifth edition). Spitzer's articles have appeared in the *Columbia Law Review*, the *Georgetown Law Journal*, and the *Yale Law Journal*, among other publications.

In addition to his USC position, Spitzer is also a professor of law and social science

at the California Institute of Technology. He was the dean of USC's Gould School of Law, and director of the USC Center for Communications Law and Policy and the Gould School of Law's Olin Program in Law and Rational Choice. He was also an assistant professor at the Northwestern University School of Law and a litigator with Nossaman, Krueger & Marsh in Los Angeles. Spitzer has been a visiting professor at Stanford Law School and the University of Chicago Law School.

Regarding his legal research in telecommunications regulation, Spitzer says that the Internet, with its ever-expanding multimedia capacity, has confounded traditional regulatory methods. "Our prior regulatory structure made the strength of protection against government regulation depend on the type of communications medium," he says. "Thus, print media and face-to-face speech received strong protections, while broadcast received much less. The Supreme Court stated quite forcefully that the Internet is to be given strong protections against regulation, analogizing it to print. However, the Internet's ability to mimic all prior media destabilizes the old system."

Spitzer earned a J.D. from USC and a Ph.D. in social science from the California Institute of Technology. He is a past director of the American Law Deans Association.

KATHERINE STRANDBURG, an associate professor at DePaul University College of Law, will coteach the Colloquium on Innovation Policy and teach Patent Law I during her 2007-08 visit to NYU.

Strandburg earned a Ph.D. in physics from Cornell University and a J.D. from the University of Chicago Law School. She has been a visiting professor at the University of Illinois College of Law and Northwestern University's Department of Physics; an associate at Mulroy Scandaglia Marrinson Ryan and Jenner & Block in Chicago; a member of the Condensed Matter Theory Group at Argonne National Laboratory, a U.S. Department of Energy research center; and a postdoctoral research associate in Carnegie-Mellon University's Physics Department. She clerked for Judge Richard Cudahy of the U.S. Court of Appeals for the Seventh Circuit.

She is the coeditor of *Privacy and Technologies of Identity: A Cross-Disciplinary Conversation* (2005) and a coauthor of the

supplement to *Cases and Materials on Trademark, Copyright, and Patent Law* (2006, second edition). Her articles have appeared in the *Berkeley Technology Law Journal*, the *Connecticut Law Review*, the *Rutgers Law Review*, and the *Wisconsin Law Review*.

Strandburg's research covers three major areas: the interplay between patenting and other innovation systems; a network science approach to understanding the patent system, applying statistical physics approaches to the patent citation network; and how increased surveillance resulting from digital communication affects social groups, and the modifications in privacy and surveillance law required to deal with that surveillance data. Of the latter topic, Strandburg says, "Freedom of association law under the First Amendment protects membership lists of expressive associations from government inquiry. However, recent computational techniques can use detailed traffic data to map out social networks and thus essentially expose organizational connections without directly asking for membership lists. The law is much less protective of traffic data than of the content of communications."

ROBERT B. THOMPSON, a scholar in corporations law, corporate finance and securities regulation, will visit NYU in Spring 2008. The New York Alumni Chancellor's Professor of Law and a professor of management at Vanderbilt University, he will teach *Corporate Separateness* in a Global



Market and Mergers and Acquisitions, and research the varying uses of subsidiaries and separate corporate entities in different legal cultures.

Of his research, Thompson says, "As corporations have become more globally integrated, there are concerns as to whether they're more likely to avoid government constraints on their externalizing behavior, including environmental and labor concerns. I am particularly interested in looking at how the use of corporate subsidiaries might contribute to this problem."

Thompson is the coauthor of *Corporations and Other Business Associations: Cases and Materials* (2006, fifth edition), *O'Neal and Thompson's Close Corporations and LLCs: Law & Practice* (2004, revised third edition) and *O'Neal and Thompson's Oppression of Minority Shareholders and LLC Members* (2004, revised second edition). He has published articles in journals such

as the *Columbia Law Review*, the *Georgetown Law Journal*, the *New York University Law Review* and the *Texas Law Review*.

Thompson has been a chaired professor at the Washington University School of Law, where he was director of the Center for Interdisciplinary Studies, and taught at the University of Sydney Law School. He has been a visiting professor at the Northwestern University School of Law and an associate at Jones, Bird & Howell in Atlanta.

Thompson, who received a J.D. from the University of Virginia, is the editor of the *Corporate Practice Commentator*, a journal that reprints the top scholarly articles in the field, and a past chair of the Association of American Law Schools' Section on Business Associations as well as its Section on Securities Regulation. He has testified before the U.S. House of Representatives Committee on Commerce and chaired the faculty senates of both Vanderbilt and Washington universities.

KENJI YOSHINO will make his second visit to the Law School in Spring 2008. He is the



Guido Calabresi Professor of Law and the former deputy dean of intellectual life at Yale Law School. He specializes in constitutional law, antidiscrimination law, and law and literature. At

NYU he will teach Constitutional Law.

After receiving his J.D. from Yale, where he was the articles editor of the *Yale Law Journal*, Yoshino clerked for Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit. He earned an M.Sc. in management studies from the University of Oxford, where he was a Rhodes Scholar.

Yoshino, the author of *Covering: The Hidden Assault on Our Civil Rights* (2006), has published articles in the *Columbia Law Review*, the *Michigan Law Review*, the *New York Times*, the *Stanford Law Review*, the *Washington Post* and the *Yale Law Journal*. He has appeared on *The Charlie Rose Show*, *The O'Reilly Factor*, *The Tavis Smiley Show* and C-SPAN's *Washington Journal*.

KIMBERLY YURACKO, a professor at the Northwestern University School of Law, will teach Property and work on two projects during her Fall 2007 visit. The first is a paper exploring whether states are constitutionally limited in how much regulatory control and oversight of homeschooling they can abdicate. The second is a book that, Yuracko says, gives a "comparative analy-

sis of sex- and race-based forms of trait discrimination in employment."

Trait-based discrimination targets those who, for instance, do not conform to specific masculine or feminine standards or certain standards of appearance or speech, as opposed to traditional status-based discrimination, which targets all members of a protected group because of their race or sex.



"The book," she says, "will explore the legal justifications for ever treating trait discrimination as actionable status discrimination under Title VII of the Civil Rights Act of 1964. Moreover, it will

provide a historically informed account of the dramatically different responses that courts have taken to trait-based claims in the race and sex discrimination contexts."

Yuracko is the author of *Perfectionism and Contemporary Feminist Values* (2003) and the coauthor of *Cases and Materials on Feminist Jurisprudence: Taking Women Seriously* (2006, third edition). She has published articles in the *California Law Review*, the *George Washington Law Review*, the *Northwestern University Law Review*, the *San Diego Law Review* and the *Texas Law Review*.

She has been a lecturer in the University of California at Irvine's Department of Political Science and a visiting professor at the University of California, Los Angeles School of Law. Outside academia, Yuracko has worked as an associate at Paul, Hastings, Janofsky & Walker in Los Angeles. She clerked for Judge Stanley Marcus of the U.S. Court of Appeals for the Eleventh Circuit and for Judge Gary Taylor of the U.S. District Court for the Central District of California.

She received a B.A. in political science and feminist studies, a Ph.D. in political science and a J.D. from Stanford University.

JONATHAN ZITTRAIN, the Professor of Internet Governance and Regulation at the University of Oxford, will teach a course on cyberlaw at NYU in Spring 2008. He is also the director of graduate studies at the Oxford Internet Institute.

Zittrain is the author of *Technological Complements to Copyright* (2005) and *Jurisdiction* (2005), both part of the Internet Law Series, and the forthcoming *The Future of the Internet—And How to Stop It* (2008). He is also a coeditor of the forthcoming *Access Denied: The Practice and Policy of Global Internet Filtering* (2007). He has been published in journals such as the *Berkeley Technology Law Journal*, the *Harvard Law Review* and

the *University of Chicago Law Review*, as well as in the *Boston Globe*, *Forbes*, the *New York Times*, the *Washington Post* and *Wired*.

Zittrain was cocounsel in the Supreme Court case *Eldred v. Ashcroft*, a challenge to the Sonny Bono Copyright Term Extension Act of 1998. He conducted the first large-scale testing of Internet filtering in China and Saudi Arabia. In collaboration with students at Harvard Law School, he began chillingeffects.org, a Web site tracking and archiving legal threats to Internet-content producers.

Zittrain earned a B.S. in cognitive science and artificial intelligence from Yale University, and an M.P.A. and a J.D. from Harvard University. Outside academia, he is a justice of the peace and was the legal story consultant for the NBC television show *Ed*.

Of all the issues raised by the Internet age, Zittrain says the most pressing is "how to reconcile our need to make modern technology work as reliably as an appliance with its roots in informal community-driven systems. We risk a world of well-functioning iPods and iPhones with much less of the innovation from left field that surprises and delights us."

Multi-Year Returning Faculty

The NYU School of Law maintains long-term relationships with faculty who return to campus on an annual basis to teach students or conduct research.

SIR JOHN BAKER, a leading authority on the development of English legal institutions, will teach Legal History of England

and the British Empire in Fall 2007. He is the Downing Professor of the Laws of England at Cambridge University.

In addition to his appointment as a Senior Golieb Fellow at the Law School, Sir John has also been a Hauser Global Law professor, a fellow of the British Academy and a fellow of St. Catharine's College, Cambridge University.

The author of more than 25 books and 100 articles, Sir John is the general editor of the *Oxford History of the Laws of England*



and the *Cambridge Studies in English Legal History*. He has held positions at Yale and Harvard law schools, the Huntington Library, the University of Oxford and the European University Institute in Florence. He was knighted in June 2003 for his significant contributions to the study of English legal history.

CHARLES CAMERON, a prize-winning scholar of American politics, returns to the Law School from Princeton University, where he is a professor of politics and public affairs. In Spring 2008 he will teach Political Environment of the Law.

Cameron's research focuses on political institutions and policymaking, and his writing has appeared in journals of political science, economics and law. His



recent work includes game theoretic models of bargaining on collegial courts and a formal theory of judicial federalism, as well as empirical analyses of the "macropolitics" of the U.S.

Supreme Court; the effects of race and gender diversity on decision-making in the U.S. Courts of Appeals; and lower-court compliance with Supreme Court decisions. He is also writing a book on the politics of Supreme Court nominations.

Before joining the Princeton faculty, Cameron served as director of the M.P.A. program at Columbia University, where he was a tenured professor in the Department of Political Science.

RICHARD EPSTEIN, who will make his third visit to campus in Fall 2007, is known for his research and writings on a broad range of constitutional, economic, historical and philosophical subjects. At the University of Chicago Law School, where he is the James Parker Hall Distinguished Service Professor of Law, he has taught communications, constitutional, criminal, health, labor and Roman law; contracts; jurisprudence; patents; property, and torts, to name a few subjects. He will teach Contracts during his visit to the Law School.



Epstein is the Peter and Kirstin Bedford Senior Fellow at Stanford University's Hoover Institution on War, Revolution and Peace. A former editor of the *Journal of Law*

and Economics and the *Journal of Legal Studies*, he now directs Chicago's John M. Olin Program in Law and Economics. Among his books are *Overdose: How Excessive Government Regulation Stifles Pharmaceutical Innovation* (2006) and *How Progressives Rewrote the Constitution* (2006).

JOHN FERREJOHN, the Carolyn S. G. Munro Professor of Political Science at Stanford University, will teach the Democratic Theory Seminar with Professor Jeremy Waldron, and the Law, Economics and Politics Colloquium with Professor Lewis Kornhauser during his visit in Fall 2007. Part of Ferejohn's research focuses on "America's statutory constitution." "Many of our important rights and values are very well protected, by statutes rather than by the Constitution," he says. "America's 'real' constitution is more flexible and even democratic than most constitutional scholarship implies."

Ferejohn is an expert in positive political theory, political institutions and behavior. He holds appointments in Stanford's Economics Department and Graduate School of Business and is a senior fellow



at the Hoover Institution. His teaching and research interests include theory of social choice, public law and comparative constitutions. He has written or cowritten five books, including *The New Federalism: Can the States Be Trusted?* (1997) and *Constitutional Culture and Democratic Rule* (2001). His articles have appeared in publications such as the *Cornell Law Review*, the *Georgetown Law Journal*, the *New York University Law Review*, the *Texas Law Review* and the *Virginia Law Review*.

Ferejohn earned his Ph.D. in political science from Stanford. He has received a Guggenheim Fellowship and is a member of the American Academy of Arts and Sciences and of the National Academy of Sciences.

MOSHE HALBERTAL, Gruss Professor of Law, is a professor at Hebrew University of Jerusalem and a fellow at the Hartman Institute of Advanced Jewish Studies. His scholarship focuses on hermeneutics, much of it concerned with the question, "What can we learn from Jewish law about the concept of law?" Halbertal, who has also served as the Gruss Visiting Professor at the Harvard and University of Pennsylvania law schools, received the



Michael Bruno Award, given to pioneering Israeli scholars under the age of 50. His books have been published to critical acclaim both in Israel and the United States. In Fall 2007 he will teach Law, Violence and the Anti-social Passions, and Maimonides Mishneh Torah: Jewish Law and Legal Theory.

DANIEL RUBINFELD, the Robert L. Bridges Professor of Law and Professor of Economics at the University of California, Berkeley, will return for his sixth visit to



NYU. Rubinfeld normally teaches Quantitative Methods and Antitrust Law and Economics but this Fall will be spending his sabbatical at the Law School.

A leading law and economics scholar, Rubinfeld has written articles on antitrust and competition policy, law and economics, and the political economy of federalism. He has also cowritten two economics textbooks with M.I.T. professor Robert Pindyck, *Microeconomics* (2002) and *Econometric Models and Economic Forecasts* (2000). Rubinfeld is a former deputy assistant attorney for the Antitrust Division of the U.S. Department of Justice, and is a fellow of the American Academy of Arts and Sciences and the National Bureau of Economic Research.

GEOFFREY STONE, who will visit in Fall 2007, will teach First Amendment Rights of Expression and Association. Stone is the Harry Kalven Jr. Distinguished Service Professor of Law at the University of Chicago



Law School, where he earned his J.D. After clerking for Justice William J. Brennan Jr. of the U.S. Supreme Court, he returned to his alma mater as a professor before serving as dean and then provost. A preeminent First Amendment scholar, Stone wrote about the effects of war on the First Amendment in *Perilous Times* (2004), which received the *Los Angeles Times* Book Award and the Robert F. Kennedy National Book Award. His most recent books are *War and Liberty* (2007) and *Top Secret* (2007).

Alexander Fellow

JAMAL GREENE, an Alexander Fellow at NYU in the 2007-08 academic year, says he will center his research on “the marketing of constitutional methodologies, focusing on originalism as emblematic. I will suggest that the relevant audience for these methodologies has broadened dramatically.” He seeks to describe the market for constitutional methodologies in developing a useful formula for a particular methodology’s success.

Greene clerked for Supreme Court Justice John Paul Stevens and Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit. He earned an A.B. cum laude in economics from Harvard University and a J.D. from Yale Law School, where he was the articles editor of the *Yale Law Journal* and codirector of the Capital Assistance Project. He has been published in the *Michigan Journal of Gender & Law*, the *Yale Law Journal* and the *Yale Law & Policy Review*.

Before attending law school, Greene was a reporter at *Sports Illustrated*, where he wrote more than 30 articles and saw every game of the 2000 World Series—a “Subway Series” between the Yankees and the Mets. He adds that he “might be the only person ever to attend every game of two different baseball playoff series in the same round” that same year—the Yankees versus the A’s, and the Giants versus the Mets.

Furman Academic Fellow

MARGARET LEWIS ’03, a Furman Academic Fellow for 2007-08, will research criminal justice, legal-system reforms and “rule of law” issues in China, continuing to delve into the areas that she studied as a research fellow at the NYU School of Law’s U.S.-Asia Law Institute, where she worked with Professor Jerome Cohen.

Lewis recently completed a piece on extradition and mutual legal assistance treaties, and is working on an article about China’s implementation of the United Nations Convention Against Transnational Organized Crime. Her research focuses



on Taiwan as well as mainland China. In 2006, she spent more than a month in Taiwan researching its criminal-justice system reforms. “This year,” Lewis says, “I plan to focus on criminal-procedure reforms in China, exploring current reforms and placing them in a comparative perspective.”

Lewis clerked for Judge M. Margaret McKeown of the U.S. Court of Appeals for the Ninth Circuit and was an associate at Cleary, Gottlieb, Steen & Hamilton in New York, where her work focused on capital markets and mergers and acquisitions. She earned a B.A. in East Asian languages and cultures from Columbia University, where she graduated summa cum laude and joined Phi Beta Kappa, and a J.D. from NYU, where she graduated magna cum laude. She was inducted into the Order of the Coif; worked as an associate editor and staff editor on the *New York University Law Review*, and won the Leonard J. Schreier Memorial Prize in Ethics. Lewis was a student fellow at the United Nations International Law Commission in Geneva.

Judicial Fellow

Judge **ALBERT ROSENBLATT** will visit NYU as a Judicial Fellow in the 2007-08 academic year. He will be teaching the State Courts and Appellate Advocacy Seminar and working with the Law School’s Dwight D. Opperman Institute for Judicial Administration.

Recently retired from the New York State Court of Appeals, Rosenblatt has had a distinguished career as a New York State Supreme Court justice; an associate justice of the New York State Supreme Court’s Appellate Division, Second Department; chief administrative judge of New York State courts; and both a county judge and district attorney in Dutchess County, New York. He was also a visiting judge at the Harvard Law School Trial Advocacy Workshop, a faculty member of the New York State Judicial Training Seminars, and a course presenter in the Newly Elected Judges Education Program in New York City.

Rosenblatt’s books include *The Judges of the New York Court of Appeals: A Biographical History* (2007) and *New York’s New Drug Laws and Sentencing Statutes* (1973). He has been published in the *Albany Law Review*, the *Cardozo Law Review*, the *New York Law Journal* and the *Washington University*



Law Quarterly, and has served five times as an issue coeditor of the *New York State Bar Journal* with New York State Chief Judge Judith S. Kaye ’62.

Looking back on the many cases he has judged through the years, Rosenblatt says, “The ones I most enjoyed writing up were those in which I had to uncover the historical underpinnings, in some instances back to common law or other historical origins that helped explain things.” These cases touched on issues as diverse as organ donation, worker safety, maternal rights, duty of innkeepers to guests and termination of life support.

Rosenblatt is currently counsel at McCabe & Mack in Poughkeepsie. He is also president and a charter trustee of the Historical Society of the Courts of the State of New York, as well as a fellow of the New York Bar Foundation. He has judged moot court competitions, served on various legal committees and received numerous awards. Rosenblatt earned a J.D. from Harvard Law School.

Global Visiting Professors of Law

JOSEF DREXL holds the Chair for Private Law and European and International Economic Law at the University of Munich, and is the co-director of the Max Planck Institute for Intellectual Property, Competition and Tax Law. He is a member of the Administrative Council of the Association of International Economic Rights and chair of the Academic Society for Competition Law. Drexel has a Ph.D. in law from the University of Munich and an LL.M. from the University of California, Berkeley, and completed his German habilitation in private law; commercial and business law; intellectual-property law; European law; and comparative law in Munich. He was a visiting professor at the Liberà International University of Social Sciences in Rome.



FRANCO FERRARI is a chaired professor at Verona University School of Law, a post he held at Tilburg University in the Netherlands and Bologna University. After serving as a member of the Italian delegation to various sessions of the United Nations Commission on International Trade Law (UNCITRAL), he served as legal officer at

the United Nations Office of Legal Affairs, International Trade Law Branch, with responsibility for numerous projects, including the preparation of *The Draft UNCITRAL Digest and Beyond: Cases, Analysis and Un-*



resolved Issues in the U.N. Sales Convention. Ferrari has published more than 120 law review articles in various languages and nine books in the areas of comparative law, private interna-

tional law and international commercial law. He is a member of the editorial board of various peer-reviewed European law journals, including *Internationales Handelsrecht*, *European Review of Private Law*, *Contratto e impresa* and *Revue de droit des affaires internationales*. Ferrari also acts as an international arbitrator.

MICHAL GAL is a senior lecturer and director of the Law and MBA Program at the University of Haifa. Her research focuses on competition law and policy. She is the editor of *Competition Policy for Small Market Economies* (2003), and has written and spoken extensively about competition law in developing economies, the intersection between anti-trust and intellectual property, and the political economy of antitrust. Gal served



as an adviser to the Organisation for Economic Co-operation and Development and the United Nations on competition-related issues, and is a nongovernmental adviser to the International Competition Network. She has won the Zeltner Prize for Young Researchers.

MARIO GIOVANOLI is a professor of banking law at the University of Lausanne. He is also general counsel of the Bank of International Settlements and chair of the



Committee on International Monetary Law of the International Law Association. Giovanoli, who graduated from Lausanne with a law doctorate, is a prolific author with at least

40 publications to his credit, writing on topics such as international financial standards, legal aspects of money, international

bank insolvencies and the use of electronic communications in international transactions. He also served on the Experts Committee appointed by the Swiss government to prepare a revision of the country's constitutional provisions with respect to currency, the monetary legislation and law concerning the Swiss National Bank.

CATHERINE KESSEDJIAN is a professor of law at the University of Paris II (Panthéon-Assas). She has 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. Kessedjian has published more than 90 books and articles on all aspects of international private law and dispute resolution. She was a practicing lawyer in Paris for many years and has been active in the International Bar Association. Kessedjian is a member of the American Law Institute and is an adviser on several ALI projects.

YOSHIHIRO MASUI is a professor of law at the University of Tokyo, where he teaches taxation. Having served as an expert member for the



Tax Commission of the Japanese government, he is currently a member of the steering committee of the Japanese Society for Tax Law and a member of the Permanent

Scientific Committee of the International Fiscal Association. His monograph *Taxation of Corporate Groups* (2002) won the Institute of Tax Research and Literature Award.

PASQUALE PASQUINO, who received his legal training in Italy, holds several academic positions in France: He is a senior research associate at the National Center for Scientific Research's CREA-Polytechnical School in Paris; assistant professor in comparative political and constitutional

theory at the University of Paris I (Panthéon-Sorbonne), and lecturer in political theory at the School for Advanced Studies in the Social Sciences in Paris. He has coauthored books and articles on Austrian-American jurist Hans Kelsen and German legal and political thinker Carl Schmitt. A leading scholar on Italian, French and German constitutional issues, Pasquino holds a visiting appointment in NYU's Department of Politics with the Faculty of Arts and Science.

ANDRÁS SÁJO is a professor of law and chair of the Constitutional Law Institute at Central European University in Budapest, and was the founding dean of legal studies there. A prominent constitutionalist, he is also distinguished in market economy fields, including



media regulation that post-Communist regimes must confront. Fluent in six languages, Sájó has been deeply involved in the drafting of constitutions throughout

Eastern Europe. His honors include the Hungarian Academy Book Prize and serving as the Blackstone Lecturer at the University of Oxford. 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.

CHENGUANG WANG is a prominent law professor at Tsinghua University in China, where he teaches Comparative Law and



Legal Philosophy while also serving as dean of the School of Law. In addition, he is an arbiter of the China International Economic and Trade Arbitration Commission, as well as vice

president of the China Association on Legal Theory. Wang is the author of numerous publications on Chinese law. He coedited *Trends in Comparative Law* (1993) and wrote "Rapid But Unbalanced Growth of Chinese Legal Education Programs" in the *Harvard China Review*. Wang holds advanced law degrees from Harvard University (LL.M.) and Peking University (LL.M. and Ph.D.). □

The Case for Refundable Tax Credits

Declaring our current system inefficient, **LILY BATCHELDER** proposes that incentives for charitable giving and other socially valued behaviors be equal for all taxpayers.



EACH YEAR THE FEDERAL INDIVIDUAL income tax code provides over \$500 billion worth of incentives intended to encourage socially beneficial activities, such as charitable contributions, homeownership, health insurance and education. This is an enormous investment, exceeding our budget for national defense and amounting to about four percent of GDP. The design of these tax incentives is therefore an immensely important policy matter. Yet despite their

efficiency rationale, little attention has been paid to the question of what economic efficiency implies about the form these tax incentives should take.

Currently the vast majority of tax incentives operate through deductions or other approaches that link the size of the tax break to a household's marginal tax bracket, which means that higher-income taxpayers receive larger incentives than lower-income taxpayers. Such an approach is often appropriate for provisions, such as deductions for business expenses, designed

to measure income or ability to pay. But we argue that it is inefficient for incentives intended to promote socially valued activities unless policymakers have specific knowledge that such households are more responsive to the incentive or that their engaging in the behavior generates larger social benefits. Absent such empirical evidence, all households should face the same set of incentives.

Purely on efficiency grounds, we therefore propose a dramatic change in how the government should provide tax incentives for socially valued activities. Under our proposal, which could be implemented on a revenue-neutral basis, the default for all such tax incentives would be a uniform refundable tax credit. These tax credits would be available to qualifying households even if they owe no income tax and would provide a much more even and widespread motivation for socially valued behavior than the current set of tax incentives. Moreover, they could further enhance economic efficiency by smoothing out fluctuations in household income and macroeconomic demand.

COMPARING TAX INCENTIVES

Currently approximately \$420 billion of the \$500 billion of tax incentives in the individual income tax code operate through deductions, exemptions, exclusions, or nonrefundable credits. Such tax incentives tie the size of the tax break to an individual's marginal tax bracket: A deduction of \$1, for example, is worth 35 cents to someone in the 35 percent marginal bracket but only 15 cents to someone in the 15 percent marginal bracket. Furthermore, these types of tax incentives fail to reach the increasingly significant share of low- and moderate-income individuals and families who do not have any federal income tax liability to offset in any given year. More than 35 percent of households during any given year have no income tax liability. These households are home to almost half of all American children.

Refundable tax credits represent a different approach. Since they are a credit, rather than a deduction or exclusion, they do not depend on a household's marginal tax bracket. A tax credit of \$1, for example, reduces taxes by \$1 and thus is worth the same to households in the 35 percent bracket or the 15 percent bracket. And since they are refundable, they provide benefits to all tax filers, regardless of whether they owe income taxes on net.

The tax code presently contains three main refundable tax credits: the Earned Income Tax Credit, the Child Tax Credit, and a small health insurance credit. The Earned

Income Tax Credit is the largest antipoverty program for the nonelderly in the country. In inflation-adjusted terms, the budgetary cost of the EITC has risen by a factor of nine since it was enacted in 1975, and it tripled between 1990 and 2000 alone. More recently, the partially refundable Child Tax Credit and a small, fully refundable health insurance credit were enacted, and the refundability of the Child Tax Credit was expanded and accelerated.

Refundable credits have grown substantially over the past three decades. In part, this is the result of policymakers' increasing reliance on the tax code, rather than direct government expenditures, to subsidize households and influence their behavior as a result of perceived or real incentives within the tax legislative process. Despite this growth, however, the vast majority of tax incentives still take the form of deductions or other approaches linked to marginal tax rates.

THE EFFICIENCY ARGUMENT

The efficiency benefits of refundable credits can be understood both intuitively and theoretically. Intuitively, if policymakers want to broadly promote socially valued behavior through the tax code, refundable credits are generally necessary. As illustrated at right, in any given year more than one-third of households do not have any federal income tax liability. About a quarter of tax units file a tax return but have no income tax liability, and another 13 percent do not file. Moreover, almost half of all children, and 80 percent of children in single-parent households, live in tax units with no income tax liability in any given year.

As a result, if policymakers want to create incentives through the individual income tax for all or most tax units to engage in certain behavior every year, such as saving or obtaining education for themselves or their children, refundability should not only be considered an acceptable instrument of tax policy—it is imperative.

At a more theoretical level, unless there is evidence that certain households are more responsive to the incentive than others or generate larger social benefits from engaging in the activity, tax incentives are most efficient if they provide the same incentive to all households—and that can only be accomplished in a straightforward manner through a uniform (and refundable) credit.

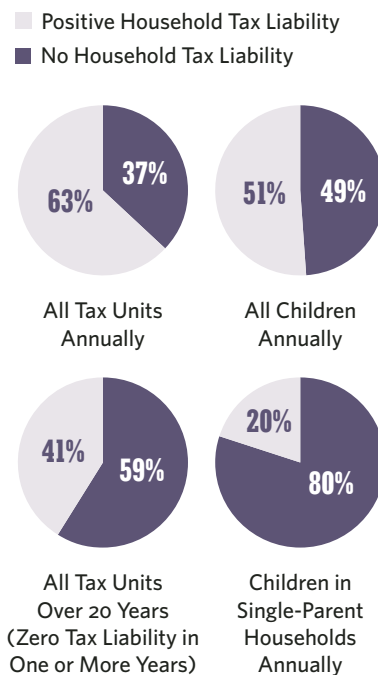
The reason that a uniform incentive is the most efficient approach in the absence of evidence regarding differences in responsiveness or social benefits is that a

small number of large mistakes in under- or oversubsidizing an activity is more costly in efficiency terms than a large number of small mistakes. Stated more technically, a uniform subsidy is the most efficient in the absence of such empirical evidence because the deadweight loss arising from an uncorrected externality rises with the square of the uncorrected externality. For example, imagine that certain behavior, perhaps charitable contributions, on average generates five cents of social benefits per dollar contributed per year and policymakers have determined to subsidize contributions by, on average, five cents per dollar. Imagine further that there is a 50 percent chance that a dollar of contributions by a high-income household generates 10 cents of social benefits, while a dollar of contributions by a low-income household generates none, and a 50 percent chance that this pattern is reversed. A uniform subsidy of five cents would leave five cents of lost social benefits in both cases. Meanwhile, a subsidy of 10 cents given to one group would result in 10 cents of lost social benefits in one case and none in the other. The uniform subsidy is more efficient—it minimizes the expected deadweight loss—because a small number of big errors (one case of 10 cents) is more costly in efficiency terms than a large number of small errors (two cases of five cents).

We acknowledge that many tax incentives may be bad policy regardless of whether they take the form of uniform refundable credits, perhaps because the behavior in question does not actually generate social benefits or because such social benefits are best addressed through direct government provision of the good or regulation. Even taking these limitations into account, however, assuming the continued existence of a tax incentive, our default structure is generally preferable. It minimizes the expected deadweight loss not only when a tax incentive undercorrects for an externality, but also when it overcorrects, either because the subsidy exceeds the social benefits generated or because the behavior actually is not socially beneficial.

We also acknowledge that tax incentives should not provide the same incentive to all households in all circumstances. If there is evidence that the associated social benefits vary systematically by income class, or that different income groups exhibit different levels of responsiveness to the subsidy, the tax incentive should not be identical for all households. Indeed, these differences between various income groups surely exist in

Federal Income Tax Liability



SOURCES: PETER R. ORSZAG & MATTHEW G. HALL, NONFILERS AND FILERS WITH MODEST TAX LIABILITIES, 100 TAX NOTES 723 (2003); AUTHORS' CALCULATIONS BASED ON A SIMPLE MODEL OF 2003 LAW AND LONGITUDINAL EARNINGS DATA FROM THE PANEL SURVEY OF INCOME DYNAMICS.

reality. But when, as is frequently the case, the evidence on these issues is nonexistent or inconclusive, the most efficient form for a tax incentive is a uniform refundable credit. The burden of proof should therefore be on those who prefer some other form of tax incentive to demonstrate that such deviations from a uniform refundable credit are justified by empirical evidence.

Even when there is empirical evidence suggesting that the optimal tax incentive should not be the same for all households, the most efficient incentive is almost certainly still some type of refundable credit. It is extremely unlikely that there is a sharp break in social benefits or responsiveness to an incentive exactly at the point of zero income tax liability, given that this threshold varies by family size and year-to-year. Yet these types of discontinuities are inherent in the application of all other basic forms of tax incentives.

Thus, if policymakers wish to use the tax system to create incentives for certain socially valued behavior, it makes no sense to exclude more than a third of American individuals and families from their reach,

or to provide smaller benefits to some households than others, absent evidence that those Americans would be relatively unresponsive or that their behavior generates fewer societal benefits.

ADDITIONAL BENEFITS

The potential efficiency benefits of uniform refundable credits are magnified further by a second feature: their ability to help smooth household income. That is, transforming existing tax incentives into uniform refundable credits would boost after-tax income during hard years, and thus help to cushion the blow of a drop in earnings, unemployment, or other hardships. Such income smoothing is desirable from an efficiency perspective for several reasons. It can reduce the costs associated with economic instability and offset failures in insurance markets. It also allows families to plan their expenditures more confidently and avoids the additional costs (moving costs, credit card debt) of financing constant changes in household living standards. Income smoothing is particularly beneficial for lower-income households because they generally don't have easy access to credit to make it through tough times, because they tend to have more volatile incomes than other families in general, and because income shocks can result in declines in their economic circumstances that persist over long periods of time and are passed on to their children.

A final efficiency benefit of uniform refundable credits is their ability to smooth

The U.S. spends 4% of GDP subsidizing socially valued activities through the tax code.

the macroeconomy. Like household income smoothing, macroeconomic smoothing can enhance economic efficiency. In particular, macroeconomic demand fluctuations make it difficult for companies to optimize their investment and production functions, resulting in adjustment costs. These difficulties can inhibit domestic and foreign investment, and thus economic growth. As a result, there is broad consensus in support of taxing and spending policies that are automatically countercyclical. Uniform refundable credits can help stabilize macroeconomic demand fluctuations by raising cash payments to families during recessionary periods, which then helps boost spending—precisely the desired response during such periods.



"I suppose one could say it favors the rich, but, on the other hand, it's a great incentive for everyone to make two hundred grand a year."

OPPOSING ARGUMENTS

Opponents of refundable credits typically raise four main objections to our proposal that the default structure for all tax incentives should be a uniform refundable credit. First, some question the extent to which government should engage in redistribution between different income groups. Second, some argue that the tax system should be used only to raise revenue, not to provide subsidies. Third, some believe that all Americans should pay at least some

tax, even if just one dollar, as a duty of citizenship and so that they feel some stake in governmental decisions. Finally, some argue that refundable credits would increase administrative and

compliance costs on net and are particularly subject to fraud and abuse.

Concerns about the extent of governmental redistribution, however, do not justify rejecting refundable credits that are enacted to enhance economic efficiency by subsidizing socially beneficial behavior. And concerns about delivering subsidies as a tax benefit instead of a transfer are generally objections to tax incentives overall, not to structuring tax incentives as refundable credits specifically.

The third objection—that all Americans should pay some tax—ignores the fact that most households claiming refundable credits pay a variety of federal, state and local taxes other than income taxes. Moreover, if one is interested strictly in federal

income taxes, it seems likely that most refundable credit beneficiaries pay a positive amount of federal income tax over time as a result of the income variations that people tend to experience over their lives. Indeed, a simplified model of 2003 federal income tax law using data from the Panel Survey of Income Dynamics suggests that about three quarters of tax units who are eligible for the refundable element of the EITC or CTC at some point during a 20-year period would nevertheless have positive net federal income tax liability over that period if historic earnings patterns are any guide. Thus, even if one accepts the principle that paying some income tax is necessary for feeling a stake in government decisions (which we do not), this principle would not necessarily preclude refundable credits once income tax liabilities are examined over longer time periods.

The final objection to refundable credits is that they could increase fraud and related compliance problems. Yet there is no reason in theory, and no empirical evidence in practice, why there should be a "cliff effect" in fraud precisely at the point of positive income tax liability. If anything, fraud may be easier to hide when it comes in the form of a deduction or exclusion, which reduces taxable income, as opposed to a refundable credit. Instead, reducing fraud and related compliance problems for all tax incentives, including refundable credits, requires structuring the incentives simply, relying on third-party reporting, and investing in enforcement staffing.

We recognize that increasing the prevalence of refundable credits may create incentives for tax units who are currently nonfilers to begin filing, thereby increasing administrative costs for the government and compliance costs for these households. These costs are real and should be taken into account. Nevertheless, they should not be overstated. Currently only about 13 percent of tax units are nonfilers. As a result, nonfilers represent a relatively small share of the roughly 70 to 80 percent of tax units who stand to gain from structuring tax incentives as uniform refundable credits. Moreover, all tax incentives are elective and, even for nonfilers, the administrative and compliance costs associated with claiming them are often likely to be swamped by the dollar value of the credit.

CONCLUSION

Uniform refundable tax credits are the most efficient structure for a tax incentive to encourage desired behavior when, as frequently occurs, evidence of how the desired behavior and its associated social benefits vary across the income distribution is unavailable or inconclusive. Indeed, refundable tax credits are generally the only way to ensure a tax incentive reaches the roughly two-fifths of tax units with no positive income tax liability in a given year. These efficiency benefits are magnified by the ability of refundable credits to help smooth income at a household level and by their ability, to a greater or lesser extent, to bolster the role of the tax system as an automatic stabilizer of macroeconomic demand. The United States spends almost four percent of GDP each year subsidizing socially valued activities through the tax code. Our proposal would dramatically improve the effectiveness and fairness of this substantial investment. □

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Reconciling Trademark Rights and Freedom of Expression

ROCHELLE COOPER DREYFUSS describes how strengthened trademark protections, such as the 2006 Dilution Revision Act, are on a collision course with technology and consumer behavior.



ON OCTOBER 6, 2006, PRESIDENT Bush signed the Dilution Revision Act, putting trademarks and free speech on a collision course. Classic trademark law regards trademarks as signals about price and quality. It protects them against the likelihood of consumer confusion in order to motivate producers to create goodwill and to reduce consumer search costs. Since allusive and referential uses of trademarks do not engender marketplace confusion, they have long been considered outside the scope of the right. The new dilution law's concern with the likelihood of "tarnishment" and "blurring" is thus a departure from traditional principles. Its ban on a wide swath of non-

confusing uses responds to the perception that marks now have intrinsic commercial value (as, for example, status symbols). Further, the new right facilitates "lifestyle marketing"—techniques that allow trademark holders to leverage their reputations from one product category to another and across geographic markets.

But just as trademark holders see greater potential in their trademarks, so too do consumers. Signifiers drawn from mythology, history, and literature are losing their potency in a world in which the populace lacks a shared vocabulary and a common intellectual tradition. Well-known marks have, to some extent, taken their place. Exploited as metaphors, similes, and metonyms, trademarks are becoming the lingua franca

of the communicative sphere. Likewise, trademarks play an expressive role on the Internet. Consumers “google” marks to find particular producers and producers use devices such as keywords, metatags, and pop-up ads to attract purchasers. Used as domain names, trademarks can draw visitors to websites for purposes ranging from political to parodic.

The result is a complicated picture. Images and trade symbols are increasing in cultural significance at exactly the time when protection is expanding. The exigencies of a global, online marketplace make stronger protection for trademarks necessary just when technology makes their widespread expressive use more desirable. Internet shopping requires both exclusivity and unrestricted availability—the former, to allow consumers to search effectively; the latter to permit cybermarkets to work efficiently. As the commercial/expressive duality of marks’ meanings becomes salient, so too does the expressive/commercial du-

ality of their use: a trademark-emblazoned T-shirt may be expressing a political point, but it is also a source of profits—profits that derive from the trademark but which can be channeled back into efforts to destabilize its meaning.

“I’m a Barbie girl, in my Barbie world Life in plastic, it’s fantastic...”

“BARBIE GIRL,” BY AQUA, ON AQUARIUM (MCA RECORDS, 1997)

The Dilution Act’s one-sided response to this picture raises the question whether lawmakers have fully grappled with the expressive conflict. Congress and the courts (and, one might add, lawmakers around the world) appear quick to jump from recognizing value in a mark to giving that value to its proprietor. They see the goal of trademark law as the elimination of all possibility of confusion, tarnishment, blurring, or online interference. The question is whether this goal is desirable—or even attainable.

This essay examines the doctrinal approaches currently used worldwide to consider both proprietary and expressive interests and the normative commitments that underlie these approaches. It ends with a suggested approach for creating more space for expressive values: instead of trying to protect the marketplace from all sources of confusion, blurring and tarnishment, trademark law should change its focus and adapt the law to the strategies that consumers employ when confronted with overlapping usages. Lessons drawn

DOCTRINAL APPROACHES

STATUTORY LAW

Each of the three forms of trademark law (rights against passing off, dilution and cybersquatting) creates tools to balance the interests of trademark holders against the interests of expressive users; each tool is, however, of limited value.

Distinctiveness. The primary safeguard for speech interests lies in the distinctiveness requirement: marks are unprotectable if they are understood to be merely expressive or merely functional. In earlier work, I suggested a departure from the traditional all-or-nothing approach to distinctiveness and posited a concept of “expressive genericity” that would give proprietors marketing control—exclusive rights over signaling value—but leave other aspects—expressive

value—with the public. In fact, significant developments have occurred along precisely these lines. In the long run, however, this approach has proved incapable of dealing with today’s increasingly complex linguistic marketplace.

Actionable use. Another way to preserve expressivity is to refine the definition of wrongful use. Statutes variously articulate this requirement as “using in the course of trade,” “use in commerce,” or “commercial use in commerce”—phrases that could distinguish use to sell from use to persuade, entertain, affiliate, or navigate the Internet.

Michelin & Cie v. C.A.W.-Canada is an example of a case decided using this approach. In a unionization effort, CAW circulated pamphlets showing Bibendum, the famed Michelin tireman, crushing workers. Michelin’s suit for infringement failed, the court reasoning that even though the union stood to earn dues, the use was not commercial: “CAW is competing for the hearts and minds of...Michelin’s employees, not its customers.” Similarly, in *Mattel, Inc. v. MCA Records, Inc.*, a challenge to Aqua’s “Barbie Girl” song, Judge Kozinski limited the concept of commercial speech to speech that “does no more than propose a commercial transaction.” Since Aqua used

Barbie to lampoon the image of the ideal woman, and not to induce doll purchases, it escaped liability.

But despite cases like *Michelin* and *Mattel*, most courts reject this approach and equate “use in commerce” with “commercial use.” As the European Court of Justice put it in the case of *Arsenal Football Club Plc v. Reed*, a use that “takes place in the context of commercial activity with a view to economic advantage” is “use in the course of trade.”

Harm. Classically, the requirement of consumer confusion provides robust protection for both humorous and political usages. *Hormel Foods Corp. v. Jim Henson Productions, Inc.* is illustrative. The case concerned Hormel’s objection to a Muppet named Spa’am. The court declined to find infringement, reasoning that “consumers of Henson’s merchandise...are likely to see the name ‘Spa’am’ as the joke it was intended to be.” Some Internet cases are similarly decided. Thus, attempts to bar the use of marks on gripe sites (of the trademarkholdersucks.com variety) are sometimes rejected on the theory that viewers understand that these sites are unrelated to the trademark holder.

Unfortunately, the confusion tool cannot safeguard all expressive uses. Many courts believe that dissipating confusion at the point of sale is not the only goal: that even if confusion is eliminated by the time of purchase, “initial interest” confusion can also be harmful. Likewise, some courts consider “post-sale” confusion problematic because the purchaser’s unauthorized use could adversely influence those who view the goods when they are in use. Many courts also consider disclaimers ineffective, especially on the Internet where they may be misunderstood by foreign viewers.

As important, the new trademark torts, anti-cybersquatting and dilution, have different standards for harm. Anti-cybersquatting law is nominally aimed at preventing “bad faith.” But bad faith, like commercial use, is in the eye of the beholder. In one sense, dilution is quite narrow in that it protects only marks that are famous. However, this constraint is not much of a safeguard for speech, because famous marks are the ones that expressive users are most interested in utilizing. Further, because it suggests that all the value in a mark belongs to the trademark holder, dilution law strengthens the view that the goal is to eliminate free riding. While U.S. courts have proved fairly skeptical of this right of action, the revision President Bush just signed eliminates virtually all the ways in which claims have been cabined.



"There's a Mr. Egg McMuffin here who says we've been using his name without permission."

Defenses. Certain high social-value uses, such as news reporting and commentary, are exempt from infringement liability. There are also exemptions for uses that play a unique role in the defendant's speech. Comparative advertising is one example—without using a rival's mark it is impossible to compare products. Similarly, a mark can be "fairly used" to describe such things as repackaged goods, replacement parts, and accessories for trademarked products.

These permitted uses are, however, highly circumscribed and usually require the user to persuade the court that the use is "fair" or "in good faith." The defenses may not cover expressively important users, such as parodists, who intentionally exploit the audience's understanding of the mark (and may even hope to cause a frisson of confusion).

CONSTITUTIONAL APPROACHES

In cases where statutory limitations fail, constitutive norms can be invoked to protect free speech concerns. For example, in *Laugh It Off Promotions CC v. SAB International* the Constitutional Court of South Africa considered a T-shirt parody of the Carling Beer mark, in which "Black Labour" replaced the term "Black Label." Laugh It Off could not avail itself of a noncommercial use defense because its business was selling parodic items. Nonetheless, the Court looked at the use through "the prism" of constitutional values and held it noninfringing.

The constitutional approach is inherently flexible and protects a broader range of uses. Relying on constitutional protection is, however, risky, as decisions are notoriously unpredictable. Also, courts do not always see trademark law as raising constitutional problems. For example, although courts understand that countenancing trespass in certain fora may be necessary to protect speech in real space, they have yet to appreciate the expressive implications of barring "trespass" (unauthorized use) of trademarks in information space.

A NORMATIVE ASSESSMENT

Given how deeply trademark rights can intrude on speech, particularly on the Internet, it can be hard to understand the lack of robust protection for expressive use. Interest group politics is, of course, one obvious culprit: trademark holders are better lobbyists than user groups. But standard public choice theory cannot fully explain this phenomenon. To some extent, conflicting uses are a wash—the Internet consumer who searched for merchant A but decided to buy from merchant B is canceled by the consumer who searched for B and found A.

Interestingly, many of the Internet cases reaching results antithetical to free-speech values are adjudicated in French courts and involve the activities of Americans. Here the issue may be cultural dominance—a particular concern on the Internet, where so much pop culture is disseminated. If

that is the problem, one solution would be to segment the Internet so that each nation can protect its own citizens as it sees fit. But it would be a mistake to support such an approach. Barring worldwide use would destroy a significant part of the Internet's value. At the same time, allowing the French view to dominate cripples navigation on the Internet and creates a solution that is out of all proportion to the problem.

Another possible reason for these outcomes is normative error. Some lawmakers see trademarks as a firm asset akin to real property, and thus consider every unauthorized use a free ride. Intellectual property law is not, however, about preventing free rides; evidence that does no more than show that a defendant enjoyed economic benefits has not, traditionally, sufficed to establish infringement. In the words of the *Laugh It Off* court, a parody can be a "take-off, not a rip off."

Finally, there is aspirational error. Lawmakers appear eager to eliminate all sources of confusion and dilution, and all unauthorized navigation. As the *Arsenal* court put it:

"For a trade mark to be able to fulfill its essential role in the system of undistorted competition..., it must offer a guarantee that all of the goods or services bearing it have been manufactured or supplied under the control of a single undertaking which is responsible for their quality."

It is clear, however, that this goal is unattainable in modern marketplaces. Because trademarks are territorial, the same mark may be used on similar goods in different trading regions; as regions merge, overlapping uses proliferate. Functionality convergence means that goods that were once different (e.g., computers and phonograph records) have, over time, become similar. If they used the same mark (e.g., Apple), there will now be ambiguity. The exceptions to infringement discussed above also result in some dual usages. Most important, not everyone is equally discerning—there will always be consumers who are confused. The time, therefore, has come to learn more about ambiguity—how it is caused; how it affects consumers; and, most important, how it is alleviated.

COGNITIVE AND BEHAVIORAL APPROACHES

Trademarks are not the only place where conflicting signals create confusion. I have two friends called Graeme; I live in Greenwich Village, shop in Greenwich, Connecticut, and visit friends on Greenwich Avenue (or do they live on Greenwich

Street?). Somehow, I manage to sort things out. In recent years, cognitive scientists have begun to study how that happens.

Admittedly, cognitive research supports certain concerns of trademark holders. The prevailing “activation theory” suggests that information is stored in “nodes” hierarchically arranged in “links.” The stronger each node and the stronger the links, the better information is retained and the quicker it is retrieved. Heavy advertising can turn a trademark into a strong node, facilitating quick recall. Indeed, some trademarks become so engrained in memory, they “dominate”—they stand for an entire product category (instance dominance) or are recalled whenever a product category is mentioned (category dominance). Instance dominance accounts for the use of trademarks as Internet search terms, but category dominance is particularly prized. Because information-processing is bounded, consumers display “satisficing” behavior: they may buy as soon

as they encounter the dominant brand, even if the choice fails to optimize their preferences.

ucts do not lend themselves to lifestyle marketing. Dilution may, indeed, be more of a theoretical problem than a real one. Even with confusion, arguably the wrong question is being asked: rather than try to eliminate confusion, the better approach is to ask how to deal with it. Cognitive research reveals various clues. First, consumers are not always confused by unfamiliar associations. Individuals monitor the activation process as it unfolds. When successive nodes fail to recall the source of an association, they eventually conclude that the association is unknown. To quote Donald Rumsfeld, “There are things we know we know. We also know there are known unknowns.” Yes, the moment of uncertainty may be frustrating. But it may also be crucial to the smooth operation of the marketplace. It is at that juncture that consumers seek out more information and learn about other considerations that should influence their purchasing decisions. Law that cuts off learning

about how visual information is integrated, what sorts of messages attract attention, and which are retained. With globalization of the marketplace, it would also help to study how people react when encountering text they do not understand. Are they confused or do they simply move on to products and websites they do understand?

In the final analysis, what trademark law especially needs is a better account of the reasonable consumer. Cognitive styles differ. If there is mobility within the various styles, then the law could be designed to encourage individuals to develop their facilities to focus and discern. Not all ambiguity will be eliminated in any event; creating incentives to deal with it will, in the long run, provide trademark holders with surer protection and give greater freedom to those who use marks expressively.

CONCLUSION

In an economy in which consumers have immediate access to products and services everywhere on the globe, in a legal environment in which symbols are protected in multiple ways, in a culture in which trademarks constitute a significant medium of expression, freedom from all sources of confusion or dilution is simply not achievable. What can be achieved is a marketplace in which consumers can decipher what they are experiencing. Legislation that is attentive to how encounters with multiple meanings are handled would protect both trade and creativity. A fuller understanding of how perception is shaped is likely to provide more durable protection for our shared expressive vocabulary. □

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“I’m Barbie. No last name.... I sign it like this....’ She picks up Alice’s ballpoint pen and writes a carefully looped, upward slanting ‘Barbie™.’”

PIGS IN HEAVEN BY BARBARA KINGSOLVER (HARPERCOLLINS, 1993)

as they encounter the dominant brand, even if the choice fails to optimize their preferences.

Trademark holders are also right to worry that their marks could lose power. Consumers presented with extraneous information experience a “fan effect”—chains of nodes are activated and information retrieval slows. If confronted with too many choices, consumers may forgo purchase. Worse, when confronted with unauthorized associations, they may encode, and rely on, inaccurate information.

There are, however, strong countervailing considerations. Trademark holders who advertise marks to the point where they become dominant should, perhaps, be required to accept the risk that the marks will be used for expressive and navigational purposes. In an analogous context, the Court in *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.* held that “if any confusion results, that is a risk the plaintiff accepted when it decided to identify its product with a mark that uses a well known descriptive phrase.” In fact, less dominance could be in trademark holders’ own interest: marks that become too associated with specific prod-

ucts do not lend themselves to lifestyle marketing. Dilution may, indeed, be more of a theoretical problem than a real one.

imperils competition. It even undercuts the core rationale underlying trademark law: if a trademark holder can end the search, it has little need to further maintain goodwill. Second, cognitive research largely bears out the intuitions of the courts that are receptive to expressive interests. When confronted with ambiguity, people rely on their priors, just as the *Henson* court assumed when it found that experience with the Muppets would resolve consumer confusion regarding Spa’am. Contextual clues are extremely important, as the *Matel* court reasoned when it decided that people hearing a song about Barbie would understand it as entertainment, and not an offer to sell a doll. People use the gestalt of their experiences, just as the *Michelin* court imagined when it held that employees who were handed union pamphlets would not be thinking about buying tires.

But much remains to be learned. One issue is the effect of disclaimers. Although trademark courts discount their value, information is often conveyed through similar devices. Indeed, warning labels, washing instructions, and warranties are often required by law. It would be useful to know more

Separation of Parties, Not Powers

Arguing that the central dynamic of government is competition between political parties rather than between branches of government, **RICHARD H. PILDES** reenvision the law and theory of separation of powers.



DESCRIBING IN THE FEDERALIST Papers a set of “wholly new discoveries” in the “science of politics” that might enable democratic self-government to succeed in the American republic, Alexander Hamilton listed first the “balances and checks” that distinctively characterize the American system of separation of powers. In James Madison’s ingenious scheme of separated powers described in Federalist 51, “the interior structure of the government” would be “so contriv[ed]...as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.” By institutionalizing a differentiation between executive and legislative powers (as well as by dividing the legislature bicamerally), the separation of powers would harness political competition into a system of government that effectively

checks, balances, and diffuses power. What is more, the system would be self-enforcing, relying on the mechanism of interbranch competition to police institutional boundaries and prevent tyrannical collusion. As Woodrow Wilson famously put it, in the Framers’ Newtonian vision, the separation of powers was to be “a machine that would go of itself.”

To this day, the idea of building self-sustaining political competition into the structure of government is frequently portrayed as the unique genius of the U.S. Constitution and largely credited for the success of American democracy. Yet the truth is closer to the opposite. The success of American democracy obviated the Madisonian design of separation of powers almost from the outset, preempting the political dynamics that were supposed to provide each branch with a “will of its own”

so that departmental “ambition [c]ould be made to counteract ambition.” What the Framers did not count on was the emergence of robust democratic competition, in government and in the electorate. Political competition and cooperation along relatively stable lines of policy and ideological disagreement quickly came to be channeled not through branches of government, but through an institution the Framers could imagine only dimly but nevertheless despised: political parties. As competition between the branches of government was displaced by competition between two major parties, the machine that was supposed to go of itself stopped running.

Few aspects of the founding generation’s political theory are now more clearly anachronistic than their vision of legislative-executive separation of powers. Nevertheless, few of the Framers’ ideas continue to be taken as literally or sanctified as deeply by courts and constitutional scholars as the passages about interbranch relations in Madison’s Federalist 51. Constitutional discourse to this day embraces Madison’s account of rivalrous, self-interested branches as an accurate depiction of political reality and a firm foundation for the constitutional law of separation of powers. In the Madisonian simulacrum of democratic politics that underwrites constitutional doctrine and theory, the branches of government continue to be personified as political actors with interests and wills of their own, entirely disconnected from the interests and wills of the officials who populate them or the citizens whom these officials represent. Acting on these interests, the branches are supposedly engaged in a perpetual competition to aggrandize their own power and encroach upon their rivals. The partisan political competition that structures real-world democracy and dominates political discourse is almost entirely missing from this picture.

As this article describes, the invisibility of political parties has left the constitutional discourse of separation of powers with no conceptual resources to understand or predict basic features of the American political system. It has also generated a set of judicial decisions and theoretical rationalizations that float entirely free of any functional justification grounded in the actual workings of separation of powers. Ignoring the reality of parties and fixating on the paper partitions between the branches, the law and theory of separation of powers is a perfect fit for the government the Framers designed. Unfortunately, it misses much of the government we actually have.

This article seeks to envision the law and theory of separation of powers by viewing it through the lens of party competition. What is revealed is that the degree and kind of competition between the legislative and executive branches will vary significantly, and may all but disappear, depending on whether the House, Senate, and presidency are divided or unified by political party. The practical distinction between party-divided and party-unified government rivals, and often dominates, the constitutional distinction between the branches in predicting and explaining interbranch political dynamics. Recognizing that these dynamics will shift from competitive when government is divided to cooperative when it is unified calls into question many of the foundational assumptions of separation of powers law and theory. But it also allows us, more constructively, to think about numerous aspects of legal doctrine, constitutional structure, comparative constitutionalism, and institutional design in a new and more realistic light.

FROM BRANCHES TO PARTIES

According to the political theory of the Framers, “the great problem to be solved” was to design governance institutions that would afford “practical security” against the excessive concentration of political power.

Madison’s vision of competitive branches balancing and checking one another has dominated constitutional thought about the separation of powers through the present. Yet it has never been entirely clear how the Madisonian machine was supposed to operate. From the modern perspective of consolidated democracy, it is hard to see how such a mechanism would arise. Even assuming that officeholders are driven by a “lust for self-aggrandizement,” the structure of democratic politics effectively channels those ambitions into a different set of activities than aggrandizing their departments or defending them against encroachments. Individual politicians gain and exercise power by winning competitive elections and effectuating political or ideological goals (their own or those of their constituents). Neither of these objectives correlates in any obvious way with the interests or power of branches of government. Madison’s will-based theory of separation of powers would seem to require government officials who care about the intrinsic interests of their departments more than they care about their personal interests or the interests of the citizens they represent. Democratic politics is unlikely to generate such officials.



“That’s just the trouble. I can’t lick them and they won’t let me join them.”

Indeed, this is just what happened: Madison’s design was eclipsed almost from the outset by the emergence of robust democratic political competition. Rather than tying their ambitions to the constitutional duties or power base of their departments, officials responded to the material incentives of democratic politics in ways that now seem natural and inevitable: by forming incipient organizations that took sides on contested policy and ideological issues and competing to marshal support for their agendas. These efforts led inexorably (though haltingly) to the organization of institutions that would facilitate alliances among groups of like-minded elected officials and politically mobilized citizens on a national scale: political parties.

The idea of political parties, representing institutionalized divisions of interest, was famously anathema to the Framers, as it had long been in Western political thought. Equating parties to other forms of nefarious “factions,” the Framers had attempted to design a “Constitution Against Parties.” But the futility of this effort quickly became apparent. By the end of the first Congress it had become clear that political competition organized around issues and programs had the potential to divide coalitions of officeholders and cut through the constitutional boundaries between the branches. The precursors of the modern political party had taken root, founded by the very Framers who had authored a Constitution against them. The rise of partisan politics worked a revolution in the American system of separation of powers, radically realigning the

incentives of politicians and officeholders. The emergence of a robust system of democratic politics tied the power and political fortunes of government officials to issues and elections. This, in turn, created a set of incentives that rendered these officials largely indifferent to the powers or interests of the branches per se. As a result, the political allies of a representative pursuing a policy agenda will often be other representatives pursuing the same agenda, not other representatives who happen to be affiliated with the same branch. A hawkish senator eager to assert American military power abroad may be happy to grant a like-minded president open-ended authority to fight a global war on terrorism—notwithstanding that this delegation “aggrandizes” the power of the president at the expense of Congress. The same senator may oppose delegating authority to a president inclined to stage humanitarian interventions—but for reasons of foreign policy, not of Federalist 51. Thus, in Madison’s terms, “the interests of the man” have become quite disconnected from the interests of “the place.” There is simply no way of grasping how the American system of government works in practice without taking account of how partisan political competition has reshaped the constitutional structure of government in ways the Framers would find unrecognizable.

Indeed, the American system functions dramatically differently depending on whether we have a government under unified or divided party control. Any understanding of the American system of

separation of powers should start from the recognition that both are possible; indeed, inevitable. Contrary to the foundational assumption of constitutional law and theory since Madison, the United States has not one system of separation of powers but (at least) two. When government is divided, party lines track branch lines, and we should expect to see party competition channeled through the branches. The resulting interbranch political competition will look, for better or worse, very much like the Madisonian dynamic of competitive, rivalrous branches—though, again, the underlying mechanism will be entirely different from the one Madison envisioned. On the other hand, when government is unified and the engine of party competition is removed from the internal structure of government, we should expect interbranch competition to dissipate. Smoothing over branch boundaries, intraparty cooperation (as a strategy of interparty competition) will override the central dynamic of the Madisonian model.

There are functional differences between these two systems of separation of powers, party-separated and party-unseparated, but the challenge to the constitutional law and theory of separation of powers should already be clear.

PARTY UNIFICATION AND DIVISION OF GOVERNMENT

The significance of whether government is unified or divided depends crucially on the internal ideological coherence and political distance between the two major parties. But the two major parties today are as coherent and polarized as they have been in perhaps a century, and for reasons that are likely to be enduring. The combination of a mature system of two-party competition nationwide, gerrymandered “safe” election districts, and somewhat more powerful party organizations in the last generation has led to the resurgence of more internally unified, ideologically coherent, and polarized parties than we have seen in many decades. And there is at least some reason to believe this will be the case for decades to come.

With cohesive and polarized parties, the functional differences between divided and unified government will be at their most pronounced. Partisan competition in government now means a Democratic Party dominated by liberals, with few moderates and no conservatives, pitted against a Republican Party dominated by conservatives, with few moderates and no liberals. Under divided governments, the absence of

a bloc of centrist legislators willing to cross party lines will make policy agreement more difficult and interbranch disagreement more intense. Under unified governments, smaller partisan majorities will be able to effect major policy change without the full range of checks of balances that are supposed to divide and diffuse power in the Madisonian system. These differences are immediately relevant to the goals and mechanisms of the constitutional separation of powers.

REENVISIONING, AND REFORMING, THE SEPARATION OF POWERS

We first explore numerous implications for constitutional doctrine from this more realistic understanding of separation of powers in practice, including for legal issues involving executive power, legislative power, and the relationship between them. But though constitutional lawyers and scholars are likely to focus first on doctrinal implications, a party-centered approach to separation of powers points in other directions as well. Particularly when it comes to confronting the unique

ernment’s policies are made highly visible. Other European democracies have gone further in organizing and empowering the minority party to play a more effective role in disrupting or influencing majoritarian governance. The French system, for example, entitles a minority in parliament to invoke judicial review to test the constitutionality of laws passed by parliament before they go into effect. This system of standing and constitutional review was created in 1974 precisely to place limits on the majority party in parliament.

The idea of minority opposition rights and institutions has not had much purchase in the American context, largely because American constitutional design assumes that political opposition, like political competition more generally, will be rooted in the branches. Congress is cast as the “opposition” to presidential governance, its “rights” are those associated with separation of powers, and “opposition rights” are thus subsumed into the ordinary workings of checks and balances. As we have seen, however, the structural position of the minority party under unified

There is simply no way of grasping how the American system of government works in practice without taking account of... partisan political competition....

challenge of strongly unified government, we might push beyond legal rules to think about separation of powers at the level of democratic institutional design.

MINORITY OPPOSITION RIGHTS

Viewing the absence of intragovernmental competition as a problematic feature of their parliamentary systems, many Western democracies have embraced the idea of “opposition rights” for minority parties out of power. In the Westminster system, for example, the majority party’s unified control over government is tempered by an elaborate set of rules and conventions that formally organize the minority party as “Her Majesty’s Official Opposition,” charged with organizing a shadow government to offer criticisms of and alternatives to the policies of the actual, majority government. The British opposition lacks any real agenda-setting, veto, or other co-governing power, but devices like opposition days and question times are designed to ensure that ongoing criticism of the gov-

ernment is more closely analogous to that of minority parties shut out of parliamentary governments than observers of the American system have recognized. Perhaps American constitutional theorists have something to learn from the comparative study of democratic oppositions in Europe and elsewhere.

Not surprisingly, constitutional democracies formed in the aftermath of totalitarian states since World War II have been the most acutely aware of the centrality of political party competition to robust democracy and, especially, the value of empowering democratic opposition. The German Constitution, probably the most imitated in recent decades, provides explicitly for the protection of parties, so that, as the Constitutional Court has held, German political parties have the “rank of constitutional institutions” and are “constitutionally integral units of a free and democratic system of government.” Opposition parties are empowered to participate in the Bundestag’s agenda-setting process, to chair a

number of standing committees, and to initiate constitutional review of legislation before the Constitutional Court whenever one-third of the members of parliament request. Combined with representation in the Bundesrat, this political leverage enables the opposition routinely to force compromises on legislation and to enact a significant part of its policy agenda.

American political institutions have never been self-consciously designed in this way to position minority parties as an “opposition” to unified government under majority control. Nevertheless, institutional structures that enable minority parties to engage in auditing, investigation, and information-gathering are one important means of maintaining checks and balances under unified party control of government.

Supermajority rules can also serve this purpose, by creating a de facto minority party veto and requiring bipartisan support for action to proceed. Consider, for example, the Senate filibuster in the context of judicial nominations, which might be viewed (sympathetically) as a de facto response to

might focus on insulating the administrative bureaucracy more fully from the partisan pressures of unified government. Here, one would need to take seriously the idea of the bureaucracy as a “fourth branch” of government, and to ensure that government is never fully unified by keeping this branch, at least, out of the hands of the majority party.

Indeed, one explanation for the rise of American bureaucracy is precisely that it came about as a response to the problem of the first overwhelmingly unified party government in American history and the threat such government was thought to pose to traditional American political practice. Although we often associate the rise of bureaucracy with more technocratic and instrumental imperatives—with the need for a specialized division of labor in the face of increasingly technical and complex regulatory problems—American bureaucracy was self-consciously constructed in the late 19th century, at least in part, for political reasons intimately connected to separation of powers ideals. The Civil War and Reconstruction established the domi-

highly skeptical of the bright-line distinctions between value judgments about ends and technocratic decision-making about means, and of the desirability of rule by the politically unaccountable “experts” that characterized Progressive- and New Deal-era administrative theory.

Were we to take more seriously the virtues of an independent bureaucracy, it is easy to imagine institutional modifications that would create greater political insulation. Longer or even life tenure for high-ranking administrators is an obvious example. Such reforms might demand greater flexibility than the Supreme Court’s formalistic Appointments Clause jurisprudence would presently afford. Other doctrinal reforms, such as rethinking separation of powers decisions that have facilitated greater political control over administrative agencies, prominently including Chevron, and resisting further efforts by presidents to exert greater control over agencies through the OMB and other strategies of presidential administration, would also help create the conditions for bureaucratic independence.

The faith of Progressives and New Dealers in neutral policy expertise may well be both naive and anachronistic. But the separation of powers case for politically insulated administration is neither. Politicization of the bureaucracy in the post-World War II era, whatever its benefits in terms of democratic accountability and political realism, has gradually eroded the capacity of bureaucratic institutions to check and balance unified party government. Perhaps constitutional and administrative lawyers and theorists should take a closer look at what has been lost.

POLITICAL PARTIES AND THE LAW OF DEMOCRACY

Thus far we have focused on mitigating the effects of unified parties and unified government, exploring institutions and reforms that might restore some measure of checks and balances under unified government. But we might also focus on measures to minimize the deleterious consequences of unified government by fragmenting or moderating the parties themselves, or by looking at ways to prevent strongly unified government from emerging in the first place. We cannot return to the Framers’ pre-modern vision of self-government without parties, but we might envision using legal rules and institutions to prevent parties from unifying government so strongly as to threaten Madisonian values. In the full article, we discuss various legal and policy changes that could lead to less polarized

Equating parties to other forms of nefarious “faction,” the Framers had attempted to design a “Constitution Against Parties.”

the erosion of a branch-oriented “Senate” check on presidential nominations during strongly unified government. The filibuster might be understood as the equivalent of a minority opposition right: a way of recreating the functional consequences of the constitutional requirement of presidential-senate consensus over judicial nominations in a political system dominated by partisan, as opposed to interbranch, competition, but only when the filibuster is applied during unified government. When party control is divided between the president and Senate, no longer is there a minority party to protect, and any nominee confirmable by a Senate majority will be effectively screened for ideological moderation. Adding a supermajority requirement when the president and Senate are divided might serve only to increase the costs of the confirmation process.

BUREAUCRACY AND THE CHECKING FUNCTION

Instead of empowering the opposition party to oversee or check the majority party under unified government (or in addition to doing so), constitutional engineering

nance of the national government over the states, leading to greater nationalization and centralization of political power than the country had ever experienced. At the same time, the postbellum ascendancy of the Republican Party vividly demonstrated the prospect of one-party dominance of the newly empowered national government. The resulting threat to checks and balances and a pluralist political culture drove even some who had been Jacksonian majoritarians in the antebellum period to see the necessity of new institutional forms. One such form was a professionalized bureaucracy.

In light of the separation of powers origins of the administrative state, it is ironic that American political culture over the last 40 years or so, on both right and left, has become far more skeptical than that of most European democracies about the possibility of a technical expertise that stands relatively independent of politics. The story of the increasing politicization of the administrative state since the New Deal—and the increasing acceptance of the inevitability, if not desirability, of this politicization—is a familiar one. Legal culture has become

political parties, while also noting various advantages for democracy that polarized political parties actually might have.

CONCLUSION

From nearly the start of the American republic, the separation of powers as the Framers understood it—and as contemporary constitutional law continues to understand it—had ceased to exist. The enduring institutional form of democratic political competition is political parties, not branches. Absorbing that insight is essential, not just to descriptive and historical analysis of the practice of democracy in America, but for normative thought about constitutional law and the design of democratic institutions today. If interbranch checks and balances remains a vital aspiration, the failure of the Framers' understanding of political competition raises the risk of a mismatch between constitutional structures and constitutional aims. Recognizing that failure and replacing it with an understanding of the actual mechanisms of political competition suggests new approaches to constitutional law and institutional design that would more effectively realize the aims of the separation of powers.

Such a project is all the more urgent as we come to terms with an emerging equilibrium of ideologically coherent and polarized political parties. Strong parties will accentuate the differences between unified and divided government, making constitutional law's conceptualization of a singular, static system of separation of powers all the more problematic. And when strong parties combine with extended periods of unified government, the challenge to the Madisonian picture of separation of powers, and to the values it is meant to protect, is stark. If the goal is a system of separation of powers that resembles the one Madison and subsequent generations of constitutional theorists imagined, it will have to be built not around branches but around the institutions through which political competition is in fact organized in modern democracies: political parties. □

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Secretary or General?: The U.N. Secretary-General in World Politics

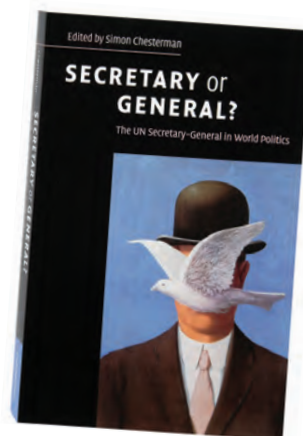
EDITED BY SIMON CHESTERMAN

“Quite apart from whether the Secretary-General is intended to be a secretary or a general, the appointment process is designed to avoid selecting either: it is a political rather than professional process, but one that is geared to choosing the weakest rather than the strongest candidate. This is not to disparage the various incumbents, but those who have stood tallest in the role have been those who most exceeded expectations.

Even within the two dominant functions of the position, the Secretary-General frequently lacks sufficient internal authority to be an effective administrator of the organization, while also lacking the resources to exercise his or her external functions with credibility. Each Secretary-General, on assuming office, has found that his room for discretion in administrative matters is sharply circumscribed by the micromanagement of the General Assembly and its committees.... This is not much ameliorated by the Charter's proviso prohibiting states from seeking to...influence him in the discharge of his responsibilities....

These apparent design flaws are far from accidental. Nor, in many ways, are they improper: the legitimacy of a Secretary-General derives, ultimately, from the member states that constitute the United Nations. Whether the office can go beyond that foundation, acquiring a legitimacy independent of those states, has been the source of the gravest challenges to the men who have held it.

Published by Cambridge University Press, 2007. From the chapter “Resolving the contradictions of the office” by Simon Chesterman and Thomas M. Franck. Except where noted, book excerpts are cited in the index above.





The Matador's Cape: America's Reckless Response to Terror

BY STEPHEN HOLMES

“The American invasion and occupation of Iraq has led to the deaths of tens and perhaps hundreds of thousands of Iraqi civilians who never harmed America or Americans. This hellish toll of death and destruction is nevertheless a nonissue in U.S. domestic politics, perhaps on the principle—if it is a principle—that out of sight is out of mind.... And the American public, having applauded its own willingness to liberate a brutally abused nation, now seems oddly indifferent to the cruel suffering it has inflicted on people for whose sake this ‘war of liberation’ is purportedly being waged.... Whatever this tells us about American political culture more generally, it also leads us to ask about the role of liberal intellectuals in the run-up to the Iraq war. Humanitarian intervention has probably never had so many passionate advocates as it had in the 1990s. Their commitment to stopping genocide at all costs made them willing to bypass the U.N. system in order to ‘end evil’ by sending American soldiers to topple tyrants inside nominally sovereign states that had not attacked the United States. This posture seemed less morally ambiguous in the 1990s than it has come to seem after March 2003.... Antitotalitarian activists and humanitarian interventionists bear no responsibility for the Administration’s reckless response to 9/11, but they did help muffle liberal outrage at the decision to invade Iraq. Their moral lapse was not to peer more deeply into the twisted motivations and limited capacities of the public officials who were going to be carrying out the policies that they, the liberal hawks, were embellishing with their good intentions.”

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Party Funding and Campaign Financing in International Perspective

EDITED BY K.D. EWING AND SAMUEL ISSACHAROFF

"Money, like water, will always find an outlet.' So informs the lead opinion of Justices Stevens and O'Connor in the Supreme Court's

latest pronouncement on campaign finance regulation. And so it undoubtedly will. In light of the developments of the 25 years following *Buckley v. Valeo*, the Court's confidence that it can predict how the latest regulatory endeavor will play out is dramatically shaken. The 1974 rendition of the Federal Election Campaign Act, truncated by the Buckley divide between contributions and expenditure regulation, yielded an innovative array of 'outlets,' first in the form of the trickles of PACs and finally in the torrents of soft money....

In light of the most recent combination of the Bipartisan Campaign Reform Act and a surprisingly pliant Supreme Court, the regulatory environment has shifted again, this time to some remove from the overarching strictures of the Constitution.... While the new regulatory regime unfolds in practice, it is possible to examine *McCConnell v. FEC* not so much for how it will play out in the cold-blooded world of political influence but for how the Court came to its conclusion.... When taken as a lens through which to gauge the Court's jurisprudence of the political process, *McCConnell* unfortunately yields at least three competing, somewhat coherent, yet largely incompatible approaches to the constitutional law of politics, thereby carrying forward the central and unreconciled tensions in this entire area of law.

This excerpt is taken from the chapter "Throwing in the Towel: The Constitutional Morass of Campaign Finance" by Samuel Issacharoff.



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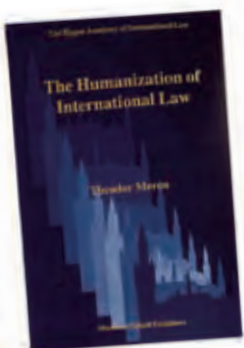
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The Humanization of International Law

BY THEODOR MERON

"The tremendous progress in the humanization of the law of war brings into sharp relief the stark contrast between promises made in treaties and declarations and the rhetoric often accompanying their adoption, on the one hand, and the harsh, often barbaric practices actually employed on the battlefield. Bosnia, Kosovo, Sierra Leone, Congo, Somalia,

and earlier Afghanistan, Cambodia, Kuwait and other situations present a picture of massacres, rapes and mutilations. The gap between the norms and the practice in war has always been wide; but never before have we had such a rich arsenal of norms accompanied by an emerging system of international criminal courts.



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Taxes, Spending, and the U.S. Government's March Toward Bankruptcy

BY DANIEL N. SHAVIRO



The English writer Saki once observed: 'When one's friends and enemies agree on any particular point they are usually wrong.'

So it was this time. The point of agreement between supporters and opponents of President Bush's tax policy, that the tax cuts were a step toward smaller government, reflected a shared misunderstanding of what 'smaller government' means. More specifically, it rested on spending illusion, or confusing the amount of the nominal dollar flows between individuals and the government with the actual size of government. Once we really examine the idea of government size, we can see that the tax cuts may well, on balance, prove to have been a step toward larger government, because their main effect may be to increase economic distortion, along with wealth redistribution from younger to older Americans.

The flawed fiscal language that encouraged the Bush Administration to view large-scale wealth transfers to older generations as a march to smaller government was as vital to its fiscal policy as faulty intelligence information was vital to its Iraq policy. However, the truly Enron-style aspect related to the long-term fiscal picture. And here the misunderstandings, while equally bipartisan, have been more deliberate. Both parties are averse to long-term fiscal measures that would make the unsustainable character of their preferred policies more evident. Better to rely on annual cash-flow deficits and surpluses, even though they reflect the use of an accounting method that would lead to jail time for any corporate executive who tried to use it.



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Student Spotlight

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Supreme Court Justice Stephen Breyer in Vanderbilt Hall with editors of the *NYU Annual Survey of American Law*, from left: Managing Editor Susanna Greenberg '07, Editor-in-Chief Eric Feder '07 and Managing Editor Alexander Macleod '07.



THEIR HONOR Justice Breyer answered questions from students and faculty before the *Annual Survey* dedication. Clockwise, from top right: Stewart, Katzmann, Sullivan, Feinberg and Adams

‘You can have a district judge in California if we can have one in Alabama.’ It worked,” said Feinberg, whose own credentials as a mediator are superlative. “Today, when you meet senators who were around back then... they say, ‘Remember those days when the Senate was more bipartisan?’” Kate Adams, Breyer’s former clerk from the U.S. Court of Appeals for the First Circuit who is now vice president and special counsel of Honeywell Specialty Materials, later added, “Perhaps through his constitutional pragmatism, judging each case one at a time through the lens of active liberty, Justice Breyer can do the same for our Court and our Constitution.”

Kathleen Sullivan, former dean of Stanford Law School, who knows Breyer from their days as Harvard Law professors, and Richard Stewart, John Edward Sexton Professor of Law, who worked with Breyer on the casebook *Administrative Law and Regulatory Policy: Problems, Text and Cases*, remarked that Breyer’s contributions in the public service have been successful because he nails down what really matters. Sullivan described how Breyer approached his work with the judiciary committee with the goal of determining “what they should do that day for the country.” And Stewart recalled Breyer’s 14 years in the First Circuit where he most notably influenced sentencing guidelines, an issue that remains among the most important to the judicial system today. “[Breyer’s] initiatives have not won universal applause,” Stewart remarked, “but these innovations, warts and all, have stood the test of time.”

The same thoughtfulness Breyer demonstrates when serving the people in a legal capacity permeates his nonlegal endeavors. As chief judge of the First Circuit, he recognized that lawyers were constantly getting stuck in malfunctioning elevators in the old Boston courthouse, causing them to miss appearances. Breyer became actively involved in redesigning the new John Joseph Moakley Courthouse, which opened in 1999, from poring over blueprints to getting cost estimates from bricklayers. “He rolled up his sleeves to renovate that courthouse,” recalled Adams. And the building on the Charles River even reflects Breyer’s practical outlook. Ever mindful of the people, Sullivan said, “He built such a courthouse with great success, with great public spaces where the people would have the best views of Boston Harbor.” □

A Justice for All

The editors of the *Annual Survey of American Law* dedicate their 64th volume to Supreme Court Justice Stephen Breyer.

WHEN HE WAS A FIRST-YEAR student, *Annual Survey* editor Eric Feder ’07 read Breyer’s dissent in *U.S. v. Morrison*—that Congress, not the judiciary, determines the balance between state and federal laws in relation to the Commerce Clause—and was struck by the idea that the law must reflect reality and that courts need to adjudicate in step with that reality. “I remember scrawling in all caps, in the margin next to that passage, ‘THANK YOU!’” Feder said.

Breyer’s practical perspective on democracy—that government is connected to the citizens it serves, and that people have a responsibility to work together to affect their communities—was repeatedly invoked by the five legal luminaries who spoke in tribute as the 2007 *Annual Survey* was dedicated to him.

Echoing Feder’s enthusiasm for Breyer’s writing, Judge Robert Katzmann of

the U.S. Court of Appeals for the Second Circuit noted how Breyer’s opinions, plain-spoken and free from footnotes, are tools of democracy, enabling anyone to read and understand his judicial decisions.

But aside from Breyer’s contribution to the law from the highest court, several speakers focused on his earlier work. “You may think that the greatest job that Justice Breyer ever assumed...was as associate justice of the Supreme Court,” said Kenneth Feinberg ’70, former special master of the federal September 11th Victim Compensation Fund. “You are incorrect.” He argued that Breyer’s talent for getting political opponents to compromise when he served as special counsel to the Senate Judiciary Committee in 1974–75 was his finest contribution to the democratic process. A prime example was how Senators Edward Kennedy and Strom Thurmond compromised on judicial appointments. “‘You can have Mississippi if we can have Massachusetts.’

When Does the Slope Become Slippery, Exactly?

Eugene Volokh probes when the inevitable begins at the *Journal of Law and Liberty's* annual Hayek lecture.

THE CENTRAL IDEA OF FRIEDRICH von Hayek's controversial 1944 best-seller, *The Road to Serfdom*, is that if government is allowed to plan an economy, communism, fascism or, indeed, serfdom will result. What irked so many was the argument that one step toward central planning would lead inevitably to totalitarianism. In other words, there is a slippery slope.

Rather than debunking or certifying this argument, however, Eugene Volokh, the speaker at the NYU *Journal of Law & Liberty's* second annual Friedrich A. von Hayek Lecture, presented his analysis (presumably the same way he teaches law classes—energetically calling on members of the audience from time to time) of slippery-slope arguments, and allowed listeners to draw their own conclusions on when to worry, and when not.

In "Slippery Slopes: Fact or Myth?" Volokh used gun control as a central

hypothetical through which he explained categories of slippery slopes. Gun registration, he suggested, is on a legislation slope, where smaller laws eventually lead to results such as complete bans. "People say, 'I register my car, I register my marriage and I register my gun. What's the big deal?'" Volokh said, first explaining the registrants' view. He then countered that registration enables searches, which in turn facilitate confiscations.

An assault weapon ban was described as being on an attitude-altering slope, desensitizing the public to restrictions with the potential to eventually control and limit all firearms.

Volokh described two other slopes: small-change tolerance slopes that result when people exhibit "rational ignorance" and unwittingly allow small changes to occur to the law; and political-power slopes



that decrease the number of supporters of a particular interest through a gradual perceived erosion of laws that allow or prohibit that activity.

Ultimately, Volokh acknowledged that democracy includes some safeguards from the pitfalls of slippery slopes. Substantive constitutional provisions such as the freedom of speech and the right to bear arms exist to prevent all-out restrictions, he said. And, he added, regulations are ultimately decided upon by voters.

"Slippery slopes exist, and you can't pooh-pooh them," said Volokh. "But the idea that tomorrow we will have the Inquisition is not realistic." □

Achieving Balance Through the Practice of Meditation



ONCE A WEEK, ABOUT A DOZEN STUDENTS slip away from their daily grind to meditate in a darkened classroom in Furman Hall. They close their eyes and focus their minds on the rhythm of breathing as their leader,

first serious meditation session, motivated by a desire to understand herself a bit better. "I had meditated before—that's not the correct way to put it—I had sat before," she said. She emerged with a desire to practice daily,

and the impulse to start the Open Meditation student group, or OM, which she runs with Sara Johnson '09 and Patrick Garlinger '09. Through meditation, says Chen, "we acquire a self-awareness to choose longer-term paths and actions that allow us to be of more service to the world."

Chen and her fellow students are not alone. Lawyers in the United States and Europe have begun embracing meditation in response to alarming increases in depression, alcoholism and suicide rates in the profession. The American Bar Association regularly organizes meditative retreats for students, lawyers and judges, and mandatory CLE credits can be earned by taking part in meditation classes.

"The essence of the lawyer's life is thought and consequences, and is almost entirely cerebral," says Matthew Warner '09, a weekly practitioner whose first experience with meditation was in one of Chen's classes. "Meditation allows a break from the problems and conflict, allowing one to acquire perspective and remember why he or she came to the law." □

Over the years, meditation has quietly slipped out of the ashram and into the mainstream. Under Chen's initiative, this stress-relieving routine is the newest kind of practice studied at the Law School.

The summer before she matriculated, Chen walked into an East Village yoga school to take part in her

and the impulse to start the Open Meditation student group, or OM, which she runs with Sara Johnson '09 and Patrick Garlinger '09. Through meditation, says Chen, "we acquire a self-awareness to choose longer-term paths and actions that allow us to be of more service to the world."

Students Get Funds to Spring Into Action During Break

MIMI FRANKE '08 CALLS HER FIRST semester of law school a “total daze,” but nonetheless mustered the energy by the end of the year to focus her attention on those in need.

“I couldn’t believe I hadn’t done anything to address the issues our country was facing after Hurricane Katrina,” said Franke, who as an undergraduate ran Vanderbilt University’s alternative spring break. With 400 students traveling to multiple countries annually, it is Vanderbilt’s largest student-run organization. Franke contacted fellow members of Law Students for Human Rights (LSHR), who in turn directed her to the Student Hurricane Network (SHN), a national organization formed by law students to address the aftermath of Katrina.

With SHN’s assistance, Franke spearheaded a trip to the area in March 2006 during the Law School’s spring break. Thirty students—eight were sent to Gulfport, Mississippi, and the rest to New Orleans—worked with a total of nine local organizations, pitching in on such pressing matters as the repair and demolition of storm-damaged homes, the preparation of written testimony for the New Orleans City Council on urgent local issues and the monitoring of eviction proceedings in Mississippi.

The trips were so successful that Franke contacted Assistant Dean Deborah Ellis '82, the head of the Public Interest Law Center (PILC), to see how she could make it an annual project. The two worked together to launch a permanent Alternative Spring Break (ASB) program and to petition the Law School for funding. The arrangement they struck makes LSHR

responsible for the planning and logistics, while PILC provides funding for travel and accommodations.

In March 2007, the first official ASB sent 34 students to three different sites. One group returned to New Orleans to aid government agencies and community and humanitarian organizations; a second group ventured to Miami to advocate for immigrant rights; and a third group worked with legal service organizations on behalf of the disadvantaged and disenfranchised in the Bronx, the poorest urban county in the United States.

Franke entered the picture at the right time. The Law School in general, and Dean Richard Revesz in particular, was interested in supporting such a program, Ellis said, but “nobody had quite the momentum and organizational know-how to do it until Mimi came along.”

Isaac Cheng '08 volunteered in New Orleans in 2006 and again this year, helping with community organizing and political action on behalf of immigrant workers and of residents displaced from housing projects. “They don’t have complicated theories about what happened,” he said. “They just have a really straightforward response, which is, ‘Come back and rebuild.’”

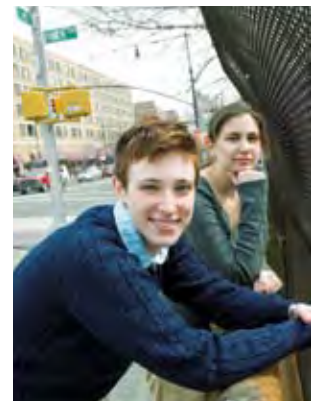
Some student participants who stayed closer to home were reminded of the tremendous need, everywhere, for legal assistance. Jessica Chicco '07 devoted the week to Legal Aid’s Juvenile Rights Division in the Bronx. She spent much of her time combing the archived files of two different cases for specific information involving a mental retardation diagnosis and evidence of sexual abuse. “We did substantive work,”



said Chicco. “I was kind of skeptical about getting anything done in five workdays, but we really did. And I learned a lot. It’s a complete immersion.”

Many students, said Franke, were surprised at how important their work was: “I put that as an incredibly good sign, one, that the organizations were actually utilizing the students but, two, showing that they really are in need of student help.”

Franke feels the ASB can make a dent in such overwhelming need. “Even outside of some natural disaster,” said Franke, “it’s extremely important for those of us who are going to hopefully assume positions of leadership and power in our country to understand...the legal struggles that many people are facing every day: a poor family in New Orleans trying to deal with insurance claims, or a legal resident challenging his detention or immigrant status, or somebody in the Bronx in need of civil legal services.” □ *Atticus Gannaway*



Molly Tack '09, left, and Katherine Stehle '08 meet with two displaced New Orleanians still residing in temporary FEMA trailers more than year and a half after Hurricane Katrina; on the streets of the Bronx Elizabeth Cate '08, T. Augustine Lo '08 and Erin Hanna '09, center, and Maria Campigotto '08 and Sydney Nash '09 take a break.



All the *Presidente's* Men

Before entering law school, Richard Brand broke a story with international political repercussions.

IN HIS PRE-LAW DAYS AS A REPORTER for *The Miami Herald*, Richard Brand '07 set out to write a positive “home-town hero” piece about the meteoric rise of Smartmatic, a local software start-up run by two Venezuelans. Smartmatic had then just beaten out several more experienced vendors to land a \$91 million contract with the Venezuelan government to supply voting machines for the upcoming recall referendum of President Hugo Chávez. Brand figured out something was amiss when he arrived at a tiny office in Boca Raton where a handwritten note taped to the door read “Please Knock.” While Smartmatic represented itself as a U.S.-based company, clearly its operations were located elsewhere.

Brand went to work: tracking down Smartmatic executives in Venezuela, pulling documents written in Spanish (he’s bilingual) buried in the bureaucracy of Venezuela’s commercial registries, and spending hours in the squat 1970s-era building that houses the National Electoral Council (CNE), sweet-talking secretaries to gain access and cultivating sources. “There wasn’t one Deep Throat,” he says, as his sources included a number of businessmen, Venezuelan government officials and a former operative of Venezuela’s intelligence agency who would fly from Caracas to deliver information to Brand at a Coral Gables restaurant.

In May 2004 Brand broke his front-page story. Smartmatic, which operated mainly out of Caracas, not Florida, appeared to

have had the inside track in obtaining the government contract. Smartmatic had partnered with Bizta, a tiny company founded by the same Venezuelan executives, which in the months prior to receiving the major contract had secretly sold 28 percent of its stock to the Chávez government. A pro-Chávez Science Ministry official sat on Bizta’s board of directors. Further, “Neither Smartmatic nor Bizta had ever performed an election,” says Brand.

After Brand revealed Venezuela’s investment in Bizta, the government divested its shares in the company. Chávez survived the August 2004 recall referendum amid accusations of election fraud by the opposition, and the story fell out of the U.S. news. Meanwhile Brand married a Cardozo law student, Samantha, moved to New York, and entered NYU.

Then in March 2005, flush with cash from its Venezuelan contracts, Smartmatic bought California-based Sequoia Voting Systems, a major U.S. e-voting manufacturer. “I was stunned to hear that a company with a controversial history and financial links to the Venezuelan government would be playing such a high-profile role in counting millions of U.S. votes without anybody looking into it first,” says Brand. In March 2006, he wrote an op-ed piece in the *Miami Herald* questioning whether Smartmatic’s purchase of Sequoia merited investigation: “Congress spent two weeks overreacting to news that Dubai Ports World would operate several American ports, but a better target

for their hysteria would be the acquisition by Smartmatic International of California-based Sequoia Voting Systems, whose machines serve millions of U.S. voters.”

In May 2006, Brand met with State Department officials interested in a briefing on Smartmatic. Congresswoman Carolyn Maloney wrote a letter to then-Treasury Secretary John Snow, attaching Brand’s articles as exhibits. Shortly thereafter, the Committee on Foreign Investments in the United States (CFIUS), the FBI and the IRS reportedly opened investigations into Smartmatic. By December 2006, Smartmatic had announced it would sell Sequoia Voting Systems in response to the investigations, but denied improper links to the Chávez government. “Obviously Smartmatic was unable to convince federal investigators that its ownership of Sequoia posed no risk to the security of our elections,” says Brand. “The pending sale is an important step in building the confidence of Americans in the electoral process.”

Brand’s firsthand exploration into a matter vital to our democracy has enriched the discussion in many classes. “Having a journalistic, deep investigation into the facts brought into the law classroom is illuminating,” says Richard Pildes, Sudler Family Professor of Constitutional Law. Pildes is an expert in voter rights law who taught Brand in his course, Law and Democracy, which addresses some of the very issues Brand has reported on. “The skills he uses, the investigative mind-set—really digging and uncovering facts, figuring how to get access to information—can serve someone well in his role as lawyer.”

Samuel Issacharoff, Bonnie and Richard Reiss Professor of Constitutional Law, an expert on the electoral process, and Brand’s independent research adviser, says: “Until the Florida election, we tended to think that the machinery of the elections was relatively technical and unimportant. Richard figured out that there was the possibility of using the new technology of computerized voting as a means to assure a preexisting set of results...and that the government of Hugo Chávez was neck-deep in moving into this brave new world.”

As a young reporter, “senators, ambassadors and mayors take your calls, and now they don’t anymore,” Brand says, describing the “byline withdrawal” he has experienced moving from journalism to the relative anonymity of law school, and on to join Cravath, Swaine & Moore in their corporate department. “But,” he says, “if ever there was a law school with more things going on in election law, it’s NYU.” □ *Jennifer Frey*

Speaking Openly About Spying

THE MEDIUM WAS THE MESSAGE LAST January as the Law School's student ACLU group hosted "Just Between You and Me—and the NSA?: A Town Hall Meeting on Domestic Spying, NSA Surveillance and the Rule of Law." Donna Lieberman, executive director of the New York Civil Liberties Union, said, "The fact that this event is taking place as a town hall meeting is not irrelevant. Everything the government is doing is secret and we wanted to give New Yorkers a free, open forum. We hope that everyone here will speak freely regardless of their views on these issues."

The six panelists were evenly divided between support and criticism of domestic spying. Century Foundation fellow Patrick Radden Keefe encouraged audience members to "not just take it blindly that these programs are going to make us safer.... If we are not careful, we will end up both less safe and less free." Ann Beeson, lead attorney in the ACLU's challenge to the NSA's warrantless wiretapping program, argued that warrantless surveillance is unconstitutional, as it violates the Fourth Amendment, and that the program expressly violates the Foreign Intelligence Surveillance Act of 1978, as well as the separation of powers doctrine.

But Timothy Bakken, professor of constitutional law at the U.S. Military Academy at West Point, said, "It is an open question whether the president has authority to engage in warrantless wiretapping for the purposes of national security." Andrew McCarthy, a former federal prosecutor who tried Sheik Omar Abdel Rahman, the mastermind of the 1993 World Trade Center bombing, said, "The main check on government power is political. If the political will was there, these warrantless surveillance programs would not be funded or the people voting for funding would be voted out of office." □



NYCLU Executive Director Donna Lieberman



A Web-Mistress of Laws

NYU student starts online forum for women in the legal world.

ALTHOUGH ANNA MACCORMACK '08 calls herself "feminist-minded," she says feminism wasn't a big issue in how she thought about her life. "Then I went to law school," she said.

Like many other female law students, MacCormack was troubled by the lack of gender equality that continues to pervade the legal profession. Women may account for more than half of all earned J.D.s, but they still only hold 17 percent of partnership positions at law firms, and a quarter of tenured law professorships. Conversations about "work-family balance" and questions about what to wear to interviews (Do I have to wear a skirt? Should I remove my wedding ring?) are common fodder on discussion forums catering to women in the law and in private conversations. Many women who had never before considered "women's issues" find themselves wondering what impact their gender could have on their legal career.

Instead of grappling with these issues silently or settling for commiseration with friends, MacCormack took action. She joined Law Women, an NYU School of Law student organization, and in her first few months as a member of the group received a letter from a Stanford law student proposing the creation of an online community for women in the law. At a conference on Stanford's campus in March of 2006, the Law Women members further crystalized the idea and worked out the details of a Web site intended to, as MacCormack put it,

allow "women in the law to be able to have all the conversations we have amongst ourselves on a much bigger stage."

A year later, MacCormack is editor-in-chief of Ms. JD (www.ms-jd.org), an online forum for women in all areas of the law. The tagline of the Web site, which officially launched in March 2007 at Yale's Legally Female conference, is "Changing the face of the legal profession." Indeed, the women of Ms. JD are revolutionizing traditional ways of networking, sharing experiences and promoting issues that concern women. The site is mostly in blog format, with law students, professors and practitioners writing op-ed-style posts that are open for comment. There is also a forum where readers can have conversations, as well as a calendar of relevant legal events.

The topics on Ms. JD are as diverse as the women posting. They range from sexual harassment to balancing motherhood with full-time enrollment in law school to options for part-time legal work to inspiring stories of women who have made breakthroughs in the legal world. Perhaps most important, Ms. JD connects women at all levels of the law and from all across the country, offering resources, communication and a sense of solidarity.

"It's sort of like sharing notes," said MacCormack, who is also editor-in-chief of the *Journal of Legislative and Public Policy*. She could have added that based on the tenor of Ms. JD's content, it's clear that the legal establishment will be put to the test. □

Coif Honor Society Inducts Alumnus Marvin Josephson

There are many ways to make successful use of a law degree, as attendees to this year's Order of the Coif ceremony realized when Marvin Josephson '52 received an honorary induction into the law school honor society.

Josephson, the founder of International Creative Management (ICM), one of the top Hollywood talent agencies, worked as an attorney for CBS before starting a talent management business in 1955. At the time he had only two clients: Charles Collingwood, a CBS newsman, and Bob Keeshan, aka Captain Kangaroo. Josephson helped Keeshan create his hugely successful children's program, and, through mergers, formed ICM in the 1970s. He remains chairman of ICM Holdings.

In more recent years, Josephson thrived as a literary agent for such luminaries



as Jimmy Carter, Henry Kissinger, Colin Powell, Norman Schwarzkopf, Margaret Thatcher and Barbara Walters; served on the Board of Overseers of the International Rescue Committee, and chaired Israel's 50th Anniversary Committee.

Josephson received a warm introduction from Dean Richard Revesz at the ceremony, which commenced with the reading of the new inductees' names by Oscar Chase, the Russell D. Niles Professor of Law and president of the Order of the Coif's NYU chapter. Members must be in the top 10 percent of their class in the sixth semester, and will graduate magna cum laude.

In his remarks Josephson reminisced about the job search that eventually led him away from major law firms to CBS, and the beginnings of ICM. He also recalled his law school days, or, rather, nights: he took evening classes to earn his LL.B., the equivalent of today's J.D. Josephson, who began his legal education at an Ivy League school, transferred to NYU at the end of his first year. "I recognized," he said with a grin, "that this was a superior law school."



NOVEMBER 14, 2006

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Scholarship Reception

BENEFICIARIES MEET BENEFACTORS
 1 Trustee George Lowy '55, with Lowy Scholars Jarrett Dickerson '09, Mark Chen '09 and Andrew Coombs '09, 2 John Carroll '80 with Jason Banks '09, the Clifford Chance Scholar within the AnBryce Program, 3 Trustee Warren Sinsheimer '57 and his wife Florence with Sinsheimer Public Service Scholar Russell Crane '09, 4 Trustee Leonard Wilf '77 with Wilf Tax Scholar Khashayar Haghgouyan (LL.M. '07), 5 Kit Sawers, executive director of the Bickel & Brewer Latino Institute for Human Rights, with Bickel & Brewer Scholars Thomas Fritzsche '09 and Melissa Navarro '09, 6 Trustee Norma Paige '46 with Paige Scholar Katie Reece '08, 7 Opperman Scholars Emily Wallace '09, Avon Khowong '09 and Nicholas Almendares '09 with Trustee Dwight Opperman.



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Remembering a Little-Known, Long-Forgotten Injustice

WHEN PRESIDENT BILL CLINTON appointed him as a circuit judge on the U.S. Court of Appeals for the Ninth Circuit in 1996, A. Wallace Tashima became the first Japanese American to sit on a U.S. federal appeals court. The irony is that when Tashima was seven years old, the U.S. government relocated him and his family from California to an Arizona internment camp for Japanese Americans. The Tashimas spent more than three years in the camp before being released at the end of World War II.

Despite Tashima's personal adversity, his main focus when he delivered the eighth annual Korematsu Lecture last April was not on Japanese Americans. In his speech, "American Abductor: The U.S. Government As Kidnapper," Tashima described a lesser-known injustice committed during the war: Not only did the United States intern its own citizens, but it also

forced the extradition and imprisonment of thousands of Latin American residents of Japanese ancestry.

Roughly 2,300 Japanese Latin Americans were interned in U.S. camps after being removed from their countries by the U.S. government. Tashima called their experience "Kafkaesque." The detainees, brought to the U.S. against their will, were deemed illegal entrants with no right to remain, but neither could they leave. At the war's end, many Japanese Latin Americans were sent to Japan, rejected by the countries that had turned them over to the U.S. Some detainees remained in the U.S., waiting years to resolve their immigration status.

The Civil Liberties Act of 1988 granted \$20,000 to surviving Japanese American detainees, but excluded prisoners who had not been U.S. citizens when detained. Japanese Latin Americans eventually settled a



class-action suit for \$5,000 per detainee, but there has never been a full accounting of their internment.

A bill in committee in the House of Representatives would create a commission to pursue such an accounting. "A full report by such a commission," said Tashima, "would go a long way toward alerting Americans about how our own government can make the most serious mistakes, and of the need for eternal vigilance to prevent those mistakes from being repeated." □

Sheinberg Lecturer Puts Race on the Table

JUST ONE WEEK AFTER RADIO TALK SHOW host Don Imus was fired for making racially charged comments about the Rutgers women's basketball team, Eva Paterson spoke of "Putting Race Back on the Table" during the 13th annual Rose Sheinberg Lecture on April 11. Paterson is the president and co-

contested Proposition 54, which would have prevented the state from recording racial data. Such a ban, Paterson's group convinced voters, would hamper medical research and efforts to improve education.

Paterson's message during the lecture was simple: "Race must be talked about."

She cited the famous 1940s "doll-baby experiment" in which black girls expressed a preference for white dolls—interpreted by researchers as confirmation of the harmful effects of segregation—as evidence that was crucial to attaining the landmark desegregation decision in *Brown v. Board of Education*. She hopes that today, similar social-science research on unconscious bias can be done in order to redefine discrimination.

Paterson has set her sights on overturning the intent standard in *Washington v. Davis* that requires plaintiffs to prove they were discriminated against due to "racial animus." She argued that social-science

research into, for example, job applications and medical interventions, shows how unconscious biases lead to discriminatory treatment. The intent standard from *Davis* fails to root out this kind of discrimination because "if you asked [the people involved] if they are racist," Paterson said, "they would say absolutely not."

Drucilla Ramey, executive director of the National Association of Women Judges, introduced Paterson, calling her "an indefatigable defender of affirmative action." Ramey recalled highlights of Paterson's record, including the live debate she had with Spiro Agnew on television when she was 20 years old, as well as her many successes during 26 years working at the Lawyer's Committee for Civil Rights. Ramey's sharply funny introduction included some lighter observations from the pair's long friendship, such as remembering a favorite T-shirt of Paterson's that reads "Of Course I'm Tired, I've Been Black All Day!"

Paterson "has been integral in every civil rights issue," said Alexis Hoag '08, who was on the committee that selected Paterson to be the Rose Sheinberg Scholar-in-Residence, a one-day commitment to informal discussion and classroom teaching. "She is a legend in civil rights in California." □



founder of the Equal Justice Society, a national organization dedicated to advancing racial justice through progressive law and policy. Her efforts were instrumental three years ago in defeating California's hotly



NYU Wins Dean's Cup in Nail-Biter

NYU SHRUGGED OFF A LATE COMEBACK from Columbia to win 68-65 in the final minute of the dramatic sixth annual benefit basketball game. Down a dozen points midway through the second half, the Lions rallied and eked out a lead. But Violet Jan-Philip Kernisan '09 put a lid on Columbia's efforts by scoring four points before the buzzer.

NYU was denied a sweep, however, when the faculty team lost its 10-minute halftime game, 7-6.

This year's event raised \$105,000 to support summer internships. The money will be shared evenly by Columbia's Public Interest Law Foundation and NYU's Public Interest Law Center. □



Cold Call M for Murder

"By far the best thing to come out of law school!"

— Michael Soutar '07

"Fantastic. A masterpiece. Final evidence of the superiority of the U.S. legal education."

— Andrea Zorzi (LL.M. '07)

"Kudos to everyone involved... You all should be excused from your exams!"

— Raphael Parker '08



RAVE REVUE Audiences thrilled over this year's student-produced musical parody, *Cold Call M for Murder*.



PAINT-FOR-NUMBERS Infranca assists Revesz

A Fetching Work of Art

After the last paddle came down, the organizers of the Law School's 13th Annual Public Service Auction last March began counting the donations.

And kept counting!

Munificent donors gave \$170,000, blazing past 2006's haul of \$139,000. Nearly 300 students will benefit from the sum, which provides grants to all J.D. candidates who choose to spend their summers doing public service legal work in the U.S. and abroad that would otherwise be unpaid.

"A large part of the \$30,000 increase came from our Law Firm Committee," said David Edwards '08, who co-chaired the auction with John Infranca '08. "We emphasized to firms that for every \$4,000 they donated, one student would receive a full grant." Seven firms met that sum, and one, Kramer, Levin, Naftalis & Frankel, doubled it.

The items in the silent and live auctions ranged from big-ticket splurges (vacations to Jamaica and Hawaii) to hard-to-score treats (tickets to an NCAA "Elite Eight" basketball game). The highest bid of the evening's live auction—\$6,500—procured a stunning double-strand pearl necklace.

After years of having pies thrown in his face or competing in feats of physical prowess, Dean Richard Revesz found a more right-brained way to contribute. Channeling artists Peter Max, Jackson Pollock and his second-grade art teacher, Revesz created an impromptu "post-post-modern" painting with brushes, rollers, fingertips and a palette of colors not found in nature.

Emily Kindler '09 bid \$350 for the Revesz masterpiece, which will have an entire wall to itself in her apartment. "This might inspire me to start collecting artwork composed by law school deans," Kindler said, adding, "It will probably be a small collection."

Fall Ball

NOVEMBER 2, 2006



Spring Fling

APRIL 8, 2007



Barristers' Ball

MAY 9, 2007



Moot Is the Point: NYU Talks Its Way to the Top



BENCH AND BAR Lawn, Karas, Mandelsohn, Tatel, DeCinque, Duncan and Badlani

Marden Moot Court Turns Political

PARTISAN POLITICS WAS ON THE DOCKET at the 21st annual Orison S. Marden Moot Court Competition. The case, written by Colin George '08 and Matthew Lippert '08, concerned three petitioners who attempted to create a ballot initiative reforming electoral vote apportionment in the fictional state of Scrantin. After the plaintiffs collected enough signatures to get an initiative on the ballot in the next general election, the Scrantin state legislature amended the state constitution to stipulate that ballot initiatives concerning electoral vote apportionment require a supermajority, rather than a simple majority, in order to pass. Claiming that their First Amendment rights had been violated, the petitioners went to district court, and, after losing there, appealed on the grounds that the trial judge

had not applied proper scrutiny to whether ballot initiatives are speech, and had erroneously concluded that individuals affiliated with a specific political party are not a protected class.

In the end, a distinguished bench, consisting of Judge Allyson Duncan of the U.S. Court of Appeals for the Fourth Circuit, Judge Kenneth Karas of the U.S. District Court for the Southern District of New York and Judge David Tatel of the U.S. Court of Appeals for the District of Columbia Circuit, sided with the plaintiffs, declaring petitioners' cocounsel Chirag Badlani '08 and Julie Mandelsohn '07 the winning team. The Best Oralist Award, however, went to respondent Anthony DeCinque '08 (Alan Lawn '08 was his cocounsel), making the honors appropriately bipartisan. □

A Winning Season

The team of Brian Crow '07, Shaneeda Jaffer '07 and Kartik Venguswamy '07 reached the quarterfinals of the **57th Annual National Moot Court Competition**. In the earlier New York regional round, Venguswamy garnered the Best Oralist honor.

Vilas Dhar '07, Rachael McCracken '07, James Medek '07 and William Newman '07 earned first, second, honorary mention and third place oratory honors, respectively, at the **Philip C. Jessup International Law Moot Court Competition, Atlantic Regional**, on March 19.

Michael Robotti '08 and Lee Turner-Dodge '08 took first place at the University of Wisconsin Law School's **Evan A. Evans Constitutional Law Moot Court Competition** on March 25. Daniel Samann '07 coached.

Jonathan Davis '08 and Jonathan Herczeg '08 took top honors at the third national **UCLA Sexual Orientation Competition** on February 24. Sam Castic '07 coached.

NYU's Moot Court Board hosted for the second year in a row the **Immigration Law Competition**. Heather Keegan '07 and Vilas Dhar '07 ran the competition, while Julia Furna '07 and Andrew Hodgetts '07 created the problem. Teams from 10 schools argued before Kermit Lipez of the U.S. Court of Appeals for the First Circuit, Stanley Marcus of the U.S. Court of Appeals for the Eleventh Circuit, and Juan Osuna, acting chairman, Board of Immigration Appeals.



IMMIGRATION LAW Jaime Lubbock '07, chairperson of the 2006-07 NYU Moot Court Board, above at left, with Keegan, Lipez, Marcus, Osuna and Dhar

INTERNATIONAL LAW Newman, Medek, McCracken and Dhar

Front-Page Issues Freely Debated at Annual Spring Symposia



Gina Magel '07, Daniel Freifeld '08 and Tanin

The Mirage of the State: Fragmentation, Fragility, and Failure, and the Implications on Law and Security

The 11th Annual Herbert Rubin and Justice Rose Luttan Rubin International Law Symposium—*Journal of International Law and Politics*

BLAME FOR 9/11 HAS FOCUSED ON HOW THE FAILED STATE OF AFGHANISTAN CREATED an opportunity for al Qaeda to gain power. Scholars and practitioners discussed a holistic evaluation of state failure stressing the causes and consequences of state failure, the implications of state weakness on international legal and political norms, and potential policy solutions to address future crises and threats to global security. His Excellency Dr. Zahir Tanin, permanent representative of Afghanistan to the U.N., gave the introductory address on how the most important issue facing Afghanistan is rebuilding security: “A state can only succeed if it has a monopoly on legitimate physical force within its borders. When this is broken...the very existence of the state becomes dubious, and it becomes a failed state.” □

The Uncertain Landscape of Election Law

—*Annual Survey of American Law*

Discussions ranged over campaign finance law and the future of spending constraints in the aftermath of *Randall v. Sorrell*, the Supreme Court ruling which struck down state law contribution limits; partisan redistricting; voting access, and the integrity and trustworthiness of the democratic process. Former New York City Mayor Ed Koch '48, who was attending to earn CLE credits, spoke informally during lunch about his own electoral experiences.

The Future of American Legal Practice in the Regulation and Business of Greenhouse Gases

—*Environmental Law Journal*

How will market-based mechanisms for the regulation of greenhouse gases develop in the United States? Academics and experts offered their views on the transactional legal aspects of various approaches and debated lessons learned from the European Emissions Trading Scheme to the development of U.S. carbon markets.

The United Nations and Three Challenges of the 21st Century: Peace and Security, Promotion of Human Rights and Reduction of Poverty

—*International Law Society*

In his keynote address, former U.N. Undersecretary-General Shashi Tharoor passionately defended the U.N. as the world's best answer to a coordinating authority and peacekeeper: “The most prominent example of a territory being administered after a conflict, namely Iraq, didn't come to the U.N. But it actually helps demonstrate why the U.N., in some ways, is a better bet, because the countries that lead military operations are not always the best-equipped thereafter to run the peace that follows.”

In other panels, Jacques Baudot, former U.N. controller; Charles McNeill, environment program manager of the U.N. Development Program, and Ambassador Richard Miller, U.S. representative to the U.N. Economic and Social Council, discussed “Poverty, Disease and the Environment: Reforming the U.N.'s Development Agenda”; Amnesty International's U.N. representative

Yvonne Terlingen and China's deputy representative to the U.N. Ambassador Liu Zhenmin discussed “What Reforms Would Enable the U.N. to Better Prevent and Respond to Violations of Human Rights?”

Current Issues in Executive Compensation—

Journal of Law & Business

Martin Lipton, managing partner of Wachtell, Lipton, Rosen & Katz; Melvyn Weiss, managing partner of Milberg Weiss & Bershad; and Justice Jack Jacobs of the Supreme Court of Delaware discussed the role of the courts in executive compensation. Other panels discussed the roles of regulators and market participants.

Behavioral Law & Economics' Challenge to the Classical Liberal Program—

Journal of Law & Liberty

Should government policies strive to correct flaws in perfect reasoning? Academics weighed in: Susan Block-Lieb of Fordham Law School and Edward Janger of Brooklyn Law School argued that recent bankruptcy reform laws were based on the erroneous idea that borrowers behave irrationally. Alafair Burke of Hofstra Law School suggested counteractions for the “guilty” bias in prosecutors.

Alternatives to Mass Incarceration—

Review of Law & Social Change

The failures of mass incarceration were established at the outset, followed by “Exploring the Viability of Alternatives in Practice” and “Domestic Violence and the Criminal Justice System: A Feminist Debate,” in which Linda Mills, professor of social work at NYU, and New York Assistant District Attorney Audrey Moore debated effective responses to intimate crimes.

Immigration Reform: Balancing Enforcement and Integration—

Journal of Legislation and Public Policy

To craft immigration policy, President George W. Bush has said, is to battle competing desires “to be a lawful society and a welcoming society at the same time.” Both goals—and their attendant issues—were discussed. University Professor Marcelo Suarez-Orozco, codirector of the NYU Institute for Globalization in Metropolitan Settings, said in his keynote address: “Immigration has been implicit in every single turn of American history.” The economic claims against immigration today are “anemic” at best. “Values and worldview should be more prominent” in the debate. □

Student Scholarship

Justice Delayed Need Not Be Justice Denied



BY KATHLEEN O'NEILL

Kathleen O'Neill '06, who has lived in Germany, Honduras, Bolivia and Colombia, earned a Ph.D. in political economy and government from Harvard University in 1999 and was an assistant professor of government at Cornell University before entering the NYU School of Law in 2003. During her second year, she became interested in transitional justice, which "asks how to accomplish justice in the context of a nascent democracy—a confluence of issues in which my interest in law and my training in political science naturally overlapped." O'Neill began developing a series of papers that probe the relationships between

various approaches to transitional justice. In this paper, she questions the frequent opposition to amnesty and prosecution in the transitional justice literature, arguing that amnesties granted early in a transitional justice process may give way to prosecutions in the longer run. O'Neill, who was a Furman Scholar with a full-tuition merit scholarship, won the Jerome Lipper Prize for outstanding work in the field of international law and was the senior articles editor for the Journal of International Law and Policy. This past year she clerked for Judge Kermit Lippez of the U.S. Court of Appeals for the First Circuit.

THIS PAPER ADDRESSES THE CENTRAL dilemma of transitional justice: how countries emerging from a period of major human rights abuses can address past violations (provide "justice") while simultaneously consolidating a new government based on the rule of law when the outgoing regime retains a great deal of power and may respond to any thoroughgoing prosecutions with a call to arms. In particular, I argue that the transitional justice scholarship has focused too narrowly on the initial decisions of transitional administrations, missing the dynamic nature of transitional justice processes over time. The central innovation is the concept of "eventual prosecution," referring to a process in which initial amnesties are followed by truth commissions, and the later prosecution of perpetrators. Eventual prosecution is possible where the ability of perpetrators to credibly threaten a return to power wanes over time, while the desire of victims and their supporters for justice holds relatively steady or increases. It is important to note that this describes only a subset of the cases in which questions of transitional justice arise. This paper makes a theoretical argument for eventual prosecution and also considers the conditions under which it is likely to occur.

I argue that eventual prosecution may provide another model for navigating the treacherous shoals where prosecution and democratization collide by taking prosecution off the agenda during the earliest phase of democratization, yet reintroducing it when there is more stability and perhaps more bureaucratic capacity to pursue prosecution. For empirical grounding, this paper leans heavily on the experiences of Argentina and Chile—two countries that have, in recent years, begun to prosecute human rights abuses from previous authoritarian regimes (1976-1983 and 1973-1990, respectively)—and Brazil and Uruguay—two neighboring countries that, while they experienced similar human rights abuses (1964-1985 and 1973-1985, respectively) under authoritarianism, have not moved toward prosecutions.

WHAT IS EVENTUAL PROSECUTION?

The concept of eventual prosecution recognizes that the choice of whether or not to prosecute is not only taken immediately after the perpetrators cede power, but is also revisited in future time periods. As society becomes more confident that any resistance from the perpetrators is unlikely to destabilize the new regime, the benefits of prosecution to the society begin to outweigh the costs of risking retaliation.

ADDRESSING ARGUMENTS AGAINST DELAYING PROSECUTION

In situating eventual prosecution within the set of choices faced by an incoming regime, it is important to remember what other options are available. As anyone examining these questions inevitably learns, transitional justice is a study in second-best options. While those who favor prosecution for moral reasons would like to see prosecutions occur immediately and on a grand scale, such a response is rarely possible. In fact, the one country in this region that attempted early prosecutions—Argentina—was ultimately unsuccessful, as the military's resistance terrified the population into ending the prosecution process and, eventually, led to a blanket amnesty and the pardon of the few officers who had been convicted for their crimes during authoritarianism. Moves toward prosecution in other countries, as in Uruguay, met with similar resistance; moreover, neighboring countries in the region learned from Argentina's experience without having to repeat it. By delaying prosecution until military power is weaker, countries like Argentina and Chile have allowed democracy to consolidate and the judiciary to gain

to amnesty and so these can be prosecuted without requiring a great deal of creativity.

Amnesty also affects who will be prosecuted. Ideally prosecutors would target perpetrators based on the severity of their crimes; however, amnesty laws limit prosecution of those whose crimes are not covered by amnesty, and these may not be the worst offenders.

Second, the delay in prosecutions means that many victims may die before their tormentors are brought to justice and—as Pinochet's recent death underscores—many perpetrators may die without an official reckoning for their past crimes. Again, the appropriate comparison is to determine whether or not the victims could have received compensation within their lifetimes without risking a recurrence of human rights violations.

BENEFITS OF DELAYED PROSECUTION

Given its limitations, why pursue prosecution once it is politically possible? Prosecutions may help establish a valid historical record. Using the law as an instrument of justice may also help to reinforce the rule of law as the primary method of redress within a

not covered by amnesty since 1999. In Argentina, the legislature with the support of the president repealed the amnesty laws entirely in 2003, allowing prosecutions against perpetrators to multiply. Compare these two countries with those where prosecutions have been further delayed or avoided altogether: Uruguay, which falls into the former category, was thwarted by potent amnesty laws; Brazil, which falls into the latter category, has not extended its efforts beyond victim reparations legislated in the 1990s. Because of the very few cases analyzed here and the wide variety of factors that differ across these cases, this discussion is meant to be suggestive rather than definitive.

Existing studies show the lack of a clear correlation between eventual prosecution and (1) the overall level of atrocities, (2) the relative strength of the incoming regime compared to the outgoing one; or (3) the strength of victims' and human rights groups.

My own analysis suggests that eventual prosecution is most likely when the human rights violations of the previous regime are not overshadowed by more recent human rights violations; where international media attention is focused on the crimes of past leaders—for instance through attempts to bring them to justice in the international community; where amnesties are seen as largely illegitimate and therefore susceptible to circumvention; and where prosecution can be linked to current problems of the democratic regime to create political popularity for the politicians leading the charge against the previous regime.

CONCLUSION

This analysis suggests that reformers in new democracies should think not only of the past when forming transitional justice policies, but of the future as well, because early decisions affect the array of options available later in the process. As the experiences of these countries illustrate, pushing for the maximum level of redress early on may restrict later possibilities: Argentina's strong push toward prosecution led to sweeping amnesty laws that might not have been necessary and later restricted the categories of crimes that could be prosecuted; attempts to repeal an initial amnesty law in Uruguay led to the passage of a more capacious amnesty law. At the same time, early decisions sometimes open opportunities to later administrations, e.g., truth commissions and nongovernmental fact-finding reports have proven useful in domestic and international attempts to prosecute particular members of the former regimes. □

Delayed prosecution signals to future leaders that, while it may take some time, massive human rights abuses may eventually be punished.

both independence and confidence that its actions will not be met with reprisals. This is not a wholly costless choice, however.

COSTS OF DELAYED PROSECUTION

At least two questions loom large in assessing the merits of delayed prosecutions: (1) how does amnesty affect which crimes and which perpetrators are prosecuted?; and (2) how does delay affect victims? In both Argentina and Chile, amnesty laws created a strong barrier to actionable claims. However, prosecutors have found innovative ways around these amnesty laws. For example, the amnesty laws in Argentina and Chile did not cover kidnapping and, since many of the casualties of the authoritarian period were "disappeared," those cases could be prosecuted under kidnapping. Additional crimes, like the taking of children from mothers during their captivity in authoritarian detention centers, are also not covered under the amnesties. Finally, crimes against humanity are never subject

consolidating democracy. In addition, prosecutions—even delayed ones—may deter future human rights violators. Deterrence is a tricky issue, however. On the one hand, eventual prosecution signals to future leaders that, while it may take some time, massive human rights abuses may eventually be punished. On the other, members of future repressive regimes may simply demand a more carefully crafted amnesty law to limit their susceptibility to prosecution. In a sense, eventual prosecution may lead to an "arms race" on both sides, as perpetrators demand more detailed amnesty laws and plaintiffs' lawyers attempt to wring from ambiguous language a justification for prosecution.

UNDER WHAT CONDITIONS IS EVENTUAL PROSECUTION LIKELY?

Having made the case for eventual prosecution, I explore the conditions under which it is most likely to occur by comparing cases where prosecutions have been undertaken. In Chile, prosecutors have pursued claims

Four Arguments for Expanding the Transnational Scope of Patent Law



BY MELISSA FEENEY WASSERMAN

A love of science combined with a curiosity about innovation policy led Melissa Wasserman '07 to focus her research in intellectual property. "One reason why I find patent law so interesting is that every time a new field of technology is developed, we are left asking if this new technology should be patentable and, if so, does current patent law adequately protect the incentives to innovate?" she says. This paper addresses the latter question with respect to networking and telecommunications. Published in the April 2007 issue of the NYU Law Review as "Divided Infringement: Expanding the Extraterritorial Scope of Patent Law," this note has won the grand prize in the Seventh Annual Foley & Lardner Intellectual Property Writing Competition and won the 2006 George Hutchinson Writing Competition. Wasserman earned a Ph.D. in chemical engineering from Princeton University in 2004 before entering the NYU School of Law, where she was articles editor of the Law Review and a recipient of the Finnegan Henderson Diversity Scholar-

ship. She is currently serving as a law clerk to the Honorable Kimberly A. Moore of the U.S. Court of Appeals for the Federal Circuit.

PATENT LAW HISTORICALLY HAS been territorial in nature. U.S. patents do not protect against the manufacture, use or sale of inventions outside the United States. However, technology is not easily contained within national borders. In particular, networking technology allows one to reap the benefits of a patented invention within the United States but practice all or part of the invention outside its borders. Thus, because of the territoriality of U.S. patent laws, unauthorized practice of a patented invention across national borders, which I refer to as divided infringement, is not actionable under U.S. patent law. Furthermore, no country's patent law may cover the infringer's activity, even if the inventor owns patents in each relevant country. The result is a legal no-man's-land:

a patented invention is being infringed, but no country's laws give rise to liability. Potential infringers who take advantage of this legal gap are able to circumvent patent law.

While it has always been possible to evade the patent system in this manner, it was not until recently that this questionable behavior has presented a real threat for patent holders. The advancement of networking and communications technology now make it possible to transmit information across national borders cost-efficiently. Before the advent of the computer network, evasion of the patent system seldom occurred because sending part of a patented process or method offshore was prohibitively expensive. Now, would-be infringers can practice an invention in multiple jurisdictions, reap the returns of a market, and escape patent infringement liability in each relevant jurisdiction. As one would expect, we have seen a dramatic increase in the practice of divided infringement over the last several decades.

While the overall trend has been to expand the transnational nature of patent law, the recent extraterritorial expansion of patent law does not go far enough. In particular, there are still a number of ways to evade the patent system and escape liability for divided infringement. I offer a number of normative justifications for expanding the transnational scope of patent law.

First, the primary purpose of patent law, to "promote the Progress of Science and useful Arts," is being thwarted by the current limited transnational reach of U.S. patent law. An inventor receives a patent as a quid pro quo for disclosing a new invention. Congress decided that in return for the disclosure of a novel, nonobvious, and useful invention, the inventor receives the right to exclude others from practicing the invention for a period of years. If a potential infringer can escape liability by placing part of the invention in another jurisdiction, this prevents the patentee from garnering the financial rewards associated with her exclusive rights. If divided infringement stunts the economic impetus to innovate, inventors will turn their focus to developing inventions that cannot be easily distributed among multiple countries. The result will be a skew in innovation.

Software and network-dependent fields will lag behind other fields whose inventions can more readily be contained within national borders.

Second, encouraging innovation is not the only consideration when expanding the transnational scope of patent law. As with any extraterritorial application of U.S. law, comity concerns arise. The major comity concern with the expansion of the extraterritorial scope of patent law is allowing something that is the public domain (not patentable) in one country to be actionable (or give rise to patent infringement) in another country. Countries are concerned that allowing this type of liability will result in a chilling of innovation within their borders. The United States is a party to a number of bilateral or multinational intellectual property agreements that enable each participating country to control its own affairs, including what is public (not patented) and what is private (patented) within its territorial borders.

Nonetheless, expansion of the extraterritorial scope of patent law does not necessarily violate principles of comity; rather, it can be consistent with them. The limited extranational application of U.S. patent law can prevent the circumvention of U.S. law without adversely affecting the incentives to innovate in foreign countries. A would-be infringer who circumvents the U.S. patent system is preventing the U.S. patentee from receiving her full scope of return of the American market. A patentholder who seeks enforcement of a U.S. patent presumably seeks a remedy within the United States. The expansion of the extranational scope of patent law in this case does not breach the spirit of the bilateral or multinational intellectual property agreements the United States has adopted with other countries. These agreements normally account for national treatment of intellectual property law under which patent holders enjoy rights regardless of the inventor's citizenship. When the harmful effects of divided infringement are largely limited to the U.S. market and its patentholders, however, the concerns of other countries will likely be minor.

This is not to say that the other countries have zero interest in the extraterritorial application of U.S. patent law. However, from the point of view of patent law, the issue is not whether another country has any interest but whether the enforcement of a U.S. patentee's rights affects the purpose of the other country's patent system by preventing that country's patentee from garnering the financial rewards of that

country's market. Every extraterritorial application of U.S. law will affect another country; the question with respect to divided infringement is what effect or interest is most important in relation to patent law and its policies and purposes. With respect to divided infringement, the focus should be on whether patentees are receiving their full financial awards of the market in which they hold a patent.

Third, the transnational application of certain inventions is oftentimes intentional. For example, the radio navigation system at issue in *Decca* lacked utility unless at least one station was outside the territorial boundaries of the United States. Therefore, it would have been impossible for the inventor to draft claims that only referred to domestic activity yet still satisfied the utility requirement of the Patent Act. In addition, the extranational application of

to the evolution of technology than trademark and copyright law. Patent law must constantly evolve to keep pace with emerging technologies, whereas the connection between trademark and copyright law and science is more tenuous. There are numerous instances where Congress or courts have expanded the scope of patent law to account for new technologies. For example, the breadth of patentable subject matter often expands to incorporate new fields of science. Today, an inventor can obtain a patent on biological materials, business methods, and software. Thus, as progress in science has caused the courts to expand the scope of patentable subject matter, it should also be the impetus behind expanding the transnational effect of patent law. The last Supreme Court case interpreting the direct infringement statute of the Patent Act was in 1971. At that time, the Court did not have

While patented goods were historically easier to contain within the United States, the advancement of networking and communications technology has destroyed this presumption.

many networking-dependent inventions is inevitable. For example, the Blackberry system in the *NTP* case transmits information across borders and would do so even if the relay station were located within the United States.

Finally, other areas of intellectual property law, such as trademark law and copyright law, are also drifting toward greater extraterritoriality. It is not surprising that trademark law was the first intellectual property regime to have its transnational scope expanded. Trademark law focuses on the reputation of the trademark holder and the *Bulova* court must have realized that it is very difficult to localize the reputation and trademark of goods that are known internationally to one specific jurisdiction. However, while patented goods were historically easier to contain within the United States, the advancement of networking and communications technology has destroyed this presumption. Therefore, the localization of patented goods is becoming as difficult as the localization of the reputation of a trademark.

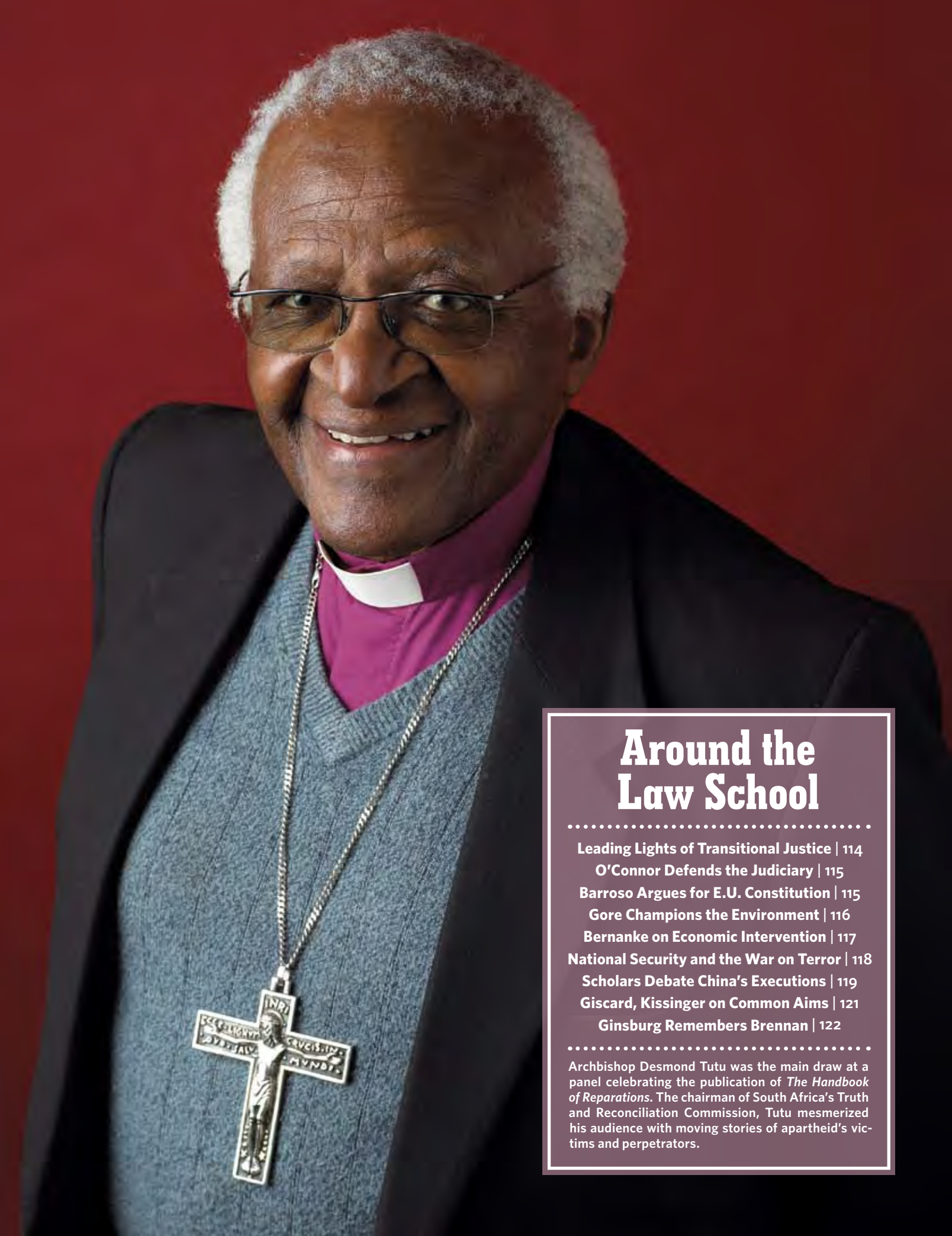
Several differences between trademark, copyright and patent law support the expansion of the extraterritorial reach of patent law. First, patent law is linked more closely

to face technology that infringers today easily use to thwart the patent system. As technology evolves, so too must U.S. patent infringement law, otherwise we risk jeopardizing the purpose of the patent system.

The second difference between trademark law and patent law is that, in contrast to patent law, trademark protection has no expiration. The law protects a mark as long as the mark is in use. The limited tenure of patent rights should cut in favor of extending extraterritorial protection to acts occurring outside the United States.

In sum, there are many reasons to expand the transnational scope of patent law. Some arise from the similarities and differences between patent law and other areas of intellectual property law that have greater extraterritorial application. Others highlight policy considerations, such as incentives to innovate, while some account for the reality that a number of inventions are made specifically to cross national borders. However, all suggest that the current limited transnational reach of patent law falls short. □

The author gratefully acknowledges the assistance of Professors Rochelle Dreyfuss and Harry First.



Around the Law School

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Archbishop Desmond Tutu was the main draw at a panel celebrating the publication of *The Handbook of Reparations*. The chairman of South Africa's Truth and Reconciliation Commission, Tutu mesmerized his audience with moving stories of apartheid's victims and perpetrators.

The Study of Moving On

Desmond Tutu and others on the value of transitional justice.

FROM THE MAJOR WARS OF THE LAST century to the scores of regional conflicts now simmering or only recently interrupted, the modern world is no stranger to W.B. Yeats's "blood-dimmed tide" of anarchy and upheaval.

But few witnesses can offer a more compelling vision of what the worst of humanity has to offer than Benjamin Ferencz, who was only 27 years old when he opened the prosecution's case in the Nuremberg Trials at the conclusion of World War II.

Ferencz told the jury then that the recently defeated Nazi regime represented the worst of mankind, but said the international legal system was prepared to set things right. "This was the tragic fulfillment of a program of intolerance and arrogance," he said. "Vengeance is not our goal. Nor do we seek merely a just retribution. We ask this court to affirm by international penal action man's right to live in peace and dignity regardless of his race or creed. The case we present is a plea of humanity to law."

Those words echo back, half a century later, as the international legal system continues to hear humanity's plea. They also serve as the anchor for a growing discipline of transitional justice, made up of practitioners, lawyers and academics who insist on finding justice in the wake of war, revolution or other political upheaval.

Ferencz, now 87, diminutive but with a lively mind, joined a chorus of titanic names from the field of transitional justice who visited the Law School in 2006-07 to take part in separate events that drew attention to this burgeoning field. Ferencz was one marquee name attached to the conference, "From Nuremberg to Africa: The Evolution of Accountability and Recovery from Conflict," organized by the American Bar Association's Section of International Law, formerly chaired by Michael Byowitz '76, and the Association of the Bar of the City of New York. Other speakers included Judge Theodor Meron of the International Criminal Tribunal for the Former Yugoslavia, who is also Charles L. Denison Professor of Law Emeritus and Judicial Fellow at the NYU School of Law; Professor David Crane, former chief prosecutor for the Special Court for Sierra Leone, and Paul van Zyl, program director of the International Center for Transitional Justice (ICTJ) and adjunct professor at the Law School.

Van Zyl is the bridge between the Law School's Center for Human Rights and Global Justice (CHRGJ) and the ICTJ. That partnership has produced an upper-level seminar for both third-year law students and LL.M. candidates, and is designed to prepare students to use the law to restore order, and seek justice, for nations or regions emerging from periods of injustice.

The CHRGJ and ICTJ sponsored appearances by two other heavy hitters in the field, including Louise Arbour, the United Nations High Commissioner for Human Rights, who in her speech cautioned that transitional justice needs to be about more than restoring order and establishing legal or political justice: "It must reach to, but also beyond, the crimes and abuses committed...into the human rights violations that preexisted the conflict and caused, or contributed to it." Too often, she said, political and legal rights are held distinct from the social, economic and human rights without which no lasting justice can be obtained. These are values she brings to a host of challenges as she confronts the fragile state of affairs in places like the war-torn Democratic Republic of the Congo and attempts to hold the government of Ethiopia to account for human rights violations.

If, as Arbour recalled, the Nuremberg Trials serve as the pillar for the field of transitional justice, one of its modern innovations has been the South Africa Truth and Reconciliation Commission, which organized confessional hearings widely regarded as having helped heal the wounds of generations of apartheid. President Nelson Mandela appointed Archbishop Desmond Tutu to chair those proceedings, which stretched from 1995 through 1998.

In October, Tutu appeared at the Law School to celebrate the publication of the *Handbook of Reparations*, edited by Pablo de Greiff, research director of the ICTJ, and featuring a case study on 9/11 reparations coauthored by Bonnie and Richard Reiss Professor of Constitutional Law Samuel Issacharoff.

In his very personal remarks, Tutu lauded the commission for its efforts to "recognize [victims] for the suffering that they endured." But he also expressed deep regret over its biggest—in his view—flaw: that it could grant amnesty but could only suggest reparations. "We in South Africa were extremely mean and incredibly ungenerous," Tutu said in characterizing the average compensation of about \$3,800—less than one-quarter of what the commission recommended—that victims received from the South African government.



Crane with Ferencz, top; Arbour

South Africa has nevertheless emerged from darkness and moved forward, which was the key goal, said Van Zyl, who was the commission's executive secretary. "Part of why I think transitional justice is so essential to study is that the world often presents you with a false choice—that at a moment of transition, we must confront the legacy of past abuse or move forward," Van Zyl said. "But I think in fact that is not the operative choice. The reality is you can either develop a proactive and constructive set of policies to confront a legacy of abuse, or the past will come and confront you, and it will do so on terms of its own choosing." □ *Michael Lindenberger*



An Independent Judiciary

O'Connor speaks out against those who threaten judges.

RETIRED SUPREME COURT JUSTICE Sandra Day O'Connor visited the Law School last fall to celebrate the formal dedication and renaming of the Dwight D. Opperman Institute of Judicial Administration (IJA). She and IJA Executive Codirector Oscar Chase, Russell D. Niles Professor of Law, discussed "The Importance of Judicial Independence."

As the first woman confirmed to the U.S. Supreme Court, O'Connor has been scrutinized and second-guessed. Often characterized as the "swing vote," she remained resolutely principled and pragmatic, and exhibited an independent judicial streak.

Now that she has retired, it is fitting that she has applied herself to protecting the independence of the judiciary, which she persuasively argues is under attack. During the conversation with Chase, O'Connor ventured opinions as to what is fostering this antagonism and how the imperiled third branch of government might be protected.

"Angst about judges," as O'Connor called it, seems to be encouraged by those who believe that judges should be political, instead of serving as checks and balances for the legislative and executive bodies.

The justice ticked through a list of state actions that she felt impinged upon the

independent nature of the judicial branch. Judicial elections topped her list of threats to independence. Colorado, for example, has cut the terms of appellate judges in half so elections and reshuffling occur more often to suit political groups' agendas. "Our country can do better on judicial selection," O'Connor said. Most disturbingly, however, she cited JAIL 4 Judges, the purposefully menacing name for a California-based interest group that had placed on South Dakota's November ballot an amendment that would eliminate judicial immunity and allow judges to be censured. Judges could even be subjected to jail time for making "wrong decisions." It was overwhelmingly rejected by voters.

What can be done to defend the judicial branch and to combat the stripping away of its equal standing with the legislative and executive branches? Bring back civics class, said O'Connor. She believes that ignorance of how our government works is the root of the problem: Only one-third of Americans are aware of the judicial branch, she noted. "No one knows what we do," she said.

O'Connor seemed confident that a review of the Court's historic cases would demonstrate the value of independence. Take *Brown v. Board of Education*. By deciding that "separate but equal" should not apply to public education, the Court created a domino effect that overturned racial segregation laws. "It was an unbelievable, necessary step, and trying to enforce it was hard," she said. "But today, it's history." □

A Resolute Advocate for the European Union

IN 2005, FRANCE AND THE NETHERLANDS dealt a blow to the European Union when they voted down a proposed constitution in national referenda. Other nations followed suit, and many doubted Europe would ever be able to unite.

One person who has not faltered in his support of the E.U. is European Commission President José Manuel Barroso, who gave the Hauser Global Law School Program's Emile Noël Lecture in April. He spoke candidly about the challenges of ratifying the constitution.

Barroso chastises skeptics who called the French and Dutch "no" votes the death of the European Union. "We have 27 countries united in peace, democracy and the rule of law," Barroso said. "Should we be pessimistic because we cannot approve the constitution? Come on!"

But it is those E.U. supporters who voice their doubts about the constitution that do real harm to the ratification

process, Barroso said. Their constant pessimism emboldens those who challenge the constitution's legitimacy. "Do you think we can get people to vote for something on a Sunday, when we attack it from Monday to Saturday?" Barroso asked.

The fear of losing national identity is yet another impediment to ratification, says Barroso: "Before being European, they are Portuguese or French or German." Such nationalism may have led to low voter turnout for the 2004 European Parliamentary elections, despite an increase in the number of countries represented.

Institutional changes such as streamlining decision-making, increasing accountability through national representatives and repositioning the vice president of the E.C. as the E.U.'s foreign minister, Barroso said, would help define the union and quell smaller nations' fears that their interests might get lost among those of their more powerful peers. He referred to his



experience as the former prime minister of Portugal, which stands in the shadows of larger European nations, to reinforce that all countries would retain their unique identities and enjoy unfettered, equal representation within the union.

"I'm not here defending a corporatist approach to the E.U.," Barroso said. □

Bold and Emphatic, Gore Calls for a Greener Future



which sets target limits on all greenhouse gas emissions for industrialized nations. He said that the nation's refusal to take part in the agreement is irresponsible: "The absence of the United States from the treaty means that 25 percent of the world economy is now missing. It's like filling a bucket with a large hole in the bottom."

Gore also expressed deep frustration with the auto industry, and the wastefulness of the internal combustion engine. He urged product innovation through CO₂ reduction, and added that finding such creative solutions could make American car

FORMER VICE PRESIDENT AL GORE was preaching to the choir last September when he stood before an audience of NYU law students and faculty, journalists and political activists to lay out a series of proposals to curb global warming. Introducing Gore was James Woolsey, the former director of the CIA under President Bill Clinton, who had this to say about his first encounter with the young congressman: "Almost all politicians start with an impression, and then have to work backward to get to the substance," said Woolsey. "Gore starts with the substance and moves forward from there."

The almost-president had been on an environmental version of a rock-and-roll tour—even before accepting the Academy Award for the global-warming documentary *An Inconvenient Truth* in March. Attracting crowds of fans wherever he goes, he's been calling for the drastic reduction of carbon emissions, countering claims that controlling pollution would devastate the nation's economy and chastising his former colleagues in Congress as "politicians who sit on their hands and do nothing to confront the greatest challenge that humankind has ever faced."

One of the basic ways the United States could begin to address the global climate crisis, said Gore, would be to sign and ratify the next version of the Kyoto Protocol,

makers more competitive in the market. "We could further increase the value and efficiency of a distributed energy network by retooling our failing auto giants to require and assist them in switching to the manufacture of flex-fuel, plug-in, hybrid vehicles," Gore said, calling this move "the single biggest opportunity" to offset the crisis.

Gore also outlined policy changes that would allow farmers to reap the benefits of growing so-called "fuel crops" for creating alternative energy sources such as ethanol, cellulosic ethanol, butanol and green diesel fuels. "Several important building blocks for America's role in solving the climate crisis can be found in new approaches to agriculture," he told the crowd. "We can revitalize the farm economy by shifting...to a focus on food, feed, fiber, fuel and ecosystem services." He also proposed the creation of a Carbon Neutral Mortgage Association, or "Connie Mae," which would provide breaks for home-buyers who choose houses built with energy-conserving window layering. In the corporate sector, he would replace the current payroll tax with an equivalent pollution tax to compel companies to hire more employees, and lower their overall CO₂ emissions.

"This is not a political issue. This is a moral issue," said Gore in summing up. "It affects the survival of human civilization." □



Trading Courtrooms for Classrooms

Fifty-seven judges attended this year's New Appellate Judges Seminar, co-sponsored by the Law School and the Dwight D. Opperman Institute of Judicial Administration. The seminar, first held in 1959, offers practical training and exposure to current issues of substantive law to judges in their first four years on the bench.

Newly appointed University Professor Arthur Miller delivered the keynote address on the topic of judicial independence. He described past political assaults by Congress and the White House, including the House of Representatives' 1804 impeachment of Justice Samuel Chase, a Federalist, after his decision to hang John Fries for treason angered Jeffersonian Republicans, and Franklin Roosevelt's Judiciary Reorganization Bill of 1937, which sought to pack the Court with politically allied justices. "It's very easy for you to become paranoid about your independence," he said. "And just because you're paranoid doesn't mean they're not chasing you."

To date, however, the judicial branch has prevailed. Miller cited the unanimous Supreme Court ruling in *U.S. v. Nixon*, which put limits on executive privilege, as evidence of the judiciary's fortitude. But Miller pushed for vigilance nonetheless. Executive overreaching in the War on Terror, as well as media that Miller calls irresponsible for portraying judicial rulings as "activist" or "anti-family," threaten judicial independence.

Judges must be more visible and educate the public on their essential role as an independent authority on the rule of law, said Miller. "You judges, with independence properly employed," Miller said, "represent the thin black robe that separates our civilization from the jungle."

The Disciple of Free-Market Discipline

Fed Chairman Bernanke spreads his message of minimizing government intervention.

WHEN BEN BERNANKE BECAME the 14th chairman of the United States Federal Reserve System's Board of Governors in 2006, he shifted the regulatory agency toward greater transparency, taking pains to explain how its "safety nets" operate and specifying when the government should and would cast them.

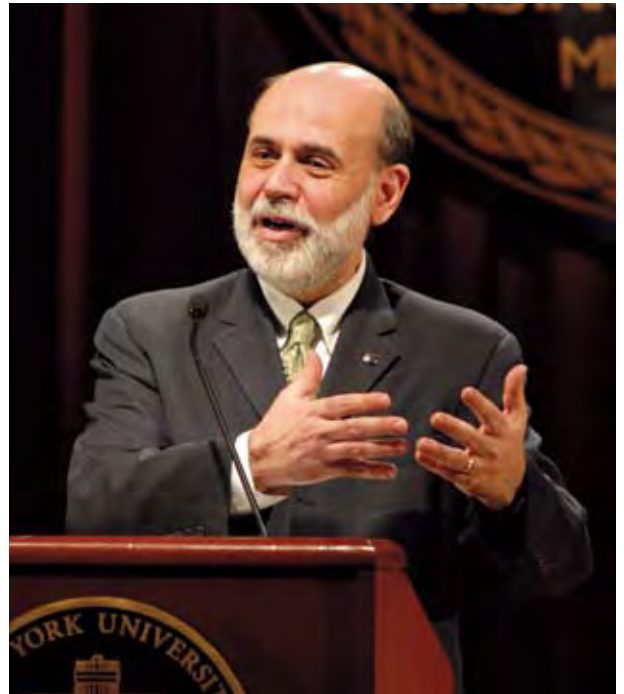
The Center for the Study of Central Banks, directed by Geoffrey Miller, Stuyvesant P. Comfort Professor of Law, and the Global Economic Policy Forum, co-chaired by Miller and Alan Rechtschaffen, adjunct professor of law, invited Bernanke to share his regulatory insight at the Law School on April 11. In his speech, "Financial Regulation and the Invisible Hand," the chairman elucidated how free-market discipline, with minimal government regulation, is the best method for such institutions as commercial banks and hedge funds to moderate financial risk-taking.

No stranger to academia, Bernanke was the chairman of the economics department at Princeton University before becoming a member of the Fed's Board of Governors in 2002. He had been a professor of economics and public affairs at Princeton for 17 years. In 1994, he was a visiting professor in NYU's economics department. "The chairman's openness with academia signals a more

against fraud and to correct markets before an economic collapse occurs. But overregulation, Bernanke cautioned, can lead to price inflation as well as limitations on innovation and competitiveness within the global market.

The chairman sees a happy medium in market-based regulatory methods, such as the Environmental Protection Agency's sale of emissions credits to companies as an economic incentive to curb pollution. If a corporation exceeds their allowed pollutant output, they must purchase more credits to offset the excess waste. "It is an effective supplement, or substitute, for conventional command and control regulatory approaches," Bernanke said.

Government regulation, he said, has at times failed to keep commercial banks from taking risks that then led to a crash. The Federal Reserve's safety nets could not avert the bank runs that caused the Great Depression. And the subsequent creation of the Federal Deposit Insurance Corporation (FDIC), while a necessary safety net, eventually spurred the savings-and-loan cri-



sis that are supposedly "too big to fail" from taking excessive risks.

The rapid growth of hedge funds over the past decade is one of the most important developments of the United States financial market, Bernanke said, and one where oversight remains minimal despite the fact that collapsed funds such as Long Term Capital Management and Amaranth Advisors suffered billions in losses. In weighing risk versus reward, however, Bernanke said that hedge funds have enhanced the liquidity, efficiency and risk-sharing capabilities of the financial system, and that Congress's approach in favor of self-regulation by creditors and other actors has been appropriate. "Because hedge funds deal with highly sophisticated counterparties and investors," he said, "and because they have no claims in the federal safety net, the light regulatory touch seems largely justified."

Bernanke warned that further regulations would limit fund managers' ability to react to market changes quickly and would interfere with innovation. The responsibility of oversight falls mostly on investors, counterparties and fund managers, with a small share going to regulatory agencies such as regional Federal Reserve banks.

Miller commented that even though hedge funds are far from a sure bet, Bernanke's message that existing federal regulations provide adequate oversight should be reassuring. "Hedge fund managers can take comfort that the Fed is not going to support drastic changes to the current light regulations, as has been proposed in some quarters," he said. □ *Graham M. Reed*

"Markets aggregate diffuse information more effectively and set prices more efficiently than any central planner ever could."

open Federal Reserve," said Rechtschaffen, "where those who study it can better understand what goes on behind closed doors."

Weighing in on the long-running economic debate over free markets and the government's boundaries on regulating them, Bernanke referred to Adam Smith's *Wealth of Nations* and used the theory of the Invisible Hand—that unfettered competitive markets drive the creation of wealth—as a starting point for capitalism. Sometimes government intervention is necessary, however, to protect consumers

sis that took place during the 1980s, when banks overleveraged to avoid foreclosure.

Minimum capital requirements, established by the Federal Reserve, are a more favorable alternative to heavy government control, according to Bernanke. These mandatory cash requirements create a buffer that prevents taxpayers from having to bear the cost of a bank's insolvency through FDIC bailouts. Similarly, bankruptcy provisions create market discipline by setting up in advance the terms of loss, so that creditors and depositors keep banks

The Center on Law and Security Gets People Talking...and Problem-Solving



The Center on Law and Security continues to serve as an important neutral ground for nonpartisan, multinational discussions about national security, counterterrorism and intercultural understanding. Below are capsule reports of the center's on-campus events during 2006-07. Please see page 120 for more on the center's conference in Italy.



A Conversation with Lawrence Wright

Moderator: Steven Simon, senior fellow for Middle Eastern Studies, Council on Foreign Relations—September 12, 2006

During the kickoff in a series of conversations about Islamist groups, center fellow Lawrence Wright, who won a Pulitzer this year for his book *The Looming Tower: Al Qaeda and the Road to 9/11*, described how bin Laden's initial goal had been to create "a kind of Muslim foreign legion" to fight Communism. But when bin Laden met Ayman al-Zawahiri, a politically seasoned Egyptian physician who already led a cadre of highly trained fighters, al-Zawahiri convinced the then-naïve bin Laden to take up arms. "I think sometimes that when al-Zawahiri spotted bin Laden, it was like Colonel Parker seeing Elvis for the first time," Wright said. "He's thinking, 'I can use this kid. He's rich. He's charismatic.'"

Open Forum on Hezbollah

Moderator: Peter Bergen, Center on Law and Security fellow and CNN's chief terrorism analyst—September 28, 2006

Passionate disagreement emerged about the goals of the Shia political and paramilitary organization, Hezbollah, in Lebanon following its 43-day war with Israel in July 2006. Hala Jaber, author of the 1997 book *Hezbollah*, dismissed the idea of the

group as a proxy for Iran or Syria, noting that it functions as a political party and a provider of social services. "Hezbollah is not an alien bunch that landed from Mars, or from Iran, or from Syria," she said. "Hezbollah are Lebanese. Most of them come from these same towns and villages that they were fighting about."

But Michael Sheehan, a center fellow and former New York City Police Department deputy commissioner for counterterrorism, wasn't convinced: "The Iranians fund Hezbollah to the tune of about \$100 million a year," he said, "and in my view, that doesn't come without any strings." While Jaber predicted Hezbollah would devote itself to rebuilding Lebanon, Sheehan anticipated a dramatic rearming. "They're going to get longer-range rockets," he said, "and it's just a matter of time before they're able to reach Tel Aviv."

Open Forum on the Muslim Brotherhood

Moderator: Peter Bergen—October 19, 2006

There was a similar clash about the goals of the Muslim Brotherhood, the Sunni organization founded in Egypt that now spans the Middle East and Europe—a controversy that was brought home by the U.S. government's denial of visas to two event participants, Kemal Helbawy, founder of the Muslim Association of Britain, and Abdel Monem Abul ElFotouh of Egypt.

The United States' action became a media story and a discussion point of the event itself. Calling Helbawy "a voice for reason," panelist Nick Fielding, a former investigative correspondent for the *Sunday Times*, said the Brotherhood "represents the best possibility in the Middle East of an organization that can both make deals and

stick to deals." But Fielding, the coauthor of *Masterminds of Terror*, also acknowledged questions about the group's commitment to democratic principles like power-sharing and tolerance of religious minorities.

Iraq, Iran, & Beyond: America Faces the Future, Part I

January 24, 2007

Policy experts, journalists and government officials examined several themes, including how the United States had begun to establish a framework to confront Shia influence.

The war in Lebanon in the summer of 2006 between Israel and Hezbollah represented a fundamental realignment, from the perspective of the Bush administration, said Council on Foreign Relations Senior Fellow Steven Simon. "It was the first battle fought between the emerging contenders in this new Middle East—the United States and its allies on the one hand, and Iran on the other," he said.

Another theme was the United States' failure to understand Muslim cultures.

"The Iraq that we entered in 2003 was largely a construct of well-meaning people who simply either could not see, or refused to see, that the country was not what it was expected to be," said Colonel W. Patrick Lang, a retired senior officer of U.S. Military Intelligence. "In many ways these mistakes continue to occur."

A chilling warning about U.S. vulnerability came from CLS Fellow Peter Bergen: A future terror attack on America is as likely to be executed by a jihadi resembling Muriel Degauque, the blonde Belgian who blew herself up in Iraq in November 2005, as by Egyptian-born 9/11 leader Mohamed Atta. This increased use of female jihadis in Iraq, Jordan, Kashmir and Egypt, and

also of European-born attackers, is part of al Qaeda's new tactical approach, according to Bergen. He said he was certain that bin Laden had reconstituted his organization on the Pakistani-Afghan border, citing evidence that the two Britons behind the London transit attacks in July 2005 had been trained by al Qaeda.

Secrecy and Government: America Faces the Future, Part II

April 12, 2007

Prominent human-rights attorney Scott Horton compared the Bush administration's denial of due-process rights for terror suspects at the U.S. Naval Base in Guantánamo Bay, Cuba, to the secretive Star Chamber abolished by the English Parliament in 1641 during a daylong colloquium exploring how the executive branch has altered the ways in which it gathers intelligence in the post-9/11 world. "Today, secrecy has reemerged, just as torture has its comeback, being justified on the public stage," Horton said. "The two fit together hand in glove: torture and secrecy. Where one is used, the other is indispensable."

While Horton argued that secrecy often cloaks torture—and nakedly partisan agendas—several former government officials stressed legitimate reasons to withhold information, albeit in a system with checks and balances to ensure accountability. "We have a very well-earned reputation with many of our partners overseas of complete inability to keep a secret," said CLS Fellow Michael Sheehan. "It undermines us now, and it will undermine us in the future."

Sheehan cited the hypothetical case of an ally withholding information about the arrest of a terrorist to keep Americans from leaking that information to the media and diminishing the prospect for other arrests.

Former CIA senior officer Frank Anderson said that on two occasions, his life was placed in imminent danger by published leaks. Nonetheless, he contended the pendulum has swung too far the other way, and that since 9/11, "we are acting under fear and anger."

Others suggested the overclassification of information undermines not just democratic principles but the quality of government policy-making.

"Decisions based on skewed or incomplete information aren't very good," said Harvard law professor Jack Goldsmith, former assistant attorney general in the Office of Legal Counsel at the U.S. Department of Justice. "There's less accountability. You don't get to correct mistakes because you don't learn about the mistakes." □



Hom, leaning, Shi, Yu, Mo and Cohen

The First Step: Transparency in Chinese Executions

Human rights advocates and scholars debate China's capital punishment record—or lack thereof.

IN 1980, THE UNITED STATES AND ITS allies made good on a threat to boycott the Moscow Summer Olympics after the Soviet Union's invasion of Afghanistan. Demanding a boycott for the 2008 Summer Olympics in Beijing was just one tactic to compel China to improve its human rights record that was discussed at the Timothy Gelatt Memorial Dialogue on Law and Democracy in Asia, sponsored by the Law School and the Council on Foreign Relations. China remains one of 73 countries with a death penalty; however, the Chinese government doesn't report statistics on convictions and executions. Moderator and NYU Professor of Law Jerome Cohen estimated that executions could be as high as 10,000 per year in China, and said that in light of the nation's willingness to address other human rights issues, its lack of transparency in capital punishment is inconsistent. "It's ridiculous that the regime won't reveal these figures."

Daniel Ping Yu, a senior research fellow at the Law School, reported that since 2006, China has enacted sweeping reforms to trial and appellate procedures, allowing some hope that momentum might be building toward eventual abolition of capital punishment. China's complicated legal system puts defendants at a severe disadvantage: They are not guaranteed representation, often misunderstand the trial

process, and are intimidated by the idea of opposing an outsized regime.

Shi Yan'an, a Hauser Global Scholar, remarked that establishing more rigorous standards for using capital punishment as well as disqualifying less serious crimes that currently warrant the death penalty, such as corruption and robbery, would be desirable—with total abolition of capital punishment by 2050.

Sharon Hom, executive director of Human Rights in China, endorsed the idea of tying capital punishment closely to human rights, an area where China has made astonishing progress. But a word of caution came from Robin Maher, director of the ABA's Death Penalty Representation project, who pointed out that deeper corruption in China's party system might slow things down: "The death penalty is always political, and that makes it vulnerable to abuse."

Still, an ambitious cross-venture in China between the ABA and NYU has made progress. Research Fellow Margaret Lewis '03 described some of the procedural safeguards the program has promoted, and experts from the Innocence Project and other death penalty reform activists have educated Chinese judges to consider the importance of such things as DNA evidence. Quoting the late Communist Chinese leader Deng Xiaoping, Lewis said, "Let's cross the river by feeling each stone." □

An Opportunity to Coordinate Anti-Terrorism Efforts



CLS Fellow Michael Sheehan, former NYPD deputy commissioner of counterterrorism, with fellow attendees

LAST MAY, AS THE GLOBAL WAR ON Terror neared the six-year mark, many senior law enforcement officials and current and former counterterrorism policy makers met for the fourth time at the Center on Law and Security's counterterrorism conference on the La Pietra campus. The discussions had a particular spotlight this year on Britain, with Peter Clarke, the senior counterterrorism official of the British Metropolitan Police Force, delivering the keynote address and highlighting some of the recent conspiracies in the United Kingdom.

The conference has become a focal point for law enforcement officials from both sides of the Atlantic, and, for that matter, an important barometer of transatlantic counterterrorism cooperation. Among those participating were Paul Clement, U.S. solicitor general; Kenneth Wainstein, assistant U.S. attorney general for national security; Michael Garcia, U.S. attorney for the Southern District of New York, and Judge Kenneth Karas of the U.S. District Court for the Southern District of New York. European attendees included Armando Spataro, Italy's leading investigative magistrate for terrorism, and Baltasar Garzón, Spataro's opposite number from Spain.

One running debate over several years has concerned the practice of rendition.

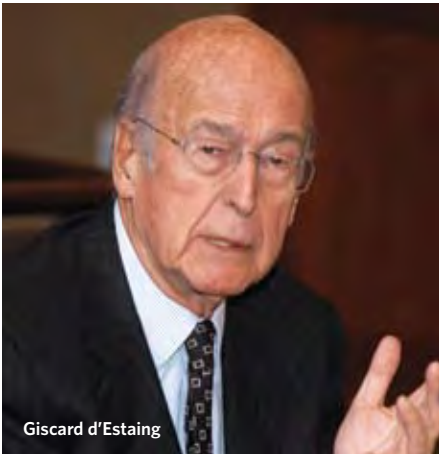
(A rendition is only "extraordinary" when the host country—the one in which the suspect is located—does not know about the removal or opposes it. In most cases, host countries cooperate with the United States to remove suspects, who are either brought to the United States or sent to a third country.) The debate has become more heated each year, and the camps are not neatly divided. The Europeans, by and large, oppose the practice, as do some American commentators. Other Americans—among them former Clinton counterterrorism officials—have argued that rendition is an invaluable tool, but that standards are required. That is, suspects should be sent only to countries that have indictments of the individual; no one should be sent to a country with a history of torture, and the United States needs to monitor treatment of those rendered to ensure that it meets international human rights standards. A second American camp insists that the War on Terror often has a ticking time bomb quality, so renditions are essential and, while gross abuses are to be avoided, public safety needs to be preserved.

Those currently in government have said little on an issue whose details are highly classified, but over the last two years, they have been subjected to considerable rhetorical heat as critics of rendition have

become more vocal, including some journalists such as conference attendees Jane Mayer of the *New Yorker* and Tara McKelvey, a Center fellow and author of the newly published *Monsterring: Inside America's Policy of Secret Interrogations and Torture in the Terror War*. This year's meeting had an unusual undertone since Italy's Spataro had filed charges against 26 CIA employees and contractors in connection with the rendition of an Egyptian radical known as Abu Omar, who was apprehended in Milan in 2003. (The case is currently on hold, and the United States has refused to deliver any of the indictees to the Italian court.)

Yet the off-the-record conference seems to be getting more convivial every year as Americans and Europeans find more common ground on the issue of law enforcement as a means of combating terror. American participants still question whether it will ever make sense to read a terrorism suspect his Miranda rights or what can practically be done about some of the worst offenders in Guantánamo, but the hard edges seen two or three years ago have clearly softened. One participant who had been an architect of the Bush strategy even wondered out loud whether it wasn't time for an entirely new approach.

The session concluded with a presentation by Steve Coll, the Pulitzer Prize-winning author of *Ghost Wars: The Secret History of the CIA, Afghanistan and Bin Laden from the Soviet Invasion to September 10, 2001*, on what it might take to stabilize Pakistan. As has become routine for the Center on Law and Security's events, the La Pietra conference was packed with experts at the top of their fields. Andrea Elliott of the *New York Times*, who won this year's Pulitzer Prize for feature writing for her articles on a Muslim cleric in the United States, spoke about sentiment within the Muslim community about police department outreach efforts. Matt Waxman, acting director of the U.S. State Department's Policy Planning Staff, addressed potential policies meant to break through ideological impasses, and Peter Bergen, author of *The Osama bin Laden I Know: An Oral History of al Qaeda's Leader* and a member of the Center's Board of Advisors, explained how the inner core of al Qaeda has weathered the War on Terror and is now reasserting itself. All departed the conference mindful of Center Executive Director Karen Greenberg's exhortation that this is a time when the best new ideas are needed—both because the 2008 presidential race has begun and because new lines of defense are so clearly required. □ *Daniel Benjamin*



Giscard d'Estaing



Kissinger

Hands Across the Water

Power players of the E.U. and U.S. cordially focus on areas of agreement, rather than difference.

DESPITE THE SOMETIMES ENORMOUS contrasts in how Europe and the United States each approach problems, these two superpowers share too much common ground to let differences in diplomacy and military strategy drive them apart. So, when areas of dispute were called out during the Hauser Global Law School Program's Transatlantic Dialogue last February between former President of France Valéry Giscard d'Estaing and Henry Kissinger, secretary of state under Presidents Nixon and Ford, the two stayed vigilantly positive about cooperation between their respective governments.

University Professor and Joseph Straus Professor of Law Joseph Weiler, who moderated the event, asked Kissinger about his decades-old quip, "When you want to call Europe, who do you call?" Ever the diplomat, Kissinger disavowed the wisecrack, and directed attention to the issue of nuclear proliferation, most significantly in Iran. "When you have 20 or 30 countries

each practicing their own determined equation with God-knows-who...I think you are entering a world in which the kind of crisis that sparked World War I in 1914 becomes more and more difficult to avoid." Kissinger observed that in the 1970s, when he and Giscard held office, they faced an obvious opponent in an armed Soviet Union. But times have changed and enemies have evolved. "The emergence of the Islamic threat, which is vast but not purely military," said Kissinger, "is not based on the nation-state but on ideology and religion."

The fact is that Iran is far more than a nation-state with nuclear potential. The country stands accused of funding and arming Hamas in Lebanon and the Shiite insurgency in Iraq, and it's feared that Iran's leaders might provide a nuclear weapon to a terrorist group such as al Qaeda to be used against the West.

In order to deal with Iran, said Giscard, Europe and America need to respect Article IV of the Nuclear Nonproliferation Treaty,

which was signed by 190 nations including Iran, Iraq, Syria and Lebanon. The article allows nuclear development for peaceful means. "There is confusion between enrichment and military use of nuclear resources," he said. "Every country has the right to have a civil nuclear [program]."

But with such high stakes at play, the foreign policies of the United States and Europe need to be as seamless as possible, both dignitaries agreed. "I don't believe we are meeting in an atmosphere of crisis," said Kissinger, "but we are meeting in an atmosphere of extraordinary challenge."

Weiler seemed skeptical that the E.U. could succeed in forming a unilateral foreign policy against such a potential threat as Iran, possibly alluding to the failure of the 27-nation union to agree upon a constitution despite the exhaustive efforts of Giscard and the European Convention he presided over. Giscard did, however, make a convincing counterargument that Europeans are motivated to work together as never before. Under siege on the battlefields of Iraq as well as in the transportation systems and streets of London and Madrid, the nations of Europe and their leaders have no other choice than to coordinate their security efforts. Giscard was hopeful that a unified Europe would effectively stand together in the War on Terror. "People are practically the same everywhere," he said, citing a recent government poll. "If you ask them, 'Do you want a common defense policy?' Seventy percent of them say 'yes.'"

The visitors further agreed that working together to reach a combined American and European policy to end proliferation, as well as address impending crises such as climate change and religious extremism, was vital. "I say this not as a criticism, but as a challenge to leaders on both sides of the Atlantic," Kissinger said. "Develop a sense of common destiny, not just a toleration." □

MacArthur Foundation Makes \$25 Million Housing Pledge



ON FEBRUARY 12, 2007, JONATHAN FANTON, president of the John D. and Catherine T. MacArthur Foundation, made an important pledge before housing policymakers, advocates, city leaders and students at Vanderbilt Hall: As part of his remarks on "Housing and America's Future," sponsored by NYU's Furman Center for Real Estate & Urban Policy, Fanton said the MacArthur Foundation will invest \$25 million over five years in new research that deepens our knowledge about the ways that affordable housing matters to children, families

and communities: how it affects children's cognitive, emotional and behavioral development and how where one lives shapes the economic, emotional and physical well-being of adults. "We expect this research to suggest ways to make U.S. housing policy more effective and efficient," said Fanton. "We want it to push our country's vision beyond incremental policy reform, to provoke far-reaching new ideas about the importance of housing and how the net benefits of our investments can best be realized and understood." □



Honoring Brennan's Legacy

The Justice's admirers and former clerks exercise free speech.

IN RECENT YEARS, MANY OBSERVERS have framed debates about freedom of religion and separation of church and state as “culture wars” issues, with liberal “secularists” on one side and the so-called evangelical right-wing on the other. But the late Justice William J. Brennan Jr., who authored key opinions backing religious freedom during his 34-year tenure on

Considered one of the most influential Supreme Court justices in recent memory, Brennan authored a slew of groundbreaking rulings while on the bench. Among his most famous were *Baker v. Carr*, a 1962 voting rights case forcing Tennessee to reapportion itself along “one man-one vote” lines; *New York Times v. Sullivan*, a 1964 decision holding that the First Amendment

limits the circumstances under which people can be sued for libel; *Goldberg v. Kelly*, a 1970 case holding that the state can't cut off welfare benefits without first giving recipients a hearing; and *Texas v. Johnson*, a 1989 case holding that laws prohibiting flag-burning are unconstitutional.

During a panel discussion moderated by Marcella David, professor of law and international studies at the University of Iowa College of Law, Post and Judge Michael McConnell of the U.S. Court of Appeals for the



the Supreme Court, wouldn't have agreed. “He believed that individuals should have the right to exercise their beliefs,” said Yale Law School Professor Robert Post. “He was always a fan of religion.”

Post was just one of the scholars and judges, many of whom clerked for Brennan, who paid tribute to the late justice in October, at the 10th anniversary celebration of the Brennan Center for Justice at NYU School of Law—a substantial birthday gift presented to Brennan by his former clerks at his 89th birthday celebration in 1995.

10th Circuit discussed Brennan's views on the First Amendment. They agreed that Brennan believed that people had the right to practice religions of their choosing. For instance, in one famous case (*Sherbert v. Verner*, 1963), he authored the Supreme Court majority opinion holding that the state couldn't deny a Seventh-Day Adventist unemployment benefits solely because she refused to work on Saturdays.

During a panel on liberty and national security, Visiting Professor Geoffrey Stone; Abraham Sofaer, a senior fellow at the

Hoover Institution, and moderator James Johnson, a partner at Debevoise & Plimpton and chair of the Brennan Center board of directors, delved into Brennan's views on striking a balance between national security and civil liberties in times of crisis. Sofaer and Stone said that once Brennan joined the Supreme Court in 1956—the end of the McCarthy era—the court began scrutinizing the executive and legislative branches more closely. “With Brennan's appointment,” Stone said, “the role of the court changed dramatically.”

Shortly thereafter, the Supreme Court began dismantling the McCarthy era laws and, over the next several decades, issued key rulings rejecting the government's argument that national security took precedence over provisions of the Bill of Rights. Most famously, the Supreme Court ruled in the 1971 “Pentagon Papers” case that judges couldn't prohibit the *New York Times* and *Washington Post* from publishing portions of a classified Defense Department report about the Vietnam War.

Supreme Court Justice Ruth Bader Ginsburg gave a moving keynote speech at the celebration, sharing personal memories of Brennan, who championed civil rights even in his private life. She first met the late justice at Rutgers University School of Law in the turbulent mid-1960s, when she was a professor and he was visiting to give a speech. Brennan arrived with Chief Justice Earl Warren and fellow Associate Justice Abe Fortas, and their presence on campus sparked protests, spurring the dean to mull extra police surveillance. Brennan's reaction: The school should leave the protesters alone. “They are just exercising their First Amendment rights,” Ginsburg recalled him telling the dean. That same commitment to freedom of speech and civil liberties in general was the hallmark of Brennan's tenure on the Supreme Court, she said. “He believed the provisions of the Bill of Rights themselves govern the conduct of all officialdom.”

While Ginsburg didn't offer an opinion on how Brennan might rule on current legal controversies, she was willing to speculate on how he would have viewed a fracas that broke out at his 1997 funeral. During the event, a protester began loudly complaining about the church service, claiming the religious service was inappropriate given Brennan's role in liberalizing abortion laws. Some mourners might have been upset at the interruption, but Ginsburg didn't think it would have troubled Brennan: “Let him speak, Justice Brennan would have said.” □ *Wendy Davis*

Notes on a Scandal

U.N. inquisitors dissect a humanitarian endeavor gone wrong.

IN THEIR RECENTLY PUBLISHED BOOK, *Good Intentions Corrupted*, Mark Califano and Jeffrey Meyer carefully track the 2004 United Nations' Oil-for-Food Programme scandal and the widespread corruption that permeated the

contracts were given to those sympathetic to loosening sanctions on Hussein's regime; \$8.4 billion of oil was smuggled by Iraq; a chief U.N. administrator was given rights to buy more than seven million barrels of oil, and U.N.-related humanitarian agencies collected tens of millions of dollars for costs never incurred.

All these things happened because no external oversight existed at the U.N. at the time, the book concluded. Considering the size of the United Nations, and Hussein's well-known despotic leadership, the deficit of supervision was something Califano found particularly shocking. "No public company runs



Goldstone, left, and Volcker

largest humanitarian effort ever undertaken by the international organization. Califano and Meyer certainly had the insider's view of the \$30 million, 18-month investigation—they were chief legal counsel and senior counsel, respectively, to the Independent Inquiry Committee, a body created by then-Secretary-General Kofi Annan to investigate the scandal.

The duo visited the Law School last fall, along with committee chair Paul Volcker, the former chairman of the Federal Reserve, and committee member Richard Goldstone, Global Visiting Professor of Law. At a panel hosted by the Institute for International Law and Justice (IILJ), they all discussed the official report, the book and the scandal's implications for the future of the U.N.

The Oil-for-Food Programme was enacted in 1995 to help the starving Iraqi people, whose country was under international sanctions after Saddam Hussein's 1990 invasion of Kuwait. The program allowed Iraq to sell its oil in the global marketplace and use the profits to help its citizens, but not to empower its military or develop weapons of mass destruction. "This was the biggest humanitarian program since the Marshall Plan," said Volcker.

But, as Califano and Meyer detailed in their book, corruption and mismanagement permeated the program. More than 2,200 companies paid \$1.8 billion in illegal surcharges and kickbacks to Saddam Hussein's government; lucrative insider oil

without these kinds of controls," he said.

Rampant insider deals and corruption festered because there were loose globalized markets and no mechanisms to control Iraq's oil sales and food purchases. The Independent Inquiry Committee also shed a harsh light on the inadequacies of the administrative infrastructure of the United Nations—specifically with regard to the Security Council. For example, China and the United States, both permanent members of the council, could not agree

on the nationalities of the oil contracts' supervisors. The 15-member council issued vague warnings upon learning of the kickbacks, and never sent a letter of inquiry to Syria when its pipeline was reopened in order to smuggle oil from Iraq. "At the end of the day, the program was not administered well," said Volcker, adding that the worth of the investigation "depends on whether they do a better job the next time around."

In the wake of the official report's release, then-Secretary-General Kofi Annan spearheaded the establishment of an ethics division, called for greater protection for whistleblowers and encouraged more transparent financial disclosure. External audits and ongoing investigations were put into place. The committee made two critical recommendations, although neither has been put into action yet. First, they suggested creating an Independent Oversight Board with the full power to audit staff, budget, accounting practices and inspection services. Second, they urged that a chief operating officer be appointed by the General Assembly to be in charge of administrative programs and procedures.

As the panel drew to a close, IILJ Executive Director Simon Chesterman offered a maverick's perspective on the topic. He noted that though the scandal rocked the U.N. to its very core and had international repercussions for months afterward, the international organization emerged stronger and better managed. Said Chesterman: "I might be one of the only people who thinks the Oil-for-Food scandal is one of the best things that's ever happened to the U.N." □ *Graham M. Reed*

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Life in the Fast Lane

DURING HIS FIRST YEARS AS NORTH Carolina governor, Mike Easley did everything he could think of to pull his state out of an economic slide; the NASCAR fan even entered a charity auto race to raise money for North Carolina's public schools. For every lap he drove above 160 miles per hour, Easley would earn \$20,000. But during training at Lowe's Motor Speedway, he slammed against the retaining wall, totaling the car. The crowd gasped. Then, after a long moment, the governor emerged from the wreckage unharmed.

Surviving such bold, risk-taking moves also has been the hallmark of Easley's public service career, which he described at length as the speaker for the 10th anniversary of the Attorney General Robert Abrams '63 Public Service Lecture last January.

As district attorney of rural Columbus County, Easley took on drug traffickers and cleaned up corruption on the local level. He sent three local sheriffs to jail and indicted over 50 public officials during his tenure. Then, as the state's attorney general, Easley cracked down on domestic violence, hate crimes and predatory mortgage

lending. Nothing, however, was as difficult and politically treacherous as his decision to sue Big Tobacco in 1998. "I knew this was going to take a terrible toll on the economy of North Carolina," said Easley, who, with a consent decree from the court, persuaded tobacco companies to allocate half of the settlement funds to establish the Golden Leaf Foundation, which helps transition former tobacco farmers to other means of income.

By the time Easley became governor in 2000, North Carolina was stymied by a steady decline in the number of textile jobs and the aftereffects of flooding that had ravaged 40 out of the state's 100 counties. To salve the resulting \$2.5 billion economic downturn, Easley issued an economic state of emergency to balance the budget: "I wasn't going to cut education. This is our way out of the woods in North Carolina." Instead, he made the unpopular choice of



Easley, left, and Abrams

going back on a campaign promise, asking the state legislature to increase taxes. "I put it to them this way: 'You don't have to be in the legislature and I don't have to be the governor, but we've got a hundred thousand five-year-olds who have to go to kindergarten next year.'"

The painful tax increases have turned out to be a healthy long-term remedy; North Carolina has seen test scores increase and the minority achievement gap close in the past five years. Once again, it seems, Mike Easley has worked his magic and done what few politicians have been able to do: walk away from a calamity unscathed. □

Five Years After 9/11: A Guantánamo Lawyer Looks Back



AS LEAD COUNSEL IN THE LANDMARK case, *Rasul v. Bush*, Joseph Margulies challenged the Bush administration's treatment and indefinite detainment of non-U.S. citizens without charges, counsel or a right to trial. The case resulted in the landmark 2004 Supreme Court decision establishing that the judiciary *can* decide if foreign nationals held at the Guantánamo Bay detention facility are being rightfully imprisoned.

Speaking at the 2006 Melvyn and Barbara Weiss Public Interest Forum, held on the fifth anniversary of the 9/11 attacks, Margulies chose not to focus on legal strategies and briefs, but on the human side of such cases, a subject highlighted in his 2006 book, *Guantánamo and the Abuse of Presidential Power*. His point was simple: "If you aspire to be public-interest lawyers, remember that it's a human being you are defending."

Margulies detailed the mental anguish and physical horrors men like Mamdouh Habib have endured in the prison at Guantánamo Bay, Cuba. Habib, a naturalized Australian Muslim, was arrested in Pakistan in late 2001 and accused of

taking part in al Qaeda training exercises. He was transferred to Egypt, where he was brutally tortured for six months before being turned over to the U.S. military. Habib was eventually detained at Guantánamo Bay without charges, and subjected to emotionally and physically abusive tactics, such as being told that his wife was dead when she was not. "I have never been to a place as disturbing as Guantánamo Bay," Margulies said. "It's a place of abandoned hope and despair." For three years, Habib languished without right to counsel, unaware that Margulies and a team of American lawyers were fighting for his release. They finally succeeded in January 2005.

Men are being held prisoner at Guantánamo Bay, he concluded, "without an opportunity to demonstrate that in the fog of war, [the administration] has captured chaff and not wheat." In the tone of a man who sees the future and is resigned to it, he added, "[The detention policy] is an extraordinarily controversial—I would say a disastrous—policy; the aftereffects and the shocks from which you will feel, as lawyers, throughout your careers." □

2006-07 Leaders in Public Interest Series

In addition to the Abrams and Weiss events, left, the Public Interest Law Center hosted these lectures:

Confronting Injustice Professor Bryan Stevenson, Executive Director, Equal Justice Initiative of Alabama.

Building Power: Grassroots Lawyering for Social Change Oona Chatterjee '98, Co-Director, Make the Road by Walking.

Current Threats to Reproductive Rights Jennifer Dalven '95, Deputy Director, ACLU Reproductive Freedom Project.

Advocacy for Children and Families Kevin Ryan (LL.M. '00), Commissioner of Children and Families, New Jersey Department of Human Services.

Doing Well While Doing Good: Representing Employees Wayne Outten '74, Managing Partner, Outten & Golden LLP.

The Rule of Law in the Aftermath of Conflict: Nation-Building in Southern Sudan Nathan Miller '02, Executive Director, Rule of Law International, Republic of the Sudan.

Beyond Lawyering: A Holistic Vision of Public Defense Robin Steinberg '82, Founder and Executive Director, Bronx Defenders.

Crimmigration: Disentangling Immigrants from the Web of National Security and Criminal Justice Andrea Black '96, Network Coordinator, Detention Watch Network.

Still Unsettled 50 Years After Brown: Racial Equality in Education Anurima Bhargava, Assistant Counsel, NAACP Legal Defense & Education Fund, Inc.

The Role of International Law (and Lawyers) in U.S. Foreign Policy Christina Sanford '00, Attorney-Advisor, U.S. Department of State.

The Immorality of Anti-Gay Discrimination Matt Foreman '82, Executive Director, National Gay and Lesbian Task Force.

Scholarship in the Public Interest Professors Cynthia Estlund and Randy Hertz, Aziz Huq, Director of the Liberty and National Security Project, the Brennan Center, and Matt Squires '08.



Marriage, American Style

Georgia's top adjudicator makes a ringing endorsement for wedding bells and vows, especially before parenthood.

THE CHIEF JUSTICE OF GEORGIA'S Supreme Court, Leah Ward Sears, began the 13th Annual Brennan Lecture by reciting a classic schoolyard rhyme: Jenny and Johnny sitting in a tree, K-I-S-S-I-N-G.... But instead of ending the verse with the couple falling in love, getting married and having kids, Sears's version finished off, "First comes sex, then comes dating, then comes cohabitating."

Marriage rates have been in sharp decline in the last 25 years, while the numbers of unwed mothers and divorce rates have soared. In her speech, Sears contended those societal trends are affecting the health and welfare of American families. Sears pointed to studies showing that children raised outside marriage suffer disproportionately from physical and mental illness; are more likely to drop out of school, abuse drugs or alcohol, and engage in violence or suffer it in their homes; and are less likely to attend college. To make matters worse, these effects have shown to be self-regenerating. Sixty percent of impoverished families are led by single mothers, and that number is rising.

"I'm here to make the case for strengthening marriage in the 21st century," Sears

proclaimed. She noted that research shows that marriage is the best structure for raising children and that communities with a high rate of married couples raising children have a higher mean income.

Sears explained that state judges like herself are interested in supporting marriage for other practical reasons. The number of domestic-relations cases has soared in recent years: Sixty-five percent of the cases in Sears's court concern domestic relations, which creates a backlogged system and overburdens the judiciary budget. Last year more than 14,000 children were in the care of the Georgia Division of Family and Children Services, and nearly 24,000 were admitted to a youth-detention center. One out of every four Georgia children under 18 has a case with the Office of Child Support Enforcement.

To solve the burgeoning problems, Sears chairs the Georgia Supreme Court Commission on Children, Marriage and Family Law, which funds marriage-education workshops for expectant parents and newlyweds, and runs campaigns at schools communicating the risks of single parenthood. The commission also educates judges to deal with evolving issues of family diversity. □

A Year in the Life of the Law School



Zachary Augustine '09 and Ian Marcus Amelkin '09, above, perform in the 2007 Law Revue; clockwise from above right: Professor Barry Adler, Furman Fellow Harlan Grant Cohen '03 and newly hired Assistant Professor of Law Troy McKenzie '00 take part in the annual Job Camp run by the Academic Careers Program; Dr. Shashi Tharoor, former under-secretary-general of the U.N., delivers the keynote at the International Law Society's Global Issues Symposium; participants in the Dwight D. Opperman Institute of Judicial Administration's week-long New Appellate Judges Seminar assemble outside Vanderbilt Hall.



Prince Turki Al-Faisal, the former ambassador of the Kingdom of Saudi Arabia to the United States, below, far left; below middle: Professor Ziba Mir-Hosseini and Zainah Anwar during a roundtable discussion, "Sisters in Islam: The Quest for Justice, Equality and Freedom," and New York Assistant D.A. Matthew Bogdanos discussing his book, *Thieves of Baghdad*.





Paul Berger '57, host of the Washington, D.C. reception at Arnold & Porter, above right; above left: Lisa Haas '92, Dennis Chow '93, San Francisco host Sloan Lindemann Barnett '93 and Sandeep Solanki '02; left, Los Angeles host Marc Marmaro '72 with Lili and Alan Penkower '67, and Michael Waldman '87, executive director of the Brennan Center for Justice, with actor Sam Waterston at the center's 10th anniversary celebration.



Brandon Kai-sing Tung '09, with his parents on Family Day, above left; below from left: Professor Richard Stewart on Admitted Students Day; former OUTLaw chair Brett Phillips '03, center, with current cochairs Ashanti Decker '08 and Nicholas Durham '08 at the first annual OUTLaw alumni reception; Adjunct Professor John Kimball introduces the 2007 Healy Lecture, "Admiralty's Greatest Hits," with panelists Joseph Sweeney, Michael Sturley, David Bederman, David Robertson, Martin Davies and Lizabeth Burrell.





Garland, center, with McGowen

The Lessons of Executions

Historians examine capital punishment through the ages.

WHAT CAN THE PAST TEACH LEGAL scholars about the present state of the death penalty? That was the central question explored during NYU's first-ever workshop on capital punishment history, convened last May at the Law School by David Garland, Arthur T. Vanderbilt Professor of Law, and history professors Randall McGowen of the University of Oregon and Michael Meranze of the University of California, Berkeley.

During the two-day conference, eight papers-in-progress were critiqued by leading death-penalty scholars and capital defenders, including University Professor

Anthony Amsterdam and Professor of Clinical Law Bryan Stevenson.

One paper discussed was McGowen's "Through the Wrong End of the Telescope: History, the Death Penalty and the American Experience." In it, he compares the divergent paths that the U.S. and Europe have taken with regard to capital punishment.

McGowen writes that in the years immediately following World War II, Italy, Austria and Germany ceased the death penalty after a "sober reassessment of the state's right to kill." But Yale law professor James Whitman noted that there was more to abolition than a reaction to Nazism and fascism. "It's

a mistake to imagine that Europe is what Europe is because Hitler did what Hitler did," he said. A campaign to strengthen human rights laws to make way for European unification and the wave of democratization that swept the continent throughout the 1970s and '80s, he said, helped fuel abolition in all but one nation (Belarus).

Around the same time, an anti-death-penalty movement was mounting in America. A five-year voluntary moratorium on capital punishment preceded *Furman v. Georgia*, the 1972 Supreme Court ruling that struck down the death penalty. State laws were subsequently rewritten, however, and by 1977 executions had resumed.

The reversal took death-penalty foes by surprise. McGowen says they misinterpreted the hiatus and reforms, such as the use of DNA evidence at trials and the shift from "cruel" electrocutions and hangings to "humane" lethal injections, as signs of a trend toward abolition. In reality, "[*Furman*] shifted the attention...to the courts," McGowen writes, "leaving the political field open to death-penalty advocates." Hard-line politicians, he says, were able to win support for new laws by blaming rising crime rates on the lack of a death deterrent. Case in point: The Oklahoma City bombing led to the Antiterrorism and Effective Death Penalty Act of 1996, which placed new limitations on prisoners' writs of habeas corpus. Stevenson said that such hasty, politically charged laws drastically alter penal policy without considering the lives it affects: "The consequences of the death penalty don't get enough time." □

New Zealand's Justice Secretary Celebrates Hauser's 12th



AS NEW ZEALAND'S JUSTICE SECRETARY and Chief Executive of the Ministry of Justice, Belinda Clark (LL.M. '87) has a hand in directing many parts of the country's legal system. She counsels the government on criminal and civil legal policies, administers parliamentary elections and governs New Zealand's police and prison services. Her work in this last area has been focused

on reducing criminal offenses and managing imprisonment rates, and exemplifies the vital connection Clark sees between scholarship and practice—something that is also the cornerstone of the Hauser Program. In her keynote address at the 12th Annual Hauser Program Dinner in February, she described synergies between the academic and public-policy worlds as they played out in New Zealand and helped her succeed at her demanding job.

In 2005, Clark faced an unprecedented one-two punch when her staff projected a shocking rise in the number of detention facilities that New Zealand would have to create in order to meet the nation's climbing crime rates. "These forecasts represented not only a significant fiscal pressure," Clark said, "but also signaled a considerable social upheaval." To determine why offenses were increasing, Clark turned to

academic scholarship and research. Several studies showed that early-childhood intervention was crucial in preventing crime, so Clark's ministry responded with social policies to benefit children in the first five years of their lives. She has improved drug, alcohol and mental health services for offenders and reformed sentencing guidelines for certain crimes based on experimental alternative-rehabilitation methods such as electronically monitored curfews and in-house detention.

Clark's undertaking would have failed, she said, without the international legal academy's help in diagnosing society's ills. "The challenge to you in academia is to help those of us in policy development better identify what we can do to tackle the causes of crime at its source," she said. "Your contribution to debate, research and evaluation is vital." □

Singapore Dual-Degree Program Swings into Action

The U.S. Ambassador to Singapore hosts a gala party for the 42 men and women from 23 countries that make up the very first class of NYU@NUS students.

BY JANE NG

MISS MARIE DALTON COULD HAVE DONE her master's in law in New York, but she chose to attend a "more valuable" programme in Singapore instead.

She signed up for a course offered jointly by New York University (NYU) and the National University of Singapore (NUS) and—in 10 months' time—will have two master's degrees.

Ms. Dalton, a former associate attorney at a Los Angeles international law firm, chose to come here, as it will give her a "broader understanding of the economic and legal realities of doing business in Asia." This will help her advise clients better when she returns to her firm, said the 25-year-old NYU law graduate.

She is one of five United States citizens enrolled in the NYU-NUS tie-up, which has a "rainbow" group totalling 42 students

from 23 countries, including Chile, China, Rwanda and Uzbekistan. All have basic law degrees and many have significant work experience.

The programme, which kicked off on May 7, is conducted in Singapore but taught primarily by NYU faculty members.

NYU School of Law Dean Richard Revesz said the NUS partnership is part of his school's vision to go global. "With the regional focus of the course, it makes more sense for it to be held here in Asia," he said.

It helps also that both schools share a common vision of developing globally oriented teaching programmes, said NUS law dean Tan Cheng Han. He added: "No matter how good you are, your range is limited. If we leverage on each other's strengths, we will be able to put out a superior product."

U.S. Ambassador to Singapore Patricia Herbold, who invited the programme

participants to her home last night, said the tie-up strengthens educational links between the United States and Singapore. "As a former practising lawyer, I am excited by the international composition of the entering class, and look forward to the growth of this innovative partnership," she said.

"Global" degrees such as that offered by the NYU-NUS tie-up are becoming increasingly popular. Some 600 students at Nanyang Technological University (NTU) are enrolled in such courses, a six-fold increase from five years ago. At NUS, about 800 students are on similar programmes, compared to 500 in 2003. □

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NYU@NUS Launch

1 National University of Singapore (NUS) Law Dean Tan Cheng Han, NUS President Shih Choon Fong, U.S. Ambassador to Singapore Patricia Herbold, Dean Richard Revesz and Global Professor of Law Simon Chesterman, 2 NUS Faculty of Law Federal Building, 3 Franca Ciambella, Jacinta Anyinge, Felipe Mohando and Arpana Vasanth Kumar in the courtyard of the Federal Building, 4 Jordan Kahn, Yi Duan, Vitaly Shmakov and Herbold, 5 Tan and Chesterman during the launch reception, 6 Nakul Dewan, Eduardo Ramirez and Lina Monton, 7 Jayant Bhatt, Richard Karugarama, Xiaomao Min, Teslim Akerele, Arpana Vasanth Kumar, and Marthine Pantouw





A Reflection on Henry Friendly

A former clerk lends a personal touch to a judge's portrait.

CHIEF JUDGE MICHAEL BOUDIN OF the United States Court of Appeals for the First Circuit, speaking at the 2006 James Madison Lecture, painted a vivid portrait of his one-time boss, the greatly admired legal scholar Judge Henry Friendly of the U.S. Court of Appeals for the Second Circuit. Tracing Friendly's career, Boudin, who clerked for Friendly in 1964, described a lawyer and scholar who respected legal precedent and other constraints, and was known for his "immense practicality, intellectual seriousness and integrity and essential moderation."

Friendly was born in upstate New York in 1903, and attended Harvard University and Harvard Law School. An exceptional law student who once considered becoming a historian, Friendly "graduated with a rare summa degree and an astonishing average of 86, approximately an average of A double plus," said Boudin. One of Friendly's professors, Felix Frankfurter, who would himself become a celebrated Supreme Court justice, helped arrange a clerkship for him with Justice Louis Brandeis. When it ended, Frankfurter urged Friendly to go into academics, but Friendly chose private practice, eventually forming his own firm, Cleary, Gottlieb, Friendly and Cox (now Cleary Gottlieb). He simultaneously served as general counsel to one of the firm's

clients, Pan American World Airways. In 1959, thanks to a supportive letter from Judge Learned Hand, President Dwight Eisenhower appointed Friendly to the U.S. Court of Appeals for the Second Circuit. "The appointment," commented Boudin, "was a salvation for a man who...had been rapidly tiring of large law firm practice."

During his time on the bench, Friendly wrote more than 1,000 opinions and 30 articles, many concerning constitutional law, which Boudin defined as "not just issues of 'rights' but also matters of jurisdiction, federal common law, the public-private distinction and other such topics." As a judge, Boudin recalled, Friendly worked hard, but his style of drafting opinions was swift: "Friendly, writing on a pad with briefs and law books stacked around him, normally produced a single draft—often over a period no longer than a weekend." Nonetheless, he was always thoughtful in his opinions, sensitive to the separation of powers, a promoter of a stabilized society and a realist about the impact a judge could have on it.

At the opening of his lecture, Boudin set himself a goal: To use this look at Friendly's work in constitutional law "as a mirror in which to catch his reflection and measure his greatness." It was a success; the image he projected was stunning. □



Declaration of Dependents

TAX LAW MAY NOT HAVE MUCH TO DO with family law, but certain kinds of paternity tests were among the elements of taxation that Jean Pierre Le Gall discussed in the 11th Annual David R. Tillinghast Lecture on International Taxation, "Can a Subsidiary Be a Permanent Establishment of Its Foreign Parent?" Le Gall, chairman of the International Fiscal Association's Permanent Scientific Committee, focused in his speech on a provision in the Organisation for Economic Co-operation and Development's Model Tax Convention that a subsidiary company with a foreign corporate parent is not necessarily a permanent establishment—a fixed place of business—of the parent. □



Tick, Tick, Tax!

AS CONCERN MOUNTS AMONG TAX experts and legislators, the Law School hosted "The AMT Ticking Time Bomb: What Should We Do About It?" in April. The Alternative Minimum Tax was originally intended to reach the richest households that paid no income tax. But by 2010 more than one-third of taxpayers will become ensnared in the AMT's "parallel tax system." Panelists included the Urban Institute's Leonard Burman; Rutgers University's Rosanne Altshuler, a senior economist on the 2005 President's Advisory Council on Tax Reform, and Professors Daniel Shaviro and Lily Batchelder. □



Alumni Almanac

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New York State's Chief Judge Judith Kaye '62 received standing ovations both before and after she delivered her keynote address at the Annual Alumni Luncheon at the Pierre Hotel last January.



ALL RISE Law Alumni Association Board President Lawrence Mandelker '68, left, with Kaye; top: Jason Washington '07, left, SBA President Johnathan Smith '07 and Vilas Dhar '07; luncheon co-chairs Katherine Frink-Hamlett '91, left, and Carol Robles-Roman '89.

Life Lessons of the Chief Judge

Editor's note: Last January, two months before being reconfirmed as New York's chief judge, Judith Kaye '62 gave the keynote at the Annual Alumni Luncheon. Here is an excerpt from her crowd-pleasing speech.

WHEN OUR FABULOUS DEAN invited me to deliver the keynote address, he said it would allow me to give "a retrospective of over two decades" of my career on the bench. Making full use of chief judge's prerogative, I've gone back even farther to share six of my life lessons.

My parents, immigrants from Eastern Europe, were first farmers and later shopkeepers in Monticello, New York, where I was born. I attended a one-room schoolhouse. Whatever image you may have about one-room schoolhouses, I skipped two grades when I transferred to public school. I attended Barnard College at age 15. You cannot imagine the enormity of the adjustment from Monticello to Manhattan. I remember the inkblot test they gave entering Barnard freshmen. I saw a rooster. The person next to me wrote "Dante's *Inferno*."

The single luckiest thing that happened to me at Barnard, maybe in my entire life, is that I came down with the mumps and had to miss my first exams. But for the mumps, I likely would have flunked everything and been back in Monticello for good.

Lesson Number 1: *A little adversity sometimes can be a blessing.*

In high school, I made the decision to be a journalist. I majored in Latin American studies at Barnard and saw myself as a journalist making and shaping world opinion in the capitals of Latin America.

After innumerable rejections, I found a job reporting weddings, church socials and women's club meetings. Not the stuff of Pulitzer Prizes. Before long, I began to rethink my life and in desperation enrolled at the Law School at night with a day job editing copy for a feature syndicate. My sole ambition was to get off the social page, and law school seemed a sure-fire way in the 1960s for a woman to be taken seriously in the male-dominated profession of journalism.

Lesson Number 2: *Every now and then it's good to reconsider the life-course you're on.*

With a demanding daytime job, for me night law school was hardly a breeze. My assigned seat in Civil Procedure happened to be next to the class genius, a particularly brilliant engineer. When the grades came back on Delmar Karlen's mid-year exam, my engineer friend and I were both shocked: My grade was at the top of the class, his at the bottom. He had written flawlessly about the law of contracts, which was the context of the exam hypothetical. My response was about the credibility of witnesses.

Lesson Number 3: *Before you go spouting off on a subject, first be sure you know what the topic of the discussion is.*

It was near-impossible to find a law-firm job. "Our quota of women is filled" was a

common response—meaning, they had a woman, a quota, or both. Naturally, I aimed for one of the completely impenetrable Wall Street firms. My wonderful classmate Roberta Karmel '62 asked me, "Judy, why are you doing this? They don't want us!"

After scores of rejections, I was hired by the venerable firm of Sullivan & Cromwell—the only female in its litigation department. Departmental meetings began, "Gentlemen and Judy." Why on earth Sullivan hired me is one of the great mysteries, and great joys, of my life.

Lesson Number 4—mine and Yogi Berra's: *When you reach a fork in the road, take it. It's no time to pause for reflection, or be timid, or ask too many questions, or study the odds. Just go for it!*

I have now marked 23-plus years as a judge of New York State's highest court, 14 of those as chief judge. Let me assure you, nothing comes close to the privilege of being chief judge.

One of the most important reforms to our court system during my tenure has been jury reform. My official reason for focusing on the jury system is that it is a singular opportunity to show the public that our justice system works well. We call more than 650,000 potential jurors every year. That's a lot of opportunity to win public trust and confidence. My unofficial reason is that years ago my NYU Law School graduate daughter Luisa '91 called me during a break from jury service to say: "Mom, this

is a great place to meet guys.” Immediately I resolved to expand the array.

We began the process with a commission of lawyers, judges and members of the public, who within six months handed me a terrific blueprint for reform. Indeed, the commission process has been a hallmark of my years as chief judge—an extraordinary route to effective reform throughout our court system.

Lesson Number 5 echoes Margaret Mead: “Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has.”

As a quick example of profound change affecting the courts, consider the drug epidemic and its impact on our criminal-court and family-court dockets. Probably three-quarters or more of our criminal cases are drug-driven, many of them low-level offenders committing nonviolent crimes again and again simply to support a drug habit. Or consider the huge child-neglect and abuse dockets and record numbers of children being removed from their homes to enter foster-care limbo. There was a public outcry: “Do something.”

I’m proud to say we have done a lot. Today in New York State we have 152 Drug Courts, offering rehabilitation instead of jail; we have Family Drug Courts to speed rehabilitation and avoid the need to terminate parental rights, and Juvenile Drug Courts for vulnerable teenagers. We have Integrated Domestic Violence Courts throughout the state focused on victim safety and offender accountability; we have Mental Health Courts to reroute people in need of treatment from prison; we have Community Courts, Reentry Courts and many more specialty courts, and, best of all, we have a Center for Court Innovation—a research and development arm to help us think through these new approaches to delivering justice.

Are those without controversy? Of course not. Nothing worthwhile in life is. We are sensitive to the criticisms when they are valid. But we also have tremendous antidotes: the thanks of people who have been served by these courts and have been able to turn their lives from the downward spiral they were on; the enthusiasm of our judges who say, “This is what I became a judge to do,” and nationwide and worldwide interest in replicating our courts.

Lesson Number 6, the words of the late South African lawyer, soldier and statesman General Jan Christian Smuts: “When enlisted in a good cause, never surrender, for you can never tell what morning reinforcements... will come marching over the hilltop.” □

Weinfeld Gala



SEPTEMBER 14, 2006

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SWINGIN' WITH THE STARS 1 Barbara Reuter and Trustee William Williams '61 dance the night away, 2 Law School Trustee Anthony Walters '77, left, and board chairman Lester Pollack '57, with his wife, Geri, share good times, 3 SeamlessWeb cofounders Jason Finger '98 and his wife Stefanie, 4 Trustee Charles Klein '63, left, and his wife, Jane, with Richard Reiss '69 and Trustee Bonnie Reiss '69, 5 Ju-Hsin Pan (LL.M. '99) with her husband Winston Wenyan Ma (M.C.J. '98), 6 Dean Richard Revesz jokes about making some brief remarks.

Recent Grad Reception



NOVEMBER 2, 2006

PARTY TIME Rafiq Kalam Id-din II '00, above left, with Peter Lallas '04, Beth Rotman '99 and Joseph Ehrlich '97; right: The New York University Torch Club off Washington Square heats up as alumni from the classes of 1994 to 2006 reconnect and network with one another.





The Iceman Cometh

NHL Commissioner Gary Bettman lunches at the Law School.

IT TAKES A TOUGH EXECUTIVE TO freeze a hockey season, withstanding pressure and criticism from players and fans. But National Hockey League (NHL) Commissioner Gary Bettman '77 cited brains, not brawn, with giving him the strength to stick to even wildly unpopular management decisions.

By Bettman's analysis, a wide disparity in the competitive skills of teams was hurting the league overall. Clubs with \$80 million payrolls were predictably trouncing those with \$20 million. "If you don't think you can outscore somebody, you've got to do something else in the game to try and slow them down," said Bettman.

When it came time for a new collective bargaining agreement in 2004, the players' union balked at the proposed salary cap. But believing the NHL needed a new economic system, and that a cap would provide longterm stability, Bettman stood his ground. The subsequent lockout led to the cancellation of the 2004-05 season.

"Very few businesses ever shut down and live to tell about it, but we set a record [in 2005-06] for both attendance and revenues," said Bettman. "No sports league has ever lost a whole season, and that's not

something I'm proud of. What I am proud of is how well we came back."

Bettman, who was the guest of Dean Richard Revesz at an October roundtable, talked expansively about his legal career and how he made the transition to business executive. "It was nothing but serendipity," Bettman said of his path from being an attorney at Proskauer Rose Goetz & Mendelsohn to taking executive posts with not one, but two sports leagues. Prior to serving as the first commissioner of the NHL, Bettman spent 12 years as senior vice president and general counsel of the National Basketball Association (NBA).

"Almost everything we do in a sports league has a legal implication," Bettman said, explaining that as the head of the "most international of the North American sports," he has dealt with upholding the NHL's by-laws as well as handling its advertising agreements, jurisdictional issues, intellectual-property infringements, broadcast and Internet rights, Olympic participation, injury compensation and even a criminal investigation into alleged gambling. "[The NHL is], like lots of entertainment companies, in lots of businesses that touch lots of areas of the law."

Roundtable Guests

The Dean's Roundtable luncheons bring prominent members of the Law School family to intimate gatherings with students. In addition to Gary Bettman, guests in 2006-07 included:

Jeffrey Aronson '83

Founder and Managing Principal,
CenterBridge Partners

Charles "Charlie" Chasin '83

Managing Director, Morgan Stanley

Jonathan Dolgen '69

Wood River Ventures

Michael Fuchs '71

Private Investor

Andrew Hendry '72

Senior V.P./General Counsel,
Colgate Palmolive Company

Lady Barbara Thomas Judge '69

Chair, U.K. Atomic Energy Authority

Jason Muss '96

President, Muss Development

Robert Pozen (former faculty member)

Chairman,
MFS Investment Management

Gregory Racz '98

President and COO, Octavian Advisors

Gerald Schoenfeld '49

Chairman of the Board,
Shubert Organization

Mark Wilf '87

President, Minnesota Vikings

Bettman's tenure with the NHL, which began in 1993, has been the catalyst for myriad changes to the sport. Bettman expanded the league to an impressive 30 franchises, up from 24 when he took the job. Stanley Cup-champion teams have represented such non-traditional hockey markets as Raleigh, North Carolina; Tampa, and Dallas. Bettman also implemented rules changes designed to make gameplay more exciting for the fans. The licensing and sponsorship revenue for the NHL is on par with such other sports merchandising juggernauts as Major League Baseball, the National Football League and the NBA. Bettman now looks back on his fateful 2004 decisions as the beginning of a new direction for the league. As the famed Canadian hockey announcer Foster Hewitt put it, "He shoots; he scores!" □ *Graham M. Reed*

Better Co-Ed Than Dead

A century-old women's college called on Virginia Worden when it needed to make a mission-altering change.

STUDENT REBELLION WAS IN FULL swing when Virginia Hill Worden '75 entered Randolph-Macon Woman's College (R-MWC), in Lynchburg, Virginia, in the late 1960s. Worden fit right in; she marched in anti-Vietnam-War protests and led a successful revolt against the school's dress code banning slacks. So she was not unprepared for the mayhem that erupted last September, when as interim president she announced that the 115-year-old single-sex school would open its doors to men in September 2007.

Some students burst into tears. Others chanted, "Keep R-MWC a WC." Over the next week, hundreds of protesters marched with signs and yellow T-shirts that read, "Better Dead Than Co-Ed." The students registered as a campus organization, which entitled them to a Web site, a faculty adviser and use of the college facilities. They held a '60s-style sleep-out on the front campus lawn that eventually moved to Worden's front yard. At 6:00 the second morning, the protesters started singing the R-MWC alma mater. "It's my karma to have students camped out on the lawn to protest this change," says Worden, who threw on jeans and a sweatshirt "and joined them, arm-in-arm, singing the college song." She says, "They let me in. I protested myself."

Nine students filed a lawsuit, which was dismissed in January. But most of the students cooled down after Worden let them pore over the school's financial statements. Over four decades, enrollment had declined steadily from 900 students to 700. As a result, the school had been dipping into its endowment to woo students with financial incentives. Had R-MWC stayed all women it would have folded within 12 years, Worden estimates. "The decision wasn't made on a philosophical basis. It was a question of survival," she says.

Raised in Columbia, South Carolina, Worden recalls accepting the lesser roles designated for girls, such as class secretary instead of president, and cheerleader instead of athlete. Both parents—Albert, who worked for a paper company, and Virginia, who quit teaching to raise Worden and her sister—were college graduates and expected their daughters to further their education. Worden was drawn to Randolph-Macon Woman's College because of its liberalism.

The college was also small enough to encourage participation and leadership in campus activities. "At a time when males were given more value than females, to have a faculty of males and females devoted entirely to women...was extraordinarily empowering," she says. She quickly involved herself in student government, ultimately becoming vice president in her senior year. Inspired by her economics courses—a subject taken by few women in those days at most coed schools—she ended up running the school cafeteria, and upon graduating in 1969 went on to earn her master's degree in economics at Vanderbilt.

Then her life took a detour. Her fiancé was killed in Vietnam. "I'd gone through a life trauma and needed something that

She became a litigator at Davis, Polk & Wardwell, juggling a full-time career with family commitments. Only after her third maternity leave did she quit to raise her children—two of whom, Katherine Worden '06 and Annette Worden '07, have also obtained law degrees from NYU. Worden threw herself into volunteering, becoming the president of the board at her daughters' private school in Summit, New Jersey, and also at R-MWC.

In the 1980s, with their children growing up, she and Geoff had dual midlife crises. Instead of buying a Corvette, however, they studied at the Union Theological Seminary, then became ordained interfaith ministers. In 1988 they founded Bridges Outreach, which distributes bagged meals, clothing and toiletries to the homeless in New York City and throughout New Jersey.

As Bridges demonstrates, Worden embodies a mix of empathy and proactivity that has served her, and others, well. During R-MWC's tough transition, Worden traveled the country talking to groups that



Worden was able to end a student sit-in by conveying both empathy and hard-nosed financial pragmatism.

wasn't that complicated to do, to work through the grief process," she recalls. For the next two years, Worden traveled the globe as an airline hostess for Pan American World Airways, once again joining a sisterhood of sorts. "They were terrific, adventurous women," she says of her fellow stewardesses. During this time, she met her brother's friend Geoffrey Worden, whom she married in 1974.

Driven by a passion for debating, Worden entered Boston College School of Law, then transferred to NYU: "I loved it. Having a degree from NYU is a wonderfully affirming credential for anything you want to do in life"—which is considerable.

were often hostile. "One of the things that is most impressive to me is her ability to have people challenge her, sometimes in not very kind ways," says husband Geoff, an independent investment banker. "She listens to what they have to say, feels and empathizes with the hurt or anger. She's like a tree—absorbing CO₂ and exuding oxygen."

By the time Worden's one-year term as interim president ended on July 1, she was sure that the decision to go co-ed was the right one. The school—now called Randolph College—more than doubled its applications: 1,859 for the Class of 2011, compared to 902 the previous year. One quarter of the applicants were men. □ *Jennifer Frey*

A Banner

A lively doo-wop group welcomed more than 1,200 guests back to Washington Square, where alumni once again engaged in substantive discussion on pressing current issues. Panels included: "Can the U.N. Do Anything About Human Rights Disasters?" moderated by Professor of Clinical Law Smita Narula; "Business Ethics and Lawyers—Beyond Hewlett-Packard," moderated by Professor of Law Helen Scott; "Hot Topics in Urban

At reunion, time froze, and you could go back to those special moments at school when the intellectual effort of studying for a prestigious postgraduate degree was coupled with the feeling that you can do anything.

—Maurizio Bianchini
M.C.J. '97, LL.M. '02

Overall, the academic content, decor, food, entertainment and CLE credits were conceived and implemented in the best manner.

—Florence Horowitz '50

2007 LAA AWARD RECIPIENTS
from left: Gilbert Holmes '72, Legal Teaching Award; Helene Kaplan '67, Alumni Achievement Award; Dean Richard Revesz; Judith Kaye '62, Public Service Award; Lester Pollack '57, Judge Edward Weinfeld Award, and Lisa Kung '97, Recent Graduate Award.



Reunion

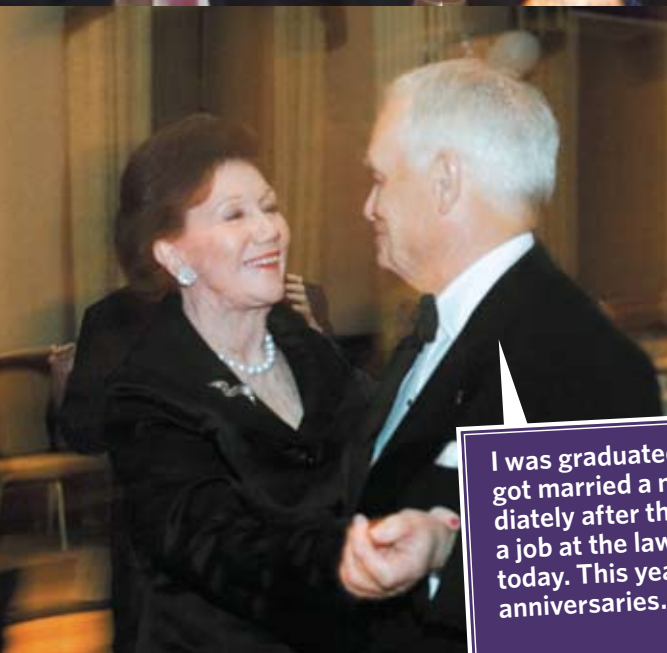
Development," moderated by Vicki Been '83, Elihu Root Professor of Law, and "How Should Constitutional Law and Public Policy Respond to Terrorism?" moderated by Richard Pildes, Sudler Family Professor of Constitutional Law.

That evening, guests enjoyed cocktails with friends from the Root-Tilden-Kern Program, OUTLaw and BLAPA; shared dinner with their classes, and kicked up their heels to a brass band at the Waldorf-Astoria.



My former classmates are now seasoned attorneys and, after years of working hard and handling many different life and professional challenges, seemed assured that our law school had provided the foundation for their success.
—Helena Heath-Roland '87

I most enjoyed remembering the following incident: My friends Alan and Jeffrey and I were all taking Antitrust together. As Alan and I were leaving the final exam, I asked him what he thought of the tricky vertical integration question. He said, "What vertical integration question?" I said, "The one in question number three." He said, "There were only two questions." I said, "Didn't you turn over the page?" The point: Jeff left 20 minutes into the exam. Alan only finished two out of three questions. I stayed the whole time and answered all the questions. We all got the same grade.
And this is why my rightful place was in the NYU Law Revue and not on the NYU Law Review.
—Peter Kazaras '77



I was graduated from the Law School, got married a month later, and immediately after the honeymoon started a job at the law firm where I still work today. This year I will have three 50th anniversaries.
—Wayne Hannah '57



HALFWAY AROUND THE WORLD Pangea3's Mumbai offices. With modern technology, says Kamlani, left, a lawyer in India can work closely with any in-house counsel or law firm in the United States.

An Entrepreneur of the Law

Applying the global outsourcing trend to the world of torts and contracts, Sanjay Kamlani is forging a new legal industry.

SANJAY SHAM KAMLANI (LL.M. '98) and David Perla, his buddy from the University of Pennsylvania Law School, were restless. It was the fall of 2003; Kamlani had already helped take OfficeTiger, a word-processing outsourcing firm based in India, from a business plan to a company of 1,500 employees in four years. Perla was five years into his stint as general counsel at Monster.com. Over an Italian dinner on the Upper East Side, they dreamed about their next career moves. Perla said: "If you gave me three great lawyers in India, I could do the work of my whole office for half the price." Kamlani didn't miss a beat: "So why don't we?"

By the following summer the two had quit their comfortable, high-paying jobs to raise money for a business that barely existed—legal outsourcing. Their New York and India-based company, Pangea3 (from the Greek word meaning "all earth"), uses Indian lawyers to provide legal and patent-support services including contract drafting and analysis; patent research, analytics and litigation; and document review.

Today, after three years in business, the company boasts 170 employees (100 of whom are lawyers) in Mumbai, and 10 (seven lawyers) in Manhattan. Its client list includes several Fortune 500 companies—although, citing confidentiality, Kamlani allows only that they've worked for Yahoo!. Revenues in 2006 exceeded \$4 million, and co-CEO Kamlani expects exponential

growth in the next two years. "Professionals can provide legal services to people anywhere in the world," he says. "Geography doesn't have to impact business."

Clients are attracted initially by the huge savings that outsourcing offers, Kamlani says. For example, Roamware, a San Jose-based telecommunications company, hired Pangea3 to create an electronic database that would highlight the key terms in about 200 contracts. Alan Sege, the firm's general counsel, estimated that retaining stateside lawyers would have cost him at least \$60,000. Pangea3's price: \$5,000.

Critics of legal outsourcing argue that such low rates are wooing jobs away from U.S. lawyers. They also charge that outsourcing can compromise the quality of the service. The Association of the Bar of the City of New York has recently addressed these concerns, issuing guidelines to keep the process ethical. U.S. attorneys need to supervise the work, ensure client confidentiality and avoid conflicts of interest. Kamlani says Pangea3 already does these things: "Our clients don't view our attorneys as any less respectful of confidentiality obligations than full-time U.S. lawyers."

Kamlani also insists that, in the long run, savings on legal fees can help fuel business growth in the United States—an argument that he says ultimately convinces first-timers to remain clients. For example, an Internet services company with a \$300,000 budget for patent review and filing could

only afford to file 10 patents a year using New York attorneys. After hiring Pangea3, it can now afford to file 30 patents annually. And then there's the industrial-products company that last year sought document-review support in a product-liability case with 4.5 million pages of files. Hiring a U.S. firm for that task would have bankrupted the company, Kamlani says. Pangea3 did the job for less than \$500,000. "If we can keep a company alive by allowing them to do a document review in India that they otherwise could not afford, then we have preserved U.S. jobs," says Kamlani.

The eldest of three sons, Kamlani inherited his entrepreneurial spirit from his dad, Sham, who immigrated to Miami from Bombay in 1967 "with nothing," says Kamlani. Sham started a business importing exotic birds, and went on to successful ventures in real estate and the garment industry. He and his wife, Kavita, recently opened an Indian restaurant in South Beach.

Kamlani received his B.A. in economics and public policy from Duke University in 1991. After earning his J.D. at Penn, he joined Coopers & Lybrand, where, says former boss Herman Schneider '64, "Anytime we had a tough problem, he got the assignment." Kamlani pursued his LL.M. at NYU, which he praised for its "practical and business-oriented focus." A year after finishing his LL.M. in international tax law at NYU, Kamlani joined OfficeTiger.

Always confident making decisions—he proposed to his wife after six months of dating and they now have three young children—Kamlani moved to India in 2005 to open the Mumbai office. He now spends his time mentoring and supervising his Indian attorneys. "We're committed to being here for as long as it takes for Pangea3 to run itself," Kamlani says. "Ultimately, we want this company to be viewed as the Cravath of legal outsourcing." □ *Jennifer Frey*

Food for Thought on a Tuscan Fourth of July

Rita Hauser and Richard Pildes convene a multicultural conference in Florence, Italy.



Hauser



Rita and Gustave Hauser, center, and Cynthia Estlund, right, attended the July 4th barbecue.



Pildes



Khouri



Margalit

RATHER THAN “JUST TALKING ABOUT” the Law School’s centers and institutes at meetings of the board of trustees, Rita Hauser ’59 wanted to show her fellow trustees the exciting work being done. So during the first week of July she and Richard Pildes, Sudler Family Professor of Constitutional Law, convened “Democracy and Cultural Difference in the Age of Terrorism,” a multicultural conference for board members and their guests at Villa La Pietra in Florence, Italy.

In addition to Pildes, Law School faculty who took part in the three-day event included Professors David Golove, Moshe Halbertal, Stephen Holmes, Samuel Issacharoff and Jeremy Waldron. Some former

Hauser Global Visiting Professors participated as well: “I’m a proponent of the comparative perspective and approach to global issues, which is why I asked Rami Khouri, a Palestinian, and Avishai Margalit, an Israeli, to share their perspectives on the Middle East,” says Hauser.

“One of the most urgent issues of our time is how democratic societies should address issues of strong differences, whether those differences are religious, racial, linguistic, tribal or cultural,” said Pildes, describing the panels’ themes. “One crucial area is the design of democratic institutions themselves: Should they take account of group differences, and if so, how? Public policy is another area: How much should

democracies seek to accommodate the different language, cultural, educational and religious claims of their members?”

There was something fitting about wrestling with these questions in Italy while also celebrating America’s Independence Day at a traditional barbecue. □

Law Review Alumni Compare Notes



Delaney



President John Sexton, left, and Lipton

A casual conversation between Martin Lipton ’55, chairman of the NYU board of trustees, and Erin Delaney ’07, editor-in-chief of the 2006-07 *NYU Law Review*, led to the revival of the publication’s alumni organization, which kicked off on April 4 with a cocktail party. Event co-chairs Evan Chesler ’75, presiding partner

at Cravath, Swaine & Moore, and Herb Wachtell ’54, partner at Wachtell, Lipton, Rosen & Katz, lent their influence to the organization, which will have programmatic goals such as connecting students researching notes topics with an impressive base of *Review* alumni who can offer resources and networking opportunities.

Your support of the annual fund...

10 world-class scholars have joined our faculty since 2006

12 students launched the Leadership in Law and Business Program

270 students received public interest grants this past summer

Taking Stock of the Law

Rachel Robbins: Law Women's Alumna of the Year

IF IT HADN'T BEEN FOR A KINK IN NYU School of Law's financial-aid policies, Rachel Robbins '76, general counsel to the New York Stock Exchange, might never have become a lawyer. In the early 1970s, the Wellesley grad with a degree in French literature was working as a paralegal; her husband, Richard, was getting his law degree at NYU. When the school told him that he was at risk of losing his scholarship and loans because his spouse worked, the newlyweds were faced with a choice: separate or have Rachel go to school, too. Rachel went to law school. "That's how I became a lawyer," Robbins says with a laugh, sitting in her sixth-floor office at the New York Stock Exchange. "I guess I've never been successful at planning my life or my career. I always have responded to opportunities."

Her more than 30-year career as a lawyer in the financial industry revolved around that philosophy. She's always been open to any new challenge that comes her way. And, as the recipient of the NYU Law Women's second annual Alumna of the Year Award, that is the advice she most wants to impart to the students at her alma mater. "I want to encourage people that change is good," she says. "They need to stay open to opportunities, develop broad skill sets and look into different kinds of things."

There's no question that Robbins has followed her own career advice. In 2001, after 25 years at Milbank, Tweed, Hadley & McCoy and JPMorgan, where she had served as general counsel, she decided to retire when JPMorgan merged with Chase. But Robbins never intended to play golf and bridge. Instead, she helped found an international consulting firm, Blaqwell;

(shares of NYSE rose 5.5 percent the day her hiring was announced). It's a critical time for the exchange as it enters into a new era of global consolidation, takes on the challenges of being a private company and adjusts to ever-changing technology. One of her first accomplishments in the job: ensuring that the \$10 billion merger of the NYSE and Euronext, the largest European stock exchange, went smoothly last spring. With her wealth of international management experience in the financial industry, Robbins, who heads a staff of 160, is perfectly suited to handle the task. "Rachel is one of the best managers I've ever worked with," says Debra Stone, a freelance consultant who worked for Robbins at JPMorgan. Citing Robbins's legal talent, her understanding of doing business in different cultures and her dedication to the professional growth of her employees, Stone says Robbins "set standards for focusing on the quality, efficiency and dedication of people to their work and not just putting in face time."

A case in point: Back before it was acceptable in the financial industry, Robbins allowed Stone, after the birth of her first



life. "This is deeply troubling to me," says Robbins, who blames the billable-hours-based legal mindset. "If you can solve a client's problem in 15 minutes, you're just not profitable for the firm. That's a disadvantage for women." She urges women to consider the path she followed and serve as in-house counsel. "One of the benefits to being in-house is that you're encouraged to come up with an effective solution quickly," she says. "You have to make legal judgments that have a real impact on the business world. It's a more pragmatic approach."

Robbins's choices have allowed her to raise two sons—now in their 20s—and maintain a full life. She sits on the board of the NYU School of Law, goes to the theater and travels overseas with her husband. Her secret? "You have to choose what to focus on and learn to be good at delegating," she says. That, and embracing opportunities that come along, just as she did 30-some-odd years ago, when she took the plunge and applied to NYU. □ *Dody Tsiantar*

RACHEL ROBBINS'S FAVORITE ELEANOR ROOSEVELT QUOTE:

"A woman is like a teabag. You don't know how strong she is until she is in hot water."

joined Citigroup International as general counsel, and served as a strategic adviser for Axiom Legal Solutions, a legal-services firm with a unique twist that allows lawyers to work for corporate clients on a flexible schedule. "I've learned that you never say never," she says. "Here I am, back at the epicenter of Wall Street."

She arrived in the hallowed halls of the New York Stock Exchange last November

child, to go on a flexible work schedule without going off the career track. "She always was an excellent role model for those of us in the profession who are trying to balance career and family," says Stone.

It's not surprising that Robbins approved of such a move. One of her concerns is the growing number of women in their 30s who are leaving law because they can't manage both a career and a satisfying family



Asylum: Views from Both Sides of the Fence

Law alumni debate the efficacy and humaneness of tougher post-9/11 U.S. immigration laws.

TAKING A HARD LINE ON ILLEGAL immigration, a Republican-led Congress authorized the construction of a 700-mile-long fence between Arizona and Mexico last September. Six weeks later, moderator Nancy Morawetz '81, professor of clinical law, asked those gathered at the Law Alumni Association's annual lecture, "Immigration: Do Good Fences Actually Make Good Neighbors?" to consider the intangible barriers between the United States and those who want to live here. "We're going to look beyond the literal fence

immigration courts or appeals boards, making asylum "an area where we see checks and balances working in our system," she said. F. Franklin Amanat, an assistant U.S. attorney in the Eastern District of New York, whose jurisdiction includes JFK International Airport, agreed, saying that although legitimate asylum-seekers are at times turned away, those instances are few in number.

Others strongly debated that point. Judy Rabinovitz '85, senior staff counsel for the ACLU's Immigrants' Rights Project, countered that since 1996, when the overhaul of immigration laws began allowing expedited removal procedures to be held at borders rather than in courts, low-level officers have had an authority disproportionate to their training to weigh asylum. This and other procedures that would be prohibited in law enforcement create an inherent unfairness in how refugees are treated, she said. For instance, she cites the fact that

their actions were initially categorized as providing material support to terrorists. Describing a central paradox of post-9/11 immigration law, she said, "This is a situation where the application of reasonable laws keeps out those who need it most." □



Doris Ling-Cohan '79, Richard Tolchin '55 and Dean Richard Revesz

at the border to the broader set of real and metaphorical fences that make up our immigration law," she said.

After 9/11, rules on immigration became stricter, particularly affecting refugees seeking asylum. Around 80 refugees are granted asylum daily, according to statistics from U.S. Citizenship and Immigration Services cited by Patricia Buchanan, chief of the immigration unit in the U.S. Attorney's Office for the Southern District of New York. Those rejected can go before

some asylum-seekers have been held in detention for years before seeing a courtroom. And then, they may even appear before immigration judges in shackles.

Abigail Price (LL.M. '89), who is a global technical adviser for the prevention of exploitation and abuse at the International Rescue Committee, described how a mother and daughter from Sierra Leone—raped, enslaved and tortured in their home—endured a grueling wait at the border because they, under duress, housed local rebels.

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BLAPA Spring Dinner



1 BLAPA's 2007 distinguished service honorees Tracy Rich '77, left, Phyllis Wan '91 and Roberto Velez '89, 2 Vijay Vaitheeswaran and BLAPA Board President Michelle Meertens '98, 3 Malika Hinkson '99 and Veronica Moo '04, 4 Hakeem Jeffries '97, Edward Rodriguez '97, Velez and Raymond Lohier '91, 5 Rafiq Kalam Id-din II '00, Marc Mitchell '02 and Kiisha Morrow, diversity manager at Cravath, Swaine & Moore, 6 Ofelia Ortiz, Fernando Ortiz '84 and AnBryce scholar Monique Robinson '10, 7 Alexis Hoag '08, Rodriguez and Natalie Gomez-Velez '89



Applause, Applause: Notable Alumni Career Highlights

Joseph McLaughlin (LL.M. '64) of the U.S. Court of Appeals for the Second Circuit is the 2006 recipient of Fordham Law School's Fordham-Stein Prize.

Peter Schuck (LL.M. '66) has published *Targeting in Social Programs: Avoiding Bad Bets, Removing Bad Apples* (Brookings Institution Press).

Judith Saffer '67 was named president of the American Intellectual Property Law Association.

Jonathan Lippman '68 has been appointed presiding justice of the Appellate Division of the NY State Supreme Court's First Judicial Department.

Marc Turtletaub '70 won the 2007 Darryl F. Zanuck Producer of the Year Award from the Producers Guild of America, and his film, *Little Miss Sunshine*, won Best Feature Film at the Independent Spirit Awards and two Academy Awards.

Hussein Hamid Hassan (M.C.J. '71) was singled out by the *Economist* as the "world's biggest figure in *fatwas* for Islamic finance." He is a Muslim legal expert who decides what gets "the Islamic seal of approval."

Susan Serota '71 chairs the American Bar Association's Tax Section.

Raymond Kelly (LL.M. '74), NYPD commissioner, was inducted into the French Legion of Honor, presented by then-French Interior Minister Nicolas Sarkozy.

James Goodfellow (LL.M. '75) is the new chairman and cochief executive officer of Fiduciary Trust Company International.

Rachel Gordon '76 has been appointed director of the New York City Region of the NYS Department of Parks, Recreation and Historic Preservation. She oversees the city's six state parks.

Willy Gaa (LL.M. '85) is now the ambassador of the Republic of the Philippines to the United States.

Dani Kuzniecky (M.C.J. '86), the general comptroller of the Panama Canal Authority, has been appointed chairman of the board of directors.

Peggy Sheahan Knee (LL.M. '87) has been serving as president-elect of the NJ State Bar Association since May 2007. She will serve as president beginning in 2008.

Shawn Maher '87 has become the staff director and chief counsel to the Senate Banking Committee.

Frank Borchert '88 is general counsel of the U.S. Small Business Administration.

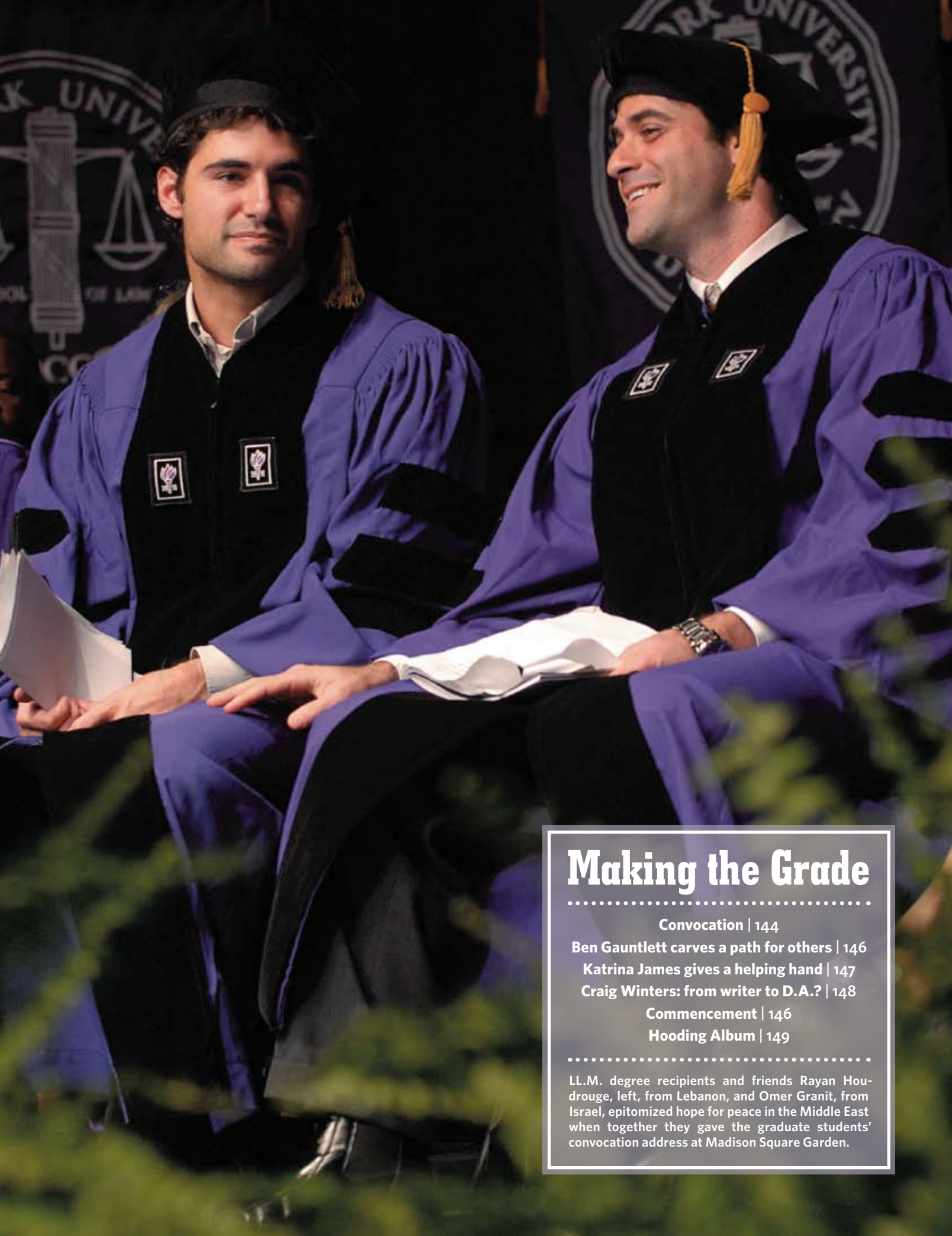
Diane Di Ianni '88 was appointed to the Massachusetts Board of Bar Overseers by the State Supreme Judicial Court.

Ray Lohier '91 has been promoted to deputy chief of the Securities and Commodities Unit by U.S. Attorney Michael Garcia for the Southern District of New York. Lohier was previously chief of the Narcotics Unit.

Samuel Buell '92 was a recipient of the 2006 Attorney General's Award for Exceptional Service. He is a former assistant U.S. attorney who prosecuted the Enron case.

Jessica Rosenworcel '97 has become senior legal counsel to the Senate Committee on Commerce, Science and Transportation.

Christina Sanford '00, a special assistant at the U.S. Department of State, received the 2006 Call to Service Medal, which recognizes significant achievements in public service by federal employees.



Making the Grade

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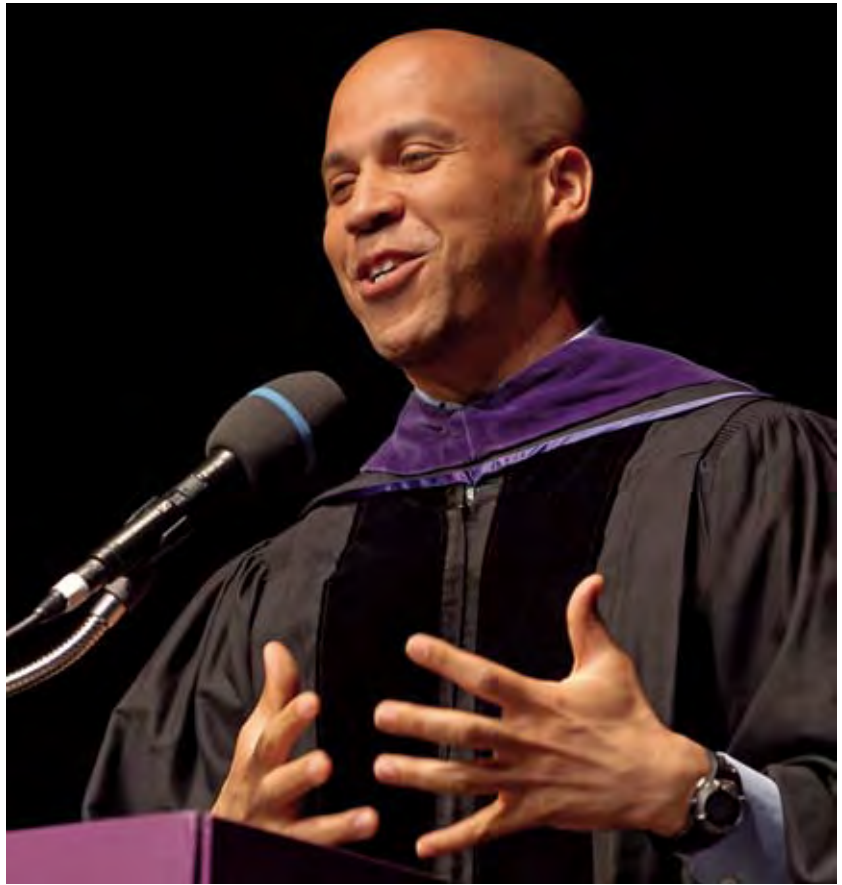
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LL.M. degree recipients and friends Rayan Houdrouge, left, from Lebanon, and Omer Granit, from Israel, epitomized hope for peace in the Middle East when together they gave the graduate students' convocation address at Madison Square Garden.

Convocation



Granit and Houdrouge, top; clockwise from right: Cory Booker; Law School board chairman Lester Pollack '57 accepts a \$210,000 class gift from Jason Washington and Moshe Orlin; Hernandez.

“Go Out in the World and Stand Tall”

ONLY 10 YEARS OUT OF LAW SCHOOL himself, Newark Mayor Cory Booker was in a prime position to reach the graduating students during his keynote address to the Class of 2007.

In 1999, when he was a Newark city councilman, Booker met Ms. Jones, a resident of the crack-ridden and violent Brick Towers housing project, who said to him, “You need to understand that the world you see around you reflects what’s inside.” Booker pitched a tent in the middle of the project and staged a 10-day hunger strike to draw media attention to the flagrant drug dealing that had paralyzed the community. He remained a resident of the Towers until 2006. The tactic so successfully drove dealers away that he moved temporarily into a motor home on one of Newark’s most dangerous street corners the following year.

Immediately after losing Newark’s 2002 mayoral race, Booker vowed to run again and won by a landslide in 2006. Much to the chagrin of his security detail, he proved his housing choices weren’t a campaign stunt by renting an unassuming rowhouse apartment in the crime-filled south section of town, where he continues to reside.

Since Booker took office as mayor a year ago, he’s instituted the Central Narcotics Division, a new police unit designed to combat violent and drug crimes; holds monthly office hours for citizens, and offers incentives for city agencies to hire Newark residents.

In the end, Booker reiterated the simple advice his grandfather gave to him on his law school graduation day. “Stand tall,” he said, bringing the cheering members of the audience to their feet.

BRIDGING THE GAP

Growing up in the poor East New York section of Brooklyn, Damaris Hernandez, the J.D. student speaker, excelled thanks to the support of her family and teachers. She graduated magna cum laude from Harvard, and, as the first in her family to pursue a graduate degree, earned a coveted AnBryce scholarship to attend the Law School.

While a second-year law student, Damaris and classmate Carlos Siso '07 co-founded TruePotential, a groundbreaking LSAT preparation program that provides low-income prospective law students with practice tests, help with their statements and abundant moral support. While coach-

ing and inspiring TruePotential recipients such as Rosanna Platzer and AnBryce Scholar Helam Gebremariam, who are now 1Ls at the Law School, Hernandez juggled her part-time job as a law clerk, coursework, a social life, editorial duties for the *Review of Law & Social Change*, and the responsibility of chairing the Latino Law Student Association’s admissions board.

“Damaris is the personification of what I’m trying to achieve,” Gebremariam said. Without TruePotential, she added, she would not have had a shot at a top law school.

“I’ve had the opportunity to experience a privileged borderland between two cultures,” Damaris said in her address, “that of the poor, inner-city, Spanish-speaking, Puerto Rican daughter” and that of the soon-to-be elite law school graduate, prestigious law firm associate (at Cravath, Swaine & Moore) and cofounder of a nonprofit organization. “In my *sal si puede*, get-out-if-you-can neighborhood, the closest I ever thought I’d be to three stripes were the ones on my Adidas,” Damaris said, pointing to the black stripes on the sleeves of her gown. “I have evolved from the Nuyorican to the NYU-Rican,” she marveled.

FINDING COMMON GROUND

Rayan Houdrouge and Omer Granit stood on the stage of the Theater at Madison Square Garden together, taking turns telling a story about Mideast relations. The unlikely duo—Omer is Israeli, and Rayan Lebanese—described how they met as war raged between their homelands and how they forged a bond of friendship that is, in their words, as strong as one between brothers.

Days before each traveled to New York to begin the LL.M. program in corporate law, the 2006 war between Israel and Lebanon erupted after Hezbollah forces crossed into northern Israel, kidnapping two soldiers and killing three others. The Israeli Defense Force (IDF) responded in part by bombing a number of Lebanese targets.

Omer, who is still an officer in the IDF, was called into service two days after arriving (but was excused from duty to stay in school). He learned that a friend in his brigade had been killed. Rayan kept up with the terrible events in his home village of Qana, a target of IDF air strikes, on CNN.

Though angry and frustrated about the war, the two did not allow politics to dominate their conversations with fellow students. However, Rayan said in their shared speech (transcribed at right), they initially tried to keep their opinions to themselves.

Maintaining their silence quickly proved impossible. In September 2006, a heated debate held by the Center on Law and Security between counterterrorism expert Michael Sheehan, Lebanese journalist Hala Jaber and former Hauser Global Law Professor Sami Zubaida about Hezbollah forced the issue into the open. Afterward, Omer and Rayan continued talking; they commiserated about their anguish as well as their hope for a peaceful future in the Middle East. “The crucial thing was sharing our experiences and our vision,” said Rayan. “This was the only way we would be able to find common ground.”

A soccer field by the Hudson River was where Rayan and Omer could let off steam and get to know each other. “In the beginning, we made sure to talk about unimportant things,” said Rayan. “We talked about playing soccer, scoring points—and about the passes that Omer didn’t give me.” Omer’s alleged ball-hogging seems to have paid off, however, as their team won the intramural league championship.

The two graduates relish their bond. “Once you realize that there are people beyond the TV screens who like to play sports and go out,” Omer said, “you say to yourself, ‘They’re not so different.’” □

“At NYU, the World Is in the Hallways”

For the first time in its 173-year history, the Law School had two graduate student speakers at convocation, delivering their speech together. Omer Granit and Rayan Houdrouge were graduated with LL.M.s in corporate law. Granit is an associate at White & Case in New York, and Houdrouge will soon be an associate at Lenz & Staehelin in Switzerland. Below is an edited transcript of their speech.

Omer: Rayan Houdrouge is my friend. He was born in Senegal and his father is a Shia Muslim Lebanese. He is from the southern Lebanese village of Qana that is tragically known for bombings in 1996 and 2006 that together killed 130 civilians.

My name is Omer Granit. I am an Israeli who served with the Israeli Defense Forces in southern Lebanon. I have lost many of my friends in conflicts between Israel, Lebanon and Palestine.

Rayan and I are both graduating from the NYU School of Law LL.M. Program. Before this year we didn’t know each other. We arrived at NYU last summer in the middle of the war between our respective countries. At that time, we were angry, frustrated and hopeless.

Rayan: Because of these strong feelings we took a somewhat defensive position and attitude when we arrived at NYU. We said to ourselves: “Enjoy the stay, improve your legal knowledge and try to take the most advantage of this experience. But keep your views for yourself; don’t share your opinions with others because you will waste your time; they won’t understand you.”

However, here at NYU, Omer and I have learned that we were totally wrong. In fact, during this year we have had the opportunity to truly express and discuss our ideas and perspectives with other people, even the least expected ones.

We deeply believe that all of the students of the LL.M. Program have learned during this year that NYU is an extraordinary community that is based on the diversity of opinions of its students and professors. Now we know that NYU is a community we belong to not because we share a common and uniform vision but because of the quality and uniqueness of our own visions. At NYU we are all together because we are all different.

Omer: The NYU experience is about possibilities. At NYU the world is in the hallways, it’s in the classrooms, it’s in the library, it is there for you to know, to discuss, to discover, to understand.

The NYU experience is the opportunity to attend a class on Islamic law with an Iranian teacher. The NYU experience is the opportunity to play on a soccer team with Brazilians, Germans, Japanese and Senegalese. The NYU experience is the opportunity to hear Henry Kissinger talking about transatlantic relations and Al

Gore talking about the environment. The NYU experience is also the opportunity to go to the Fall Ball and have a drink with American J.D.s and debate burning issues.

Of course, these are only a few examples. However, they show what makes the NYU experience an extraordinary journey; it represents a unique chance to discover the other, to speak with him, to share with him and to start to better understand him. The NYU experience constitutes a fantastic tool to expose us to different opinions, ideas and perspectives. It presents us with this challenge to discover the other on a somewhat “neutral” ground, which allows us to free our minds, and the rest follows.

Rayan: During this year we have had to defend our positions, to argue and confront. And we believe that thanks to this confrontation, we now know more about ourselves, our qualities and our limits.

This year at NYU has been truly about building character, personality and friendships. It has helped us to enhance our goals and encouraged us to take responsibility. This year was a great legal experience; but it was also, and perhaps more importantly, a socially and politically stimulating experience.

We have met many people from all over the world and we have seen many differences among us. But at the same time we think that today we view ourselves less as citizens of a certain country and more just as humans with common fears, needs and objectives.

Now we are in a better position to understand the approaches and reasoning of people with other backgrounds and cultures. And this is why today we are better legal professionals.

As to the conflict involving our countries and Palestine, I must admit that Omer and I still disagree on a lot of points. But now we strongly feel that the crucial thing is sharing our respective experiences and visions, because it is only through this that we will be able to find common ground for solutions.

I won’t lie: We are still angry and we won’t forget what happened to my village. We won’t forget what happened to Omer’s friends; we won’t forget all the Israelis, Lebanese and Palestinians who died in the conflicts. But today we have hope, because today we believe a discussion with the other is possible.

PROFILES



Ben Gauntlett

HAUSER SCHOLAR BEN GAUNTLETT rarely cracked open a textbook in high school. The six-foot-tall Aussie was a jock all the way, playing cricket, rugby and athletics—the down-under equivalent to track and field. In 1995, his sporting days came to an abrupt end when he suffered a broken neck during a rugby match in his hometown of Perth, leaving him a quadriplegic with limited movement in his arms, hands and upper body. Recovering in the hospital, Gauntlett set aside darker thoughts: “You think you’re badly off, then you see someone on a ventilator, or a guy who gets just one visitor a year,” he recalls. “You realize how lucky you truly are.”

But determination, not luck, drove Gauntlett’s future successes. Turning to academics, he finished two years of school in one. He entered the University of Western Australia initially to study medicine, but switched to law because “law is more dependent on intellect than physicality,”

he says. Traveling with his prize-winning moot court team gave him the confidence to undertake arduous trips abroad. Graduating in 2002 with dual bachelor’s—law and commerce—he went to Oxford on a Rhodes Scholarship, then on to NYU for his LL.M. in trade regulation.

He lives alone, cooks for himself and pushes his nonmotorized wheelchair. He’s assigned a notetaker, and friends help him navigate the streets in a pinch, although he was homebound after snowstorms: “It’s too bad your mates don’t have a spare bulldozer on them to help you out in the snow.”

Gauntlett is helping write a brochure for NYU law students with disabilities. “It’s one of those evolving things where people with disabilities stand on the shoulders of others,” he says. “The next person will have it easier.” He will return to Oxford to finish his doctorate in competition law, with an eye toward practicing law back in his native Australia. □



Commencement



“In recognition of his outstanding professional achievements, his profound civic and philanthropic legacy, and his unwavering devotion to this institution...”

.....

Dean Richard Revesz introducing Lester Pollack '57, chair of the board of trustees of the NYU School of Law, who was presented the Albert Gallatin Medal by President John Sexton





"We are always asked to identify ourselves as belonging to a category—male/female, straight/gay, Caucasian/African American/Asian/Hispanic. What would happen if we were all to simply identify as human beings first?"

.....

Rahim Moloo (LL.M.)
Graduate Student Speaker



"Esteemed for your fortitude, wisdom and energy in fighting crime and corruption, you have earned the profound and enduring gratitude of your fellow citizens of the world."

.....

President John Sexton introducing Spanish Magistrate Baltasar Garzón Real, senior fellow at the Center on Law and Security, who was presented an honorary Doctor of Laws.



Katrina James

KATRINA JAMES HAS WORN MANY hats—even a baker’s cap. James, who learned pastry-making as an undergrad at Cornell, is bi-racial, black and white; and bi-national, born in England. When it comes to trying on careers, she embraces the *Sturm und Drang* with aplomb.

In college she had visions of being a public defender, but after interning at a child welfare agency in Harlem, James realized that her clients needed counseling more than reduced sentences. Putting law school on hold, she earned an M.S.W. at NYU.

Later feeling burned out by social work, James went into admissions and recruiting, first at Fordham and then at NYU’s Wagner Graduate School of Public Service, and noticed a pattern: Candidates from disadvantaged backgrounds—regardless of ambition—often didn’t have the requisite qualifications. Rejecting one such student, she recalls: “I was heartbroken because I knew he could be a great practitioner.” She, too,

could have missed opportunities if not for the rigorous British schooling that placed her in accelerated classes. The comparison made James realize that her original plan, law school, would better equip her to offset these imbalances in our society.

James began at NYU thinking that “the next *Brown v. Board of Education* is coming, and I want to be a part of it.” She’s active in the Black Allied Law Students Association and the Coalition for Legal Recruiting, which promotes faculty diversity.

Next she’ll work in Manhattan as an associate at Clifford, Chance, a firm she chose for its securities litigation work, and volunteer as an admissions officer at TruePotential, the LSAT prep course for low-income students started at the Law School: “I might not use all of the nonprofit skills that I have right away, but I’ll be prepared for the day when I move on to do other things...whatever I decide to do.”

We’ll add more pegs to the hat rack. □



The Empire State Building shimmered in violet on commencement eve.

.....

President John Sexton awarded an honorary doctorate of fine arts to Wynton Marsalis, who was accompanied to the podium by Law School Trustee Anthony Welters '77. Bottom, Caroline Cincotta carried the School of Law banner into Washington Square Park.



Craig Winters

THE DISCOVERY OF AN INCRIMINATING email changed the course of Craig Winters's legal career.

Probing potential abuses in the insurance industry for then-New York State Attorney General Eliot Spitzer, Winters, a summer intern, came across the smoking gun: an email from an employee of insurance broker Marsh & McLennan providing evidence of bid-rigging. That eventually led Spitzer to file a civil complaint against Marsh in October 2004, and to clean up the insurance industry. It also gave Winters a jumpstart on another career: writing.

That winter break he started work on a book, tentatively titled *The Spitzer Effect*, which would examine the AG's impact on the mutual-fund and insurance industries. Winters, whose interest is market regulation, assisted in Spitzer's earlier investigation into the mutual-fund business. In February 2005, he received an initial book offer that was too low to pay his credit card

debt. Financially strapped—he juggled academic jobs and house-sat while working for Spitzer—Winters believed in his book enough to aggressively court a top literary agent, and, by September, he had signed a handsome two-book deal (the second book deals with the impact of excessive executive compensation) with Knopf. Winters took off that fall semester to research the book (due out by January 2008), but was never far from campus. His bylines continued to appear in the Law School's student newspaper, the *Commentator*.

In September, he and his girlfriend, Katie Roberson-Young '06, plan to move to Miami, where he'll take a year to finish his books before looking for work as an assistant district attorney. Although Winters's long-term career plans are to investigate and prosecute white-collar crime as a D.A., he will keep his pencils sharp—just in case: "Writing is as fulfilling [as law] and allows me to enter and exit the legal profession." □



Convocation Kudos

Proud relations and scholarship donors celebrate with graduates of the Class of 2007 and share in the joy and honor of attaining degrees from New York University School of Law.





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Who's Who

1. Jean Arakawa with his wife, Renata Arakawa (LL.M. '06)
2. Edward Britan with his uncle Alan Fuchsberg '79
3. Geoffrey Butler with his uncle Terry Novetsky '84
4. Joseph Cipolla with his father-in-law, Robert Toan '68 (LL.M. '77)

5. Seth Endo with his sister Corey Endo '02
6. David Farkas with his sister Sandra Mendell '04
7. David Firestone with his brother Michael Firestone '03
8. Chanie Fortgang with her father, Chaim Fortgang '71
9. Alexander Goldenberg with his cousin Rosalind Fuchsberg Kaufman '77

10. Ian Greber-Raines with his brother Blair Greber-Raines '02
11. Alexis Greenberg with her father, Melvin Greenberg '71
12. Laura Greenberg with her father, Richie Greenberg (LL.M. '82)
13. Daniel Warren Hudson with his father, Robert Hudson (LL.M. '72)

14. Emily Huters with her aunt Diane Yu, NYU Chief of Staff and Deputy to the President
15. Andere Indacochea with her father, Ricardo Indacochea (LL.M. '76), and brother Alonso Indacochea (LL.M. '06)
16. Suthatip Jullamon with her brother Kanok Jullamon (LL.M. '04)

17. Andrew Lopez with his sister Laura Lopez '95
18. Shamiso Mbitvo with her guardian William Wetzel '66
19. Michael McGovern with his brother John McGovern '93
20. Knox McIlwain with his father, John McIlwain '69
21. Linda Melendres with her brother A. Paul Melendres '99, and cousin Ryan Harrigan '01

22. Eric Brandon Moran with his stepfather, Law School Trustee Jay Furman '71
23. Alex Morgan with his father, Tom Morgan (LL.M. '76)
24. Rebecca Munoz with her father, Kenneth Munoz '75, and brother Michael Munoz '03
25. William Newman with his grandfather Leonard Newman '43



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- 26. Jonathan Rotenberg with his father, Joseph Rotenberg '74 (LL.M. '79)
- 27. David Rubinstein with his father, Aaron Rubinstein '75
- 28. Gregory Schwegmann with his brother Christopher Schwegmann '01
- 29. Michael Seaton with his wife, Christina Bost Seaton '04

- 30. Michele Steiner with her father, Bruce Steiner (LL.M. '76)
- 31. C. Philip Theil with his cousin Jacob Sasson '06
- 32. Guillaume Vitrich with his uncle Didier Malaquin (M.C.J. '76)
- 33. Carolyn Walther with her domestic partner, Christopher Murillo '05

- 34. Rachel Weinberg with her father, Melvin Weinberg '72
- 35. Michael Wiener with his mother, Geraldine Golomb Wiener '85
- 36. Ana Zampino with her father, John Zampino (LL.M. '74)

Scholars and Donors

- 37. Sullivan & Cromwell Public Interest Scholar Rose Cahn was hooded by Law School Trustee Kenneth Raisler '76.
- 38. Furman Academic Fellows (from back): Paul Monteleoni, Amanda Goodin, Christopher Bradley, Erin Delaney and Leslie Dubeck were hooded by Law School Trustee Jay Furman '71.

- 39. AnBryce Scholars: RaShelle Davis, Jason Washington, Damaris Hernandez and Rosa Neel were hooded by Law School Trustee Anthony Welters '77 and Beatrice Welters.
- 40. Deborah Rachel Linfield Fellow Shabnam Faruki was hooded by Jordan Linfield.

- 41. Carroll and Milton Petrie Foundation Scholars: Vanessa Briceno, Adan Canizales, Brian Collins and Tricia Bushnell were hooded by foundation Executive Director Nancy Laing (second from left).
- 42. Sinsheimer Public Service Scholar Ani Mason was hooded by Law School Trustee Warren Sinsheimer (LL.M. '57).

Making the Grade photographs by Leo Sorel



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A Chat with Rita Hauser



You are a prominent New York Republican, as was your father. He was very active in the party and close to Governors Dewey and Rockefeller. People ask me, "Why are you Republican?" I tell them New York was different when I was coming of age. I am a Rockefeller Republican.

Did he encourage your interest in politics? He thought women should be schoolteachers.

So, were you a rebellious child? I wouldn't call it rebellious, but I had a very strong personality. I still do. If there was something I wanted, I marshaled the arguments and proceeded to figure out how to get it. I never gave up—persistence!

How did you develop your international focus? My forte has always been languages. I studied Latin, French, German and Italian, and was particularly interested in the French Revolution. I didn't know people had the power to change things like that. When I earned my law degree in the U.S., I went to France for a law degree in order to practice in both places. Most big law firms didn't hire women, and if they did, they put us in estates and trusts. My friends Ruth Bader Ginsburg and Sandra Day O'Connor had similar experiences. I was even more peculiar because I wanted to do international work, which meant travel. I remember one senior fuddy-duddy at a major law firm telling me, "Women can't travel alone." I'm not talking about prehistoric times, either.

Do you think that a cross-cultural legal education is essential for law students? We have a global economy, and lawyers represent corporations that are international in nature. We conceived of the Hauser Scholars Program to be a sort of Rhodes Scholarship for lawyers. International students, already experts in their fields, receive an LL.M., while our students are exposed to people from other systems. The faculty and students in the Singapore dual-degree program come from places like India, China, Australia and Canada.

You served on the President's Foreign Intelligence Advisory Board under Brent Scowcroft from 2001 to 2004. What do you think is a plausible outcome from our intervention in Iraq? I see no plausible

An authority on international law, trustee Rita Hauser '59 endows the Hauser Global Law School Program with her husband, Gustave (LL.M. '57). She championed the LL.M. program in Singapore, and convened faculty and trustees for a democracy and terrorism conference (see page 139) in July. This adviser to presidents and prime ministers spoke candidly with senior writer Graham Reed.

end since we are in the middle of a civil war. I never supported the war and I urged that on everybody, from the president down. I subscribe to the view that we should withdraw combat troops from the major cities to just across the borders. The Sunni and Shia will have to fight it out and reach a political accommodation. I don't see any point to further U.S. engagement. The underlying political issues are not being addressed and we will have more casualties.

In 2001, your name was in the hopper for U.S. ambassador to the U.N. Do you ever wonder how things might be different? I would have resigned over the Iraq war. We are the most powerful player

in the U.N., and when something is important to our national interests, we have to get it by bringing along other nations. That means compromise. We shouldn't just expect others to vote with us, which is what happened with the second resolution for the Iraq war. We were twisting arms and bribing nations and it didn't work.

You and your husband are both very busy people. How do you spend your free time? We have two great loves. The first is hiking. In New York, we walk everywhere. The other is music. I am on the Lincoln Center board, and was on the N.Y. Philharmonic board for decades.

Who is harder to deal with, artists or politicians? The common denominator is that they both have very large egos. My father taught me that when successful politicians look in the mirror, they say, "Me, me, me!" If you don't believe in "me, me, me," then you don't have the juice to be a politician.

What is the best lesson you taught your own children? That everybody slips on a banana peel sooner or later. How you get up, brush off your behind and get on with things is the great test in life. Also, if you have offended anyone, apologize. You may find they'll be there when you've slipped.

Have you given that same advice to politicians? Yes. But politicians rarely apologize. □

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sweet SUCCESS



“From understanding contract principles to deciphering federal, state, and local codes and ordinances to negotiating with various parties, the skills I gained during my years at the NYU School of Law were invaluable in the business world.”

In 2005, Deborah Im '04 took time off to pursue a dream: She opened a “cupcakery” in Berkeley, California, to rave reviews. When she sold the business to practice law again, she remembered the Law School with a generous donation.

Our \$400 million campaign was launched with another goal: to increase participation by 50 percent. Members of every class are doing their part to make this happen.

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